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Convergence in the Political Liberal Community

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Abstract. In the recent literature, a number of political liberals argue that diverse members of society can realize an ideal of community if the members restrict their political deliberations to a set of considerations that all reasonable members can be expected to share qua citizens. While the political liberal proposal of deliberative restraint provides a promising start to understanding community for liberal societies, it misses the necessity of *convergence on outcomes* for community. This paper defends a convergence requirement for community, discusses how the convergence requirement necessitates qualifying deliberative restraint, and considers the implications of the convergence requirement for political discourse. It concludes by considering the possibility that convergence may be sufficient for community even in the absence of shared reasoning.

Key words: community, convergence justification, political liberalism, public justification, public reason.

With friends like that, who needs enemies?
– Joey Adams

Supporters of liberal societies are often suspicious of social ideals of community. Many think that community requires homogeneity, which conflicts with the pluralism that free societies foster.[1] Moreover, many associate community with tribalism, militarism, nationalism, and even totalitarianism. On this understanding, a desire for a society to also be a community is atavistic and dangerous to the liberal order (Hayek 2013, 271, 292, 294). It is tempting, then, to abandon community as an inappropriate social ideal and aim instead for a merely just society.[2] On such a view, liberal societies provide frameworks within which diverse people can form many distinct communities (Gaus 1985; Kukathas 2003, chap. 3; Nozick 1974, chap. 10; Oakeshott 1991, chap. 11). In much the same way, a liberal society provides the framework within which members form families, though the society as a whole does not realize familial ideals.

Of course, certain forms of community are not possible or desirable for a diverse, liberal society.[3] But some political liberals have not abandoned community, arguing instead that diverse members of society can leverage their areas of agreement to build community.[4]

1] On the sources of pluralism, see D'Agostino (1996, 17–19), Gaus and Van Schoelandt (2015), Muldoon (2016, 1–5), Rawls (2005, sec. II.2), Vallier (2019, 20–23).

2] Levy argues that "When it comes to the fraternal solidarity aspired to by many theorists, we can't have it, and we shouldn't want it […]" (2017, 107).

3] Rawls rejects the possibility of a democratic society being a community in the sense of "a body of persons united in affirming the same comprehensive, or partially comprehensive, doctrine." (2001, 3) See also Benn (1988, chap. 12).

4] Political liberals are part of the broader public reason tradition, and some theorists in other parts of that tradition also defend ideas of community, such as Van Schoelandt (2015, sec. 4) and Wendt (2018, chap. 13).

In particular, political liberals propose that members of society restrict their political deliberations to a set of considerations that all reasonable members can be expected to share *qua citizens*. Engaging in such deliberative restraint, they argue, realizes a valuable form of community.

While the political liberal proposal of deliberative restraint provides a promising start to understanding community for liberal societies, I shall argue that it misses the necessity of *convergence on outcomes* for community. To this end, section I elaborates the political liberal conception of community. Section II defends a requirement of convergence on outcomes that are acceptable from the diverse perspectives of the members of society. Including such a requirement, however, necessitates allowing members to raise objections in political deliberation even when grounded in controversial values, contrary to the requirement of deliberative restraint. Section III considers the implications for political discourse. After section IV considers the possibility that no outcomes will achieve convergence, section V concludes by briefly considering the possibility that shared reasons may not even be necessary for community, for convergence may be sufficient even in the absence of shared reasoning.

I. THE POLITICAL LIBERAL COMMUNITY

Political liberalism encompasses a family of views holding that laws or policies must be justified by shared reasons (Watson and Hartley 2018, 76). Political liberals also endorse a requirement of deliberative restraint according to which members of society must deliberate about relevant political decisions *exclusively* in terms of shared, "public" reasons.[5] These reasons are values that each member of society shares or recognizes as an appropriate consideration for political decisions. Leland and van Wietmarschen, for instance, state their "Reciprocity Principle" as follows: "When making political decisions, citizens must rely only on considerations that they can reasonably expect all reasonable citizens to accept." (2017, 143) Similarly, Lister argues that "the reasons that lie behind our decisions" must be mutually acceptable, "*otherwise we exclude the reasons in question from our decision-making.*" (2013, 15; emphasis in original) Deliberative restraint thus requires not only using shared reasons in deliberation, but also excluding or "bracketing" all unshared values.[6] Typically, in a large and diverse society, most values will not be shared, so deliberative restraint excludes most of the values that members of society hold. Public reasons, on this account, are only drawn from a shared conception of free and equal citizenship.

John Rawls discusses public reasoning in terms of a shared conception of justice (cf. Watson and Hartley 2018, 72). In what Rawls calls a "well-ordered society", all members of society endorse the same conception of justice and effectively govern their society in

5] Alternatively, the requirement is sometimes specified in terms of "accessible" though not necessarily shared reasons. For discussion of the different specifications, see Vallier (2014, chap. 1).

6] On the need to 'bracket,' see Freeman (2007, 415) and Moon (1995, 8, 60–62).

accordance with it. I will not focus on a conception of justice, however, because political liberals do not expect that members of society will in fact share such a conception. For this reason, we cannot expect that society will be well-ordered.[7] Insofar as the members endorse different conceptions of justice, their conceptions are not shared. To preserve the shared reasons requirement, political liberals must hold that the competing conceptions are each derived from more foundational values that *are* shared. For Watson and Hartley, public "reasons stem from reasonable political conceptions of justice," but those conceptions "are based on the values that persons as free and equal citizens share." (2018, 72; cf. 83) Anyone deliberating on the basis of a controversial conception of justice should be able to explain how the conception is derived from the shared values, so they are ultimately supporting policies based only on shared values. So, insofar as the members of society are required to appeal to shared reasons, we should understand their appeals to diverse principles and conceptions of justice as circuitous appeals to the underlying shared values.

Understanding conceptions of justice as relevantly standing in for shared values implies that the conceptions of justice are not themselves *necessary* for public reasoning. I take it, then, that deliberative restraint should be understood as allowing members of society to appeal in their deliberations either to controversial conceptions of justice when these are derived from shared values or directly to the shared values without formulating a conception of justice. Deliberative restraint requires shared values but not necessarily shared conceptions of justice. Indeed, political liberals often argue for particular policies without appeal to any conception of justice – e.g., Watson and Hartley's discussion of marriage policy (2018, 84).

Political liberals disagree about how to specify their view, so I will here make certain specifications for simplicity, though my arguments apply to other specifications as well (mutatis mutandis). I will assume that political liberalism concerns at least all laws backed by coercive political power, rather than being restricted more narrowly to constitutional essentials (Quong 2010, 274). On the simplest political liberal view, unshared values must be entirely excluded from public political deliberation such that, as Watson and Hartley claim, "citizens have a moral duty to never appeal to their comprehensive doctrines when engaged in public reasoning." (2018, 7; cf. chap. 3.IV) Under this specification, political deliberation is restricted to public reasons, rather than allowing members to appeal to non-shared reasons even in specially qualified circumstances. Lastly, political liberals are only interested in justification to "reasonable" people. I will assume that this is the set of members of society that seek fair cooperation with others, endorse the relevant public reasons, and give those reasons significant, though not necessarily absolute, weight in their complete

7] More precisely, we cannot expect society to be well-ordered in the sense given by Rawls (Gaus and Van Schoelandt 2017; Kogelmann 2017; Smolenski 2019), though Neufeld and Watson (2018, 53) provide an alternative understanding of a well-ordered society to accommodate justice pluralism.

perspectives.[8] The unreasonable, then, are those who reject liberal-democratic values and are assumed to be outside of the political liberal community.

There are diverse groundings for political liberalism, such as commitment to a kind of respect, joint rule, or autonomy.[9] In addition to these common proposals, some theorists defend political liberalism as a means to realize a social ideal of community, which is sometimes expressed alternatively in terms of friendship. Such political liberals argue that the members of a diverse society can realize a valuable ideal of community by complying with requirements of deliberative restraint for political decisions. The community-based defenses are provided either as additional support for the other groundings or because of doubts about the adequacy of the other groundings.[10] In either case, the theorists present the concern for community as independent of the other sorts of grounding. My concern going forward is strictly with the community-based considerations.

On these accounts, community is not realized by merely deliberating on shared terms. Community also requires a certain kind of motivation or disposition. It would not be enough if the members appealed to shared values merely coincidentally or out of momentary strategic considerations. Community is here realized in a *commitment* to deliberative restraint through which members actively exclude values that are not shared. Mutual commitment to deliberating in terms of shared values and excluding contentious values constitutes the valuable communal motivation. We see this concern for motivation when Lister argues that "the regulation of our conduct by the principle is itself the valuable outcome, because this regulation puts us into a particular relationship with each other." (2013, 107) Similarly, on Leland and van Wietmarschen's account, deliberative restraint must be joined with other communal elements for the society to realize the ideal of community. In particular, Leland and van Wietmarschen hold that compliance with deliberative restraint realizes community only when members have a certain type of mutual concern (2017, 162). Let us consider what type of concern is necessary.

Leland and van Wietmarschen hold that community most fundamentally requires mutual non-prudential concern for each other's interests (2017, 162). This does not require that the concern actually work against their prudential interests; it just requires that the motivation be not merely prudential or instrumentally egoistic. I thus take their account to be compatible with concern for reciprocity or mutual benefit. Essentially, the individuals must be responsive, rather than indifferent, to each other's interests. For Leland and van Wietmarschen, even non-prudential concern is not sufficient. To realize community, people must also satisfy non-imposition and non-deference requirements.

8] Rawls holds that "it is left to each citizen [...] to say how the claims of political justice are to be ordered, or weighed, against nonpolitical values." (2005, 386)

9] E.g., Larmore (1996, sec. 6.3), Quong (2010, chap. 5), Watson and Hartley (2018, 62–63). Vallier (2019, chaps. 2–3) argues that social trust supports public justification, though not of the political liberal variety.

10] E.g., Leland and van Wietmarschen (2017) argue that political liberalism realizes both joint rule and community, and Leland (2019) raises some objections to respect-based defenses of political liberalism.

On the one hand is an objectionable imposition that might be characteristic of paternalism. This occurs when one makes decisions out of concern for others but based on a conception of the good that those others reject.[11] We should note that this does not have to be coercive. The problem is not that you are forcing them to comply with the conception of the good; what Leland and van Wietmarschen are after has a wider scope. Consider, for instance, giving a gift. Suppose Alf thinks that it is good for people to be thin, and Betty is far from his ideal of thinness but embraces her own ideal according to which big is beautiful. Though Alf might think it would be good for Betty to lose weight, given her own views it would be objectionable for him to give her a gym membership for her birthday. It is not a rights violation or an injustice, but Alf is not being a good friend if he selects a gift solely on the basis of his conception of what is good without regard for Betty's view of the matter. Deliberating about the interests of others without regard for what they value is antithetical to community. According to Leland and van Wietmarschen's non-imposition requirement, then, community is realized only when decisions to promote the interests of others are not imposed in this way. The people being benefited must be expected to *recognize it* as a benefit.

On the other hand, members must not be unduly or inappropriately deferential; one should not reason *only* on the basis of the other's conception of the good when it is contrary to one's own. There seems to be something disingenuous about deliberating with the supposed aim of benefitting another on the basis of values you reject. In such a case, from your perspective it is not a way to benefit them. Non-deference, then, may require that Alf not give Betty donuts or other gifts that he views as detrimental.

Leland and van Wietmarschen argue that deliberative restraint facilitates diverse people acting on non-prudential concern with neither imposition nor deference. Basically, people should find what values they share and exclude the rest. Since Alf and Betty don't agree on whether thin is in or big is beautiful, they must exclude or bracket those considerations when deliberating for each other's interests. The shared values are things that each person can recognize as good, so deliberation based on them would be neither imposed nor deferential. Applying this to the political case, Leland and van Wietmarschen (2017, 146) argue that members of society should deliberate exclusively based on "a set of basic liberal-democratic values, such as freedom, equality, the rule of law, and the idea of fair social cooperation, together with a set of uncontroversial political values such as security and efficiency."[12] On their account, the shared values provide a partial conception of the good, specifically identifying the interests of the members *as citizens*. Deliberating on the basis of the shared values is meant to ensure that an individual can act in such a way that

11] Cf. Ebels-Duggan (2008, 151–53), Gaus (1985, 202), and Vallier (2019, 55).

12] Those endorsing deliberative restraint do not agree on which considerations are public reasons. For instance, Ebels-Duggan (2010, 63) includes "political values such as public health, safety, and protection of natural resources." More importantly, we should expect members of a large-scale liberal society to disagree about what are, or ought to be, the shared public reasons (Lister 2013, 131). The fact that the members of society could try to appeal to common values while appealing to different sets of values raises serious issues for deliberative restraint views, but such problems are beyond the scope of this paper.

both she and the other individual would agree is beneficial. Leland and van Wietmarschen say specifically that with the general endorsement of, and compliance with, deliberative restraint, each member can "(1) act on her non-prudential concern to benefit her fellow reasonable citizens, (2) regard the actions of those citizens as being in her interest, and (3) expect her actions to be regarded by those citizens as being in their interest." (2017, 162) Thus, Leland and van Wietmarschen believe that deliberative restraint allows members to realize a mutual concern without imposition or deference and thus to realize an ideal of community.

The bracketing requirement highlights an important distinction. A political liberal community is *not* a society in which the members simply share a comprehensive view. The members of a thick association based in shared culture, traditions, values, religion, and philosophic views may appear to satisfy the deliberative requirements by appealing only to their shared values, but the homogeneity means that such people would not need to bracket any consideration and may all appeal to what they believe is the whole truth. Political liberals explicitly promote deliberative restraint for societies in which members have diverse perspectives, including conflicting religious, moral, and philosophic views. This approach recommends not that the members of society not have these disagreements at all, but that they actively exclude contentious considerations from their deliberations about the society's laws.[13]

II. THE NECESSITY OF CONVERGENCE FOR COMMUNITY

Some public reason theorists, such as Gaus (2011) and Vallier (2014), defend a "convergence requirement" such that a law must be justified to each member of society given her own beliefs and values.[14] That is, each individual must have conclusive reason to endorse the law or see it as acceptable from her own perspective (Gaus 2011, sec. 13). Each member must have sufficient justification, but there need not be a particular justification sufficient for each member. The members of society may have diverse reasons that converge on endorsing the law.[15] Of course, convergence permits sharing reasons, but it does not require it. Members also do not have to see the law as optimal, but only as good enough to warrant endorsement. In Gaus's (2011, sec. 16) version, a law must be better than having no morally authoritative rule for that area (given the background network of already justified rules). Often, many alternative laws meet this standard. These laws are for that individual "eligible," and laws eligible for every member of the society are "socially eligible."

Discerning whether a law is eligible for an individual is not simply a matter of considering what reasons she has for endorsing that law. One must also consider, from her

13] See Gaus (2011, sec. 3.2) on insulation strategies in public reason.

14] On the conception of "justification to," see Van Schoelandt (2015, sec. 1).

15] Though the reasons do not need to be shared, they may need to be mutually intelligible (Vallier 2014, 29).

perspective, the reasons she may have for rejecting it. Even if she has defeasible reasons to endorse the law, she may have reasons that undermine or outweigh those reasons.[16] That is, she may have "defeaters" and all-things-considered reason to reject the law as unacceptable. The convergence account, then, is sensitive not only to what a member would see as good or the reasons for a law, but also to the diverse members' objections to the law and how the pros and cons relate.

We should note both what this standard permits and what it rejects. On the one hand, the convergence requirement allows laws that every member of society has reason to see as mutually beneficial or valuable. Members may disagree about how valuable a law is and how well it compares to alternatives, and they may have very different (even conflicting) reasons for seeing the laws as valuable, but they can see it as valuable nonetheless. On the other hand, the convergence requirement rules out laws that some members see as not beneficial overall even if they provide some benefit. This includes laws that some individuals have reason to see as generating more costs than benefits or even as outright oppressive.

As defended by Lister (2013) and Leland and van Wietmarschen (2017), deliberative restraint lacks a convergence requirement. Deliberative restraint requires that the members of a society deliberate on the basis of shared values, but it does not require agreement on the precise interpretation, relative ranking or weights, or application to given circumstances of those values.[17] Members might, for instance, endorse competing conceptions of equality, weigh freedom against equality differently, or disagree about the likely equality-relevant effects of a proposed policy. Thus, members may deliberate in terms of shared values and yet arrive at conflicting conclusions. Of particular importance is the fact that deliberative restraint not only allows for disagreement about what outcome would be best, but also allows for outcomes that some members see as unacceptable. For instance, Lister explicitly rejects the view "that the laws themselves must pass the qualified acceptability test […]" or face exclusion. (2013, 15) So Lister explicitly holds that deliberative restraint is sufficient for community in the absence of mutual acceptability of the outcomes. Leland and van Wietmarschen (2017) are less clear about convergence requirements, but they recognize that there will be significant reasonable disagreements about political policies, and their specification of neither the requirements of deliberative restraint nor those of community require mutual acceptability of the outcomes.[18]

Without a convergence requirement, deliberative restraint is not adequately sensitive to the perspectives of others. We can see this with the following simple case.

16] On defeasible reasoning, see Gaus (2011, 246–52).

17] For instance, Lister (2013, 17; cf. 146) recognizes that there will be reasonable disagreement "about the weight, application or interpretation of shared, public reasons […]." See also Watson and Hartley (2018, 83–84).

18] Ebels-Duggan (2010, 65) and Moon (1995, 102) each seem to implicitly accept a convergence requirement for community. For them, it seems, deliberative restraint is an important strategy for realizing community, but it is not sufficient when the outcomes are unacceptable from some members' comprehensive views.

