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Social Insurance and the Argument from Autonomy

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Abstract. In recent decades politicians and policy-makers have emphasised the need to shift from a “passive” to an “active” welfare state. This has resulted in policies that reduce compensation rates in social insurance or make compensation conditional on different requirements such as participation in rehabilitation or vocational training. This article argues that such policies are justified if they tend to ensure an adequate level of personal autonomy. To that effect, a ‘thick’ conception of personal autonomy is spelled out based on Norman Daniels’ extension of the principle of fair equality of opportunity. Some objections to policies limiting entitlement to social insurance are discussed. It is argued that although the objections fail to show that limited entitlement to social insurance is always unjustified, they identify considerations that must be taken into account for an overall assessment of such policies.

Key words: social insurance, active welfare state, justification, autonomy.

I. THE ACTIVE WELFARE STATE

In recent decades politicians and policy-makers have emphasised the need to shift from a “passive” to an “active” welfare state that prevents rather than merely relieves poverty and distress (cf. Pestieau 2006, 47f).¹ As Frank Vandembroucke, one of the more ardent defenders of such a development puts it:

The traditional welfare state is, in a sense, predominantly a passive institution. It is only once an undesirable outcome has occurred that the safety net is spread. It is surely much more sensible for an active state to respond to old and new risks and needs by prevention. (Esping-Andersen et al. 2002, X)

Generally, the shift towards an active welfare state has renewed the interest in constructing social policies that reduce compensation rates in social insurance and make compensation from social insurance conditional on different requirements (Pestieau 2006, 47).

In this article I argue that policies that limit entitlement to compensation from social insurance are justified if they contribute to the preservation of an adequate level of personal autonomy. In section II, based on Norman Daniels’ extension of the Rawlsian principle of fair equality of opportunity, I spell out a conception of personal autonomy that is ‘thick’ enough for the task. In section III I present the argument from autonomy and in section IV I discuss some further implications of the proposed argument. In section V I argue that the argument from autonomy is in certain respects an improvement on previous arguments in the literature on the shift towards an active welfare state. In section VI I discuss three objections, arguing that although they raise important considerations

1] The Belgian government coined the term “active welfare state” in 1999 when Frank Vandembroucke had become minister for social affairs and pensions. The European Council adopted it at the Lisbon summit in 2000 to characterize the common agenda for social policy within the European Union.

they fail to show that policies that limit entitlement to social insurance are unjustified. Section VII concludes.

II. A 'THICK' CONCEPTION OF AUTONOMY

In the philosophical literature there are different conceptions of autonomy. For the purpose of this article it is fruitful to turn to Norman Daniels' theory of just health and his defence of what can be seen as a particular conception of personal autonomy based on extending John Rawls' principle of fair equality of opportunity. In Rawls' theory the principle of fair equality of opportunity requires that those with similar talents and abilities and with roughly the same willingness to use them should have the same prospect of success regardless of their initial place in the social system (Rawls 1999, 63; Daniels 2008, 57f). Daniels extends the principle of fair equality of opportunity by arguing that it is satisfied when we enjoy a fair share of the array of life plans we can reasonably choose in our society given our talents and skills (Daniels 2008, 58f).² Being primarily concerned with health and health care, Daniels argues that health in the sense of securing what he calls "normal species function" is strategically important to ensure fair equality of opportunity (Daniels 2008, 34f). Since health in this sense depends both on access to health care and broader social determinants, such as socioeconomic inequality and access to education and so forth, the proposed broadening of the principle of fair equality of opportunity allows Daniels to spell out a powerful argument for institutions that provide a wide arrange of health care services and institutions and policies that ensure social and distributive justice. As Daniels points out, the importance of socioeconomic factors for health fits especially well with Rawls' overall conception of social justice and the difference principle which holds that inequalities should work to the advantage of the group that is worst off in terms of primary social goods. Since a Rawlsian society would be an equal society, at least compared with many competing conceptions of social justice, it would also tend to be a healthy society (Daniels 2008, 95ff).

To further elaborate on the notion of fair equality of opportunity it is useful to turn to two issues that are of particular relevance for Daniels' extension of the principle. First, in many contemporary societies there are strong social norms about the value and merit of independence and everyone should be self-supporting. Being in the relevant sense self-supporting thus becomes a precondition for the preservation of one's dignity and self-respect. Since dignity and self-respect greatly influence the range of life plans and projects we can choose to pursue, I suggest that being in a relevant sense self-supporting is as much as health a prerequisite for fair equality of opportunity in Daniels' extended sense.

²] Daniels notes that the implementation of the principle of fair equality of opportunity in any particular society requires that it is made specific relative to the circumstances in that society with regard to culture, technological level and economical situation etc. Thus, in any specific society fair equality of opportunity is achieved when all enjoy what Daniels calls "the normal opportunity range" which reflects basic facts of the society (2008, 61).

Second, the extent to which we enjoy a fair share of the array of life plans we can reasonably choose in our society given our talents and skills depends on the extent to which we can form relationships and become members of different social groups. In particular, social psychologists have emphasised that our ability to form different relationships and become members in different social groups is especially important for our ability to create ourselves as distinct persons. Marilynn B. Brewer and Miles Hewstone have for example argued that “the self is meaningful only in the context of one’s relationships to others and in one’s position in social groups” and that “the self is a cognitive construction, developed in the course of social interaction and experiences as a group member” (Brewer and Hewstone 2004, 3). I conclude that in order to really enjoy fair equality of opportunity in Daniels’ extended sense we must, in addition to being healthy and having access to a reasonable level of education, be in the relevant sense self-supporting and have the right characteristics to become members in a sufficiently wide range of social groups. When we do that we have what I will call “an adequate level of personal autonomy” (which I will also refer to as “the thick conception of personal autonomy”).

Daniels grounds the value of personal autonomy in the form of fair equality of opportunity on Rawls’ view that moral agents are essentially free and equal and thus have a fundamental interest in maintaining the conditions under which they can revise their life plans as time goes by (Daniels 2008, 61). But the importance of having an adequate level of personal autonomy could also be based on the idea that we create ourselves as distinct persons through the choices we make in our lives. In the words of Jonathan Glover:

[T]he distinctiveness of a particular person is not something just given, but is something we partly create in course of our lives. My distinctiveness is affected by the choices I make. Decisions about relationships, about what work to do, or where to live, may be influenced by how I see my life so far, and by my ideas of what sort of person I want to be. (1988, 17)

Some of our choices are in a relevant sense irreversible. For example, it is typically taken that the choice to become a parent is irreversible (or thinking in that way may be constitutive of being a good parent). But many other choices are reversible. Living in a certain area, having certain friends or pursuing a certain career are for example often reversible in the sense that we can move (at least if we can afford it), meet new friends and change careers (if our skills are attractive on the labour market). To have a reasonable opportunity to revise such choices we require an adequate level of personal autonomy. Now, I suggest that we have stronger reasons that operate on an individual level for preserving personal autonomy than the kind of life we are currently leading (with the exception of ‘irreversible’ choices). One reason for this is that personal autonomy makes it more likely that we stick to our commitments and projects for the right kind of reasons rather than due to lack of alternatives. This is true even if we have no thought of changing our lives or if thinking about changing our lives would be incompatible with the kind of life we lead. For example, even if Anne cannot dwell on the idea of leaving the covenant if she wants to remain a devoted nun, the mere fact that she could leave the covenant if

she put her mind to it makes her devotion more valuable in the sense that it is more likely that she remains a nun because of religious devotion as opposed to psychiatric obsession or lack of reasonable alternatives.³ Another reason is that modern society is inherently dynamic. Economical and social circumstances continuously change. Hence, even if we wish to continue leading, in some relevant sense, the same life we must be able to respond to changing circumstances. A final reason is that psychological research suggests that our self-esteem is like a “sociometer” that measures our standing in the social groups we are members of (Kirkpatrick and Ellis 2004, 53). If our standing would drop we must be able to become members in other groups where we may have a better standing to preserve our self-esteem. Since personal autonomy ensures that we may become members in new groups, it is also a prerequisite for upholding our self-esteem in a dynamic and changing society.

III. THE ARGUMENT FROM AUTONOMY

In recent decades many welfare states have taken steps to become more “active.”⁴ As the European Commission notes in the 2007 Joint Report on Social Protection and Social Inclusion:

Member states are increasingly focusing on “active inclusion” to strengthen social integration. There is a clear trend towards making benefits more strictly conditional on active availability for work and improving incentives through tax and benefit reforms. (European Commission 2007, 9)

In many welfare states this shift has resulted in social insurance policies that in various ways limit entitlement to compensation from social insurance (cf. OECD 2007). For example, benefit levels in sickness insurance and unemployment insurance have been reduced overall or policies have been introduced that reduce benefit levels in relation to the period recipients have relied on the insurance. Policies that make entitlement to unemployment insurance conditional on participation in labour market programs, such as vocational training or subsidized work, have also been introduced in many welfare states (ibid.). There has also been an increased interest in using sanctions to compel recipients to comply with job search requirements and participation in rehabilitation (f. Abbring et al., 2005). I suggest that policies that in these ways limit entitlement to social insurance are justified if they contribute to the preservation of an adequate level of personal autonomy. I call this the argument from autonomy.

³] This is also an argument for endorsing a social welfare system that upholds a reasonable social minimum.

⁴] For countries in the EU, see The European Commission (2007) *Joint Report on Social Protection and Social Inclusion*; For the US, see Lawrence Mead’s “A summary of welfare reform” (2005). For the OECD, see the OECD report “New Ways of Addressing Partial Work Capacity” (2007). Activation of the poor and those who need assistance has more or less always been a prominent concern of social policy and social insurance throughout history.

Policies that limit entitlement to compensation from social insurance can preserve an adequate level of personal autonomy in different ways. To begin with, prolonged reliance on social insurance has been associated with mental stress and health problems that negatively affect our ability to form and realize the intentions that are required to pursue different kinds of lives. As noted by Wulf Gaertner, “[i]t is being reported by doctors and psychologists that individuals that have been out of work over a long period are suffering from this situation psychologically – and not only in real and obvious income losses. They get isolated within society and start losing the capacity to do and initiate certain things, a capacity which they formerly possessed” (Gaertner 1993, 62; See also Rodriguez et al. 2001). Policies that limit entitlement to social insurance can contribute to the preservation of personal autonomy by being constructed in ways that prevent prolonged reliance on social insurance through reduced compensation rates over time or making compensation conditional on various activation requirements. Studies have for example shown that reduced benefit levels tend to decrease sickness absenteeism (Henrekson and Person 2004), and sanctions in unemployment insurance tend to increase the transition from unemployment to work (Abbring et al., 2005).

Furthermore, policies limiting entitlement to compensation from social insurance can contribute to the preservation of personal autonomy by being constructed to give incentives to healthier lifestyle choices and reduce the prevalence of health problems associated with smoking and obesity. One example is various forms of bonus options in health insurance, which have shown to be effective in promoting the adoption of healthier lifestyle choices (cf. Zweifel 1992, 70, 80f).

Mere reliance on social insurance can also restrict our participation in different social groups or social contexts. For example, the sociologists Jonas Frykman and Kjell Hansson have shown that those who received compensation from social insurance in Gisslaved, a small town in Sweden, were largely excluded from participation in social life because of prevailing social norms (Frykman and Hansen 2005). Overall, since our personal characteristics are, as Worchel and Coutant put it, “the currency that can be used to buy membership in other groups or gain favour in the existing group,” we have reason to endorse limited entitlement to social insurance if it gives us incentives to behave in ways that make it more likely that we have the right characteristics to be able to buy membership in different groups (2004, 193). Policies that tend to prevent the need to rely on social insurance could thus contribute to the preservation of an adequate level of personal autonomy.

Finally, as argued by Richard Dagger, we require the assistance of others to ensure that we have a reasonable range of different life plans that we may choose to pursue. Dagger illustrates this point with the example of being able to read; it is vital to the exercise of our autonomy that we are able to read, but our continued ability to read is something that we owe also to writers, publishers, providers of books and newspapers, providers of light and other kinds of infrastructures (Dagger 1997, 39). Likewise, to sustain practices that are vital to personal autonomy we need the active assistance of others, which gives

us reason to endorse policies that increase the likelihood that others are able to provide such assistance, for example by promoting healthier lifestyle choices or the skills and knowledge required for the provision of the goods and services that enable us to attain an adequate level of personal autonomy. Taken together, these considerations suggest that limited entitlement to social insurance may preserve an adequate level of personal autonomy by giving incentives to the effect that we have a fair share of life plans we can reasonably choose from given our talents and skills.