> *Fur Coat*: Alf follows the requirements of deliberative restraint, identifies values that he shares with Betty, such as fashion, and selects a gift in accordance exclusively with these values. In particular, Alf gets Betty a fashionable fur coat. Because Betty, unlike Alf, subscribes to religious and philosophic doctrines morally opposed to fur clothing, she finds the gift unacceptable.

Though Alf has a sufficient pro tanto reason based in shared values to give Betty the coat, her perspective provides defeater reasons for that decision. In this case, she could not even get the benefits of fashion from the coat, since she would refuse to wear it, and it seems to her to have overwhelming moral costs. It is not that the gift is simply suboptimal, as if Betty thought a different coat would better fit her wardrobe. Instead, Betty finds the gift unacceptable, even repulsive. Having the coat would be harmful to her interests given her moral commitments.

In this case, Alf is not adequately sensitive to the fact that this gift is not beneficial for Betty despite the pro tanto justification for it in terms of their shared values. How this relates to their friendship depends on Alf's epistemic position. If Alf knew in advance about her moral objections and ignored or bracketed them, then his gift would obviously fail to realize an ideal of friendship or community; giving Betty the fur coat in full awareness of her objection is more of a cruel joke. If he did not know in advance about Betty's anti-fur moral commitments, we would still expect him to be sensitive to her objections in other ways. For instance, when she voices her objection to the gift, he should recognize that it was in fact not a good gift for her. It would be inappropriate, even bizarre, for him to instead demand that she bracket her moral views and accept the coat. Likewise, when he becomes aware of her objection, this should affect his future decisions, so he should not get her another fur garment next year. Lastly, even if he does not know about her moral objections, if he is properly sensitive to her perspective he will at least have a reasonable degree of alertness to the possibility of defeaters from her perspective. This is especially so if Alf already has evidence that it is significantly likely that Betty would have such defeating considerations (e.g., if he knows that she is a vegetarian and has voiced deep opposition to product testing on animals). If Alf is unsure, then he should ask Betty or otherwise investigate. Given the nature of gift giving, he might not let on why he is asking about her views on wearing fur, but he can raise the subject and find out her view. An unwillingness to investigate would be irresponsible of him, and overall such insensitivity would show that he does not really care or does not care in the right way.

When Alf knows that the fur coat is unacceptable for Betty, he should take consideration of the coat off the deliberative table. He should exclude that outcome because it is not eligible for Betty. He might still use the shared reasons as a basis for generating alternative gift options, but he must consider which are eligible rather than defeated. That is, he needs to consider what alternatives satisfy the convergence requirement. This may mean selecting a gift that does less well in terms of their shared values, such as a less fashionable

denim jacket, but convergence takes clear priority here. Merely deliberating on the basis of shared values is not sufficient for realizing community without such sensitivity to the comprehensive perspectives of others.

Members of society need not ensure that their political decisions are optimal, but they should work to ensure that those decisions are acceptable for all. This means taking options off the table that reasonable fellow members find unacceptable. This will sometimes require that a member support a policy she thinks is inferior to another in terms of members' shared values. The point of the deliberation should not be to promote those values maximally, but to provide mutually recognizable benefits even if that comes at some expense to shared values.

Considering the non-imposition requirement further illuminates the necessity of convergence. This requirement reflects the need for sensitivity to others' perspectives and the need for mutual recognition of benefits. Making decisions supposedly in another's interests while disregarding her own view on the matter is corrosive of community. We saw that it is inappropriate for Alf to give Betty the gym membership because Betty does not share Alf's aesthetic values. The same problem arises if Alf gives Betty the fur coat. The coat seems to Alf to be a good gift because he values fashion and has no qualms about fur, but despite Betty's sharing an appreciation of fashion, she is deeply opposed to the fur. For Alf to disregard Betty's perspective on the morality of fur is to assert his own understanding of her interest in disregard of her reasonable disagreement. To intentionally ignore the objections of others would be as much a community-negating imposition as to rely on a conception of the good that they reject.

There is an important lesson here about deliberating on the basis of a shared partial conception of the good. Though it may help Alf's deliberation to consider Betty's interests in fashion, he cannot rest satisfied having benefitted Betty *qua fashionista* while giving her a coat she finds morally abhorrent. That gift does not actually benefit Betty even if it does benefit her qua fashionista. For political community, even if it makes sense to try to benefit people *qua citizens*, we cannot try to benefit them merely qua citizens.[19] We must remain sensitive to the fact that they are full people with broader perspectives. Even if we focus on benefitting them as citizens, we must still be interested in benefitting them as individuals. The point of conceiving of their interests as citizens is to facilitate, not replace, benefitting them.

III. POLITICAL CONVERGENCE

Political community may seem significantly different from personal friendships or other intimate relations insofar as the scale of politics introduces new challenges. The members of a large and highly heterogeneous society are poorly positioned to understand each other's perspective and assess whether convergence obtains. Political liberals may wish to reject a convergence requirement in light of the epistemic difficulties.

19] Ebels-Duggan (2010, 69) makes a similar point in criticizing Freeman (2006).

These epistemic difficulties are serious, but it would be a mistake to abandon convergence. Most centrally, we saw that proper concern for not imposing on others requires the sensitivity to their perspectives that the convergence requirement expresses. To reject a convergence requirement would be to reject the need for this sensitivity and thus to altogether reject community for the liberal society. It is, however, also important to notice that it matters what the members are aware of, alert to, sensitive to, and disposed to account for or disregard. Alf's gift may still realize community if he at least tries to achieve convergence, even if he missteps and his best efforts lead to a gift that fails the convergence requirement. But for Alf to willfully disregard considerations that he knows make the option unacceptable to Betty is antithetical to community. The same is true for members of society at large. The epistemic difficulties will make for more occasions in which reasonable efforts at convergence are not successful, but it matters for community whether the members make the efforts.

Furthermore, one should not exaggerate the difficulties. Even in vast and diverse societies, members often know about the objections of other members to policy options. For instance, if considering military conscription in the United States, it is well known that there are religious pacifists.[20] It is not hard to know that pacifist members of society must reject a policy that conscripts them into combat, even if shared values such as equality and security support the policy. Someone supporting conscription of other members in willful disregard of their pacifism cannot, in Leland and van Wietmarschen's words, "expect her actions to be regarded by those citizens as being in their interest." (2017, 162)

Importantly, however, a member of society needs some method for discovering the relevant considerations from the perspectives of others. Since a member cannot rely on mere reflection to check for defeating considerations in others' perspectives, she depends on others' actually communicating such considerations. The diverse members must be free to voice their concerns and raise their objections, even when these come from their comprehensive views and thus involve unshared values. The members cannot expect each other to bracket or be silent about these concerns, any more than Alf could expect Betty to bracket or be silent about her views on the morality of fur. Dialogue among the members regarding political decisions, then, cannot exclude unshared considerations and thus cannot occur exclusively in terms of shared values.

There are two qualifications to note here. First, I am only arguing that the members must be free to raise, and be mutually sensitive to, considerations that may defeat a proposal. This does not imply that members could appropriately appeal to their controversial conceptions of the good to justify imposing policies that are unacceptable to others. The asymmetry between reasons for and reasons against a proposal is already apparent in Alf's decision-making. The fact that he must be sensitive to Betty's unshared moral values and *rule out* the fur coat does not mean that he can include his unshared "thin is in" values

20] Vallier and Weber (2018) and Van Schoelandt (2018) discuss pacifists. Clifford (2011, sec. II) provides Rawlsian reasons for permitting selective conscientious objection.

to positively justify selecting the gym membership. The convergence requirement here is removing outcomes that would be unacceptable for some members, but the members are still under the non-imposition requirement. Second, I am here only arguing that the deliberation must allow the considerations that rise to the level of making an outcome ineligible. Convergence regards whether the outcome is acceptable, not necessarily best. I am thus not arguing that a member must be sensitive to every possible consideration that others may have, but only the considerations that may make an outcome unacceptable. The proposal, then, is that deliberative restraint must make allowances for members of society to raise unshared considerations against a proposal when these considerations make the proposal unacceptable. Excluding or silencing those considerations would be antithetical to community.

Though I have emphasized the defeaters from unshared values, it is worth noting that the members should be sensitive to defeating considerations grounded in the shared values themselves. In particular, just as deliberating from shared values does not guarantee reaching the same decisions, it does not guarantee that the decisions will be mutually acceptable. Disagreement about the precise interpretations, relative weights, and applications of the values generates disagreement about which decision is best and at times even about which are acceptable. A member of society must be sensitive to the fact that other members may find a decision unacceptable in light of their own understandings of the shared values and the facts relevant for the case. So, for instance, some members may, on the basis of shared values and their beliefs about the effects of markets and redistributive policies, defend a radically libertarian system of strong private property rights along with very minimal economic regulations or redistributive programs (Lomasky 2005; Tomasi 2012; Vallier 2017). Other members may anticipate that such policies would be disastrous for poor people and thus find this proposal unacceptable (Gaus 2010, sec. VI.B.). The disagreement is within the confines of the shared values, rather than arising from unshared values, but the proposal is still unacceptable for some members. The dissenting members could not be expected to see such a policy as beneficial, so for the proposer to insist upon it would fail to realize community.

This suggests that political liberals should adjust the requirement of deliberative restraint. Even if shared values provide pro tanto justifications for a policy, the members of society need to know whether any member has a defeater for the decision. In exactly the sort of large-scale society for which political liberals think deliberative restraint is necessary, such restraint would also be dangerous if not qualified to allow members to voice their objections grounded in their comprehensive conceptions of the good.

IV. EMPTY SETS

It may seem that convergence will often be unachievable. In some cases, the diverse members of society may have defeating considerations for every alternative, so the socially eligible set may be empty. While some may see the possibility of empty sets as an objection

to requiring convergence, I would emphasize that an empty eligible set can indicate something normatively important.[21] An empty eligible set often implies that nothing should be done. Sometimes doing nothing is best for realizing community. If Alf found that every gift he considered was defeated from Betty's or his own perspective, then it might be best for him to simply give no gift at all rather than one that is imposing or disingenuous. That may be unfortunate, but life is unfortunate sometimes. If this occurs often, Alf and Betty are likely to simply agree to not bother trying to get each other gifts, but that doesn't mean that they don't realize community in other activities. The same applies in political contexts. The government should, for instance, not establish any official state church, since none of the options would be socially eligible. Though we cannot know in advance how often people will be able to find mutually acceptable decisions, it would not be surprising if community in a diverse society is best realized with a considerable degree of policy minimalism. The community will in some ways be thin, as by focusing on defense of the basic liberties and forgoing many peripheral activities that, like official churches, are bound to be not only controversial but for many unacceptable.

Moreover, while empty sets are possible, we should not exaggerate their likelihood. Political liberals should expect members who share the liberal values to often find mutually acceptable options, particularly for cases in which the values are highly implicated. Insofar as all find values such as freedom, equality, and security important, we should expect that the members of society will not typically have defeating considerations for every alternative. Even individuals that have defeaters for some alternatives will find some others eligible. In fact, when the liberal values are highly at stake, we should expect the individuals to find many possible policies eligible. Here we must keep in mind that the standard is not optimality, but acceptability, and people typically find far more policies acceptable than optimal.

Polycentrism and subsidiarity can often facilitate convergence since policies may satisfy the convergence requirement at a local scale even if not for the society as a whole. Members of society sensitive to the perspectives of others can thus respond to a lack of convergence at one level by considering related policies with narrower jurisdictions and thus avoid imposing the law on those for whom it is unacceptable.[22] And, of course, even where no law is justified, the members of society may be free to pursue the values through non-state ventures. The lack of agreement on a state church, for instance, merely defeats policies for any state-established church, but many members of society organize and associate to form churches within civil society. Members of a diverse society can often preserve and promote community by pursuing their aims non-politically.

21] Shadd (2016) argues that convergence cannot be required for coercion because the requirement produces an empty set.

22] Van Schoelandt (2018) considers accommodations, such as religious exemptions, in terms of restricting the relevant jurisdiction of a law.

Though I think that a significant variety of policies establishing and protecting basic liberties are socially eligible for liberal-democratic societies, this cannot be guaranteed. Were there no mutually acceptable possibilities, this would not show that community does not require convergence or that community can be realized through mere deliberative restraint. Instead, it would show that community, on the present analysis, is not possible for that society. Diversity seems to undermine community in that society. Political decisions, in such a society, would be imposed upon some. The imposition may be justified overall, but its justification does not ensure that it is a realization of community.[23]

Where political decisions are to be made without convergence, the value of community still seems to support striving to minimize harm. For instance, while all military policies may be unacceptable to certain pacifists, it would be particularly noxious to conscript them into combat. When we are imposing on others, the value of community supports imposing lighter rather than heavier burdens. This brings out the fact that community comes in degrees and community is preserved better if members deliberate in a way that is to a significant degree sensitive to the perspectives of those imposed upon. In these cases, even if community is not fully realized, the members may be able to at least avoid relations of cold indifference or outright hostility. Moreover, a failure to realize community in one decision does not mean that community cannot be realized in many other decisions or in the institutions overall. Members of society should not, when faced with having to make some decisions without convergence, simply abandon sensitivity in that or other decisions. It would be an unnecessary sacrifice of community if they did not remain alert to the convergence alternatives when available.

V. THE CENTRALITY OF CONVERGENCE FOR COMMUNITY

Up to this point I have assumed that political liberals are correct in holding that shared reasons are necessary for community, though I have argued that such reasons are not sufficient. This leaves open the importance of shared reasons vis-à-vis private reasons for realizing community. One might think that shared reasons are much more important and convergence reasoning is of little significance. In contrast, I argue that convergence reasoning is foundational and shared reasons are not necessary for community.

This is brought out in a case of friendship-exemplifying gift giving. In the television show *Parks and Recreation*, antisocial Ron worries that hyper-social Leslie will throw him a big surprise birthday party (Holofcener 2011). In the end, Leslie does surprise Ron, but with a room where he can be alone to eat a steak dinner and watch *The Bridge on the River Kwai* and *The Dirty Dozen*. Ron expresses his surprise, and relief, saying: "Ann said you had a big party—sombreros, karaoke." Leslie exemplifies a fundamental aspect of friendship when

23] Lister (2013, 129), Leland (2019, sec. 5), and Van Schoelandt (2015) each hold that the concern about community may be outweighed by other considerations. Though not in terms of community, Friberg-Fernros (2010, 39) defends understanding public justification as a "mere ambition" or "a mere goal or a prima facie duty."

she replies, "Yeah, I did that for Ann. Why would I throw Ron Swanson an Ann Perkins party?" Leslie is sensitive to the fact that Ron would appreciate *this* surprise but would not have appreciated the sort of surprise that would be suitable for Ann. Leslie's sensitivity is essential to her friendship and ensures that she does not impose on Ron. And it seems safe to assume that Leslie is not merely deferring. Leslie would not, for instance, give Ron high explosives, even though he would see that as a good gift.[24] Instead, she finds a surprise that Ron and she could converge upon in judging to be good.

At no point does Leslie indicate any shared values that were the basis of her reasoning. Moreover, it does not matter whether she did reason from shared values. The important thing is that the gift is something that both can recognize as good. While it is possible that we could discern what values they share, nothing hangs on whether Leslie considered any shared values. If Leslie reasoned through convergence, there is no threat to community. Suppose Leslie started by writing a big list of things that Ron would like without worrying about what values would justify them, and then she ruled out anything (such as explosives) that she could not support with her own values. In doing this, she was discerning what options are socially eligible, and for that task she did not need to be concerned with whether an option is eligible for her and Ron for the same reasons. Maybe she thought *The Dirty Dozen* is good *because it is a classic film*, while Ron thought it is good *because it is a war movie*. The important thing is that in her reasoning she was sensitive to Ron's own perspective and settled on an option that both could recognize as good. While sensitivity to convergence is necessary for realizing community, shared reasons are not.

What the example highlights is that convergence is the real heart of community. The convergence approach to public reason calls on members of society to be empathetic and work to really understand each other's perspectives. To realize community in a diverse and liberal society, we must foster and maintain mutual understanding, rather than recognizing only what people share and silencing other aspects of their diverse perspectives.

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24] In one episode (Miller 2011), Ron gives a nine-year-old a Claymore mine as a gift so that she may "[u]se it to defend [her] property."

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The Instability of *The Law of Peoples* and a Suggested Remedy

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Abstract. Rawls' *The Law of Peoples* is vulnerable to the criticism of instability, which is exemplified by his oversight of the aggressive state. In order to address this criticism in keeping with Rawls' overall project, I argue that the grounds for intervention in the Society of Peoples ought to be extended from merely human rights violations to also include the imposition of unjust inequalities by one state upon another. I also argue that Rawls' conception of public reason is too narrow, and must be expanded to include participation of all reasonable citizens, not merely representatives of the peoples with membership in the Society of Peoples. In refuting objections to each of these alterations, I establish that this two-part revision is a successful route to be taken in addressing the concern of instability while also remaining in keeping with – and perhaps making more Rawlsian – Rawls' overall project. My solution does this by further advancing liberalism, reflecting a commitment to pluralism and the social contract tradition, and more resolutely recognizing a possible divergence in moral capacities between representatives and citizens.

Key words: Rawls, Law of Peoples, instability, modus vivendi.

Rawls' account of global justice presented in *The Law of Peoples* has been the target of various criticisms that include but are certainly not limited to: failure to adequately address international distributive inequality (Tan 2004; Pogge 2002), a narrow characterization of human rights (Reidy 2006; Hinsch and Stepanians 2005), and equal treatment of decent peoples despite not being fully liberal (Nussbaum 2006; Tan 2006). Despite the great deal of attention paid to Rawls' account, little consideration is given to the pivotal point that his model is unstable due to its potential for becoming a modus vivendi – an arrangement of coordinated self-restraint of competitive behavior between two or more states in the hopes of self-interest maximization and a peaceful coexistence.

According to Rawls, it would be "wise and prudent" for the states involved in the modus vivendi to ensure that it "represents an equilibrium point", insofar as it is disadvantageous for the participating states to violate the arrangement (2005, 147). It should be noted, however, that the states involved are fully prepared to pursue their interests to the detriment of other participants if circumstances change to permit their doing so. I offer a number of closely connected reasons for thinking a modus vivendi is inherently unstable. Potentially becoming a modus vivendi proves particularly problematic for Rawls' account because he takes stability for the right reasons – rather than a balance of forces – to be a necessary feature of any theory of justice. Setting aside the aforementioned various criticisms, I argue that Rawls' *The Law of Peoples* is vulnerable to my critique of instability for two reasons: (i) the aggressive state – a state that Rawls' model leaves logical room for but has heretofore gone unrecognized, and (ii) the restricted operation of public reason in the Society of Peoples. I ultimately suggest that adopting a model of public reason widened to permit participation of qualified individuals external to the Society of Peoples, in conjunction with revisions to the grounds for just intervention in the Law of Peoples, alleviates both

of these issues. This suggestion not only remedies instability, but also maintains the spirit of Rawls' project by further advancing liberalism, reflecting a commitment to pluralism and the social contract tradition, and more resolutely recognizing a possible divergence in moral capacities between representatives and citizens. Modifying Rawls' project with this spirit in mind ultimately makes his project more Rawlsian – more consistent with those tenets he held to be of the utmost importance for justice.

To carry out this project I first explain Rawls' conception of global justice and public reason in *The Law of Peoples.* I then elaborate my critique of instability, illustrating why Rawls' model has the potential for becoming a modus vivendi. Next, I explain how *The Law of Peoples* permits aggressive states. From here, I spell out my two-part remedy for the instability exemplified by the aggressive state: one, extending the permissible grounds for intervention from merely human rights violations to also include the defense against unjust inequalities being imposed upon one state or peoples by another, as well as two, a more inclusive conception of public reason that permits all reasonable citizens – not merely representatives of liberal and decent peoples – to participate. While doing this, I consider and refute objections to each of these components. In refuting these objections, I demonstrate that my two suggested modifications to the *Law of Peoples* are in keeping with Rawls' overarching project and that they should be adopted so that the threat of instability can be definitively eliminated.

I. RAWLS' *THE LAW OF PEOPLES*

In order to advance my criticism that Rawls' model is unstable because of the possibility that it will become a modus vivendi, it is helpful to first examine its relevant portions. These include what it takes to be a member of the Society of Peoples (SoP), the limited account of human rights whose violation serve as the sole justification for intervention, the Law of Peoples (LoP), as well as how it is determined by the second original position, and public reason.

The LoP is a collection of ideals and principles that are subscribed to by only the SoP. Two types of peoples are members of the SoP and are exclusively considered well-ordered societies: these are liberal peoples and decent peoples. A well-ordered society has three features: (i) everyone accepts and has knowledge that everyone else accepts the same principles of justice, (ii) its basic structure satisfies the accepted principles of justice and this is known, and (iii) its citizens have a sense of justice that guide them to generally comply with the basic institutions that are regarded as just (Rawls 2005, 35-40). Liberal peoples have three features in addition to being well-ordered: (i) they have, "[…] a reasonably just democratic government that serves their fundamental interests […]" (ii) the citizens are united by common sympathies, which are essentially synonymous with a feeling of nationalism, and (iii) a moral nature (Rawls 1999b, 23). By virtue of (i), liberal peoples respect human rights. It is easiest to understand the status of decent peoples (as

well as those that are not well-ordered and not included in the SoP) if one first examines the role of human rights in *The Law of Peoples*.

According to Rawls, human rights are a special class of urgent rights that include "the right to life; to liberty ([…] a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property […]; and to formal equality […] (that is, that similar cases be treated similarly)." (1999b, 65) Human rights set a necessary – though not sufficient – standard for the decency of an institution, and they are intrinsic to the LoP (Rawls 1999b, 78-85). Human rights have three features: (i) fulfillment is a necessary condition for a society's institutions and legal order to be considered decent, (ii) fulfillment is sufficient to exclude "justified and forceful intervention by other peoples", and (iii) they set a limit to reasonable pluralism (Rawls 1999b, 81). Reasonable pluralism is the idea that free institutions tend to have and foster a diversity of comprehensive doctrines among their (the institution's) members (Rawls 2005, 36). When human rights set a limit to reasonable pluralism, they deem unreasonable those comprehensive doctrines that fail to respect human rights. Essentially, if the standards set by human rights are not met, the SoP has *prima facie* justification for intervention of various kinds. Rawls is vague about what intervention amounts to, suggesting that is may be either sanctions, or – when the violations are particularly egregious – military involvement.

Decent peoples, like liberal peoples, respect human rights, prohibiting liberal peoples from intervening upon them (Rawls 1999b, 60-65). Decent peoples also respect their members' rights to be consulted in political decisions and to voice dissent, despite members not having democratic rights. Dissenters must be heard fairly, and not dismissed as incompetent solely in virtue of being a dissenter. Perhaps most importantly, decent peoples lack aggressive aims and must seek legitimate ends through peaceful channels (such as diplomacy and trade). Rawls believes that these features of decent peoples afford them the opportunity to transform into fully liberal peoples eventually.

Outlaw states, however, refuse to abide by a reasonable LoP which means that they, among other things, fail to recognize human rights (Rawls 1999b, 90-92). Because of this refusal, they cannot participate in the SoP. Outlaw states are regimes that justify war to potentially advance their rational (yet unreasonable) interests (Rawls 1999b, 28). An alternative form of outlaw state mentioned in passing violates human rights, but is not well-ordered and is not aggressive (Rawls 1999b, 93n.6). The violation of human rights means not only that they violate what the SoP recognizes as reasonably just, but also that peoples may permissibly intervene upon them.

There are two other categories of societies that cannot partake in the SoP: the burdened society and the benevolent absolutism. The burdened society is a society that is greatly disadvantaged in the pursuit of becoming either a decent or liberal peoples due to external historical, social, and economic circumstances. The benevolent absolutism is non-aggressive and respects human rights, but fails to be well-ordered because it does not give its members a role in political decisions.

The LoP, subscribed to by only members of the SoP, is determined by implementing the second original position (Rawls 1999b, 32-40). This differs in a few ways from the first original position, a key component of Rawls' account of justice on the domestic scale presented in *A Theory of Justice*. First, in the second original position, liberal and decent peoples have rational representatives that are "fairly situated as free and equal". (Rawls 1999b, 33) Second, unlike individuals in the first original position, these peoples, taken as a single body, do not have comprehensive doctrines of the good. The absence of such doctrines is because a liberal society taken as a whole does not have a conception of the good, only the individuals within said society do. The liberal society's lack of a conception of the good permits a pluralism among conceptions of the good of individual members. So, representatives of the peoples do not operate behind the veil with a particular comprehensive doctrine of the good in mind (because there is no comprehensive doctrine that can be ascribed to the peoples as a whole). (Rawls 1999b, 34) Third, peoples' fundamental interests are specified by their political conception of justice, not by the principles they agree to within the LoP. This situation is unlike the first original position because individuals' fundamental interests are specified by their conception of the good. Fourth, peoples select principles of justice from varying interpretations of the pre-set list of eight principles of the LoP. This limitation is placed on peoples so that their rights and duties are derived, "[…] from the Law of Peoples itself, to which they would agree along with other peoples in suitable circumstances." (Rawls 1999b, 27) These eight principles are:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political or social regime. (Rawls 1999b, 37)

Like in the first original position, representatives operate behind a veil of ignorance that prevents them from knowing such things as level of economic development, resources, features of the population they are representing, or the size of the territory the population occupies (Rawls 1999b, 32-33). They do know, however, that there are reasonable and favorable conditions being fulfilled that make a constitutional democracy plausible. Representatives negotiate to determine the terms of cooperation that are fair, just as in the first original position, but this negotiation is done only in terms of the eight principles. Negotiating over just these principles helps ensure that "inequalities are designed to serve

the many ends that peoples share" while the representatives of peoples try to maintain the equality and independence of their own society (Rawls 1999b, 41).

It is mandatory that the eight principles satisfy the criterion of reciprocity, since this criterion is characteristic of liberalism. The criterion of reciprocity requires that

> when terms are proposed as the most reasonable terms of fair cooperation, those proposing them must think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated or under pressure caused by an inferior political or social position. (Rawls 1999b, 14)

This criterion aids in ensuring that global disparities in power or wealth are acceptable to those affected. Reasonable pluralism, like the criterion of reciprocity, is crucial for a global structure to attain liberalism. Public reason can serve as the basis from which a diverse array of peoples can develop the LoP within a liberal conception (Rawls 1999b, 55).

In order to fully understand of *The Law of Peoples*, one must be able to recognize the notion of public reason and its central role in global justice. On Rawls' model, free and equal peoples participate in the public reason of the SoP, hashing out what their mutual relations, as peoples, should look like (1999b, 54-58). His reasoning for claiming that only well-ordered societies can engage in public reason follows from his stipulation that only they have the capacity for a moral nature, making them capable of carrying out the moral duty of public reason. States lack this moral nature – being moved purely by their rational interests – making them unsuitable candidates to reasonably consider how to advance the project of liberalism in the forum of public reason. The content of public reason consists of the criteria, ideas, political concepts, and principles of the LoP. It is important to note that

> public reason is invoked by members of the Society of Peoples, and its principles are addressed to peoples as peoples. They are not expressed in terms of comprehensive doctrines of truth or of right […] but in terms that can be shared by different peoples. (Rawls 1999b, 55)

Discussing principles in shared terms ensures that public reason can properly serve as the basis for a broad spectrum of peoples to develop and refine the LoP.

The ideal of public reason is realized when government officials – acting as representatives – follow and act on the LoP. These representatives explain to other peoples their reasons for enforcing or "revising a people's foreign policy and affairs of state that involve other societies." (Rawls 1999b, 56) Private citizens can achieve the ideal of public reason by imagining themselves as government officials and considering what foreign policy they would think it reasonable to advance. It should be noted, though, that while private citizens can achieve the ideal of public reason, the conclusions they reach carry no weight in the global discussion and their achieving the ideal does not amount to it being realized. Rather, private citizens' capacity for achieving the ideal ensures that they (the citizens) will hold their representatives (government officials) to the appropriate standard for participation in public reason. Rawls holds that public reason "is part of

the political and social basis of peace and understanding among peoples" when this disposition among citizens is "firm and widespread" (Rawls 1999b, 57). When public reason is widespread in this way, peoples are properly suited to discuss in shared terms – and eventually determine – how to address critical issues.

Having completed an explication of the relevant portions of *The Law of Peoples*, our attention can now be shifted to the reasons why it is inherently unstable, which I will ultimately suggest can be remedied by (i) extending the permissible grounds for intervention from merely human rights violations to also include defense against unjust inequalities being imposed upon one state or peoples by another, and (ii), a more inclusive conception of public reason that permits all reasonable citizens – not merely representatives of liberal and decent peoples – to participate.

II. THE INSTABILITY OF *THE LAW OF PEOPLES*

Rawls' model for global justice, as it stands, is vulnerable to the critique that it is inherently unstable due to the likelihood of devolving into a modus vivendi. As previously mentioned, a modus vivendi is the coordinated self-restraint of competitive behavior between two or more parties in the hopes of self-interest maximization and a peaceful coexistence. The parties involved care little for the interests of each other, and since self-interests are the primary concerns of parties, the modus vivendi will not be based upon shared values between parties; a modus vivendi is not a value-based world order where parties are committed to a shared political conception, like in the SoP. Once self-restraint is established between the parties, the modus vivendi perpetuates itself by "ensuring that each party has sufficient incentives to participate so long as most others are participating as well." (Pogge 1989, 219) This arrangement ensures continued participation by making it the case that a party is damaged if it stops participating. Rawls' model leaves open the possibility of an extremely unbalanced distribution of power by giving little consideration to socioeconomic inequality, and this unbalanced power or lack of consideration for inequality, in turn, allows unjust inequalities to arise. I take unjust inequalities to be inequalities imposed upon one party by another, where the inequalities are not freely accepted or agreed to by those on the receiving end of them. For the remainder of the paper I am primarily concerned with socioeconomic and distributive inequality, but that is not to say these are the only relevant types of unjust inequalities. Importantly, I am not arguing for the implementation of more demanding global redistributive principles, like those articulated by Charles Beitz (1999) or entertained by Pogge (1994). Rather, I am appealing to Rawls' conception of justice as fairness, wherein "the fair terms of social cooperation are to be given by an agreement entered into by those engaged in it" and "made in view of what they regard as their reciprocal advantage, or good" (2001, 15). In order for the agreement itself to be fair, one party cannot have "unfair bargaining advantages over others" and the use of force, coercion, deception, and fraud are ruled out (Rawls 2001, 15).

So, consider the following case illustrating one way that unjust inequalities might arise: a party, Haplessburg, enters the modus vivendi for needed natural resources, but are at a disadvantage compared to most parties precisely because of this lack. Even if Haplessburg might instead continue in isolation (to their detriment), it seems additionally preferable to participate because they will obtain protection from being attacked or enslaved by the other participants (by virtue of a modus vivendi being coordinated self-restraint). With Haplessburg's continued participation, they continually lose power to the point where they wholly depend upon maintaining membership in the modus vivendi, even if it is no longer self-interest maximizing. The room left for unchecked inequality means that Haplessburg can no longer consider leaving the modus vivendi in favor of isolation. As the modus vivendi moves forward, Haplessburg remains weak because they have no option but to comply.

From this example, it is easy to see that parties may be left completely incapable of preventing bad outcomes. Since the modus vivendi is unstable, participants, like Haplessburg, may fear falling into the vicious cycle described above and decide to enter war in hopes of establishing protection and power. An alternative to this is that the parties involved with greater power may pre-empt the weaker party's attack. Either way, these measures intended to protect "can lead to a partial or complete breakdown of ordered relations." (Pogge 1989, 221) Even if the arrangements of the modus vivendi happen to withstand these attacks, it may be at the cost of the existence of some of the modus vivendi's participants.

Finally, it is not difficult to imagine how a party may be pragmatically incapable of giving precedence to its own members' values, when the party runs the risk of not even surviving participation in the modus vivendi. If parties fear one another, they will focus upon survival and long-term security of their members' values, rather than short-term actualization of said values. It is unlikely that a party would exercise restraint, despite ethical qualms, when their existence hangs in the balance, especially when success in prevailing seemingly ensures that their members' values will win out in the end.

For these reasons, it is evident that it is undesirable for a modus vivendi to materialize. Instability from an extremely unbalanced distribution of power, lack of protection for parties against horrible outcomes (including being dissolved), and an inability to give precedence to members' values all contribute to the conclusion that a modus vivendi will be neither peaceful nor just.

None of the eight principles address these issues. One may argue that (8) – peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political or social regime – does address this issue by requiring liberal and decent peoples to help burdened societies that are prevented from establishing just or decent institutions by "unfavorable conditions". But Rawls does not clearly stipulate what precisely "unfavorable conditions" amount to, making abiding by this principle difficult, at best. Additionally, (8) says nothing about preventing severe socioeconomic disparity between liberal and decent peoples that have achieved

just and decent institutions respectively. It is not difficult to imagine a society that is socioeconomically disadvantaged, but meets the minimum standards for a decent society, preventing it from being classified as a burdened society. There is nothing in Rawls' model to aid these peoples. This situation is problematic because Rawls states that the Law of Peoples "holds that inequalities are not always unjust, and that when they are it is because of their unjust effects on the basic structure of the SoP, and on relations among peoples and among their members." (1999b, 113) Yet it is precisely the latter case – where inequalities have unjust effects on the relations among peoples – that I am concerned with, and that Rawls' model fails to address.

It might further be claimed that discussing this principle in the forum of public reason could give rise to revisions that would address this issue. There is no guarantee, however, that liberal and decent peoples would see to it that extreme socioeconomic disparities leading to unjust inequalities are protected against because such extremes are not a primary concern of Rawls' liberalism. Rather, the LoP is concerned with the wellbeing of individuals, as well as justice and stability for the right reasons; not distributional inequalities (Rawls 1999b, 120).

Furthermore, Rawls' model fails to adequately address what Pogge refers to as the situated assurance problem (Rawls 1999a; Kant 1999). The situated assurance problem arises when a party's reasons for accepting the burdens associated with social cooperation are undermined due to a lack of assurance that other parties will adhere to the same standards of social cooperation (Pogge 1989, 100). As a result, the situated assurance problem "threatens pervasive noncompliance with existing ground rules." (Pogge 1989, 101) One might suggest that principle (2) does sufficiently address this issue. (2) States that, "peoples are to observe treaties and undertakings." (Rawls 1999b, 37) This, however, is merely a superficial demand. There is no hint at the repercussions for failing to observe treaties, and other components of Rawls' model preclude intervention unless a human rights violation is involved. Additionally, public reason is limited only to discussion of the LoP, not to mechanisms external to the LoP that would ensure enforcement.