IV. SOME ELABORATIONS

The argument from autonomy has some implications that deserve further discussion. To begin with, it can either be based on the claim that we should have a certain range of life plans to pursue at each time, or the claim that we should be able to pursue a certain range of life plans seen over some period of time. The first claim implies that any policy that causes the range of life plans we may pursue to fall below the prescribed range is unjustified. But this seems unreasonable because in many situations it would seem perfectly reasonable to accept that this range falls below any such prescribed range if the decrease is temporary and if it tends to ensure that we have an adequate level of personal autonomy in the long run. For example, making compensation from unemployment insurance conditional on participation in vocational training temporarily restricts the range of plans and ends we may pursue. But once completed vocational training may greatly increase the range of life plans we may pursue by making us more attractive in the labour market. Since it is unreasonable to deny that such policies preserves an adequate level of personal autonomy I suggest that the argument from identity should be based on the second claim, I will briefly return to the question of fixing the relevant period of time in the last section.

Furthermore, we have stronger reasons to endorse a particular policy the more effective it is in preserving an adequate level of personal autonomy. At the same time, because policies limiting entitlement to social insurance operate through incentives we may end up in a worse position in case we need to rely on the insurance than we would have with a less demanding policy. To see how the argument from autonomy handles the trade-off between stability and incentives it is instructive to turn to the example of Anne. Anne is a lawyer and she may *ex ante* endorse an unemployment insurance policy that requires that recipients change careers and accept work in other locations when they have relied on the insurance for some time. Such a policy tends to increase the rate of return to work and thus ensure an adequate level of personal autonomy. Suppose that Anne becomes unemployed. The argument from autonomy does not justify requiring her to move and change career as long as her unemployment does not harm her personal autonomy. With time, however, it is more likely that being unemployed will cause her to have less than an adequate level of personal autonomy. Rodriguez et al. have for instance shown that prolonged reliance on welfare increases the risk of depression (Rodriguez et al. 2001). In the absence of any further considerations it would then be justified to require that she

changes careers and moves to another town (for example to work as a receptionist in a law-firm). What happens if Anne refuses to accept the job as a receptionist? Leaving her without support may cause her to have less than an adequate level of personal autonomy. At the same time, there is an increasing risk that being unemployed affects her health status and her ability to remain a member in different social groups and networks on equal terms, at the same time as she will have fewer resources overall. Since the negative effects on personal autonomy from such factors may cause her level of personal autonomy to fall below the adequate level irreversibly or for a very long-term, it is in her interest to accept the new job as a receptionist.

It is important to note that the argument from autonomy does not justify all policies that limit entitlement to social insurance. Putting aside the danger that she might be tempted to exaggerate the negative psychological consequences of forcing her to move for another kind of job, Anne may risk depression or psychosis if she were compelled to comply with such a requirement. In that case, the argument from autonomy does not justify requiring her to accept the job she has been offered. Of course, to what extent certain requirements contribute to the preservation of an adequate level of personal autonomy of those with certain characteristics, such as educational level or different measures of health status, is an empirical question that can only be determined on an aggregated (group) level and not on an individual level.⁵ Nevertheless, there is some kind of requirements that would seem more efficient than others in preserving an adequate level of personal autonomy. Stuart White has for example suggested that instead of mere work-requirements conditionality should be based on what he calls “civic labour,” i.e. “labour that provides a significant service for, or on behalf of, the wider community” (White 2003, 98). Since policies that make entitlement to social insurance conditional on the notion of “civic labour” provide individuals subject to such policies with a broader range of ways in which they could satisfy the relevant conditions, they are arguably more efficient in preserving personal autonomy than mere work-requirements.

I conclude this section with a comment on the relation between the argument from autonomy and paternalism. Because paternalism implies an interference with individual freedom it is often considered objectionable. But paternalism is less objectionable the more it is likely that those interfered with acknowledge the reasons for the interference (Husak 1981). Since we have strong reasons to preserve an adequate level of personal autonomy we also have strong reasons to endorse policies that promote our personal autonomy even if they would temporarily interfere with our freedom. This makes it more likely that we would find the interference and the paternalism of the argument from autonomy less objectionable. Moreover, in those cases limited entitlement to social

5] On an individual level we can only know *ex post* whether a particular policy had the desired effects on that person's personal autonomy. An assessment of how different kinds of requirements affect individuals' personal autonomy could for example be based on WHO's International Classification of Functioning, Disability and Health (ICF) which provides a framework for the description of health and health-related states to assess to what extent individuals are able to participate in their society (cf. WHO 2002).

insurance is justified by reference to the protection of people other than those who are subject to such policies, the argument is not paternalistic. For example, there is nothing paternalistic about policies that aim at keeping parents out of poverty because poverty harms their children's wellbeing.

V. PREVIOUS ARGUMENTS

The argument from autonomy is based on Daniels' notion of "fair equality of opportunity." However, as Daniels points out himself, this notion is close to Amartya Sen's notion of "capabilities to function in different ways (Daniels 2008, 64ff; Sen 1993, 31). Given the similarities between the two notions it would seem that the argument from autonomy could be reformulated in terms of capabilities. According to such an argument we have reasons to endorse policies that give incentives to healthy lifestyle choices and employment because good health and employment are required for the exercise of a wide range of functionings in most modern societies (cf. Dean et al 2005). But this does not mean that the argument from autonomy is redundant. The considerations leading to the argument from autonomy also support an argument based on capabilities, which makes the argument from autonomy support the capability approach rather than the other way round. And although Sen points out that appeal must be made to underlying concerns and values to distinguish between important and trivial functionings, he does not elaborate on this (Sen 1993, 32). The argument from autonomy, however, specifically relates the importance of specific characteristics and functionings to their relevance for membership in different social groups and the wider notion of social identity and fair equality of opportunity. Finally, whereas Sen notes that functionings are relevant for our well-being, the argument from autonomy spells out the relation between functionings (such as having good health or having a certain level of skills), membership in different social groups and well-being.

The proposed argument is in some respects also an improvement on other arguments for limited entitlement to social insurance in the literature. Lawrence Mead has argued that poverty and reliance on social welfare depend not as much on lack of opportunities as lack of "competence" among the poor. Mead does not elaborate what he means with "competence" other than saying that we are competent when we have the attitudes and skills we need to hold any job such as literacy and punctuality (1986, 24). By making entitlement to social welfare conditional on work requirements individuals are given incentives to behave in a "competent" way. Since individuals fulfil their obligations towards society by leading "competent" lives, and most individuals want to lead such lives, making entitlement to social welfare conditional on work requirements is justified (Mead 1986, 82ff; 1997, 1f). But, as Mead also points out, this argument cannot be made for the beneficiaries of social insurance programs who typically have a work history and thereby also the required "competence" (1997, 26). Neither is "competence" in the sense of coping with work an issue with regard to sickness insurance or unemployment insurance. The

underlying notion of “competence” is therefore not ‘thick’ enough to ground a justification of limited entitlement to compensation from social insurance.

Limited entitlement to social insurance may also be justified by arguments pertaining to the promotion of social inclusion or the prevention of social exclusion. Such arguments are especially frequent in the current debate on the shift towards an active welfare state. But *social exclusion* is a contested concept. According to Burchardt et al., an individual is socially excluded if (a) she or he is geographically resident in a society and (b) she or he does not participate in the normal activities of citizens in that society. Among the “normal activities” are consuming at least up to some minimal level the goods and services that are considered normal, engaging in an economically or socially valued activity such as paid work or education, engaging in social interaction with family or friends and identifying with a cultural group or community (Burchardt et al. 1999).

It is commonly taken that social exclusion is bad, either for the individuals who are excluded or in general. Making a distinction between involuntary and voluntary exclusion (which he calls “social isolation”), Brian Barry has argued that involuntary exclusion is bad because it violates social justice and that voluntary and involuntary exclusion are both bad because they threaten social solidarity (Barry 2002). Julian Le Grand has argued that both involuntary and voluntary exclusion are bad because they lead to negative externalities. For example, that rich and well-educated families put their children in private schools may have a negative effect on the quality of public schools, thereby affecting children from poorer and less educated families (Le Grand 2004). Likewise, reliance on social insurance affects production and economic performance.

Individuals relying on social insurance are socially excluded in the sense that they do not work. But although social exclusion may be bad for reasons pertaining to social justice, social solidarity or negative externalities, these arguments fail to show that reliance on social insurance is always equally bad. That we rely on social insurance is not problematic from the point of view of social justice as long as we are entitled to compensation. Neither is it problematic from the point of view of social solidarity. Through previous contributions we have acquired a *prima facie* right to rely on social insurance. Therefore, others are not likely to resent us for relying on social insurance (at least as long as they are aware that we are entitled to it and we have not relied on the insurance for too long a period). Nor are we likely to resent the rest of society because we rely on social insurance - at least as long as we do not rely on social insurance because of lack of fair equality of opportunity. As to arguments pertaining to negative externalities, the effect on production or economic performance from reliance on social insurance is negligible when taken individually. Although there may be good arguments for the moral relevance of such effects on an aggregated level, most of us would not accept giving up our entitlement to compensation from social insurance because of the difficulties and controversies involved in determining the nature and extent of such effects. That we have acquired a *prima facie* right to compensation from social insurance through previous contributions makes it plausible to require that limited entitlement to social insurance is

justified by arguments we are likely to accept. Since arguments pertaining to effects on an aggregated level remain controversial, such arguments are in general inadequate to justify policies that limit entitlement to social insurance.

Finally, Robert Goodin has argued that in some cases insurance cannot fully compensate individuals for their losses in terms of how they may carry on with their lives and projects (what Goodin calls “means-replacing compensation”). Instead, to achieve the same level of well-being individuals had prior to their losses, they are given means to adopt other plans and projects (what Goodin calls “ends-displacing compensation”). Since ends-displacing compensation violates individuals’ autonomy, it is better to adopt policies that prevent the need for compensation in the first place whenever means-replacing compensation is infeasible (Goodin 1995, 176). But means-replacing compensation may also harm individuals’ autonomy. To take one example, reliance on means-replacing compensation from unemployment insurance may be stigmatizing and exclude individuals from certain social contexts thereby harming individuals’ autonomy in the same way as many forms of ends-displacing compensation. Goodin’s argument therefore fails to justify insurance policies that it nevertheless may be in our interest to adopt.

VI. FOUR OBJECTIONS

In this section I will discuss one objection to the argument from autonomy and three general objections to policies that limit our entitlement to social insurance. These objections raise important considerations that must be taken into account in assessments of policies limiting entitlement to social insurance but they fail to show that such policies are always unjustified.

The first objection is that the strength of the argument from autonomy depends on the extent to which our ability to lead different lives depends on our physical or personal characteristics. But, the objection goes; this makes the argument to start from the wrong end: we should not limit entitlement to compensation from social insurance to ensure that we have the right physical and personal characteristics for leading different lives but seek to create a society where we may lead any life regardless of our characteristics. Rather than adopting policies to reduce reliance on social insurance because people relying on social insurance find it more difficult to be accepted in society we should change society to accept individuals who are relying on social insurance. Although it is easy to sympathize with such an attitude it is nevertheless part of a liberal democratic society that we are largely free to organise ourselves as we see fit. Williams Galston has for example argued that “[l]iberal governance acknowledges that important spheres of human life are wholly or partly outside the purview of political power. As such, it stands as a barrier against all forms of total power, including the power of democratic majorities.” (Galston 2005, 1)⁶ In

⁶ John Rawls has in a similar vein argued that we are allowed to determine and pursue our own idea of the good life within the limits of just institutions (Rawls 1999, 496).

a liberal state it is thus not always the task of the state to determine which characteristics should regulate membership in different social groups. Nor is it obviously unjust that we must have certain characteristics for membership in different social groups. For example, it is not unjust that I cannot join the local football team because I am a lousy football player – even if I am a lousy football player because I am obese. That the strength of the argument from autonomy depends on the extent to which individuals run the risk of being excluded is therefore not an objection. It simply reflects the fact that in a liberal society we lead our lives in social settings that to a certain extent determine what characteristics we must have to be accepted.⁷

The second objection, which is a general objection to limiting entitlement to social insurance, is that individuals' need to rely on social insurance is often correlated with socioeconomic factors that are wholly or partially beyond their control. For example, studies have shown that smoking in adulthood is correlated with socioeconomic factors such as education and income level (Power et al. 2005), and obesity among adults is correlated with childhood obesity (Krebs et al. 2007) at the same time as individuals who smoke or are obese tend to rely more on sickness insurance (Lundborg 2007). Since it is arguably unjustified to impose burdens on individuals because of factors that are wholly or partly beyond their control, it is also unjustified to limit entitlement to social insurance.

John Roemer has proposed how the influence of factors partly beyond our control can be taken into account on a policy level. Briefly, the idea is to adjust for factors partly beyond individuals' control to determine when they have exercised "a comparable degree of responsibility" (Roemer 1993, 149). Roemer gives an example involving lung cancer and smoking behaviour. First, society decides what factors seem important in determining smoking behaviour, such as occupation, ethnicity, gender, parents' smoking behaviour and income level. Second, the relevant population is divided into different types where each type consists of individuals who have approximately the same values for all factors. Two individuals have exercised comparable degree of responsibility if the numbers of years they have smoked are similarly related to the median number of years smoked within their type. Suppose that a sixty-year old white college professor whose parents smoked until she was seven smokes eight years and a sixty-year, black, male steelworker, whose parents were chain-smokers, smokes twenty-five years. If they are both median smoker for their type they have exercised a comparable degree of responsibility (Roemer 1993, 150f). To take comparable degree of responsibility into account, entitlement to social insurance could be limited in accordance with individuals' type. For example, a social insurance policy could be constructed in such a way that entitlement to compensation from social insurance for those of the first type is limited when they have smoked for more than eight

7] This does not mean that we should not try to make society more inclusive or that the state may not contribute to such a development. Neither is it to deny that it in many cases it is unjust to exclude people from membership in different groups because of their characteristics. Such cases are commonly regarded as cases of discrimination. Where to draw the line between discrimination and legitimate requirements for membership in different social groups is a further question that is beyond the scope of the present contribution.

years whereas those of the second type must smoke more than twenty-five years for their entitlement to social insurance to be limited.

Nevertheless, for two reasons I think we should be careful with such measures. First, as Roemer points out, the claim that socioeconomic factors influence individuals' choices is political and not metaphysical in the sense that it is not a claim that individuals cannot overcome such factors by acts of will (Roemer 1993, 149). Given that we have reasons to endorse social insurance policies that prevent that our level of personal autonomy falls below the adequate level we may also have reasons to oppose adjustments of the incentives because of our "type." If smoking more than x years increases the risk of lung cancer to some level that we find unacceptable, then it is in our interest to be given incentives to smoke less than x years regardless of the number of years the median smoker of our type smokes. Second, our current values and preferences are largely influenced by the values and opportunities we were brought up with. These, in turn, were largely influenced by socioeconomic factors beyond our control. Despite this, we tend to think that the choices we make in the light of our preferences and values are within our control. For example, although which party we vote on is largely correlated with socioeconomic factors beyond our control we still tend to think that our decision to vote on a particular party is within our control. To deny that our decision to vote on a particular party is within our control would amount to denying that we are autonomous agents. The same is true of many lifestyle choices in the sense that denying that choices about what to eat or whether to exercise are within our control would amount to denying that we are autonomous agents. Thus, in order to preserve our status as autonomous agents we must think of some choices as being within our control even if they are to a certain extent influenced by factors beyond our control. To make policies limiting entitlement to social insurance dependent on socioeconomic factors would therefore in many cases amount to a denial of our equal status as autonomous agents by implying that certain groups have less control over their choices than others.⁸ These remarks suggest that it is important to base conditionality on requirements that depend on choices we typically take to be within our control. For example, with regard to health insurance, it would be preferable to base premiums on dietary choices, or choices about physical activity, that are usually considered to be within our control rather than Body Mass Index (BMI) that also reflects other factors such as genetic predisposition and childhood BMI (cf. Krebs et al 2007). In general, it

8] Thomas Nagel has also noted the importance of agency in determining which choices or actions we should be held responsible for in his essay "Moral Luck." Plausibly, which choices are typically seen as within the control of autonomous agents partly depends on prevalent social norms and attitudes, which in turn are influenced by progress in fields such as psychology, sociology and biomedicine. For example, sexual orientation used to be seen as something within our control, but is nowadays commonly seen as caused by biological factors and beyond our control. Moreover, it is important to note that adjusting policies that limit entitlement to social insurance to personal characteristics, such as educational level discussed in section 3, is not to deny our equal status as autonomous agents. The reason is that the motivation behind such adjustments is primarily to increase the efficiency of the policy and not to adjust for lack of autonomy (see Nagel 1979, 37).

may be warranted to base conditionality on individuals' effort in participating in physical activities or in programs to quit smoking rather than on their biometrical status.

This reply to the second objection opens up for two further objections. The third objection is that limiting entitlement to social insurance primarily affects those who are already vulnerable and disadvantaged. For example, studies have shown that individuals in low skilled and low status employment have higher rates of sickness absence than those in high skilled high status employment (North et al., 1993). Consequently, policies that result in less protection from social insurance would only add a further disadvantage to individuals who are already disadvantaged. To answer this objection, policies could be constructed in ways that mitigate such negative effects for already disadvantaged groups. For example, entitlement to compensation could be conditional on broader notions of civic labour rather than the narrower requirement of finding a work that one may do after some fixed period of time.⁹ It is also in the interest of members of disadvantaged groups to be given incentives that help them escape poverty and preserve an adequate level of personal autonomy.¹⁰ Rather than showing that policies that limit entitlement to social insurance are unjustified, the objection points to the importance of mitigating adverse consequences for vulnerable groups.

The fourth objection is that even if adverse consequences of limited entitlement to social insurance are mitigated there may still be harm to innocent third parties. Children are a particularly vulnerable group. Less protection from social insurance is associated with an increased risk of poverty and low household income. Apart from the more obvious effects of not being able to participate in the same kind of activities as their friends, evidence suggests that low household income tends to negatively affect children's health, cognitive abilities, and school achievement (Brooks-Gunn and Duncan, 1997). Poorer health, poorer cognitive abilities and poorer school achievements may permanently affect children's personal autonomy as adults. For example, individuals with poor cognitive abilities and school achievements are less likely to acquire a higher education and consequently more likely to end up with a narrower range of employment opportunities. Individuals in poor health may find it more difficult to participate in everyday activities in social life. This objection points to a general problem for arguments based on the beneficial consequences of adopting particular policies: in many cases policies have beneficial consequences for some and less beneficial consequences for others. How should we deal

9] For example, following a recent reform of the Swedish sickness insurance individuals on sickness insurance are required to seek work that they can perform after 180 days. In case their health status prevents this, they are entitled to continued reliance on sickness insurance. To mitigate negative effects for disadvantaged groups, it could for example be required that those whose health-status permits it either seek work or participate in some broader notion of civil labour after 180 days to be entitled to continued reliance on social insurance.

10] As noted in section 3 above, to what extent policies that limit entitlement to compensation from social insurance have the intended effect is an empirical question. It also depends on other factors, such as availability of employment opportunities and so forth.

with mixed effects of limited entitlement to social insurance? Mixed effects raise intricate questions that it are not always possible to solve on a principled level. Instead, at some point we must turn to a fair procedure through which we can deal with particular cases of mixed effects taking into account the characteristics of different groups. Daniels has developed such a procedure that he calls “accountability for reasonableness” which requires that (i) the reasons appealed to are publicly accessible, (ii) that the reasons are such that fair minded people who are disposed to find mutually accepted terms of cooperation accept them as relevant for the issue at hand, (iii) there is some mechanism for challenging and disputing resolutions and (iv) there is some kind of regulation to ensure that (i) – (iii) are met (Daniels 2008, 118f). I suggest that accountability for reasonableness provides a procedure by which intricate issues about mixed effects can be handled on a policy level taking relevant socioeconomic factors into account. Nevertheless, as to the question of harm to innocent third parties such as children, the considerations pointed out above suggest that factors that operate during childhood may have a strong influence on one’s future abilities and level of personal autonomy. This supports the more general claim that consequences that affect children raise special concern and should be weighted accordingly in the overall process of assessing the desirability of different policies limiting entitlement to compensation from social insurance.

VII. CONCLUDING REMARKS

The shift towards an active welfare state has increased the interest among politicians and policy-makers in limiting entitlement to social insurance. Taking Daniels’ broadening of the principle of fair equality of opportunity as a starting point, I have argued that policies that limit entitlement to social insurance are justified if they contribute to the preservation of an adequate level of personal autonomy. I called this “the argument from autonomy.” To be sure, whether particular policies are justified by the argument from autonomy is largely an empirical question. For example, whether it justifies policies that make entitlement to compensation from social insurance conditional on vocational training depends on the extent to which such training tends to ensure an adequate level of personal autonomy. This, in turn depends on factors that operate both on individual and societal levels. But instead of making normative arguments, such as the argument from autonomy, irrelevant, this brings forth and specifies the role of normative arguments in identifying which empirical questions are relevant for the justification of welfare state policies. In this way the argument from autonomy contributes to the overall justification of social insurance policies that limit entitlement to compensation by identifying empirical questions that deserve further research.

I have also discussed four general objections to limiting entitlement to social insurance. Although these objections are forceful, I argued that they fail to establish that such policies are always unjustified. Nevertheless, the objections identify issues that need to be addressed in a comprehensive discussion about policies associated with the

shift towards an active welfare state. I think that three such questions are particularly important. The first question pertains to the effectiveness of policies limiting entitlement to social insurance. As discussed in section IV, it is typically only possible to establish an effect of such a policy on an aggregated level and not on an individual level. But how strong must this effect be to claim that the policy contributes to the preservation of an adequate level of autonomy and that it makes such a policy justified? The second question is related to the first. In section IV I argued that the argument from autonomy should be understood in the sense that a policy is justified if it ensures an adequate level of autonomy seen over some longer period of time rather than at every particular time. But this raises the question how long should this period be. The final question pertains to the problem of mixed effects. How should the mixed effects on autonomy for members of different groups be weighted? I suggest that ultimately these questions must be answered within an overall discussion of the justification and legitimacy of policies limiting entitlement to social insurance and the shift towards a more active welfare state. Apart from issues related to the appropriate conception of autonomy, and its significance relative to other values we have reasons to preserve or promote, this must also include a discussion of which conception of legitimacy is appropriate for an assessment of the justification and legitimacy of the welfare state – be it “active” or “passive.” I hope the present article can contribute to such a discussion.

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Social Norms: Repeated Interactions, Punishment, and Context Dependence

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Abstract. We argue that recent game theoretic approaches to social norms differ on some fundamental issues, our focus being on recent accounts by Ken Binmore and Cristina Bicchieri. After a brief introduction, we present the deepest cause for their disagreement, namely whether the action of norms should be modelled as a one-shot game, the option favoured by Bicchieri, or by a repeated game, as Binmore does. Although these choices appear to leave room for the two accounts to be complementary, we then argue that this is not possible. First, differing attitudes to modelling punishment, a central feature of all informal work on social norms, prevent any straightforward integration of the two theories. Second, the solution cannot consist in merely choosing between the two accounts, as they both fail to deal with the way in which triggered norms depend on context, in static as well as diachronic frameworks.

Keywords: social norms, Game Theory, context-dependence, punishment, repeated interaction.

I. GAME THEORY AND SOCIAL NORMS

Game-theoretic approaches to social norms have flourished in the recent years, and on first inspection theorists seem to agree on the broad lines that such accounts should follow.² By contrast, this paper aims to show that the main two interpretations of social norms are at odds on at least one aspect of social norms, and both fail to account for another aspect.

We are sympathetic to the broad project of using game theory to model social norms. Our aim is not to undermine this project or argue that no coherent framework or frameworks is possible in principle. Rather, we aim to show, with reference to two particular issues, that at this stage it is unclear if and how differing approaches can be integrated into a unified picture. The two issues we go on to discuss are, first, the role of punishment within the models and, second, how they deal with the context dependence of norm triggering. In each case it is the question of whether or not the model should be one of repeated or one-shot interactions that is the source of problems for integration.

When it comes to different modelling approaches, the recent literature provides two presentations of social norms. Ken Binmore outlines a model that frames social norms in terms of repeated interactions (1994, 1998, 2005). In contrast, Cristina Bicchieri's model is of one-shot interactions and involves utility transformations, triggered by social context,

1] This paper stems from our earlier "Social Norms and Game Theory: Harmony or Discord?" (Paternotte & Grose, 2012) and shares its overall diagnosis but adds to it by providing a deeper analysis of several points.

2] Despite their disagreements on specific issues; see for instance the issue 9 (vol. 3) of *Politics, Philosophy and Economics*, 2006.

that make norm conformity the rational behaviour (2006, 2008). Both of these authors repeatedly refer to each other's work as belonging to a common programme but, we argue, their difference on the question of repeated interaction models makes integration of their approaches problematic.