Even if enforcement mechanisms are developed, backing (2) more substantially contradicts the sufficient condition to escape intervention – that of merely satisfying human rights. Setting consideration of these potential mechanisms aside, the SoP is left with no substantial method for considering ensuring that peoples reasonably observe treaties. The same problem arises if one were to cite Rawls' claim that peoples must be respectful of each other and, because of this, treat each other as equals and observe treaties. Once again, there is no method in place to ensure that respect is maintained. Rawls' failure to address the situated assurance problem leaves open the possibility that peoples that play by the rules will suffer while other peoples ignore them with no repercussions. To be charitable, the purpose of pointing this out is to demonstrate that there is an oversight within Rawls' account; it is not to deny altogether that he would have been open to amending his account with an enforcement mechanism.

Finally, Rawls' focus on shared fundamental values accompanied by the concern of peoples about complications arising from the situated assurance problem plausibly leaves peoples pragmatically incapable of giving precedence to the shared values of their citizens (recall Haplessburg). Peoples will understandably be more urgently concerned with simply protecting themselves and ensuring survival within the global structure. Only once a people has secured its survival can it concern itself with promoting the values of its own citizens. One might respond as above, claiming that (2) resolves the situated assurance problem and relieves this concern of peoples. Just as before, this is merely a superficial demand until it is backed with legitimate clout. It should again be noted that backing (2) more substantially contradicts the sufficient condition of merely satisfying human rights to escape intervention. Until this problem is solved, the peoples' fear stemming from the situated assurance problem is warranted.

These three deficiencies in Rawls' account suggest that his value-based world is inherently unstable since it is capable of devolving into a modus vivendi. This possible devolvement means that Rawls' account may not be peaceful or just, which is a problem Rawlsian scholars ought to take seriously, given how Rawls considers stability a necessary component of any theory of justice. He takes stability to be an institution's ability to remain just when changes are made to accommodate new social circumstances.[1] If there is a deviation from justice, the institution will still be considered stable if said deviations are "effectively corrected or held within tolerable bounds by forces within the system." (Rawls 1999a, 401) Additionally, Rawls values stability for the right reason – a reasonable interest "guided by and congruent with a fair equality and a due respect for all peoples" – over stability as a balance of forces (1999b, 44-45). He is concerned that peace between states gained when stability is of the latter form will "be at best a *modus vivendi*, a stable balance of forces only for the time being." (Rawls 1999b, 45; emphasis original) As established above, a modus vivendi is evidently unstable.[2] If a model of global justice is capable of devolving into a modus vivendi, it too is inherently unstable. It follows from this that Rawls' global order is neither peaceful nor just.

1] One might be concerned that social circumstances are constantly shifting – particularly those shared values that shape how we characterize what is just – and so there is a higher risk of instability. Provided these shared values are "affirmed by an overlapping consensus of comprehensive doctrines", the institution will remain stable for the right reasons, and not merely because it is a *modus vivendi* (Rawls 1999b, 16).

2] It should be noted that there are competing evaluations of *modus vivendis* that, contra Rawls, find that they may be suitable (if not the best) way to achieve justice in a pluralistic world. For example, Charles Larmore (1987) argues that we can separate the principles of justice from the principles of morality, and achieve a morally neutral account of justice via *modus vivendi*. Fabian Wendt (2016), on the other hand, dismisses Larmore's characterization, understanding a *modus vivendi* not as "a distinct approach to politics" but instead as "a concept that refers to institutions that enable us to live together in peace under circumstances of disagreement and conflict, are accepted as a second-best, and satisfy certain minimal moral criteria." (353) But to understand *modus vivendis* in these ways would be to abandon central tenets of the Rawlsian project.

III. THE AGGRESSIVE STATE

Rawls does not consider the possibility of what I will call aggressive states, and as a result overlooks a powerful objection to his view that there is a clear-cut case exemplifying his model's weakness. Aggressive states lead to further unsatisfactory conclusions for his account, typifying his inability to handle a type of institution capable of destabilizing his global order. At this point I would like to pre-empt the possible objection that demonstrating that there is room for the aggressive state and that it has been overlooked does little to cast doubt on Rawls' project. Instead, it seems uncharitable to criticize him for this, since he is seemingly concerned with ideal theory while the aggressive state, as explained below, is clearly a concern of non-ideal theory. But *The Law of Peoples* should not be read as merely an ideal theory of global justice. Rawls' work clearly demonstrates that he's concerned with the non-ideal when considering those societies that are not well-ordered (i.e. outlaw states, benevolent absolutisms, and burdened societies). Additionally, Part III of *The Law of Peoples* is titled "Nonideal Theory", taking up questions of war, burdened societies, and distributive justice. Given this textual evidence, it is apparent that non-ideal theory is something Rawls took seriously, and to draw attention to his oversight of the aggressive state is hardly beyond the scope of his project.

The aggressive state recognizes and respects the human rights of its own citizens and citizens of other states and peoples, thus meeting some of the necessary conditions for having its institutions and legal order considered decent. This state's recognition of human rights does, however, meet the sufficient condition to be protected from intervention (unlike outlaw states), either by sanction or military involvement. Unlike decent peoples, this state does not consult members on political decisions, nor does it fairly listen to dissenters. In addition, this state seeks its ends aggressively rather than peacefully. Thus, the aggressive state does not abide by seven of the eight principles that constitute the LoP.

To illustrate the quintessential aggressive state, imagine two states that rely upon each other for limited natural resources: K and A. K keeps to itself while A is aggressive. Now imagine that A threatens to invade K, unless K exports its natural resources to A for no compensation. Here A has aggressively imposed a demand on K that K can do little about without losing the much-needed natural resource it receives from A. K is prohibited from intervening upon A on Rawls' model unless (i) A violates human rights in some manner, or (ii) A *actually* attacks K. That is, pre-emptive self-defense in the face of a threat is impermissible according to Rawls (1999b, 89-93). Rawls' model consequently allows A to extort K – imposing unjust inequalities – while facing no repercussions for reprehensible behavior until their (A's) actions have escalated to the point of attack.

As mentioned above, Rawls definitively states, "[human rights] fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example by diplomatic and economic sanctions, or in grave cases by military force." (1999b, 80) If we are to take Rawls' model seriously, the aggressive state is protected from intervention due to its satisfaction of human rights. Here one may raise the objection that the aggressive

state is actually failing to respect human rights. But, given Rawls' extremely limited human rights, it is unclear whether any of these rights are actually being violated. It is a mistake to say, however, that the aggressive state must be fully immune to intervention initiated by the SoP despite its aggressive aims, failure to have a consultation hierarchy, and failure to fairly listen to dissenters. This is because of the threat the aggressive state poses to not only the rational self-interests of other states and peoples, but also the shared values of the SoP, and as a result, the stability of the global order. Determining appropriate standards for handling this society seems possible, but at a cost.

To maintain Rawls' framework one may either bite the bullet and grant full immunity to aggressive societies or, alternatively, reconsider basing his framework for intervention solely upon human rights. Granting full immunity is simply not an acceptable option for reasons discussed below. In considering basing the framework for intervention, one logically has three routes to choose from: (i) maintaining that human rights violations are the only justification for intervention, (ii) completely disposing of human rights violations as the only justification for intervention, or (iii) claiming that human rights violations and something more (taken together or separately) are the only justifications for intervention. If one takes the first route and insists that human rights are the unique basis for intervention, one must at least conduct a substantive overhaul of the necessary and sufficient conditions pertaining to them. I set this option aside in favor of the third course in the hopes that my suggested remedy will leave Rawls' project, on balance, more intact than a substantive revision of human rights that would work against his efforts to maintain reasonable pluralism. Taking the second course seems wholly unreasonable, namely because it is an obsoletely held position that institutions should sit idly by while human rights violations are occurring. If one takes the third course and adds unjustly imposed inequality upon one state or peoples by another as a basis for intervention, in conjunction with a more inclusive account of public reason, then the threat of instability presently faced by Rawls' model is resolved. I discuss these modifications at length below (in Section IV).

As it is currently formulated, Rawls' position lacks the tools to deal with the aggressive state that exemplifies the inherent instability of his model. The dangers that the aggressive state pose to other peoples and states while going unchecked account for Rawls' deficiency. If the aggressive state is permitted to carry on because it is free from intervention and sanctions, the peoples that were not concerned about the situated assurance problem prior to its recognition should certainly be concerned afterwards. Moreover, the fundamental assurance problem is more likely to be instantiated.

Those threatened by the aggressive state risk being attacked or thoroughly disbanded. Prior to attack, the threatened cannot place sanctions on the aggressive state precisely because it (the aggressive state) is respecting human rights. The threatened also may not pre-emptively attack the aggressive state, because Rawls would consider such an attack to be a violation of just war doctrine (1999b, 90-91). Once attacked, liberal and decent peoples may go to war to defend themselves, but there is no guarantee that they

will prevail. If the aggressive state prevails, the overpowered peoples will likely lose all of their control. One may respond by citing the Law of Peoples as providing protection for those peoples overpowered by the aggressive state. But as it stands, it is not clear to what extent liberal or decent peoples can permissibly aid those peoples in unfavorable conditions arising from being overpowered. Depending upon what formally amounts to intervention, liberal or decent peoples may not be able to provide aid to the overpowered peoples without intervening against the aggressive state. Note that intervention may merely be strong-arming or a trade sanction intended to weaken the aggressive state and aid the overpowered. But, once again, these measures of intervention are prohibited under Rawls' model, since the aggressive state respects the limited account of human rights up until they become militarily aggressive.

The presence of the aggressive state within Rawls' model makes devolving into a modus vivendi even more plausible than I previously suggested. The plausibility of this occurrence, in turn, illustrates the inherent instability of his model. Given Rawls' explicit acknowledgement of the importance of stability for any theory of justice, his failure to consider the aggressive state is a serious oversight. This instability can be remedied, though, by a substantial revision of public reason and an amendment to when intervention is permissible that is in keeping with Rawls' overarching project.

IV. A SUGGESTED REMEDY

I suggest revising Rawls' account of public reason to include reasonable citizens of all states, rather than only the representatives of peoples that comprise the SoP. When paired with the amendment that a state or peoples having unjust inequalities imposed upon it by another state or peoples can permissibly intervene against its oppressor, these revisions successfully handle all three issues that contribute to my criticism that Rawls' model is unstable. Additionally, this remedy ensures stability and its maintenance through advancing the project of liberalism, in keeping with the spirit of Rawls' project. To recall, these three issues are the sparse consideration of socioeconomic inequality that can give rise to an extremely unbalanced distribution of power, failure to address the situated assurance problem, and peoples being pragmatically incapable of giving precedence to the shared values of their citizens.

To handle those states and peoples that suggest and forcefully implement unjust inequalities upon other states or peoples, I argue it is permissible for the affected party and third-party defenders to intervene upon the oppressor by sanction, or in grave cases, by military force. This amendment to what warrants intervention alleviates not only the threat posed by the aggressive state, but also the threats posed by all other states and peoples that refuse to play by the rules at any given time. As a result, instability due to devolving into a modus vivendi is no longer a danger for Rawls' model, despite the plausibility of the aggressive state. By revising the grounds for intervention, the LoP is backed with the necessary legitimate clout that addresses the three issues Rawls' model

was previously incapable of handling. The potential for a dangerously, and unjustly, unbalanced distribution of power is no longer likely due to peoples and states having an enforcement mechanism available to protect against unjust impositions. This protection ensures that peoples and states reasons for accepting the burdens associated with social cooperation will not be undermined due to a lack of assurance that other parties will adhere to the same standards of social cooperation. And when peoples are no longer concerned with the situated assurance problem, the inability of peoples to give precedence to the shared values of their citizens is no longer an issue. This is because they are no longer primarily concerned with ensuring survival.

One might object to this amendment to the LoP, claiming it is *ad hoc*, added merely to address the issue of those imposing unjust arrangements and is not cohesive with Rawls' overall project. I maintain, however, that this amendment to the grounds for intervention simply coheres with and supports the other eight principles of the LoP. Rawls himself acknowledges that this "statement of principles is, admittedly, incomplete" and "other principles need to be added", demonstrating the foresight that room must be left within his model to accommodate unforeseen or overlooked circumstances (1999b, 37). The amendment to intervention that I propose adding aids in ensuring that the first three principles regarding freedom and independence, observance of treaties, and respecting equality are upheld. Furthermore, it is not at odds with any of the pre-existing eight principles.

One might claim that I problematically uphold that states may also protect themselves against unjustly imposed inequalities, despite their not being liberal or just. It is questionable at best, though, that states must be subject to unjust inequalities in light of their not being wholly just themselves. This amendment to permissible grounds for intervention – taken with an altered account of public reason – not only resolves the aforementioned issues that lead to instability, it is also cohesive with other aspects of Rawls' project.

By making public reason more inclusive, alterations to the LoP are not made by only the peoples enforcing the eight principles – the SoP. Instead, all citizens that are inherently affected by decisions pertaining to the global institution (the SoP) will have the opportunity to engage in public reason, provided they are reasonable. I adopt Rawls' tenets of reasonableness, which he presents in *Political Liberalism* (2005, 48-54). A reasonable individual both willingly proposes and abides by fair principles of cooperation among equals, and readily accepts the burdens of judgment when engaging in public reason. While this definition of reasonable is not made explicit in the account of public reason given in *The Law of Peoples*, it is implicit by way of the principle of reciprocity and the fact that representatives of peoples are negotiating terms that they know their peoples will be subject to if they wish to maintain membership in the SoP.

Rawls holds that participating in public reason is an intrinsically moral duty, like other political rights and duties (1999b, 56). Recall that his reasoning for claiming that only members of the SoP can engage in public reason follows from his stipulation that only

they have the capacity for a moral nature, allowing them to realize the moral duty of public reason. In contrast, states lack this moral nature, making them unsuitable candidates for participation in public reason.

But it does not clearly follow from the nature of states that the states' citizens, when taken independently, are also incapable of advancing liberalism. One can easily imagine a citizen of a state that has a moral nature and satisfies reasonableness. The moral nature and reasonableness of said citizen allows the citizen to imagine herself as a government official and consider what foreign policy she would think it reasonable to advance, enabling her to achieve the ideal of public reason. When citizens from around the globe that share these qualities engage in public reason together, they will be able to realize the ideal of public reason (as explained in Section I) analogously to how representatives realize the ideal, according to Rawls.

I uphold, like Rawls, that contributing to the dialogue of public reason is a moral duty. This means that on my model reasonable citizens with a moral nature have a moral duty to contribute to the dialogue of public reason, and the SoP should recognize this moral duty, seeing as its fulfillment is crucial to furthering the project of liberalism. This is primarily because Rawls intends for the global institution to uphold the tenets of liberalism. Thus, the global institution must recognize the moral duty of reasonable citizens to participate in the public reason that shapes said institution, seeing as it is the global institution's aim to be a liberal democracy that would grant citizens democratic rights.

Additionally, it seems inappropriate for the SoP to determine independently what amounts to and triggers aid given to other institutions (peoples or states). Those reasonable citizens with membership in states or peoples subject to inequalities imposed by other states or peoples should be able to aid in the revision of those conditions that impact the institutions they live within, both globally and domestically. The global institution lived within is the SoP, while the domestic institution is the citizen's state or peoples. This idea appeals to the principle of affected interests, which states individuals should be able to influence decisions that affect them (Fung 2013, 2). Decisions that are not influenced by those affected may not appropriately consider their interests. In order to maintain the fairness that Rawls deems crucial to the political processes of the Society of Peoples' basic structure, it seems appropriate that all reasonable citizens – not merely representatives of peoples – have the opportunity to determine what size contributions are acceptable for a given predicted return and what inequalities are just (1999b, 113-115). Furthermore, to arbitrarily exclude the perspectives of some individuals affected by distributional concerns merely by their state membership contradicts the call for reasonable pluralism that Rawls values so highly. Notably, arbitrary exclusion also goes against the underlying and pervasive current in social contract theory that those that develop contracts are synonymous with those that are subject to it (Nussbaum 2006). Broadening public reason in the way suggested above avoids these issues and, instead, mends Rawls' account so that is more clearly reflects a commitment to pluralism and the social contract tradition.

While it cannot be decisively determined what conclusions those participating in this comprehensive public reason will come to – as this is an empirical question – there is reason to be optimistic. As more participants are welcomed – due to their moral obligation rooted in their being reasonable moral citizens – to engage in public reason it is likely that the ideal of public reason will be achieved. As citizens move towards the disposition to "repudiate government officials and candidates for public office who violate the public reason" of free and equal citizens, the political and social basis of peace and understanding will be strengthened, just as Rawls had hoped (1999b, 57). The achievement of the ideal of public reason will feasibly ensure that inequalities that do arise are just in nature because there has been true fairness in participation and consent. If it is the case that there has been true fairness in participation and consent, inequalities will not contribute to the situated assurance problem or the inability of peoples to given precedence to the shared values of their citizens, unlike in Rawls' original model. It is in this way that revising public reason not only aids in ensuring stability, but also advances the project of liberalism as explained by Rawls.