We draw attention to the fact that differences on the question of whether we should think in terms of repeated encounters or not lie at the very foundations of the models. Such disagreement makes common approaches to punishment and context dependence deeply problematic. This is not to say that having multiple approaches is unwelcome in principle. Still, those unfamiliar with the literature could be forgiven for taking it that there are core similarities common to all game theoretic treatments of social norms. In fact, the only issue on which they unambiguously agree is that norms should be modelled as being equilibria of a game theoretic model. This leaves open the question of what is the correct game to be modelled and it is to that issue that we move in section two.

II. TO REPEAT OR NOT TO REPEAT?

First, note that it would be totally unreasonable to demand that all social interactions be modelled by the same game. Our point in this section is that a fundamental difference in the models presented by Binmore, Bicchieri and others makes it difficult to see them as compatible analyses that can sit on the shelf next to each other and be called upon depending on the strategic nature of the situation at hand. Rather, they disagree at a deep level about the way in which we should model norms and important features such as punishment.

The core difference between these approaches to social norms that we consider is the type of interaction modelled. It has been common to identify the fundamental problem of social cooperation with the prisoner's dilemma (PD). For instance, it has been suggested Hobbes' *Leviathan* presents an informal analysis of PD interactions (1991). More recently, Brian Skyrms (2004) stresses the value of thinking about social interactions in terms of the "Stag hunt" game, citing Rousseau as a precursor. Previously, Skyrms (1996) devotes chapters to the PD and to Hawk-Dove / Chicken games.

These studies reflect one aspect of norm-following that has been stressed in the literature, that being that norms pull us towards actions not in accordance with our narrow self-interest (Young 2008). In most of the above games the equilibrium outcome is at odds with that which is optimal from society's point of view. The exception being the stag hunt in which there is a coordination problem between two equilibria, one of which is Pareto superior to the other.

Bicchieri's account of social norms is broadly in keeping with these approaches. She stresses that norms operate in "mixed motive" interactions. These are loosely characterised as those in which there is a conflict of interest and the potential for mutual gain. Given this loose characterisation, her definition appears to apply to a very wide class of games. Demanding that a game contains conflict to some degree can be taken as meaning that

different players' payoffs are not perfectly correlated. Requiring the presence of a mutual benefit can be translated as requiring that there be a Pareto-dominant payoff profile or a Pareto undominated one, or even one which provides a better average payoff. Although her characterisation is imprecise we can see that the focus is on norms overcoming conflicts of interest. This becomes apparent when we examine the way in which the action of norms is modelled.

Bicchieri is very explicit that, "the problem that a social norm is solving in the first place is *never* a coordination problem." (Bicchieri 2006, 34; her emphasis) When a social norm exists, it *changes* the agents' utility functions. Preference for conformity comes about via a transformation of player *i*'s utility function which converts a mixed-motive game to a coordination game in which all (or, more accurately, enough) players prefer to conform. Once the players' utilities have been transformed, mutual norm compliance becomes an equilibrium of the transformed game. When the norm is triggered, agents' utilities are modified for every result of the game as a function of the highest loss caused by anyone's deviations from the norm. My being sensitive to the norm makes me consider as less valuable the consequences of actions that do not follow it (whether these actions are mine or others'), in proportion to the highest loss that this combination of actions entails (Bicchieri 2008, 199, Appendix 9.1).

When it comes to reasons for this preference transformation when a norm is triggered, Bicchieri makes a number of suggestions. Agents may be motivated by the desire to please others, recognition that others normative expectations are reasonable and, most importantly for our purposes, fear of punishment (Bicchieri 2006, 29).

At this point we emphasise the feature of this account on which we subsequently focus. The model is of so-called one-shot games with no modelling of repeats of the interaction. Norm-following becomes rational, equilibrium behaviour in the one-shot game once the players' utilities have been transformed. In this respect Bicchieri's model is similar to Herbert Gintis's recent model in which a "normative disposition" discounts non norm-following acts (2010).

In contrast, Binmore's account is explicitly one of repeated interactions. For him, one-shot interactions are not those for which we are prepared by either our biological or cultural heritage. The "game of life" is an indefinitely repeated game. (Binmore 1994, 25) It is this focus on repeated interactions that makes Binmore concerned with a different role for norms than that of transformation of preferences. He focuses on the coordinating role of social norms that helps us to make our actions fit appropriately with each other. In game theoretic terms this fit is framed in terms of behaviours being in equilibrium with each other, where neither player would want to unilaterally change their action. The "folk theorem" of repeated game theory demonstrates that indefinitely repeated games have multiple equilibria, that is, multiple different ways in which actions can be mutually appropriate, and thus players face an equilibrium selection problem. (Myerson 1991, §7.5) For Binmore, social norms solve this problem by making a particular behaviour salient in a particular context. Our shared cultural heritage is what allows us to coordinate on an

equilibrium. Notice that in the case of Bicchieri's (and Gintis's) norms, the coordination role of norms need not arise because the utility transformation makes norm-conformity the one rational outcome.

It should also be emphasised that Binmore's focus on repeated games makes his account totally general when it comes to the base games that can be repeated. PDs, stag hunts, hawk-dove, coordination games and so on can all fall under this approach and in each case the equilibrium selection is between equilibria of the repeated game rather than what would be the equilibria if the games were played just once.

At this point it appears that there need be no incompatibility between these approaches to social norms and scope for them to be integrated. Preference transformations attempt to capture the notion of norm-following pulling people to act against their narrow self interest and their coordination role is reflected in the difficult equilibrium selection problem faced in repeated games. Integration would take the form of the Bicchieri's games forming the base games for Binmore's repeated interactions. However, we first argue, at least on the important issue of punishment, the different accounts cannot be straightforwardly integrated. We then show that they both fail to adequately describe how context-dependent social norms are, for related but different reasons.

III. WHAT PLACE FOR SANCTIONS?

There are at least three ways in which to model game theoretically the action of punishment or social sanctions. As we will see, different approaches to norms model them in different ways. In itself this is not a problem. As we stressed in section one, there is potential value in having multiple modelling approaches. The problem here is that the different ways of thinking about punishment makes them appear incompatible with each other in the sense that they cannot be integrated. This is of particular concern because punishment of non-compliance is one of the central features of any informal account of social norms.

Returning to the three game theoretic models of punishment, one possibility is for the sanction to feature as a payoff alteration. For instance, if defection in a PD is punished, and payoffs following defection are reduced, mutual cooperation can become an equilibrium outcome. This payoff transformation option is certainly the one taken by Gintis. He emphasises the "choreographing" role of norms in (one-shot) games with multiple equilibria. However, where compliance is not already part of an equilibrium outcome, sanctions can play a formal role as an argument in the utility function, thereby tipping the balance in favour of norm-following being an equilibrium (2010). In the case of Bicchieri, punishment does not feature explicitly in her formalization. However, as raised in section two, sanctioning is cited as a reason for the utility transformation that is a central feature of her model. In fact, it is unclear precisely how punishment connects with her formal model and in this sense the role of sanctions is poorly integrated with that formal account. An obvious possibility is the payoff altering role we are considering

here. In that case the discounting of payoffs associated with non-conformity with the norm would reflect punishment received. However, if we look closely at Bicchieri's formalization it seems that this cannot be a correct interpretation, something emphasised by Daniel Hausman (2008). Remember that the discounting of norm-breaking actions is a function of the negative consequences of *all* players' deviations from norm-following. If the discounting of my payoffs were due to potential punishment *of me* then we would expect such discounting to be a function only of my own deviations from the norm. So, while it is clear that, according to Bicchieri, sanctions play a role in transforming utilities, it is unclear precisely in what way this is cashed out in the model.

A second formalization of sanctioning is to expand the game to make the punishment action an explicit move. This has the advantage of prompting the modeller to pay attention to the possible consequences of punishing for the punisher. In particular, punishing is very often taken to involve paying costs oneself.³ We will not expand further on this option since it is not one taken by either Bicchieri, Gintis or Binmore, to whose repeated interaction model we now move.

In models of repeated interactions punishment behaviour can be modelled in a way unavailable to one-shot models. In this case some plays of the base game constitute sanctioning behaviour. Take, for instance, the indefinitely repeated PD. Permanent mutual cooperation can be the outcome of equilibrium strategies. One, but not the only, possible equilibrium strategy is the famous "Tit-for-Tat."⁴ In this case cooperative behaviour is reciprocated but, importantly for its being an equilibrium, so is defection. Retaliatory defection is interpreted by Binmore as a punishment for breaking the cooperative norm. A less forgiving strategy is the so-called "GRIM strategy" (Binmore 1994, 197). This cooperates until it is defected against and then switches to the punishment of permanent defection.

A strength of interpreting punishment in terms of strategies in repeated games is that it naturally makes explicit that punishment can take many forms in terms of its duration and by what it is provoked. For instance, "Tit for two Tats" requires two successive defections before it punishes with defection. However, a weakness is that punishment loses some of its special status found in informal accounts of social norms. What we mean by this is that there is nothing distinctive about punishing as represented by a repeated game strategy compared to any other behaviour that is conditional on one's partner's actions in previous rounds of play.

Having raised some tensions in both Bicchieri and Binmore's framing of punishment we move on to the question of integrating their models since, even if the issues raised above are not fatal to their accounts, there remains a problem with bolting them together. Remember that the integration suggested at the end of section two was that the utility

3] Something Gintis and others stress in their claims for a disposition in humans towards "strong reciprocity" (Gintis 2000).

4] See Binmore 1994, §3.2.5 for powerful arguments that TFT's importance as a repeated PD strategy has been overemphasised.

transformation role of norms acts on the base game and that we can then examine the coordination role for norms when repetitions of these games create, via the folk theorem result, an equilibrium selection problem. However, we have already seen that punishment plays a role in both accounts but is characterised in different ways. For Bicchieri (and Gintis), punishment triggers norm-following in a one-shot context, potentially via it being represented as altering players' payoffs. In contrast, in the repeated game framework, punishment is a constitutive part of the strategies themselves.

A potential response to this difference is that the repeated game approach can be reinterpreted into the one-shot case by taking the expected payoffs of the repeated payoff stream as the payoffs of a new one-shot game. This approach is followed by Skyrms when he argues that the repeated PD can be rewritten as a one-shot stag hunt game (Skyrms 2004). However, this is a reframing of the repeated scenario rather than an integration of the two approaches. To reiterate, our concern is that in one case punishment features as a reason for action and in the other it is just one of the moves in the game. When attempting to apply an integrated model to actual cases of norm-following where social sanctions are present it would then be ambiguous in which of the two ways we should model those sanctions.

At this point we are left with the question of whether one interpretation is to be preferred in general or in specific cases of norm-following or whether we should accept a plurality of modelling approaches. It is not our intention to adjudicate on this point here. What we stress is that such an adjudication (including agnosticism) would not be a move towards an integrated game theoretic account of social norms. Moreover, the following sections suggest that before any possible integration, both interpretations have to be completed in order to integrate the fact that norms are highly context-dependent.

IV. CONTEXT DEPENDENCE: THE TRIGGERING AND STRATEGIC ROLES OF EXPECTATIONS

Despite the striking variance in their analysis, as shown in the case of the nature and role of punishment, all accounts of social norms suffer from at least one common shortcoming, for related reasons. The basic problem is the following. A certain situation of interaction, formalised by a game (the sets of agents' actions and payoffs), may well trigger various social norms, depending on the background context of the interaction. When an interaction is repeated, should we say that the context changes so that a new social norm may appear, or that it does not since the base game describing each interaction is unchanged? In other words, when during a repeated interaction should we expect a social norm to be stable and when unstable?

First, let us recall the characteristics of one-shot and repeated interaction approaches to social norms, respectively exemplified by Bicchieri's (2006) and Binmore's (1998, 2008). For Bicchieri, a social norm is cued in certain situations by the agents' beliefs about others' behaviour and expectations. As seen in section two, this triggers a change

in preference that makes it rational for agents to choose certain actions. For Binmore, whether a norm is triggered depends on the similarity of the situation with a known one. Agents' actions are not explained by a preference change, but by their behaving as they are used to in a similar situation. In other words, when facing new situations in the laboratory, agents either conserve preferences or habits from their outside life (Woodward 2008).

Do the starting game's characteristics constrain the existence of a social norm? Not really. Theorists usually reckon that cooperative norms can appear in any kind of cooperative dilemma, that is, of games containing an outcome that, although not an equilibrium, Pareto-dominates an equilibrium.⁵ However, this expresses the theorists' interest for certain kind of games (those in which cooperative behaviour calls for an explanation) rather than a logical necessity or an empirical fact. Indeed, social norm theorists are disposed to see norms appear in almost any kind of game. Binmore does not discuss the issue, and we have seen in section two that Bicchieri holds that norms can appear in any 'mixed-motive games,' that is, games containing potential for mutual benefit and some conflict of interest; this description suits most games. Defenders of the competing 'group identity' explanation of cooperation are not any more precise. For instance, Bacharach (2006) only talks of situation of 'strong interdependence,' which is nothing else than the presence of a Pareto-dominated Nash equilibrium - although he provides no explanation why this condition is paramount. Overall, virtually any game could cue a social norm.

This makes context all the more important to social norms. The term "context" refers to anything that cannot be expressed by games' parameters. So the absence of constraints or payoff structures on the existence of social norms increases the importance of expectations or of the similarity with real-life situations in determining when social norms may appear.⁶ Of course, games still play a role in determining *what* social norms may appear. On this point though, somewhat unexpectedly, one-shot and repeated interaction approaches are not as separated as it seems. Expectations matter in the former, but even if they are not explicitly mentioned in the latter, their role is merely hidden.

Suppose an agent is confronted with laboratory game A and deems it similar to real-life situation B, in which she would choose to do X. She will then do X in A for the same reason that she would have done so in B: because it is part of an equilibrium (she thinks mistakenly). But by definition, agents play according to an equilibrium if they believe that others will do the same. In a repeated game approach, expectations about others' behaviour and their expectations determine what an agent is going to do; the only difference is that they do not also lead to a preference change. Note that expectations also play this role in one-shot approaches, in addition to their triggering effect: once a game is transformed,

5] E.g. the Prisoner's Dilemma, in which the mutual cooperation outcome makes both players better off than the mutual defection one does, although only the latter is a Nash equilibrium.

6] An example of the effect of similarity between games on behaviour is found in Binmore 2010: when individuals had to play a public goods game, "recognised" it as a familiar situation called "harambee" and then played accordingly. An example of the role of expectations can be found in Bicchieri 2008.

expectations about others still influence a player's choice in the new game. In other words, expectations can have both a *triggering* role and a *strategic* role (this distinction will become important in the next section). One-shot and repeated interaction approaches to social norms both recognize the strategic role of expectations, but only the former also explicitly mentions their triggering role.

A related reason why the two approaches are closer than it may seem is that the factors that cue norm-following behaviour are not necessarily different. In the one-shot interaction approach, certain expectations trigger preference change, but there is no constraint on the expectations that agents may or may not form. This reflects a widespread practice in rational choice theory: theorists determine what is the best, or rational choice for an agent given her preferences and beliefs, without asking whether those can be considered as rational or acceptable themselves. Now an agent's expectations about others may perfectly stem from the similarity of the laboratory game with a real-life situation: because A is similar to B, I may expect others to play according to B's equilibrium. So the role of game similarity could find a space even in one-shot approaches, as one possible origin of agents' expectations.

In both approaches, similarity between games may cue a social norm and resulting expectations influence the agents' behaviour. What are the differences then? First, according to the one-shot interaction approach; other factors than similarity between games may trigger a social norm. However, the main difference lies in the link between the base game and the game that agents are actually playing. According to a repeated interaction approach, the laboratory game A is *replaced* by one representing the similar real-life situation B, in which players then play according to one of B's equilibria. According to a one-shot approach, the payoffs of laboratory game A are *transformed* into those of a game C. The difference is that there need not be a payoff transformation function that leads from A to B, and more precisely not one that corresponds to Bicchieri's description (2006, 52-54). In both cases, the characteristics of game A partly influence the game that players are *really* playing; only the way to determine the latter from the former varies.

V. CONTEXT-DEPENDENCE IN REPEATED GAMES

When agents interact only once, context-dependence is not deeply problematic, as it all depends on which expectations agents have or which real-life situations they deem similar to the one at hand. Surely, this makes social norm following behaviour hard to predict, as a theorist would need to know all possibly related real-life situations and all expectations linked to a social norm in a given population. Still, the analyses provided by both one-shot and repeated interaction accounts are clear.

What happens to a social norm when the same game gets repeated? What makes agents keep sticking to it or start following another one along the way? On this point, the two accounts described above start to differ significantly, even if none of them provide a satisfactory answer.

On the one hand, as the base game is just repeated and does not change, agents may well keep following the same norm. However, there are always multiple equilibria in a repeated game, and according to Binmore each of them could be a norm. There are also multiple ways in which the game's payoffs can be modified through preference change functions, and so just as many norms according to Bicchieri. As a game is repeated, agents observe each other's behaviour and consequently may see a change in their expectations; they may also start to understand the nature of the game they are playing and as a result adapt their behaviour to it. For these reasons, both one-shot and repeated interaction accounts of social norms may predict that a social norm that agents follow changes as time passes. What does this change depend on? One way to put the problem is: when should observations of behaviour during repeated play lead to a change in the social norm an agent follows?

It is a fact that most often, agents' behaviour varies with time when they play a repeated game. As may be expected, the repeated interaction account of social norms fits some of such cases well. For instance, the rate of cooperation in a repeated public good game tends to decrease with time (Camerer 2003, 59). In an Ultimatum game, offers can usually stabilize around one arbitrary value, although in the Dictator's game (when they cannot be refused) they get closer to zero. In these three cases, agents' strategies converge towards one of the game's Nash equilibria (no contribution in the public good game, any nonzero offer in the Ultimatum one, zero offer in the Dictator game). This is consistent with what the repeated interaction account predicts: when playing game A, agents may start to act as if they were playing game B, but as repetitions of the game accumulate, their understanding of the situation will improve and they will gradually learn to play according to A's equilibria. The effects of the context (that is, the existence of a similar real-life situation) can thus be offset by the success of an agent's strategy, in terms of its concrete payoff.

Is this interpretation consistent with all experiments? It seems so. Consider Isaac and Walker's (1988) experiment (discussed by Bicchieri, 2006, 149ff.), consisting of two separated runs of ten successive public good games. Conversation between participants was allowed either only before the first sequence, only before the second sequence, or not at all. What was observed is although the level of contributions typically declines as the game is repeated, allowing conversation before a sequence led to higher, sometimes *increasing* contributions, and that the effect of a conversation before the first sequence carried over to the second one. The increasing effect is puzzling from a repeated interaction account, because in any equilibrium of a repeated social dilemma, there should be a decrease of the contribution level at least in the last round. If agents were slowly learning not to mistake the situation for a different one, their behaviour should converge towards such an equilibrium. It may be that the learning process needs longer than a handful of repetitions to kick in.

However, such an argument threatens to render the explanation ad hoc: agents could be said to learn whenever they play according to an equilibrium (which are many

in repeated games), and not to learn yet whenever they do not.⁷ Moreover, whenever agents do not play according to a finitely repeated game's equilibrium, such as when their contributions increase in the last period, one can always say that they are still behaving as if in real life, when it is hardly ever sure that an interaction will not be repeated some time in the future. Any behaviour in the last repetition could thus be seen as part of an equilibrium of the infinitely repeated game. Even if players perfectly understand that the numbers of repetitions in an experiment is finite, they might be behaving partly intuitively, based on the similarity between laboratory and real-life situations. Put differently, to be satisfying the explanation should tell us when agents act strategically (by considering the payoffs and structure of the actual interaction) and when habitually.

How does a one-shot interaction account fare? It actually faces a similar problem. Let us start with a difference: one-shot accounts based on preference transformations have no problem explaining that contribution levels in a social dilemma should not decrease in the last game. This is because the preferences of norm-following agents may be such that contributing zero is not an individually dominant strategy anymore (by contrast, without a preference change, payoffs are such that defecting is always individually beneficial). Still, it is just as difficult to say when agents should start following different social norms. The problem stems from the unknown balance between the triggering and strategic effect of expectations (as described in the previous section).

When agents can have different preferences (or type) and are uncertain about others' types, a useful game-theoretic concept is that of a perfect Bayesian equilibrium (Osborne and Rubinstein 1994, 231-37). When applied to repeated games for instance, it says that agents start with a prior belief about everyone's possible type, which they will then update by Bayesian conditionalisation as they observe others' action. Observations constantly modify agents' beliefs about others' types and expectations about their behaviour. These changes of beliefs are part of the Bayesian Nash equilibrium: two strategies can only be at equilibrium if when agents implement them, the change of beliefs they cause is consistent with the strategies' prescriptions. This models the *strategic* role of expectations, that is, the way in which they help determine the behaviour agents who maximize their expected utility.

Now recall that in Bicchieri's one-shot interaction account of social norms, expectations have a *triggering* role, that is, they can lead to a change in preferences. So a change in expectations may well cause an agent swapping types, and in particular can lead to the appearance of new types. This cannot be made part of Bayesian Nash equilibria, in which a list of possible types is set from the beginning and cannot evolve. The problem is that the theory can then explain virtually any observed behaviour: either agents follow a well-defined norm, in which case expectations play a triggering role at the start and then

7] Note that the carry over effect in itself need not be a problem for a repeated interaction account. There is a repeated game equilibrium in which agents make high contributions all the time, except towards the end. As long as the contribution level decreases at some point, it may stay high for a long time before, and there is no reason why this would not carry over between several sequences of games.

only a strategic role (preferences do not change as the game is repeated); or it does not and can be explained by the fact that the expectations changed over time and so triggered another norm.

Overall, both kinds of accounts seem able to fit any data, thanks to the liberal definitions of context. Expectations can be part of the context; as they routinely change during any repeated interaction, they may trigger a change in norms at any time and thus allow one to explain any behaviour. Learning processes determine when the context's influence stops overcoming benefit-related considerations; but in the absence of a precise definition of such processes, the effect of context can also be used to explain any behaviour.

VI. CONCLUSION

We have argued that despite surface-level similarities, game-theoretic accounts of social norms are not easily integrated. This is due to the existence of two main kinds of accounts, based on one-shot or on repeated interactions. This distinction gives rise to different treatments of the role played by punishment. Moreover, the problem is not merely to choose between them, as they both suffer similarly from difficulties to account for the context-dependence of social norms while conserving their explanatory power.

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On Political Legitimacy, Reasonableness, and Perfectionism

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Abstract: The paper advances a non-orthodox reading of political liberalism's view of political legitimacy, the view of public political justification that comes with it, and the idea of the reasonable at the heart of these views. Political liberalism entails that full discursive standing should be accorded only to people who are reasonable in a substantive sense. As the paper argues, this renders political liberalism dogmatic and exclusivist at the level of arguments for or against normative theories of justice. Against that background, the paper considers aspects of a more plausible, deeper and more inclusive idea of public political justification that builds on a thinner, potentially cosmopolitan idea of the reasonable. The paper considers what content such an idea may have, and identifies a method of inclusive abstraction through which it may be enriched in content to render it fruitful for the purposes of a justification of principles of political justice. But the move toward more depth and inclusiveness faces constructivism with two challenges. First, inclusivism about the scope of political justification might not be able to avoid dogmatism unless it invokes perfectionist considerations. And second, the authority and appeal of a fruitfully rich idea of the reasonable depends on whether the addressees of political justification already value wide acceptability.

Key words: Rawls, O'Neill, Macedo, Larmore, political liberalism, legitimacy, public justification, reasonableness, discursive respect, perfectionism, cosmopolitanism, abstraction.

I.

Political liberals,¹ it has often been observed, tie political legitimacy to an idea of the reasonable. To be legitimate, they argue, political power must be exercised in accordance with political principles that rest on publicly justifiable grounds. Public justification, in turn, respects reasonable disagreement, regards reasonable acceptability as justificatory, and includes in its scope, or constituency, reasonable people. The idea of the reasonable is key, as well, for a host of related themes at the core of political liberalism – such as the inclusiveness of public justification and public reason, the scope of toleration, the nature of equal respect, the grounds for a distinctively 'political' approach to political justice, as well as the relationship between political constructivism and perfectionism. It remains contentious, though, just what content and role this idea has, and should have – and, more fundamentally, how we may determine in the place what idea of the reasonable, if any, a liberal view of political legitimacy and public justification may be built on. The following discussion addresses this complex theme; it pursues to main aims. First, I shall outline an unorthodox reading of the role of public political justification in political liberalism that brings out the higher-order, *meta-theoretical* nature of political liberalism's appeal to public justification and reasonableness. Second, I shall suggest a modification of political

[1] While John Rawls's views will often be in the foreground in what follows, I will not equate political liberalism with his post-1985 views; instead, I will refer to it as a family of views on justice, justification, reasonableness, and related issues as advanced in writings such as Rawls 1993, 2001; Larmore 1987, 1996; Macedo 1991. On generic features of political liberalism, see below, and Besch 1998, 2004, 2012.

liberalism's view of political justification that allows us to more plausibly determine, in ways aligned with a more inclusive, cosmopolitan view of the scope of a strong form of equal respect, what idea of the reasonable public political justification may start from.