One might wonder why I have decided to argue for all reasonable citizens to participate in public reason, rather than just representatives of citizens. I do so for two reasons. The lack of inclusivity in Rawls' public reason arises from only reasonable representatives – government officials of the members of the SoP – being permitted to participate. In order to recognize the sentiments of those individuals affected by global policies, more than just reasonable representatives need to be included. The need for consideration of reasonable individuals arises out of the government officials of states being, by nature, unreasonable due to their abstaining from becoming liberal or decent. Additionally, the government officials of states may not serve as representatives of their state's members, depending upon what type of government the state has. Some examples include a patriarchy without elected representatives, or a state where elections are notoriously fraudulent. When dealing with outlaw states, according to Rawls, the leaders and officials of said state should be distinguished from civilian members because "[the leaders and officials] are responsible […] the civilian population, often kept in ignorance and swayed by state propaganda, is not responsible." (1999b, 95) If government officials are the only people that are permitted to participate in public reason, then there is the potential for all voices of a given state's citizens to go unheard. But the voices of those affected being unacknowledged goes against the principle of affected interests. By obligating all reasonable citizens of all states and peoples to participate in public reason, there is no longer a concern of lack of representation in the dialogue.

One might suggest that rather than obligating all reasonable citizens to participate, there should be a shift in what it means to be a representative. However, including all reasonable citizens is preferable to this move because altering the definition of representative presents a host of issues and is ultimately inconsistent with Rawls' project, which I aim to leave intact. If one changes what it means to be a representative from being the sole representative of a state or peoples to being the representative of a collection of

individuals based on some shared interest, then the formal equality that Rawls values so highly is abandoned. I am taking shared interest to be something like feminist values, subscription to a religion, persons with disabilities activism, or an interest in racial equality. The problem with this type of representation is that an individual might – and likely does – have multiple interests, and so they will either be forced to choose a primary interest by which they will be represented, or be represented by a multitude of interests. For individuals to be forced to choose a primary interest may deny other components of their identity, which is a violation of the human right to liberty of consciousness. For individuals to have varying numbers of representatives respective to their interests does not amount to formal equality, and thus violates the human right to formal equality. If individuals act as their own representatives, as I suggest, then liberty of consciousness and formal equality is maintained because each reasonable individual eligible to participate in public reason is granted the same weight. It is for these reasons that I offer the solution of participation of all reasonable individuals, rather than merely representatives of one form or another.

V. CONCLUSION

In short, I have illustrated how *The Law of Peoples* is vulnerable to the criticism of instability, which is exemplified by Rawls' oversight of the aggressive state. In order to address this criticism in keeping with Rawls' overall project, I have argued that the grounds for intervention be amended so that it is also just for a state or peoples to intervene upon another state or peoples when unjust inequalities are being imposed. I have also argued that Rawls' conception of public reason is too narrow, and must be expanded to include participation of all reasonable citizens, not merely representatives of the peoples with membership in the Society of Peoples. In refuting objections to each of these alterations, I have established that this two-part revision is a successful route to be taken in addressing the concern of instability while also remaining in keeping with – and perhaps making more Rawlsian – Rawls' overall project. My solution does this by further advancing liberalism, reflecting a commitment to pluralism and the social contract tradition, and more resolutely recognizing a possible divergence in moral capacities between representatives and citizens.

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Double Effect, Pacifism and Intentions: An Analysis of G.E.M. Anscombe's Philosophy of War

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Abstract. The permissibility of killing innocent people in war is not usually defended. However, Elizabeth Anscombe's defense of the application of double effect in warfare seems to allow for innocent civilians to be killed in special borderline cases such as the bombing of a munitions factory. This seems to rest on the proposition that the bomber does not intend to use the civilians' deaths as a means to an end, but merely foresees their deaths as a result of the destruction of the factory. In this article I challenge this idea and potentially expose a weakness in Anscombe's argumentation.

Key words: Anscombe, double effect, intention, pacifism, just war theory.

Anscombe's defense of the doctrine of double effect in application to warfare is the main topic of this article. More specifically, I am concerned with the question of whether someone could consistently argue that the killing of innocent civilians in war is sometimes morally permissible.

Firstly, a general presentation of the context is needed. In *War and Murder* she begins with the idea that the use of coercive force by states and rulers is legitimate (Anscombe 1961). According to her, there are two possible attitudes regarding the use of coercive power by the state. The first is that the world is entirely a jungle, merely a display of different forces, and that the use of force by states is only one of these. The second attitude is that the coercive power of the state is a necessary and legitimate form of power that maintains social order and makes the world be a lesser jungle than it could be (Anscombe 1961, 45).

She states that the use of force by the sovereign state as a legitimate form of violence is an idea commonly accepted. The state has the right to use violence against its external enemies and even against its civilians if they threaten the safety of the community or break the law. Anscombe states that the deliberate choice to kill people (as in *intending* to bring about their death) is a right reserved only to the state. She adds that it must be admitted that authorities do intend to kill their enemies as a means to ensure public safety (1961, 49-50).

Although Anscombe does not explicitly say so, the first attitude can be attributed to the advocates of extreme forms of pacifism: an *absolute pacifism*. It rejects the legitimacy of the use of force by the state and its rulers and condemns it as an injustice. It condemns any use of coercive power by the state and all the actions of the military during a war.

Anscombe takes pacifism as the view that it is morally wrong to participate in wars. War is an activity that involves killing people and killing people is always morally wrong. Therefore, to the absolute pacifist, war is inherently evil and so is the profession of being a soldier.

Pacifism is regarded by Anscombe as a false doctrine, because it makes no distinction between killing innocents (non-combatants) and killing combatants in war (1961, 52-56).

She does not condemn all the activities of the military or even war itself, because she claims that the state has a right or a duty to protect its population. However, what she does condemn is the *intentional* killing of innocent civilians. This killing is immoral if it is used as a means to an end or as an end in itself.

Something which pacifism also rejects is the doctrine of *double effect* which relies on the distinction between, on one hand, the *intended*, and, on the other, the *foreseen* consequences of an action. According to the doctrine, the intended consequences are morally relevant and the merely foreseen consequences are not. The foreseen effects of an action can either be unfortunate by-products of the intentional action or mere accidents.

Applying double effect to warfare, Anscombe would argue that the bombing of a military target located within a heavily populated area may be morally permissible as long as the intended effect is the destruction of the target and not the killing of innocent civilians (1958a, 4).

My aim is to challenge the idea that the bombing of a military target (say, a munitions factory) located in a populated area can be adequately described as unintentionally killing innocent civilians. I will argue that the doctrine of double effect fails to apply to the case in which the bomber knows for certain that civilians will be killed as a result of the bombing of the intended target. Here, contrary to what double effect would have us think, the bomber actually uses the civilians as a means.

If double effect fails, then either we end up arguing that in war it is sometimes morally permissible to intentionally kill innocent civilians (if no other means of attaining victory are available), or we have to side with the absolute pacifists and condemn war completely.[1]

I. WHAT IS DOUBLE EFFECT?

What exactly is the doctrine of double effect? It is, as I have previously stated, a doctrine that assumes a morally significant distinction between the intended effects of an action and its foreseen effects. The origin of this doctrine lies in the work of Thomas Aquinas.

To the question of whether or not a private person may kill another person in self-defense Aquinas remarks:

> Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental as explained above [...]. Accordingly the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful [...]. (Aquinas II, II, Q64, Art. 7)

1] This conclusion has also been supported by Lichtenberg (1994).

In other words, I may not intend the death of my aggressor. The right to choose to kill may be reserved only to the state and its public authorities. My assailant's death must be only a consequence or accident of the measures I take to defend myself. Or as Anscombe states:

> The plea of self-defense (or the defense of someone else) made by a private man who has killed someone else must in conscience - even if not in law - be a plea that the death of the other was not intended, but was a side effect of the measures taken to ward off the attack. (1961, 50)

Thus, a private person must never intend to bring about the death of his or her assailant. The death must merely be a by-product or an accident that results from the efforts of the private person to defend himself or herself. The private person must then not shoot to kill or lay any lethal traps for the aggressor. However, if the private person pushes his or her aggressor and the assailant falls down the stairs and dies, then the death of the aggressor (if not intended) is an effect that is beside the intention of defending oneself.

It is not hard to see why this idea has been of interest to moral philosophers. If the difference between the intended effects and the foreseen effects of an action is a morally relevant distinction, then one can be responsible only for the intended consequences of one's action but not for the accidental effects of the action, even if those consequences are foreseen.[2] This idea is not exempt from abuses, of course, and Anscombe is aware of it.

II. WHY THE DOCTRINE IS USEFUL

Anscombe's uses and defenses of double effect are present in a number of her works including *War and Murder* (1961), *Mr. Truman's Degree* (1958a) and *Modern Moral Philosophy* (1958b). The justification for keeping the doctrine of double effect can be distinguished quite easily.

Firstly, Anscombe considers that the morally significant distinction between intended consequences and foreseen consequences is an essential part of Christianity. She states:

> For Christianity forbids a number of things as being bad in themselves. But if I am answerable for the foreseen consequences of an action or refusal, as much as for the action itself, then these prohibitions will break down. If someone innocent will die unless I do a wicked thing, then on this view I am his murderer in refusing: so all that is left to me is to weigh up evils. (1961, 57)

If the distinction between the intended and the foreseen is not a moral distinction, then it seems one could consider that I am responsible for any consequences that follow from my actions. Anscombe also offers a similar justification for double effect when writing about Henry Sidgwick's consequentialism.

2] For revisions of the doctrine, see Quinn (1989) and McMahan (1994). For defenses of the distinction between intended and foreseen consequences, see Bratman (1987) and Hills (2007). A defense of the moral significance of the distinction can be found in Hills (2003).

Her reading of Sidgwick's consequentialism amounts to the thesis that "it does not make any difference to a man's responsibility for an effect of his action which he can foresee, that he does not intend it." (1958b, 11)

This elimination of intention from moral discourse is problematic, according to her, because I may be responsible for effects of my actions that I clearly did not intend. For example, I may be put in a situation in which I am forced to either do something incredibly evil or leave the country. If I leave the country, I lose my job. I am aware of this, but it's unreasonable to say that I intended to lose my job because I chose to leave my country rather than do something incredibly evil.[3] Losing my job, in this case, is thus an unfortunate, unintended, but foreseen effect of my refusal to do something incredibly evil.

III. THE ABUSE OF THE DOCTRINE AND ANSCOMBE'S ARGUMENT

One need not stretch one's imagination too much in order to realize how the doctrine of double effect might be abused. If the intention is that which gives an action its moral value, then one can redirect the intention behind an action however he or she sees fit before acting. According to Anscombe, due to Cartesian psychology, someone can view the intention as an "interior act of the mind" and thus use double effect in order to justify any heinous crime (1961, 58).

Before the bombs are released on a city, the pilot of the aircraft could always mutter to oneself that what he or she means to be doing is follow the orders the superiors. The executioner, before administering the lethal injection, could say that he or she is not intending to kill the inmate, but to do his or her job. The president of a country, after ordering a nuclear attack on a city, could even claim that it was not his or her intention to kill civilians, but to force that country into surrendering.

The final example is exactly the kind of event that motivated Anscombe to write her 1958 pamphlet *Mr. Truman's Degree*. In the pamphlet she argued against the proposal from Oxford to grant president Truman an honorary degree. President Truman was known at the time to have ordered the atomic bombing of the cities of Hiroshima and Nagasaki in order to force Japan into surrendering. Anscombe thought Truman to be a murderer, because choosing to kill innocent civilians either as a means to an end or as an end in itself is to commit murder.

The idea that Japan's capitulation may have saved the lives of many soldiers of the Allies did not impress her. To Anscombe, this was rendered irrelevant, because the bombing of Japan was unnecessary by itself (1958a, 3). The bombings of Hiroshima and Nagasaki were unnecessary, in her view, because Japan was already open to negotiating

3] Variations of this hypothetical case are to be found in "War and Murder" (1961, 51) and "Modern Moral Philosophy" (1958b, 11).

peace before the bombings. Furthermore, a case can be made that the causes of Japan's surrender were not even the atomic bombings themselves.[4]

However, the relevant part to this article is Anscombe's argument against the bombing of cities and the way in which she saves the doctrine of double effect from its abuses.[5]

Anscombe sustains two distinct propositions:

(i) It is nonsense to say that someone does not intend the means to a chosen end. We, necessarily, intend the means that we use in order to achieve our chosen ends (1961, 59).

(ii) Intentionally killing innocent civilians as a means to an end is *always* murder (1958, 4).

As stated above, Anscombe uses these two propositions in order to defend double effect from abuses and to claim that the atomic bombings ordered by president Truman were war crimes.

Proposition (i) prevents agents from justifying their immoral actions by redirecting their intentions just before performing the action. The pilot, before releasing the bombs on a city, could not say that he or she only intended to follow orders, because to follow those orders (the end) he or she had to bomb the city (the means). Likewise, the executioner cannot say that he or she did not intend to kill the inmate on death row, but only to do his or her job. In order to do the job, the executioner has to kill the inmate on death row.

Similarly, president Truman could not say that he issued the order to bomb Hiroshima and Nagasaki, but did not intend to kill civilians. All these abuses of the principle of double effect are prohibited by (i).

Thus, Anscombe's argument for the immorality of the nuclear bombardments is the following:

(ii) Intentionally killing innocent civilians as a means to an end is *always* murder.

(iii) The atomic bombings of Hiroshima and Nagasaki were intentional killings of innocent civilians that were chosen as a means to an end (the capitulation of Japan).

Therefore,

(iv) The atomic bombings of Hiroshima and Nagasaki are murders.

The crucial part of premise (ii) is the term "intentional". One must intentionally, as in deliberately, kill innocent civilians in order to commit murder. In order for an action to count as murder one must choose to kill innocent civilians as a means to an end or as an end in itself. This would imply that an unintentional killing of innocent civilians does not, therefore, count as murder. Anscombe states:

> I intend my formulation to be taken strictly; each term in it is necessary. For killing the innocent, even if you know as a matter of statistical certainty that the things you do

4] See Ward Wilson, "The Bomb Didn't Beat Japan. Stalin Did." (2013)

5] This argument, I believe, can be adequately stated if one combines the relevant parts from "War and Murder" and "Mr. Truman's Degree".

> involve it, is not necessarily murder. I mean that if you attack a lot of military targets, such as munitions factories or naval dockyards, as carefully as you can, you will be certain to kill a number of innocent people, but that is not murder. On the other hand, unscrupulousness in considering the possibilities, turns it into murder. (1958a, 4)

Prima facie, this would seem inconsistent with what had been said beforehand about murder. Anscombe implies that even if the bomber knows that he or she will probably bomb civilians, the deaths of the people are unintentional in this case, because the intention behind the action is to bomb the military target. The fact that civilians will likely die during the bombing is something, as Aquinas would put it, beside the intention. The effect of killing the innocents is here but a by-product of the action and not the means to the end.

It is in this borderline case that I believe that the principle of double effect breaks down. If the doctrine fails to apply to this case, then what Anscombe has stated in the above passage is inconsistent with proposition (ii), that it is always murder to choose to kill innocent civilians as a means to an end.

IV. TWO FORMS OF PACIFISM

One of the most famous defenders of *just war* theory, Michael Walzer, reintroduced the Medieval terminology of *jus ad bellum* and *jus in bello* into the philosophy of war. *Jus ad bellum* is used to refer to the justice *of* war, as in the causes of a war or the reasons for starting a war. *Jus in bello* is meant to refer to the justice *in* war, as in how the war is fought. The first presupposes a class of adjectival judgments such as: This war is just/unjust. The second presupposes a class of adverbial judgments: This war is being fought justly/unjustly (Walzer 1977, 21).

Absolute pacifism rejects the idea of a just war from the very start. War is an activity that necessarily involves the killing of people, and since absolute pacifism does not make a distinction between killing combatants and killing non-combatants, no war can ever be justifiable. Thus, the thesis of just war theory is the contradictory of this judgment. It is the thesis that some wars are justifiable. As Lee (2004) notes, this is a fundamental assumption of just war theory.

Recounting Anscombe's understanding of pacifism, we may state that absolute pacifism sustains the following two propositions:

(v) No use of coercive force by the state is justifiable.

(vi) No war is justifiable.

However, there are many other forms of pacifism which are more moderate. I am concerned only with one of these, namely *contingent pacifism*. In one of its versions, it does allow some wars to be justifiable in so far as no innocent civilians are harmed or killed. This would mean that contingent pacifism is interested in *jus in bello*, in the way in which the war is being fought (Fiala 2018).

Therefore, if contingent pacifism allows some wars to be justifiable just in case no innocent civilians are killed in them, then it rejects (vi) on the ground that if some wars are possible without the taking of innocent lives, then those wars are justifiable. It could also reject (v) on the ground that there are obviously uses of coercive force by the state that do not end up in a killing or even presuppose a killing. Thus, only those uses of force that do not harm or kill civilians would be permissible.

Roughly, contingent pacifism would argue:

(vii) If some wars can be carried out without civilians being harmed or killed, then some wars are justifiable.

(viii) Some wars can be carried out without civilians being harmed or killed.

Therefore,

(ix) Some wars are justifiable.[6]

Premise (viii) seems to be the crucial point regarding just war theory. Taking into account the many cases in which civilian casualties occur in warfare, we could come to think that innocent people being killed in war is inevitable and unavoidable. Thus, according to Steven Lee, just war theory presents us with the following trilemma of mutually inconsistent propositions:

A. Some wars are justifiable.

B. Civilians should not be harmed or killed by combatants.

C. No war can be carried out without civilians being harmed or killed (Lee 2004, 234).

Lee remarks that we can obtain the following implications from these propositions:

(x) (B & C) → ~A

Obviously, if civilians should not be harmed or killed in wars and if no wars can be fought without killing civilians, then no wars are justifiable. If we form a modus ponens here, the conclusion would be proposition (vi), the second thesis of *absolute pacifism*.