Sections II-IV address political liberalism's ideas of political legitimacy and public justification, identify the role these ideas accord to reasonableness, and advance a view of the content of the idea of the reasonable employed here. Political liberals, I argue, reconcile their stand on matters of theory-acceptance in the domain of the political – a stand that gives rise to their distinctively 'political' approach to political justice in the first place – with their own, more substantive commitments by supposing an idea of the reasonable that is rich in content (and richer than has often been seen). Like other critics, I argue that political liberalism seems both dogmatic and unacceptably exclusivist. On this basis, the second, constructive part of my discussion engages two issues. We may try to avoid dogmatic exclusivism while retaining much of political liberalism's view of political justification by building this view on a more inclusive idea of the reasonable. However, first, prior the adoption of a more inclusive idea of the reasonable as politically basic, we need to determine within what scope such ideas need to be acceptable in order to merit this status. Section V suggests that such an idea should be acceptable within a potentially cosmopolitan scope, but suggests, as well, that this conception of inclusivism needs to be defended on non-constructivist, *perfectionist* grounds. On this view, a suitably inclusive, politically basic idea of the reasonable would build a perfectionist defense of the good of discursive respect. (I elaborate on the form discursive respect and relate it to other kinds of moral consideration in section III.)

The second theme is this. There simply might not be an idea of the reasonable that is thin enough in content to be duly inclusive while still being rich enough to suit the purposes of a justification of liberal principles. This problem is especially pressing if we take it that the justification of such principles may not proceed from justifiers that are the subject of reasonable disagreement. Section IV, then, identifies self-suggesting elements of a suitably thin and inclusive idea of the reasonable, and considers a method of O'Neill-type 'inclusive abstraction' through which such an idea might be enriched in content without sacrificing inclusiveness. What will emerge from here are the structural contours of a view of public political justification that salvages aspects of political liberalism's views of political legitimacy and public justification that many find plausible while avoiding some of the problems of these views, and that helps to locate the foundational contribution that perfectionism can make to a defense of an inclusivist view of public justification.

II.

A good starting point is Rawls's "liberal principle of legitimacy."

LPL The exercise of political power "is proper and hence justifiable" only if it is exercised in accordance with a constitution the essential content of which can be endorsed in the light of reasonably acceptable political principles. (Rawls 1993, 217)

To fix ideas, let us note in what sense of the notion LPL expresses a *liberal* principle. On one usage of the term, a theory of justice is a “liberal” theory if it prescribes that people be accorded certain basic rights, liberties, and opportunities of special priority, as well as suitable means to make use of these things. We may call this a *substantive* sense of the idea of liberalism.² LPL is a liberal principle not in this substantive sense of the notion. It is a liberal principle in a different, *legitimacy-theoretical* and *justificatory* sense of the notion. This sense is captured by Waldron when he says that the “fundamentally liberal” idea is that “a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it”. (Waldron 1987, 140) LPL adapts the idea of liberalism as legitimacy-qua-acceptability to the institutional profile of a constitutional regime, while simultaneously tying it to an acceptability-based, inter-subjective idea of public justification – to which I shall turn shortly.³

Let us observe, as well, that even though LPL at first sight seems to express a merely applicative view of legitimacy – i.e., a view that supposes principles of political justice and merely regulates how justice as specified by those principles is to be administered – LPL’s role is more complex than this. True, LPL can be fulfilled fully only if suitably justifiable political principles are at hand. Placed in its systematic context, however, LPL in effect integrates a view of the moral permissibility of exercises of political power with a higher-order view of the justificatory requirements that a reasonable theory of political justice must meet in the first place in order to be such that its political principles may govern the exercise of such power. LPL, then, is not properly an applicative view of legitimacy; it plays a more fundamental role. This becomes clearer once we consider what sort of justification LPL calls for, to which I shall now turn.

According to LPL, exercises of political power must be justifiable at least at two levels: they must be justifiable by the light of constitutional principles (level 1) that are justifiable by the light of reasonably acceptable political principles (level 2). What principles are reasonably acceptable? And on what grounds may we take them to have that quality? This brings in a third level of justification. Political principles, seen as a subset of moral principles, may come in at the second level only if they can be shown to be reasonably acceptable by a theory of political justice that counts as a “public basis of justification”. (Rawls 1993, 100) What matters for our purposes are the constraints associated with the

2] This follows Rawls’s substantive notion of liberalism: see Rawls 1993, 223.

3] To think of this idea of liberalism as justificatory, rather than merely legitimacy-theoretical, follows Gaus 1996, 3ff. It also reflects the fact that Rawls takes legitimacy to be a matter of acceptability-based justifiability. As it is worth adding, Rawls works with the substantive notion and the justificatory notion of liberalism. It is plain that he adopts the substantive notion. He also adopts the justificatory notion. It is in the justificatory sense that he can claim that his own view, *Justice as Fairness*, despite being liberal in the substantive sense, would not be liberal if it was unable to gain an overlapping consensus, or failed to be suitably acceptable by reasonable people: see Rawls 1993, 143. Below, I shall in effect suggest that Rawls takes the justificatory sense of liberalism to be more fundamental in the order of justification than the substantive sense, and that he secures that a view that is liberal in the justificatory sense can also be liberal in the substantive sense by including in the scope of public justification reasonable people only.

requirement of publicness. What, then, makes a professed basis of justification public? Rawls replies that a theory of political justice can be a public basis of justification only if it is the subject of an overlapping consensus between reasonable comprehensive doctrines. (Rawls 1993, 143, 192) However, the reason why it matters that a theory of political justice, *T*, is compatible with the reasonable doctrines endorsed in society is that *T*'s incompatibility with any of these doctrines would mark one important way in which *T* can fail to be equally acceptable by the reasonable people endorsing such doctrines. But equal acceptability by reasonable people is what constitutes public justifiability. Thus, a theory of political justice is a public basis of justification only if it is publicly justifiable to reasonable people. Accordingly, Rawls writes that public justification is basic for political liberalism, and does not require us to look to the content of reasonable comprehensive doctrines. (Rawls 1995, 144 n. 21)

Now, there are different views of the role of public justification in political liberalism. On one view, it is a principle-applying exercise that supposes that reasonable level-2 principles are already at hand. E.g., Quong in effect reads it as supposing the conditions of a well-ordered society – a society of reasonable people that mutually recognize a reasonable political conception of justice and its principles. (Quong 2011) Thus, public justification supposes that the relevant others already share these principles as authoritative. But this does not exhaust the complex standing of public justification in political liberalism. In a second, more fundamental role, the standard of equal acceptability by reasonable people operates as a guideline of theory-selection and theory-construction – a standard that gives rise to the project of a political liberalism in the first place. (Besch 1998) Rawls, I take it, does not suppose that there currently is a society that is well-ordered in his sense. And yet, he argues that we here and now have reasons to accept that only a non-comprehensive, political form of liberalism, if anything, can serve as a public basis of justification. Correspondingly, he here and now applies the principle of toleration to philosophy and under this constraint attempts to work out JF in political terms – an exercise that addresses us, or at least the reasonable, rather than (only) the hypothetical inhabitants of a non-existing, well-ordered society. It is exclusively in this second, fundamental role that public justification matters now – in this role, it does not suppose that level-2 principles are already at hand, but rather guides the search for a theory of justice that may be relied on in arriving at such principles in the first place.⁴

What must a theory of justice, *T*, look like to be equally acceptable by the reasonable? Political liberals answer that it must not only be liberal in content, but also political in form:

R1 *T* must as a whole be consistent with what it takes to respect reasonable people as free and equal persons (call this “the respect requirement”).

4] On this understanding of public justification, it instantiates a robust form of Postema-type restricted trans-individual reasoning: see Postema 1995, 64ff. On the structure of public reasons in political liberalism: see Besch 2004, chapter. I.9.

R2 T must take equal acceptability by reasonable people to be something that justifies political principles, or their reasons (the constructivism requirement).

R3 T must at all levels of argument respect reasonable disagreement, and it should interpret this as requiring that reasonable disagreement be avoided in political justification (the toleration requirement).

R4 The political principles it advocates may apply to the domain of the political only (the requirement of limited scope).

These are some of the features of a “political” and liberal theory of political justice that matter now. One way to render Rawls’s argument is as follows. Reasonable people cannot equally accept a theory of justice unless it complies with what it takes to respect reasonable people. But to duly respect each reasonable person, it must treat equal acceptability by them itself as a genuine justifier and, correspondingly, avoid the reasonable disagreements that exist between them. Now, a theory of justice that meets these constraints can be liberal in content if it is limited in scope and contains political values only. At the core of this, then, is an idea of respect that gives rise to a constructivist view of justification and a commitment to avoiding reasonable disagreement. Political liberalism’s commitment to liberal content, political values and its limitation of applicative scope flow from this.

All this in effect allocates two tasks to the third level of political justification: the task of identifying a theory of political justice that is publicly justifiable to, or equally acceptable by, reasonable people, and the task of identifying reasonably acceptable political principles by working from within that theory. In essence, therefore, political liberalism construes political legitimacy as public justifiability, and takes this to be a matter of the equal acceptability of a theory of political justice by reasonable people. Importantly, this invokes reasonableness at a higher-order, *meta-theoretical* level. On the reading suggested here, reasonableness marks the very standpoint from which to accept or reject theories of political justice as a whole, including the principles they advocate, the premises they draw on, and the standards of reasoning they deploy. To meaningfully guide the search for a reasonably acceptable theory, however, the content of reasonableness must be available as authoritative prior to the selection of any of the theories that are being assessed in terms of their reasonable acceptability. In the order of justification, reasonableness here is justification-constitutive, rather than justification-dependent, in status.

III.

Let me now turn to the question of what idea of the reasonable – or what “threshold tests of reasonableness” (Macedo 1991, 47) – all this supposes. Is this an idea that we may treat as politically basic? I will first elaborate on the role and then on the content of this idea.

One role is plain from the above already. If political legitimacy is equal acceptability by reasonable people, its substantive profile depends on, and varies with, the content of the idea of reasonableness that we suppose. And there can be many such ideas. We might see

people as reasonable only if they are committed to maximizing utility, or if they promote human perfection, or if they act and reason in ways all relevant others can follow, or only if they follow god's true commands, and so on. These ideas nominate different theories of justice and different sets of political principles as authoritative.

Another role concerns questions of justificatory inclusion and the scope of equal respect. Political liberalism only includes reasonable people in the scope of political justification – or, to use Friedman's terms, the "legitimation pool". (Friedmann 2000, 23) The equal respect it claims to take seriously does not extend to the unreasonable. To unpack this, let us distinguish between various types of moral standing. Thus, consider the difference between the claim (i) that a being, X, has moral significance, and the claim (ii) that the grounds (reasons, principles, standards) that we act on in responding to X's moral significance should be acceptable by X. There are different kinds of moral status in play here. If we accord a status that corresponds to (i), we include others in the scope of what is sometimes called "moral concern."⁵ To invest moral concern in a being involves a non-instrumental willingness to protect or support it, or it's good. If we accord a standing that corresponds to (ii), however, we accord a more demanding form of moral status – this is the status that matters now. Call it "discursive standing." To accord to X discursive standing involves the commitment that activities that affect X be governed by grounds that X could accept.

Now, we can accord to others different kinds of discursive standing, depending on the relationship we take to hold between the goodness and the acceptability of our grounds. Put bluntly, we can identify our grounds as good depending on their acceptability, or else identify our grounds as good on some acceptability-independent basis. Thus, there are *constitutive* and more *derivative* forms of discursive standing. Where we accord constitutive standing, we believe not only that actions that affect others should be based on grounds they could accept (or share, or follow), but take it, too, that the authority of these grounds at least partly depends on, or is *constituted* by, their acceptability by these others. Where we accord derivative standing, by contrast, we in effect reverse the order of dependence: rather than seeing the goodness of our grounds as depending on their acceptability, we take the acceptability of our grounds to (at least ideally) *derive from*, or be a *consequence* of, the proper appreciation of their goodness. To mark this difference, let me speak of *discursive respect* where we accord the stronger, constitutive form of discursive standing.

The phenomenology of discursive standing is complex. While its constitutive and derivative forms seem to be located on opposite ends of a sliding scale, thus allowing for degrees and intermediate forms, we seem to accord both forms of standing to others. E.g., prior to much reflection and doctrinal streamlining, we might accord derivative standing to others whose judgment we take to be impaired or unreliable, while showing discursive respect to trusted peers. At the level of theory, practical constructivism typically requires

5] What I call "moral concern" is what Darwall calls "(moral) recognition respect" (Darwall 1977, 40); Warren calls it "moral status" (Warren 1997, 5).

that discursive respect be accorded to (some) people in (some) important moral or political matters. Accordingly, constructivist views of justice typically build on ideas of justification that construe some form of acceptability as constituting the epistemic-practical authority – or their correctness, validity, reasonableness, and so forth – of principles of justice. By contrast, if we require the relevant principles to be based on grounds that claim an authority that is not constituted by their acceptability, we can still value acceptability – e.g., we might hold that it is an element of the human good that people be able to accept the principles that apply to them, or that their free support is necessary for the stability of a just regime, and so on – yet we would not include the relevant others in the scope of discursive respect in relation to the grounds of these principles.

To return to political liberalism. Political liberals accord full discursive respect to the reasonable. For Rawls, theories of justice and political principles have political authority only if they are equally acceptable by the reasonable. Thus, if such theories or principles fail to be suitably acceptable by some reasonable people, this is a reason to doubt that these theories or principles meet the relevant requirements. Things are different in the case of the unreasonable: they at most enjoy derivative discursive standing. If they reject reasonably acceptable theories or principles, this does not constitute reasons to doubt these theories or principles, but confirms their unreasonableness. Thus, Rawls insists that while the unreasonable should be addressed, they should be addressed by arguing “from conjecture.” We argue from conjecture if “we argue from what we believe, or conjecture, are other people’s basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reason.” (Rawls 1997, 786) Now, Rawls does not claim that political principles have political authority just in case they are equally acceptable by the reasonable *and* are justifiable to the unreasonable by arguing from conjecture. He argues that political principles have all the political authority that they need if they are equally acceptable by the reasonable. If unreasonable people do not accept them, then this does not constitute reasons to doubt these principles – instead, it confirms these people are not reasonable. Arguments from conjecture thus are attempts to persuade the unreasonable to not reject principles that claim political authority *whether or not* they can accept them.

To a similar effect, Macedo wants political liberalism to address the unreasonable, but only *after* the framework of public justification is in place and political principles have been established. In engaging the unreasonable, then, the authority of these principles is not called into question. Thus, engaging them is introducing them to principles that are accorded authority *whether or not* they can accept them. (Macedo 1991, 61ff.) Larmore, not least, suggests that political principles should be justifiable to the unreasonable, but with the justification premised on the counterfactual supposition that they are reasonable. (Larmore 1996, 142) But this does not accord discursive respect to them. There is a difference between (i) seeing Betty as reasonable and assessing political principles by the light of reasons that she can accept, and (ii) seeing her as unreasonable, but imagining what *would* be acceptable by her *if* she was reasonable. In the case of (ii), it is not Betty

who is accorded discursive respect, but an imagined, *idealized* person, Betty*, that differs from Betty in only endorsing views that are not unreasonable. Accordingly, if Betty rejects principles Betty* accepts, this underlines her unreasonableness.

IV.

This leads us to the content of political liberalism's idea of reasonableness. What content the idea of reasonableness has in political liberalism is contested. Sympathizers tend to argue that it is thin in content and so can be inclusive in scope of application and appeal. Critics often insist that it is thick in content and so is exclusive in scope of application and appeal. Elsewhere, I argue that it is thick, or substantive, and so I will side with the critics.⁶ Let me briefly explain why there is reason to take it to be substantive.

There is content that Rawls explicitly builds into this idea and content that must be part of it if political liberalism is not self-defeating. Content of the first type includes the following. Reasonable people maintain a sense of justice and a conception of the good. They are committed to being able to justify their actions and institutions on grounds they and others like them cannot reject, and to follow terms of cooperation that are as acceptable to them as they are to other reasonable people. They recognize the burdens of judgment, respect reasonable disagreement and take this to require that such disagreement be avoided in the justification of moral-political principles. And they believe that society should be a fair system of cooperation. The list continues. More important is content of the second, implicit type. Much of what Rawls says builds on the idea that reasonable disagreement rules out equal acceptability by the reasonable: if *S* is the subject of reasonable disagreement, then *S* is not equally acceptable by reasonable people. This applies, as well, to the argument from public justification to political liberalism. Now, there is disagreement about the ideas reflected in R1-R4. E.g., perfectionists disagree with the view that a theory of political justice must be constructivist and needs to be tolerant in terms of avoiding reasonable disagreement; comprehensive liberals dispute political liberalism's commitment to a limited scope, and so forth. However, this disagreement either counts as reasonable – i.e., disagreement that can arise between reasonable people without impugning their reasonableness – or it does not. If it does, political liberalism will not qualify as equally acceptable by reasonable people. Hence, it would fail its own standard of public justifiability, and so be self-defeating. But Rawls does not conclude this: he takes it that a theory of political justice, if it is to be publicly justifiable, must meet R1-R4. But then he must construe such disagreement as *not reasonable*. And this is tantamount to building a commitment to the ideas reflected in R1–R4 into the idea of reasonableness

[6] For an account of reasonableness in Rawls: see Besch 1998; for a view of reasonableness in political liberalism more generally: see Besch 2004, section I.14.

that public justification builds on. Hence, this idea of reasonableness is substantive – it effectively amounts to a thick value concept.⁷

Consider Larmore's views. At first sight, he builds his political liberalism on a thin idea of reasonableness. His approach, he writes, supposes that "reasonableness" refers to no more than "the free and open exercise of the basic capacities of reason." (Larmore 1996, 143, 1999, 602) But there certainly is a sense in which anti-liberals (e.g., Nazis, fundamentalists, but also act-utilitarians) can freely and openly exercise these capacities, if by that we do not mean anything that smuggles in liberal commitments, but a voluntary, more or less informed and coherent exercise of inferential reasoning and judgment. Political justification would thus have to avoid all premises informed and coherent anti-liberals would reject. But then it would be mysterious how it could lead to liberal principles, or any widely sharable moral conclusions. Political liberalism's idea of reasonableness, then, must be richer in content. Rawls gives us a clue as to what additional content is needed when writes that political liberalism "supposes that a reasonable comprehensive doctrine does not reject the essentials of a democratic regime." (Rawls 1993, xvi) He never specifies exactly what these essentials are, but it is safe to assume that they include substantively liberal ideas: namely, the views that citizens should enjoy basic rights, liberties, and opportunities of special status, and means to make use of these things. And in supposing that reasonable doctrines do not reject these essentials, Rawls supposes that the reasonable people who endorse such doctrines do not reject them: this is why the search for an overlapping consensus points toward, rather than away from, substantively liberal principles.

It does not end here. Even if a suitably rich idea of reasonableness is supposed, a problem of self-defeat still looms. This idea must also be *reflexively stable*. That is, building the relevant content into this idea and according to it the role political liberalism accord to it may not be the subject of reasonable disagreement. Thus, political liberalism needs to suppose, too, that reasonable people do not disagree with two additional views: first, the view that equal acceptability by people *who are reasonable in political liberalism's rich sense* justifies; and second, the view that only people *who are reasonable in this rich sense* need to be accorded discursive respect. In this two-fold sense, then, reasonableness must not only be rich in content but also, as Estlund puts it, "insular." (Estlund 2008, 55)

V.

What we have here, then, is a politically basic virtue of reasonableness that is accorded a key role for the purposes of theory-selection for the domain of the political, but that is strikingly rich in content. And while some of this content is contested even by liberals, there are, it seems, many conscientious citizens who are not reasonable in the sense of this virtue (say, the sense of reasonableness*). Absent a justification of reasonableness*,

7] Estlund notes a related problem in Rawls (Estlund 2008, 54).

then, political liberalism's view of political justification, and with it its idea of political legitimacy, seems both dogmatic and unacceptably exclusivist.⁸

However, a remedy for this problem suggests itself: political justification should be enriched with a more inclusive, fourth level of argument at which it is determined in the first place what idea of the reasonable we may rely on at lower levels of justification. Structurally, this would constitute an extension of the depth of political justification that allows us to hold on to many of political liberalism's other metatheoretical views, e.g., the views that a theory of justice must be equally acceptable by the reasonable, or should avoid reasonable disagreement, or that discursive respect should be accorded to reasonable people only, and so on. Prior to level-four arguments, however, it would here remain open in terms of what idea of the reasonable these views may be understood. Of course, a more inclusive form of political justification might be unable to arrive at substantively liberal conclusions if it avoids "reasonable" disagreement and seeks equal "reasonable" acceptability – without construing reasonableness in terms that are geared toward liberalism. Still, this problem cannot be resolved by dogmatically denying non-liberals full discursive respect. Legitimacy for liberals only, it seems, is no genuine legitimacy at all.

On the extended view of political justification that this suggests, political power must accord with constitutional principles (level 1) that are justifiable by political principles (level 2); these principles, in turn, need to be justifiable as reasonable by a theory of justice that is suitably acceptable by reasonable people (level 3). At a fourth level of argument, finally, it needs to be determined what idea of reasonableness may govern political justification at lower levels of justification. Let me now make some initial moves at this fourth level. What idea of reasonableness may we treat as politically basic? A plausible element of the answer, I submit, is this – call it "the *cosmopolitan response*":

CR Political justification should suppose an idea of reasonableness that is equally acceptable by everyone to whom our political principles apply – as determined not by the bounds of states, nations, cultures, and so on, but by the applicative scope of these principles and the effects of activity prescribed by them.

I hasten to add two things. First, there is of course no shortage of ideas of reasonableness. But it is not enough to single out one idea that you and I find plausible; rather, what is needed is an idea that all relevant others can accept. And, as Moore notes, such ideas are contested, and the more so the more important their role is in justification. (Moore 1996) Thus, there might not be an idea of the reasonable that suits the purpose – one, that is, that is not also trivial, or unhelpfully devoid of content, or too formal. I shall return to this serious worry in the next section.

Second, the above leaves the case for more inclusiveness in an awkward position (inclusiveness, that is, as measured by CR). Evidently, we may not simply browbeat

[8] On the problem of public dogma: see Besch 2012.

political liberals. If the case for more inclusiveness relates to exclusivists like the reasonable* relate to the unreasonable*, then whatever is wrong with political liberalism's exclusiveness will be wrong with that case. But for all that we have seen, the objection from dogmatic exclusivism simply supposes what political liberals deny. E.g., it suppose that (at least some) unreasonable* people should be accorded discursive respect. This arguably commits it to suppose, too, that reasonably* unrejectable views are in need of justification, that unreasonable* objections can put them in this need, and, not least, that reasonable* views that are in this need should be justifiable to (at least some) unreasonable* people as well. These things are plausible – and this is part of the appeal of that objection. Still, we cannot presuppose the truth of the view that more inclusiveness is needed: an inclusive view of scope may not be taken to be the default position, but is in need of justification *itself*. The task at hand, then, is two-fold. We need to establish within what scope ideas of reasonableness need to be acceptable. Once this is done, the systematic context is in place to work out an inclusive idea of reasonableness – hoping, as it were, that such an idea can still be useful for the purposes of political justification.

Now, there is a catch. Can a view of scope like CR be established on constructivist grounds alone? It is doubtful that such grounds suffice. Accordingly, we have reasons to defend CR on non-constructivist, perfectionist grounds. Let me use this section to support the plausibility of this view. Suppose we construe CR's authority in constructivist terms, and so take it that its authority depends on its acceptability *within the right scope*. This complicates matters. For now we cannot defend an inclusive view of scope without supposing a view of scope. A first problem, then, is this. If we take it that a view of scope such as CR needs to be equally acceptable within a scope *as prescribed by CR*, we seem to be back to begging the question against exclusivists. Let us assume, however, that we may take it that CR must be equally acceptable within that inclusive scope. This leads to another problem. The relevant political principles apply also to exclusivists, and some exclusivists, notably political liberals, endorse views that quite deeply reject inclusivism. Such exclusivists cannot coherently accept CR – or, rather, they cannot coherently accept CR prior to abandoning the commitments that make CR unavailable to them. But if CR is not equally acceptable within its own scope, it fails the constructivist acceptability requirement. Thus, what constitutes the need to justify CR in the first place, namely, the existence of exclusivism, seems to at the same time undermine meeting that need on constructivist grounds.