(xi) (A & C) → ~B

Indeed, if we accept, as just war theory does, that some wars are justifiable, but that wars generally cannot be fought without civilian casualties occurring, then we should accept cynically that it is not the case that civilians should not be harmed. This is, rightly so, an unacceptable conclusion for both the just war theorist and for the pacifists, because it would justify any kind of atrocities done to civilians.

(xii) C → (A v B)

If we assume that it is true that no wars can be carried out without harming civilians, then it would seem that we would have to reject either that some wars are justifiable or that

6] For the sake of simplicity, I will assume here that civilians not being killed is a necessary and sufficient condition for a war to be justifiable. The better conclusion (and consequent) would be "Some wars are justly fought", because avoiding harm to civilians is a part of *jus in bello* (the justice in war), not of *jus ad bellum* (justice of war). However, a contingent pacifist, I believe, would not see a problem with the conclusion "Some wars are justifiable" if it is tacitly assumed that the wars carried out without harming civilians are started on just reasons.

civilians shouldn't be harmed in war by combatants. As Lee notes, one of the disjuncts must be false. (2004, 234)

Keeping these considerations in mind, it would seem that the absolute pacifist must accept B and C, deny A and, as a result, sustain proposition (x). The just war theorist, it would seem, must accept A and B, but reject C, thereby sustaining:

(xiii) (A & B) → ~C

The just war theorist would therefore, sustain proposition (viii) just like the contingent pacifist would. In the context of this trilemma, the contingent pacifist would sustain the implication (xiii) exactly like the just war theorist. But then where exactly do the just war theorist and the contingent pacifist differ?

V. CONTINGENT PACIFISM VS. JUST WAR THEORY

The difference between just war theory and contingent pacifism lies in, I believe, one's acceptance of the doctrine of double effect. The contingent pacifist seems to not allow the application of double effect because of an *absolute restriction* on the killing or harming of civilians. It is irrelevant whether the civilian killings are intentional or not. The contingent pacifist would judge that any military operation that results in killing civilians or harming them is a murderous one. It is worth noting that even if civilian deaths would result because of a mistake on the part of the military, the contingent pacifist would judge that murder was committed.

In this sense, a contingent pacifist would be somebody such as Thomas Nagel who presented two sets of restrictions that may be respected in war:

> I have said that there are two types of absolutist restrictions on the conduct of war: those that limit the legitimate targets of hostility and those that limit its character, even when the target is acceptable. (1972, 138)

In other words, there should be rules that differentiate between legitimate and illegitimate targets, and rules that restrict what may be done to legitimate targets. It would be immoral to kill innocent civilians. Combatants are the ones that are the legitimate targets if war is to be justifiable.

The distinction between combatants and non-combatants is not a sharp one and it is obviously not one of the goals of this article to attempt to clarify it. However, some broad considerations are necessary. Firstly, as Paul W. Kahn stated, war does not differentiate between the innocent and the guilty, but between combatants and non-combatants (2002, 2).

As Nagel said, in war, non-combatants are the ones that are "innocent". However, this innocence is not moral innocence. Civilians are not "innocent" in the sense that they may have done nothing wrong and soldiers are not "guilty" in the sense that they are doing something wrong. Rather, the non-combatants are innocent in the sense that they are

harmless or not contributing to the threat. Combatants are then *harmful* or in the process of harming (Nagel 1972, 139).

Anscombe supports a similar view that the innocents in war are "all those who are not fighting and not engaged in supply to those who are with the means of fighting." (1958a, 5) Combatants would then be the ones that are fighting and helping those who are fighting. Thus, as Nagel remarks, "we must distinguish between combatants and non-combatants on the basis of their immediate threat or harmfulness." (1972, 140)

The application of this would allow farmers and medics to be non-combatants, because their work does not contribute to the threat posed by the military. However, munitions factory workers and truck drivers transporting weapons and ammunitions could be considered legitimate targets, because their work contributes directly to the threat and power of the military.

Returning to the difference between contingent pacifist and just war theorists, it is worth reiterating that contingent pacifists consider that harming or killing non-combatants in war is not permissible under any circumstances. On the other hand, just war theorists could allow such killings to occur if they accept the doctrine of double effect.

Double effect presupposes, of course, the morally significant distinction between the intended effects and the foreseen effects of an action. One must not intend the killing of non-combatants. Killing non-combatants deliberately is murder, as Anscombe states. However, according to my reading of Anscombe's understanding of double effect, if the killing of non-combatants is neither intended as a means to an end or intended as an end in itself, but is only a by-product or a foreseen consequence of a certain permissible action, then the killing is not murder.

Contingent pacifists and just war theorists thus differ in a more fundamental way. The first think that killing civilians is always murder and the second judge the morality of killing civilians with respect to whether the killing was intentional or unintentional.

How does one use double effect to judge whether a killing is intentional or not?

VI. TACTICAL VS. TERROR

Anscombe's case in which killing non-combatants in war may not be murder was presented in one of the previous sections. This passage is of importance:

> For killing the innocent, even if you know as a matter of statistical certainty that the things you do involve it, is not necessarily murder. (Anscombe 1958a, 4)

The example she gives is that of bombing a munitions factory which is located in an area populated by civilians. No matter how careful that bomber could be, he or she is almost guaranteed to kill a number of civilians as a result of unleashing the bombs on the factory. It is in this type of case that the principle of double effect is supposed to excuse the deaths of the civilians on the ground that they were unintentional. They were mere by-products of the bombings.

In the defenses of double effect, this type of case is often contrasted with the case of the *terror bomber:* the one who kills a large number of civilians in order to lower the morale of the enemy army. Jonathan Bennett (1980) argued, however, that these two cases are not so morally different if we examine them closely.

The bomber who destroys the military target but does not intend the deaths of the civilians nearby has come to be called the *tactical bomber.* In comparison to the terror bomber, double effect would dictate that the tactical bomber *intends as a means* the destruction of the target and the civilian deaths would only be by-products or accidents of the intended action. The terror bomber, of course, intends to use the civilian deaths as a means to an end.

It must first be remarked that neither the tactical bomber nor the terror bomber intends to kill civilians as an end in itself. The first one's end is to reduce the strength of the enemy army by destroying, say, one of its munitions factories, while the second's is to use civilian deaths as a means to lower the enemy army's morale.

If we follow the double effect application here, we would say that it is always wrong to kill non-combatants as a means to an end and it is sometimes right to destroy a military target while knowing (but not intending!) that some civilians will die in the process (Bennett 1980, 95).

So the moral difference between the two cases is that the terror bomber intends the killings and the tactical merely foresees them, but why exactly is the tactical bomber's action sometimes morally permissible? Someone might say that the terror bomber kills the civilians directly, while the tactical bomber does not. Bennett rightly says that this is not true. In neither case are there intermediate events between the bombings and the killings. It might also be downright absurd to say that the tactical bomber does not directly kill the civilians on which he or she releases the bombs (1980, 96).

Although neither of the bombers necessarily wants civilian deaths, both would rather allow civilians to die than not carry out their missions. So how do their intentions differ? Bennett believed that the difference between the two bombers should lie in their answer to this question:

Q: If you believed that no civilian deaths would occur, then would you have been less likely to carry out your mission? (1980, 100)

Although, as Bennett remarks, there is more than one interpretation to this question, I believe that it would be useful to interpret it as meaning: If no civilians would die, in conjunction with whatever you believe would follow causally from that, then would you have been less likely to carry out your mission?

Bennett believed that both bombers would answer affirmatively here. In the case of the terror bomber, if no civilians die, then surely the morale of the enemy army would not be lowered. In the case of the tactical, if no civilians die, then it means that the bombs were ineffective and did not destroy the factory.

However, I think that this is not quite correct. The terror bomber will surely answer 'Yes', because the deaths of the civilians are clearly the means to lowering the enemy's

morale. This is not so in the case of the tactical bomber. He or she might answer 'No' if the bomber believed that the deaths of the civilians were unnecessary as to whether the military target would be destroyed or not. After all, the civilians might not even be in the area at the moment of the bombing and the bomber could still fulfill the goal of the mission, while the terror bomber could not achieve his or her goal without civilian deaths.

To sum up, the terror bomber could have the belief that if no civilians would die, then the enemy's morale will not be lowered. The tactical bomber could have the belief that it is not the case that if no civilians would die, then the target would not be destroyed. The civilian deaths are not necessarily linked to the success of the tactical bomber's mission. There could be a chance that actually no civilians are near the military target at the moment of the bombing.

Bennett states that this difference is not morally significant either, because the distinction between intending something as a means to an end and foreseeing something as an effect is not "linked to a difference in probability." (1980, 103) It would seem that there are not actually good reasons for believing that the two cases are morally different. In fact, a case can be made that the two are morally equivalent. As stated earlier, both bombers would rather have civilians die, than not carry out their missions.

Lichtenberg's approach to this issue is more insightful, I believe. She puts forward the idea that we ought to conceive the bomber's choices as packaged deals (1993, 352-53). The package would consist of the immediate foreseeable causal sequence of the bomber's actions. The terror bomber's end is to lower the enemy's morale and this can be done only if civilians are killed. The tactical bomber's end is to reduce the enemy's strength by destroying one of its munitions factories, but he or she must also accept the fact that there is a very high probability that civilians will die. These are the two package deals of each case.

Lichtenberg's argument, as I understand it, would be the following:

(xiv) If both bombers choose to carry out their respective missions, then they choose their respective package deals.

(xv) If they choose their respective packages, then they also choose the contents of the package.

(xvi) If they choose the contents of the package, then they also choose to kill civilians (If, obviously, killing civilians is part of the package deal.)

Therefore,

(xvii) If both bombers choose to carry out their respective missions, then they choose to kill civilians.

This argument would have us conclude that even the tactical bomber chooses to kill non-combatants. If that is so, then he or she uses the civilian deaths as a means to an end, just like the terror bomber does. Lichtenberg writes:

> Doesn't the choice of a package that harms or kills people come to the same thing morally as using them as a means? It's not that the tactical bomber wants them to

> die, it's just that he would rather destroy the factory than not, and civilian deaths are a necessary concomitant of that. But similarly, it's not that the terror bomber wants civilians to die, it's just he would rather lower enemy morale than not, and their deaths are required for that to happen." (1993, 353)

It would thus seem that in the end, both cases are morally the same. The tactical bomber actually intends to have civilians killed as a means to his or her chosen end. However, I believe that Lichtenberg's argument is not very convincing in this regard. Consider again an example of double effect used in many of Anscombe's works: I am put into the situation of choosing to do something incredibly evil or leave the country. I do not intend to do the evil thing and I choose to leave the country, but if I leave the country I lose my job. Does it follow that I chose or intended to lose my job, because I knew I would lose it? It would rather be the case that my boss fired me and not that I voluntarily quit my job.

Lichtenberg anticipated this difficulty and made the distinction between mediated and unmediated consequences. She gives the following interesting example: If I am a teacher and my student threatens to do something terrible if I give him or her a bad grade, then if I give the student a bad grade did I intend him or her to do the terrible thing? Or, even better, am I responsible for the student's action? (Lichtenberg 1993, 357)

This example would suffice to show that when the foreseen effects are mediated by the choices of other people then our responsibility towards those effects decreases. If an effect is contingent upon another person's decisions, then it would seem that we did not intend those effects as we would have if those effects had been unmediated.

However, this is still not a strong enough argument in order to show that the tactical bomber actually intends the deaths of civilians as means to the end. If I intend to quit my job and know that there is a high probability to starve in a month, does it follow that I intended to starve?

This, in my view, is analogous (although obviously not the same thing) to the fact that if I assert a conditional, it doesn't follow that I have asserted the consequent. In the next and final section, I hope to give a more convincing argument that the tactical bomber intends the civilian deaths as means.

VII. INTENTIONAL UNDER THIS DESCRIPTION

The starting question for this section is: What makes an action intentional? Anscombe's famous work *Intention* provides a simple criterion for distinguishing between intentional and unintentional actions. The intentional actions are those actions to which the question "Why?" can apply. This "Why?" is evidently not a causal "why", but a justificatory "why". The person who is questioned must give a reason for the action and not a cause for the action (Anscombe 1963, 9-10). If I cross the room to open the window and if someone were to ask me at that moment "Why are you opening the window?" I

may answer "Because it's hot in here and I prefer the room to be chilly." This is a reason for opening the window and not a cause of the opening of the window.

What are then unintentional actions? Anscombe answers that actions are unintentional if the question "Why?" fails to apply to them. The question is refused application when the subject answers either "I did not know I was doing that." or "It was something involuntary." (Anscombe 1963, 11-12) I may be pouring coffee into a cup and not know that the cup was made of porcelain. Someone might ask me "Why are you pouring coffee into that cup of porcelain? It's not for individual use!" and I could reply "I did not know I was using the porcelain cup." This would also be the case if I was unaware of standing in someone's sunlight at a beach and the person would ask me "Why are you standing in my sun?" If I was unaware of it, I would, of course, reply "I did not know I was doing that." As for involuntary actions, I could be moving my legs while sitting on a chair and be asked "Why are you moving your legs?" I could answer "It's involuntary. I have restless leg syndrome."

Anscombe remarks that because an action can have different descriptions, actions can be intentional under certain descriptions and unintentional under others (1963, 11-12). For example, I am aware that I am pouring coffee into a cup, but I may not be aware of the fact that it is a porcelain cup or that it is a cup intended for a particular person or that it is a cracked cup and I end up spilling coffee on the table. Thus, if I am asked "Why are you pouring coffee into the cup?" I may answer "Because it's morning.", but if I am asked "Why are you pouring coffee in my personal cup?" I will answer "I did not know I was doing that."

This is not to say that because a person's action can have different descriptions, then that person is performing multiple actions or more than one action. The presence of many descriptions of an action does not imply multiple actions. This is similar to how multiple descriptions of a single particular person do not imply multiple persons. One might then be tempted to ask: What is *the* action behind all these multiple descriptions? Anscombe replied that this question does not have a clear sense and that ultimately any accurate description of an action is just as legitimate as any other accurate description of that action (1979, 220).

In what follows, I will apply this criterion to the case of the tactical bomber. This would call for an analogous case presented by Anscombe herself. Let us imagine that a person is hired by somebody to pump poisoned water into the water supply of a house. This act of pumping poisoned water into the house supply would certainly poison the inhabitants of the house. If the person *knows* that the hirer hired them to pump poisoned water into the house supply, then, Anscombe states, the person cannot argue that they did not intend to poison the inhabitants (1963, 44).

If someone were to ask "Why are you pumping water?" the person could answer "To get the money promised by my hirer." This is an acceptable reply that shows that the action is intentional. However, if someone were to ask "Why are you pumping poisoned water into the house supply?" the person cannot say "I did not know I was doing that." In

our case it is stipulated that the person knows what he or she was hired for. Furthermore, answering "I am only doing this to get the job done, but I don't intend to poison the inhabitants." would be inappropriate. In order to achieve the end of the action (to get the money) the person has to pump poisoned water into the house supply. As Anscombe says: "[...] he cannot profess not to have had the intention of doing the thing that was a means to an end of his." (1963, 44)

This, in effect, is a restatement of (i): It is nonsense to say that someone does not intend the means to a chosen end. We, necessarily, intend the means that we use in order to achieve our chosen ends.

Then, in order to show that the tactical bomber uses the civilian deaths as means to an end, we must show that the action of killing non-combatants is intentional and not merely foreseen. Let us recall the case: The tactical bomber is given the mission to bomb a munitions factory located in a heavily populated area. The tactical knows as "a matter of statistical certainty" as Anscombe put it, that bombarding the factory will kill civilians nearby.[7]

Furthermore, Lichtenberg stresses that "[...] in the example as it is given to us the tactical bomber *knows* that in carrying out his raid he will kill civilians; there is no way of prising apart this effect from the one he intends". (1993, 354)

Now let us apply Anscombe's criterion for distinguishing between intentional and unintentional actions. If the tactical bomber were to be asked while releasing the bombs the question "Why are you bombing the munitions factory?" he or she could say "I am bombing the factory, because I was ordered to do so and because we need to reduce the enemy's military strength." Bombing the factory is obviously the intended means to the end.

Now, what if someone would ask then "Why are you bombing these innocent civilians?" and the bomber would reply with "I did not know I was doing that."? This would be a lie, because, again, in the imagined case, the bomber either knows for sure that civilians will die or knows that there is a high chance that there will be casualties. The same would go for the reply: "I am not doing that." This is false, because the description of the action is an accurate one. Bombs are actually being dropped on the heads of non-combatants that are unfortunate enough to be too close to the target of attack.

The defense that the bomber doesn't kill them directly, because he or she is not aiming at them would be tempting to endorse here. However, we must recall Bennett's statement that it is absurd to say that the bombs do not directly kill the civilians. There are no intermediate steps between the explosions and the killings and, even if there were, the bombs would still be the cause of the innocent civilians' deaths.

7] It might be worth saying that in this imagined case, the innocent civilians (the non-combatants) are the people that happen to be near the factory. For the purposes of this argument, I will not be concerned with settling the issue of whether a munitions factory worker is a combatant or not. I will be concerned only with the civilians that just happen to be near the factory at the moment of the bombings.

Furthermore, one could argue that "bombing innocent civilians" and "killing innocent civilians" would be interchangeable descriptions. They accurately describe the tactical bomber's action just as well as the description "bombing the munitions factory" does. Given Anscombe's criterion, it does not help to argue that bombing the factory is the intended means, while killing the non-combatants in the area is not. The bomber's action is intentional under *both* descriptions.

This would amount to say that the tactical bomber intends bombing the civilians as a means to an end just as much as he or she intends bombing the factory as a means to an end. Since the bombs that are dropped destroy the factory and kill the civilians nearby, and the bomber knows of these consequences it would not be the case that his or her actions are unintentional under any of the two descriptions. Therefore, we cannot say that the distinction between intended consequences and foreseen effects holds. Thus, we obtain the following:

(xviii) The Doctrine of Double Effect can be applied only to cases where we can distinguish between intended means and foreseen effects.

(xix) The tactical bomber example is not a case where we can distinguish between intended means and foreseen effects.

Therefore,

(xx) The tactical bomber example is not a case to which the Doctrine of Double Effect can be applied.

It would seem that double effect cannot justify the permissibility of the tactical bomber's action. Unless the bomber does not make efforts in order to avoid killing or harming the civilians, then he or she cannot say that the deaths were not intended. If this is so, then the bomber's actions could be excused only if he or she didn't know beforehand that civilians would be killed. If the bomber didn't know, then the answer "I was not aware I was killing innocent people." could be adequately given to the question "Why are you bombing non-combatants?"

Where does this leave us now? What does this argument imply for the just war theorist? It would imply that double effect is not applicable once the bomber knows with certainty that his or her action will result in civilian casualties. Intentional civilian deaths would be murders. Unintentional civilian deaths would be the excusable ones. These would be the ones that the combatants in war are not aware of or did not realize would occur. Or in other words, the ones that happen due to mistakes.

If the application of double effect breaks down in the case of tactical bombers, then the question would be: In what other cases in warfare could double effect be adequately applied to? If the doctrine is to be abandoned completely, then the just war theorist, and Anscombe for that matter, can excuse the killing of non-combatants only when these killings are unintentional and committed by mistake. The just war theorist could make this claim if he wishes to keep the morally significant distinction between intentional killings and unintentional killings.

The contingent pacifist, on the other hand, couldn't care less about double effect. If innocent civilians are killed in a war (whether intentionally or not), then that war is immoral. However, the problem of civilian casualties in war affects contingent pacifists just as much as it affects Anscombe's argumentation. Proposition (viii) (Some wars can be carried out without civilians being harmed or killed.) rests on shaky ground. Miscalculations, bad leaderships, bad decisions, insufficiently trained combatants or, in other words, the very possibility of human error, is present in wars just as it is present in any other human activity. This increases the probability of innocent casualties. If no war can be carried out without inevitably harming or killing at least some civilians due to errors on the part of the army, then it has to be conceded that all wars are unjust. Assuming that civilian deaths are an unavoidable part of war, contingent pacifism collapses into absolute pacifism.

Thus, if double effect were to be rejected from just war theory due to my above criticism and if we concede that no war is possible without civilian deaths, then either the just war theorist would have to argue that some intentional killings of non-combatants are permissible in war or else conclude that all wars are immoral and succumb to absolute pacifism.

VIII. CONCLUSION

In this article I aimed to show that Anscombe's use of double effect cannot be adequately applied to the case of the tactical bomber. This is so because the doctrine of double effect presupposes a morally significant distinction between intended consequences and foreseen consequences. If we use Anscombe's criterion for distinguishing intentional actions from unintentional actions and apply it to the tactical bomber's action, we observe that the action is actually intentional under the description "is bombing the innocent civilians". This is so because, in the imagined case, the bomber knows that if he or she bombs the military target, then the innocent civilians nearby will be killed.

While releasing the bombs on the military target, the bomber could be asked "Why are you bombing this munitions factory?" and the reply could be "I am doing this in order to reduce the enemy army's strength." This shows that the bombing is intended as a means to an end. If, however, the bomber were asked "Why are you bombing these innocent civilians?" the reply "I did not know I was doing that." would be a lie. In the imagined case, the bomber knows of this effect and chooses to carry out the mission anyway. Thus, it seems that killing the innocent civilians is also intentional and if this is so then there is no distinction between intended consequences and foreseen consequences in the tactical bomber's case. The principle of double effect fails here.

Anscombe sustained proposition (ii) Intentionally killing innocent civilians as a means to an end is *always* murder. This implies, as she explicitly stated in her pamphlet against president Truman, that simply killing innocent civilians is not necessarily

murder. In order to be murders, the killings must be intended either as means to an end or as ends in themselves. Thus, it would follow that unintentional killings of innocent civilians are not murders.

Anscombe believed that civilian casualties that result from bombing a military target aren't necessarily murders, because the deaths of civilians can be foreseen effects rather than intended effects. I argued that Anscombe's argumentation is weak here and that double effect actually cannot be applied to the imagined case. If I am right, then it remains for the just war theorist to prove the necessity and usefulness of double effect by appealing to other cases in warfare in which the doctrine works.

If double effect is to be rejected altogether from just war theory, then it seems that the theorist can only excuse those killings of innocent civilians which are done by mistake. However, one might argue that some military operations that involve inevitable civilian casualties are themselves inevitable and necessary. If this is the case, then the just war theorist must either argue that sometimes intentionally killing innocent civilians is justifiable (which begs the question of when exactly it is justifiable to do that and when it is not) or admit that no wars are justifiable and become an absolute pacifist.

Without the doctrine of double effect, it seems that the problem of innocent civilians dying in war would force us into a dilemma of extremes, in a Scylla and Charybdis situation. As Lichtenberg (1993) remarked, rejecting double effect altogether could leave us torn between absolute pacifism and unrestrained warfare.

Perhaps as a final remark, it must be added that this proposed analysis of the distinction between intended effects and foreseen effects could have applications in the ethics of drone warfare. Similar to the tactical bomber, the operator of the drone could not say that his or her drone strike that resulted in civilian deaths was an unintended side-effect of the strike if he or she knew beforehand that civilians would be killed as a result of the bombardments. This, of course, obtains if my understanding of Anscombe's distinction between the intended and the unintended is correct.

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Inconsistencies in Raymond Geuss' Realist Theory

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Abstract. Contemporary debates in political philosophy have been dominated by the accounts of realism. As one of the most prominent figures in political realism, Raymond Geuss addresses the critical need for an action-guiding theory that could actually be of use in political practice. The Cambridge-based philosopher firmly rejects the idealistic account of politics (which he refers to as the "ethics-first" approach) that derives from Kant's *Metaphysics of Morals*, arguing that it sets a wrong starting point in political theory and therefore succumbs to unrealism. Geuss holds that political theory should strive to understand the "real motivations" of political actors and thus take into account features such as human finitude, the inevitability of conflict and the unequal distribution of power. The present paper points to certain inconsistencies in Geuss' theory, arguing that a plausible conception of political legitimacy cannot be justified in the absence of certain moral norms and principles: How can we define reasonableness in action? To what extent is coercive power acceptable? When should political authority be sanctioned? etc. Moreover, the dismissal of normative standards makes political realism impossible *in praxis*, ignoring the strong tendency towards international cooperation of the last decades.

Key words: Raymond Geuss, critique, political theory, political realism, ideology, rights, justice, power.

In his short, yet very controversial writing *Philosophy and Real Politics*, Raymond Geuss strongly criticizes the neo-Kantian tradition in political philosophy, arguing that it must be replaced with a "realistic" theory that strives to understand the real motivations of the political actors; so far, political theories have been limited to prescribing a set of norms and moral duties according to which individuals should behave, but which are in clear contradiction with the actual political practices. Geuss argues that the derivation of politics from ethics sets a wrong way of theorizing, because it assumes that ethics is separable from other aspects of human life (i.e. interests, aspirations, ideals that motivate certain actions) and ignores the individual through excessive generalization that misinforms (Geuss 2008, 13). Moreover, he even denies the fact that something such as universal ethical principles may exist.

Geuss thinks that a theory of action in general (and in this case of political action) must start with a hermeneutical approach to culture, given the fact that understanding the world from which an individual (political actor) comes from is the *sine qua non* for justifying his actions. For the Cambridge-based philosopher, the assumption that the actions of political agents can and above all must be understood starting from the moral principles available to reason is obsolete. On the contrary, Geuss holds that the main task of political philosophy is to investigate "the real motivations" of the political agents, not to substitute them with a moral equivalent. Furthermore, the finitude of human existence is an important factor in the analysis of the decisions and actions of political agents; subsequently, "politics is not about doing what is good or rational or beneficial *simpliciter*, but about what is good in a particular concrete case by agents with limited

powers and resources" (Geuss 2008, 30-31). Thus, politics cannot be understood as a matter of either good or evil, based on the normative ethical approach, or in the light of certain abstract concepts such as justice or rights, due to the fact that it is "deeply rooted in the multidimensionality of the human society and its continuous evolution" (Havugimana 2018, 178).

In brief, Geuss criticizes political philosophy for being alienated and built upon a fantasy in which we find nothing of what actually happens in the political reality. The American philosopher rejects the idealistic account of politics (which he refers to as the "ethics-first" approach) that derives from Kant's *Metaphysics of Morals*, arguing that it sets a wrong starting point in political theory and therefore succumbs to unrealism. Consequently there is no need for a theory that forces normative commitments (such as the Kantian categorical imperative). On the contrary, a theory that can truly guide the actions of political agents is needed; and such a theory, says Geuss, must start with the analysis of power-relations. Moreover, in so far as political theory takes into account features such as conflict, interests and human finitude, it will reveal that moral values acquire a different understanding when maintaining power is at stake.

Geuss' realist approach starts from the premise that not all the values that govern human interactions are moral values. Political realism places politics on a non-moral normative foundation, thus eliminating the distinction between politics and domination. The present paper sheds light on certain inconsistencies in Geuss' argumentation in favor of political realism. Moreover, we will argue that when we dismiss ethics from political theory and replace it with the concept of power, the very understanding of what politics is becomes problematic.

I. POLITICAL THEORY VS. POLITICAL REALISM

In a nutshell, political realism rejects the political theories derived from Kant's *Metaphysics of Morals*, which purportedly obfuscate political reality by creating an idealized model, governed by the categorical imperative: "act only according to that maxim by which you can, at the same time, will that it should become a universal law." (1991, 49) By doing so, political realism emphasizes competition and conflict in the pursuit of power, as opposed to cooperation and collective action. Therefore, when political relations are shaped by power, state autonomy and political practice itself become problematic; if normative standards are lacking, there are no political obligations to fulfill.

The tendency towards realism in contemporary philosophy is mainly the result of the so-called "weak thought" typical to the post-modern time as opposed to the rigorously rational way of thinking from the modern period (Vattimo and Rovatti 1983). Contemporary philosophy is built upon the critique of the values instituted in the modern era, based on doctrines such as that of science and technology, the cult of reason and the ideal of freedom in the context of an abstract humanism. Thus, the

hegemony of reason, specific to the modern period, has been replaced with an "affective-hermeneutical thought". Contemporary thinkers regard man as an "emotionally disposed being" (Moraru 2018, 32) rather than as an exclusively rational one, because emotions are the first substrate of mental life, the original form of adherence to the world. This *forma mentis* asserts itself in political philosophy through the tendency towards realism, meaning it ceases to provide a normative foundation. However, this empirical account that prevails in contemporary philosophy can "encourage us to be guided by our emotions at the very time when the abyss between unregulated impulse or undiluted self-interest and moral principles has been so tragically displayed in practice" (Paton 1947, 7).

Geuss objects to the abstract and idealized theories which reduce political practice to applied ethics, ignoring features such as conflict, disagreement and imbalances of power. Hence, the philosopher rejects "the strong Kantian strand that is visible in much contemporary political theory" (2008, 1) and as an alternative to the normative political philosophies the American thinker advances a theory based on four assumptions: that *political philosophy must be realistic*, in other words "to be concerned with how social, economic and political institutions operate in a society at a given time and what determines the actions of human beings in certain circumstances" that *it must recognize the primacy of action* over a set of rules that regulate the decision-making process; that *politics is historically located*, meaning it is indissolubly bound to a cultural context, to human interactions; and that "*politics is more like the exercise of a craft, or art*, than like traditional conceptions of what happens when a theory is applied" (2008, 9-15). In other words, Geuss emphasizes the fact that politics is, above all, a matter of practice.

Geuss strongly criticizes political theories for idealizing to the point where "they prevent a clear understanding of the world" (Morgan 2005, 111) and stresses the need for practical theories. The American philosopher holds that

> the assumption that good/evil is always supposed to trump any other form of evaluation is probably the result of the long history of the Christianisation and then gradual de-Christianisation of Europe, which one need not make; evaluation need not mean moral evaluation, but might include assessments of efficiency, simplicity, perspicuousness, aesthetic appeal, and so on. (2008, 39)

Therefore, manichaeism must be left behind in order to obtain a theory that can be applied in political practice. Political philosophy should focus on describing real-life politics, taking into account the dynamics of human interactions, power relations, interests and conflict. By ignoring these significant features, normative theories succumb to moralism, thus obfuscating political reality. For Geuss, Neo-Kantian political theories are naïve and detached from reality; they have failed in understanding that politics is mainly about the pursuit of power which most often comes before any normative beliefs.

II. INCONSISTENCIES IN GEUSS' THEORY

Geuss firmly rejects the division between descriptive and normative theories, the former supposedly giving just facts and the latter moral principles and values: "the attentive reader will notice that I do not distinguish sharply between a descriptive theory and a pure normative theory" (2008, 16). This comes with no surprise, since his alternative to mainstream political theories "resembles a purely descriptive exercise too closely." (Rossi 2010, 205) Albeit Geuss points to the fact that only by dismissing the distinction between descriptive and normative can we obtain a political theory free of illusion, one might wonder whether this is rather a strategic maneuver meant to conjure away the caducity of his own theory. Also, the philosopher stresses the need for an action-orienting political theory, but can this be achieved merely through description? Even though political realism "has devoted its energies to a 'methodological dispute' with those who see political theory as a subfield of moral philosophy" (Verovšek 2018, 267), this need not mean that it offers a viable alternative, since Geuss himself objects to the fact that one must propose a positive alternative when engaging in the critique of a doctrine (2008, 95). Yet, we are left with the impression that however realistic such a political theory may be, the dismissal of normative principles makes it impossible *in praxis*, ignoring the general tendency of the last decades towards collaboration and collective action. Hence, Geuss' "facts-first" theory might itself succumb to description and not live up to its expectations; or maybe this is the case with a political reality that has degraded to the point where it has become irretrievable. However, even if political actors deliberately dismiss normative standards, it is not the case for political theories to dismiss them as well, since political theories should be shaping reality and not the opposite way.

By dismissing the division between descriptive and normative, Geuss attempts to restructure political philosophy itself, which at its core is normative. Thus far, political philosophy did not seek to describe but, on the contrary, to explain political phenomena and this is only possible by subsuming them into general laws. Political theories show how things *ought* to be, but most often the way they are is ugly and immoral. However, this is hardly a reason for dismissing the standards for political behavior. It is true that sometimes the distinction between facts and values is hazy, but if we think of the facts as means of realization of objectives that are value-based, the vagueness disappears. Or is it that Geuss suggests political philosophy, instead of being a branch of ethics, should rather be a branch of sociology? In other words, that it should be concerned with how people act, casting aside any type of criticism? But then, how can such a theory be action-guiding whilst lacking a normative framework?

Geuss accuses normative political theories for being ideological, but one might ask whether this holds true for political realism as well, which seems to be an attempt of justifying certain ethically unreasonable political practices (i.e. acts of violence, excessive authority, short-term decision-making etc.) by convincing us that in the realm of politics the pursuit of power trumps any normative beliefs. But how can we define reasonableness

in action in the absence of any standards for political behavior? It is worth noting that this question is left unanswered, since Geuss does not offer any specifications in this regard; the normative ground of his theory remains uncertain.

The Geussian critique starts from the (false) premise that there exists something such as a non-ideological place from which to address the very issue of ideology. It seems that Geuss is ignorant to Paul Ricoeur's writings, otherwise he would have taken into account the fact that axiologic neutrality is not achievable, therefore it is impossible to make a non-ideological critique of ideology (Ricoeur 1986, 314-323). Besides, if the idealized ethical model "prevents us from seeing how the real world of politics operates, how did he manage to see his way through it?" (Morgan 2005, 115), Geuss claims that he is able to see what others cannot see, meaning that he can denounce ideology since it is someone else's thought, whilst his own thought has not been perverted by it. Given this, one might wonder if Geuss is being intellectually honest. However the case may be, one thing is sure: his attempt at *Ideologiekritik* is the weakest part of his argumentation, since it hardly provides any reasons to accept his claim that political realism is a non-ideological doctrine. By ignoring the ineluctable aspect of ideology, the philosopher sets an argument from a false premise – that there is a non-ideological place from which to develop a political theory – leading us to believe that such a theory would be more successful than the existing ones.

Apart from this, Geuss implies that ideology is something intrinsically wrong, that its main function is to distort reality; yet once we step outside the Marxist theory, a positive aspect of ideology becomes salient. Aside from projecting a distorted view of reality, ideology also ensures the cohesion of a social group *via* tradition. In other words, ideology is what justifies and mobilizes a historical community: for instance, "The American Declaration of the Rights is the credo of a group and perpetuates its initial energy beyond its effervescence period" (Ricoeur 1986, 307), meaning it is the founding act that establishes a social group, providing its members with a certain self-representation. However, Geuss casts aside any positive function of ideology and criticizes the very concept of human rights. The American philosopher holds that the existence of individual rights is not something to be taken for granted. Consequently, he engages in a historical enquiry of rights, showing that they are nothing but mere inventions of the late Middle Ages, since they cannot be traced any time earlier in the so-called European tradition (Geuss 2008, 65). The philosopher refutes the belief that individual human rights lie at the core of political theories from the simple reason that such a concept is not as natural (is not an *a priori* determination) and indispensable that a society cannot exist without it. By doing so, Geuss aims to reveal the caducity of Nozick's political theory that "actively distracts people from asking other, highly relevant questions by presenting *rights* as the self-evident basis for thinking about politics." (2008, 69) But is this not the case with political realism as well? It is true that when we analyze Nozick's theory in light of the assumptions which Geuss thinks any political philosophy should be built upon, it appears to violate a couple of rules: it ignores the historical dimension of politics by taking

for granted the concept of an "individual right" without any further enquiry; it does not recognize the primacy of action over a set of rules (individual rights), since the very entity that guarantees these rights (the state) is the same that violates them; hence, the theory succumbs to unrealism. Nozick's theory is ideological because it fails to acknowledge the functioning of power and consequently it obfuscates political reality.

The same is the case with Rawls' theory that starts from the premise of the preeminence of justice. Again, Geuss rejects the possibility of an "intuitive conviction of the primacy of justice"; besides, even if it were true that we had such an intuition, the concept would still remain unclear, since there cannot be any certainty that all individuals have the same representation of justice. Rawls' biggest failure is ignoring one of the main features of politics which is the inequality of status (due to unequal power distribution) that makes justice, in the sense of equality, impossible to achieve. Consequently, Rawls' theory ignores the features that actually shape the political world – the ineliminability of conflict and an unequal power distribution – whilst (falsely) assuming that agreement on certain values is possible.

At this point, at least two objections come to mind. First, how come that political theories based upon normative concepts (such as human rights) are ideological in the sense that they prevent us from seeing the "real" world of politics, whilst a descriptive, facts-first theory that is based upon the concept of power is not? On the contrary, we argue that such a theory would be even more ideological, given the fact that its normative grounds are unclear and thus enable any justification for political actions in the pursuit of power. Second, Geuss fails to consider that "political equality rests on the empirical fact of natural human equality" (Fukuyama 2002, 9) and therefore arguing that concepts such as individual human rights and justice do not lie at the core of politics means to challenge the very existence of human nature. By doing so, the philosopher ignores the fact that all individuals, regardless of their status, share a common humanity. It remains uncertain why Geuss holds that "rights-discourse […] is an inherently apolitical way of thinking about politics." (Geuss and Hamilton 2013, 91) Why is it that a rights-discourse stops debates on important political issues such as setting political priorities in conflict situations? Albeit Geuss disapproves of manicheism, he himself seems to suggest that political theories are either idealistic (therefore bad), distracting us from the real problems by making use of ethics and rights language, or realistic (therefore good), focusing on facts whilst acknowledging that "to talk about rights is to take attention away from other important things." (Geuss and Hamilton 2013, 92) It is not clear whether he suggests we should dismiss rights in the sense that one should not make use of them in the context of a realist theory or rather that we should understand rights as one of the many elements embedded in the political process. Yet, one might ask, why is it that individual rights and political facts cannot be combined? Is it that they are so opposite that they offset each other? This question remains open for further research.

Finally, let us discuss the main idea of Geuss' realism, which is that political theory must not be normative (and thus critical) but rather should focus on examining and

describing the political context. The philosopher holds that political theories ought not to prescribe behavior based upon moral norms and principles; on the contrary, the main concept in terms of which political events can be understood is that of power, as it appears from the question posed by Lenin "Who whom?" (кто кого), that is "Who 'does' what to whom for whose benefit?" (2008, 25) Therefore, if political practice, free from universal ethical principles and norms, is reduced to the exercise of power, how can we distinguish between a legitimate and an arbitrary exercise of power? In other words, what exactly justifies the exercise of power in one way or another in the absence of some universal standards for behavior? "To think politically is to think about agency, power, and interests, and the relations among these", Geuss says. (2008, 25) His statement reminds of a famous phrase in the Melian Dialogue related by Thucydides: "right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must."[1] A power such as the one from the Melian Dialogue does not admit ethical considerations, but when it comes to contemporary political power we cannot help but wonder if its exercise is legitimate, if it is right. Political legitimacy is built upon the values that are realized by means of political action, values such as justice: is political power used in a right way? Although Geuss does not completely give up on the idea of justice, he holds that it must be understood in its application in concrete situations, which involve power relations and certain interests. The main failure of ethics-first theories is that it expects political agents to always choose the principle of justice, ignoring the unequal power distribution which makes justice in the sense of equality impossible to achieve. But when choices are made based upon interests, which are so volatile, instead of being guided by the principle of justice, how are we to provide any account for them?

At this point, it seems that Geuss is rather trying to justify the socio-political degradation through a theory that ceases to show how things *ought* to be and starts accepting them the way they *are* (since we cannot derive an "ought" from an "is", we would consequently have a theory lacking a normative framework). Nonetheless, political theories should not succumb to reality; the fact that we are living in a world of poor morality, unequal justice and violated rights is hardly a sufficient reason for dismissing ethics from political theories. In spite of politicians thinking that the state must be based on principles derived from experience (Kant 2006, 67), political philosophy should not cease to be critical and strive to build normative models which, *nota bene*, are meant to provide orientation and a standard for evaluation, not to deceive us by creating the illusion of a perfect world in which all individuals act rationally. In his attempt to focus on the most salient aspects of the political realm (conflict and power relations), Geuss loses sight of the need for normative standards and thus fails to provide anything more than a negative critique of the existing political theories.

Assuming that Geuss' political realism does not completely elude ethics, the means by which to distinguish between legitimate power and pure domination remain uncertain

1] Thucydides, *History of the Peloponnesian War*, chap. XVII, the Melian Dialogue.

and thus the very understanding of what politics is becomes problematic,[2] all the more the philosopher is mostly concerned with pointing what politics is not, but fails to provide a positive definition of it. It can be objected that

> Geuss does not view power as in itself normatively problematic; for him power is a useful concept for analyzing historical and sociological limitations of the perspectives that people can have on themselves and their specific context. This should be read as an attempt to overcome the view of the concept of power as normatively negative, or even as 'poisonous', which prevents its discussion and evaluation beyond the division between legitimate and illegitimate power. (Prinz 2015, 7)

In other words, power should not be evaluated in moral terms, but rather analyzed in concrete situations, revealing the effects it produces. We consider that this argument is not valid, since, in the absence of a normative framework, the exercise of power alone does not lead to an understanding of politics. No doubt that an analysis of the political power-relations in societies would be fruitful in many ways, but we doubt that it could be the foundation of a political theory.

III. CONCLUDING THOUGHTS

Throughout this paper we shed light on some inconsistencies in Geuss' theory, arguing that his so called "realist" program seems to be impossible to put in practice for at least three reasons. First, it lacks a normative dimension and thus it cannot provide any account for political action. By imposing as a methodological exigency no distinction between normative and descriptive, Geuss' theory seems unable to accomplish its tasks, that is to guide and evaluate political action. Second, it starts from the false premise that there exists a non-ideological place from which to develop a political theory. The philosopher strongly criticizes the neo-Kantian political theories for being ideological in the sense that they draw away attention from the functioning of power, yet his own theory seems to be ideological since it tries to prove that ethics and individual rights are just some negligible factors in the realm of politics. Finally, Geuss' theory does not provide a plausible conception of political legitimacy. By focusing on the analysis of power relations, the philosopher ignores the need for certain tools for distinguishing between a legitimate and an arbitrary exercise of power: How can we define reasonableness in action? To what extent is coercive power acceptable? When should political authority be sanctioned? These questions remain unanswered. Since political legitimacy refers to political obligations, it can only be built upon a set of normative principles. Lacking a firm distinction between good/evil, acceptable/unacceptable, political practice cannot be governed by political realism.

However, the fact that debates in political philosophy are being dominated by the accounts of realism is worrying because it reveals the tendency towards a "post-

2] We encountered a similar argument in Rozi (2010, 509).

human stage of history." (Fukuyama 2002, 7) In other words, in the absence of certain fundamental values, our very humanity is at risk. Throwing old values overboard without even assimilating new ones eventually means alienating ourselves from our own nature. Therefore, at the end of this paper we are left to reflect upon the contemporary human condition, since it is our duty to lower this problem into the depths of philosophy. At the end of the volume *The Great Disruption*, Francis Fukuyama predicts that only a "return to religiosity" (1999, 249) might be able to restore the wholeness of life.

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Book Reviews

Natsuko Akagawa & Laurajane Smith (eds.), Safeguarding Intangible Heritage. Practices and Politics, Routledge, London and New York, 2019, Pp. xiv+259, ISBN: 9781138580756

In recent years, research in the interdisciplinary field of Heritage Studies has become increasingly complex in response to the evolution of the concept of heritage in international policies. Whereas a few decades ago scholarly work centered on conservation and management issues benefitting by specialists' expertise and a discourse mostly concerned with national and regional identities, the current diversity of research topics and methods at work is indicative of a paradigm shift. It was particularly the *Convention on the Safeguarding of Intangible Cultural Heritage* (ICHC) adopted by UNESCO in 2003 that generated many such changes, by introducing a new conceptual category with far-reaching political, legal and administrative implications. As defined by the Convention, Intangible Cultural Heritage (ICH) "means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage." (UNESCO 2003, Art.1) Hence, cultural practices, living traditions, narratives, symbolic spaces and oral histories have secured a more prominent place in debates on the value of various forms of heritage.

Safeguarding Intangible Heritage. Practices and Politics is, in this context, a consistent and trustworthy companion to researchers trying to keep up with rapid developments in the field. Its editors, Natsuko Akagawa and Laurajane Smith, have written extensively on heritage in interdisciplinary frameworks including archaeology and anthropology to improve comprehension of the dynamics between cultural expressions and public policies, as well as cultural diplomacy. In addition, they are the co-editors of a ten-year younger volume, *Intangible Heritage*, a work remarkable for its historical outlook on the 2003 Convention, as well as for engaging the contributions of some authors involved in the negotiations prior to its signature.

Safeguarding Intangible Heritage. Practices and Politics begins with a summary of the evolution of the concept of intangible heritage over the last three decades, in response to the mainstream view on heritage, referred to as the Authorized Heritage Discourse, of which Laurajane Smith has written in several of her works. This Eurocentric view, associated with the nineteenth-century context of nation-making and identity-legitimizing contributed to an understanding of heritage in terms of objects, sites, and intergenerational transmission of long-lasting values. It was a discourse allied with the institution of the museum, patriotism, nationalism and liberal education, which drew on expert knowledge and state agencies to define and promote the heritage in need of protection. By comparison, the new category of ICH, partly a result of political and diplomatic endeavors to give a voice to historically marginalized or ignored cultures of the Global South, has dislodged many certainties about what valuable heritage means and who establishes this. In addition, ICH mobilized international support due to the ongoing threats posed by globalization to specific cultural practices of communities, especially indigenous ones, small groups still maintaining unique traditions, and mostly communities lacking the necessary means to promote their own culture.

The volume is structured in two parts, the first focusing on the challenges gen-

erated by the ICH in theory, as well as from an institutional and legal point of view, whereas the second is dedicated to examining the practicalities of safeguarding, which is more than a mere nuance to the established terminology of protection-preservation-conservation. Totaling an introductory chapter and 14 articles, it includes contributions which manage to balance theoretical claims with a variety of examples and case studies, providing readers with a clear perspective on the advantages and challenges of ICH. In addition, they discuss important values or practices to which ICH is connected: sustainability, cultural rights and diversity, de-centralization, creative industries or eco-tourism.

Chapters 2 and 3 shed light on the most difficult issues to which the new concept has given rise, i.e. the participation of communities in the selection and safeguarding of intangible heritage elements representative for them and framing ICH within the current regime of intellectual property rights.

Although not a new instrument in public decision-making, community involvement here goes beyond the procedures of stakeholder consultation, and is considered "to re-orient the power relationship from seeing ICH and its bearer communities as subjects of research, to regarding ICH as a value and social resource for its communities" (18). The new forms of partnerships, as well as the role of NGOs connecting the communities and the decision-makers who will prepare the proposal for listing are consistent with the interpretation of ICH safeguarding as a matter of cultural rights of a specific community. Moreover, ICH is naturally connected with sustainable development concerns of communities, by incorporating practices related to land use, agriculture, and biodiversity management. The influence works both ways, since the stakes are high to encourage the listing of those practices contributing to sustainable development, which is one of the values governing the Convention. It is instructive to note that, although "communities" naturally refer to the actual custodians or stewards of heritage, in practice there is often a wider circle at work, including academic institutions, as well as regional and national agencies.

Where intellectual property rights are concerned, ICH presents legislators with far more complexity than the classic notion of heritage, and this is visible in the process of nomination and inscription of elements for which several parties may have claims. Moreover, geographical indications, copyright design, patent and trademark protection, as well as the data publicizing system of inventories are sometimes likely to work not for the real benefit of the source communities, and rather lead to an over-crowding of regulations. This is interestingly illustrated by Chapter 7, which discusses the pros and cons of documenting linguistic heritage by means of digital archives. The process is analyzed in terms of its efficiency, as well as, critically, from the paradigm of power relations between the final beneficiaries, documenters and the communities. In addition, it helps readers better understand ethnographic and ethno-linguistic heritage as a forerunner to ICH, and the pervasive influence of methodologies and institutions on the new context of data collection. In the third place, this case study raises the dilemma of living heritage versus archived heritage, disconnected from the people, practices and environment it originated from.

Since the issue of living forms of cultural expressions is a salient one for the 2003 Convention, it is legitimate to ask whether the creation of lists which generate in turn other lists enabling linguists to trace the evolution of idioms across time and space in a project management logic is of use for the communities themselves, other than by pub-

licizing their existence. As proof of how the post-colonial paradigm of data collection and presentation has influenced linguistic archives, many speakers from disadvantaged communities still lack access to these digital resources. This contrasts expert knowledge with what we know little of, i.e. "speakers' own linguistic theories, their beliefs about language, and the ways in which they experience the creation of their heritage with the participation of others" (112).

Chapter 14, dedicated to the heritagization of Kyrgyz oral poetry echoes these concerns, and draws attention to another element of living practices, namely improvisation. The case study refers to a particular epic tradition from Kyrgyzstan, *Art of Akyns, Kyrgyz Epic Tellers*, included among the Masterpieces of the Oral and Intangible Cultural Heritage of Humanity. It is a combination of epic art and socio-political commentary, whose improvisational nature is related very much to recent events and the context of the performance. Traditions and social norms are referred to, sometimes critically, in the form of political commentaries. This kind of art illustrates the dynamic and fluid nature of intangible heritage, as "a discursive field where the past and present connect and inform one another, transforming oral poetry performances into a unique folk art that is traditional in form, yet modern in content." (221) The fact that every such performance is unique does not exclude the existence of a genre transmitted over generations, yet it does raise questions as to how to safeguard such heritage without decontextualizing it and depriving it of its original function, in other words, how to avoid commoditization of living practices.

The relation of ICH with social and economic development is also an important topic, which the volume addresses especially in Chapter 9, dealing with the Indonesian traditional art of batik making and revitalization of economy by creative industries. It discusses the way in which the 2009 UNESCO listing of Batik on the Representative List of the Intangible Cultural Heritage of Humanity provided the Indonesian government with an opportunity to nationalize this practice, and to support using a symbol of national cultural unity for economic development. Here again, laws, recommendations, policy initiatives and institutional infrastructures are as relevant to understand the dynamic of ICH definition and promotion as the story about the cultural practices themselves. This reflects a tension between the aspiration of preserving cultural diversity, which is often such because it evolved in de-centralized contexts and, on the other hand, the need of increasing cohesion and mobilizing resources to support projects with wider, national relevance.

This tension brings us to a final issue that can be considered to some extent constitutive to the development of ICH, namely its association with cultural diplomacy or national agendas. As a series of cultural practices that require a form of management, by association with values such as diversity, sustainability, promotion of mutual respect, tolerance and human rights, ICH is of important use for nation branding and affirmation of national identities in the context of globalization. For example, the case discussed in Chapter 13, that of *washoku*, officially inscribed as "traditional dietary cultures of the Japanese, notably for the celebration of New Year" (203), shows that protecting traditional ways of life, as maintained by culinary heritage is often accompanied by more standardization and concerns for supporting related industries. When we think of food we think first of all of variety, and that perhaps more than in any other domain, every little detail of a recipe, preparation, context of serving, ceremonies, local flavors, etc., would make a big difference, justifying therefore the unique character of this kind

of heritage. However, some of the best-known designations, such as "Gastronomic meal of the French", "Traditional Mexican cuisine" or "Mediterranean food" (203) seem surprisingly general, despite the explanations that accompany them, which refer to a whole series of farming particularities, rituals, traditions, and culinary techniques. The strategic proposal from Japan is interesting in this respect, because it relates the concern for consolidating a sense of national identity with what it identifies as essential for Japanese culture, i.e. respect for nature and sustainable use of resources, health promotion, inclusivity and gender respect. It reflects concern for changing eating habits of the young attracted by "Western food and styles of eating" (207), while aspiring to promote Japanese food internationally, and although it insists on its national character, it aspires to be universal in scope, meeting UNESCO's targets. As far as cultural diplomacy is concerned, this is, for sure, one fine example of how specific intangible heritage finds its way into the global discourse.

To conclude, *Safeguarding Intangible Heritage. Practices and Politics* is a rich, carefully constructed academic resource, managing to give a clear overview of a highly complex topic, along with vastly documented commentaries, examples and many useful syntheses of conceptual and implementation dilemmas related to intangible cultural heritage.

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