This result might seem hasty. It is possible to tweak the constructivist acceptability requirement so that a view like CR can be said to be equally acceptable by the relevant others even though exclusivists cannot coherently accept it. One way has surfaced just now: CR can be said to be *acceptable* by exclusivists in the hypothetical (or counterfactual) sense that they could accept it, or at least would not be committed to reject it, if they abandoned whatever commitments make CR unavailable to them. But such tweaking holds little promise. On the one hand, it cuts both ways. If CR can count as suitably acceptable despite there being relevant others who cannot coherently accept

it, then the same holds for exclusivist views of scope. Yet if both CR *and* non-CR meet the constructivist acceptability requirement, it cannot be that requirement that grounds CR's authority. On the other hand, tweaking that requirement is either *itself* reasonable or it is not. If it is *not* reasonable, then the fact that CR meets the tweaked requirement cannot confer authority on CR. If it *is* reasonable, then it will be the reasons we have in the first place to secure CR's status by tweaking that requirement, rather than the successful application of the tweaked requirement to CR, that grounds the authority of CR. Again, this authority would need to be based on other, non-constructivist grounds.⁹

To deepen these doubts, consider a recent constructivist case for inclusivism – i.e., O'Neill's case for cosmopolitanism about the scope of “ethical standing,” or of “reason or of ethical consideration.”¹⁰ (O'Neill 1996, 48-52) She notes that a constructivist case for inclusivism itself needs to be followable, or coherently acceptable, within an inclusive scope. She argues, however, that major attempts to determine the grounds and boundaries of moral status do not meet that requirement. Neither Platonist appeals to a metaphysically grounded, objective value of people or their inclusion in the scope of discursive respect will do, nor will particularist appeals to the norms of “our” form of life, or “our” political, social, or other traditions suffice, nor, not least, will it be enough to appeal to the instrumental value that the inclusion of people in the relevant scope might have for some people or other. In one way or other, such appeals, O'Neill argues, instantiate thinking that some relevant others cannot follow, and that hence do not meet the constructivist acceptability requirement. Similar reasons disqualify attempts to ground moral status in ideas of recognition. (O'Neill 1996, 51, 91-97) As an alternative, O'Neill offers a “practical” approach: in her view, the presuppositions we inevitably make about others whom we take to be on the receiving end of our intellectual and non-intellectual activity, widely conceived, render it incoherent for us not to accord moral status, or discursive respect, to them. Arguably, this would entail that agents must accord that status to everyone on the receiving end of their activity, including discursive and political activity. Thus, we would in effect have arrived at a constructivist case for an inclusive view of scope like CR.

Alas, this case fails. O'Neill plausibly argues that where we take others to be on the receiving end of our activity, we make assumptions of “plurality,” “connection” and “finitude” about them: that is, we take them to be independent sources of activity that are connected and vulnerable to us. (O'Neill 1996, 97-106) She argues, as well, that we cannot coherently deny these assumptions where we presuppose them. Now, this leaves open how we ought to relate to others about whom we make these assumptions. And this is as it should be: to be reconstructively adequate, a view of the presuppositions of other-regarding activity needs to be true of a wide range of activity, including activity

9] This touches on a general problem in practical constructivism about the scope of practical reasoning: see Besch 2011.

10] See also O'Neill 2000, 112-29, 186-202, and O'Neill 1988. O'Neill does not distinguish between moral concern, derivative discursive standing, and discursive respect; for our purposes, we may take her case to be about the scope of discursive respect. See Besch 2011.

that discursively excludes others, or that seeks to demean, hurt, or even destroy others. Thus, this view needs to be ethically neutral – and this it is. And yet, it is on this basis that O’Neill infers that we must accord moral status to all others whom we take to be on the receiving end of our activity. But this does not follow. What follows is that we must accord that status to the relevant others *if* we already suppose some view to the effect that this status must be accorded to all vulnerable and connected sources of activity – that is, to all real people who are, or whom we take to be, exposed to our activity. Yet *this* is the sort of view that O’Neill needs to establish. And it is also the sort of view that exclusivists cannot coherently accept. Rather than vindicating an inclusive view of scope, then, O’Neill in effect supposes such a view – a view, moreover, that, if it has authority, cannot have that authority on constructivist grounds as some relevant others cannot coherently accept it.

This suggests we defend inclusivism on grounds that are perfectionist in form. That is to say, should concede that we have reasons to accept an inclusivist view such as CR because discursive respect, while it *is* an impersonal good, does *not* depend for its status as such a good on its equal acceptability by the relevant others. Of course, this merely gestures toward a kind of perfectionism (and at a thin version at that), and it leaves open what it is about discursive respect that makes it such a good. But this is all what is needed now. Note, though, that even if an inclusive view of scope can be salvaged by making a perfectionist case for discursive respect, a puzzling issue remains. Such a case will *not* accord to all relevant others discursive respect. To some others, it will at most accord derivative discursive standing. And it is an open question whether this is a performatively coherent stand to take.

VI.

Let me now suppose that a case for CR can be made, and that the systematic context is in place to identify a suitably inclusive idea of reasonableness. What content might such an idea have? This issue is crucial. If inclusiveness requires triviality, near-emptiness, or unhelpful formalism, the inclusivist aspirations of justificatory liberalism come at a high cost – at least, that is, if we require political justification to avoid reasonable disagreement and to treat reasonable acceptability as justifying. In the remainder of my discussion, let me address this issue of content.

To start with, I take it that an inclusive idea of reasonableness may involve content associated with the meaning of the word “reasonable” (as it is used in relation to a virtue of people in their capacity as political or moral agents). Following Moore, as far as this meaning goes, reasonable people are committed to some practice of reason-giving, or justification; and they take it that others are worthy of reason-giving and some moral consideration. (Moore 1996, 171) Note that this implies very little. A commitment to a practice of reason-giving is not a commitment to *constructivist* practice of reason-giving, or public justification. And a commitment to showing others moral consideration is not a commitment to according them *discursive respect*, rather than derivative discursive

standing. There are other obvious elements of reasonableness that may or may not be entailed by the meaning of the word “reasonable”, but mark features that are typically present where the term applies. E.g., reasonable people exercise “the basic capacities of reason” – understood as a commitment to reasonability and criticality. (Larmore 1996, 143) And they possess certain “executive virtues” that normally enable us to do as we say and to act in accordance with our moral and non-moral beliefs. (Macedo 1991, 275) Perhaps less trivial is another element. Reasonable people place positive value on agreement, or some form of agreement. It is not easy to capture this element without making it unnecessarily controversial, but perhaps we may say that reasonable people place positive value on what they take to be reasoned convergence in judgment between what they regard as relevant other people. Other things being equal, then, they prefer solutions that are the subject of such convergence over relevantly similar solutions that are not. Again, this entails little. It leaves open what justificatory or moral rank reasonable people accord to agreement, whose agreement they value, how deep the agreement is that they value, and what sort of considerations they take to trump or even nullify that value.

All this leaves the pursuit of a political justification of substantively liberal principles in a tight spot. It is likely that some people who are reasonable in a minimal sense of the sort just sketched cannot coherently accept some of the ideas at the heart of political liberalism, such as the idea that we should avoid reasonable disagreement, or that some kind of acceptability by the relevant others justifies, or that political principles should apply to the domain of the political only, or that these principles should be substantively liberal. And even if all reasonable people accepted the first three of these ideas, there might still be reasonable disagreement about the fourth idea, or about whatever considerations we need to invoke to link the first three ideas with the fourth. It would follow that if we are to avoid reasonable disagreement in political justification and construe of equal acceptability by the reasonable as justifying, then a substantively liberal theory of justice cannot provide a suitably inclusive public basis of political justification.

Can we build more content into a politically basic idea of the reasonable? There is no *a priori* reason to confine ourselves to content that we associate with the meaning of the word “reasonable”. And we have reasons to go beyond such content if we hope to arrive at a substantively liberal theory of justice. However, adding more content adds more concerns about equal acceptability – concerns, of course, that are raised already by the content we associate with the meaning of that word: after all, our conception of that meaning is likely to reflect our more substantive views of what is or is not reasonable. And, if Moore is right, any non-trivial view of reasonableness is likely to be contested by some relevant others. But then the attempt to add more content runs into a dead end unless we find a widely acceptable way to identify additional content despite expectable disagreements about the nature of reasonableness.

Now, there is a self-suggesting way in which disagreement about a subject matter can help to bring out common ground on that subject matter. Reverting to O'Neill, consider her idea of abstraction.¹¹ A simple example brings out its point:

1. All objects in the garage are green Volkswagen.
2. All objects in the garage are green cars.
3. All objects in the garage are colored vehicles.

(1) to (3) mark increasingly abstract claims. Roughly, (2) is more abstract than (1) in the two-fold sense that (2) is entailed by (1), but does not contain information (or 'brackets predicates,' as O'Neill puts it) that (1) contains – i.e., it leaves open the brand of the car in question. Similarly, (3) is more abstract than (2) as (3) is entailed by (2), but leaves open both the color and the kind of the vehicle in question. As O'Neill observes, there is nothing unusual about reasoning that engages in abstraction – it is an ordinary feature of everyday discourse, and often serves as a useful way of identify what people must agree on in virtue of what they disagree about. To put things in terms of our example, if you claim that all objects in the garage are green cars, and I claim that they are all yellow cars, then once we see in what respect we disagree, namely, matters of color, we know that we are both committed to agree that these objects are colored vehicles.

Suppose we apply this approach to disagreement more systematically – say, as a method of inclusive abstraction – to disagreements about reasonableness that exist between reasonable people (people that are reasonable, that is, in terms of the minimal notion sketched above). There is no *a priori* reason to believe that inclusive abstraction cannot help to identify substantive common ground amidst such disagreement. Of course, this would be very hard to do at any larger scale – e.g., consider the complexities it would involve to set up widely accessible deliberative forums that would allow us to actually identify, map, and systematically relate the ways in which reasonable people disagree about ideas of reasonableness.¹² And whatever content emerges as abstract common ground might, yet again, be less than what is needed. But there is plenty of material to work from and good reason to try if indeed we are to expect that ideas of reasonableness tend to be the more controversial the more important their role is in political justification.

In closing, let me add two comments. First, the search for content that an inclusive, politically basic idea of reasonableness may contain is not confined to content we associate with the meaning of the word "reasonable." But neither is it confined to content associated with ideas that their proponents identify *as* ideas of reasonableness. This search, I submit, may also focus on views that play a similar normative role in the moral and political outlooks that reasonable people endorse. Ideas of reasonableness often reflect what we

[1] O'Neill outlines her views on abstraction in O'Neill 1988 and 1996, 38ff.

[2] Still, deliberative democratic theory has suggested ingenious ways in which it could be attempted. See, Ackerman, Fishkin 2005, and Fishkin 2009.

might think of as proto-ideals. Proto-ideals do not amount to substantive ideals of what it means to do right or be good in their own right. Rather, they reflect conceptions of qualities and capacities that, we take it, enable people to competently participate in the pursuit of doing right and being good – on at least *some* conception of what that pursuit requires that might not be our own, and whether or not they actually excel in that pursuit. At the same time, they reflect conceptions of the standpoint from which, we believe, more substantive moral or political conceptions should be assessed. Ideas of reasonableness, I take it, often give expression to proto-ideals, and might quite typically do so (to say the least, this seems plain in the case of the idea of reasonableness* and the minimalist idea sketched in the last section). However, reasonable people might endorse proto-ideals without identifying them as ideas of reasonableness. I submit, then, that we may rule in views that play the part of proto-ideals for the purposes of the attempt to abstract toward content that a duly inclusive, politically basic idea of reasonableness may contain.

Second, a method of inclusive abstraction might help us to identify common ground, but that this ground is common does not by itself ensure its justificatory relevance. Consider an example. Betty claims that reasonableness asks us to be prepared to give others reasons that are good by their standards (call this “Ra”). Paul argues that it requires us to be prepared to give others reasons that are good by our standards (Rb). Peter, not least, claims that it involves a commitment to being able to justify ourselves to others on grounds they cannot coherently reject (Rc). Each of them is committed to Moore’s more abstract view that reasonableness involves a commitment to a practice of reason-giving (R*). Thus, they cannot coherently reject R*. But this does not mean that they cannot coherently reject that R*, rather than Ra, Rb, or Rc, be adopted as a politically basic idea of reasonableness. True, the fact that they cannot coherently reject R* commits them to accept that R*, rather than Ra, Rb, or Rc, be adopted as such an idea *if* they place sufficiently high value on equal acceptability in the first place. Without this additional factor, however, that fact seems to remain irrelevant to their dispute. Thus, the relevance of a method of inclusive abstraction is limited. Perhaps its application to disagreement about reasonableness (or, I have suggested, proto-ideals more generally) brings to the fore much needed content that reasonable people cannot coherently reject. But that they cannot coherently reject that content does not entail that they can accept to construe a politically basic idea of reasonableness exclusively in its terms. It seems, then, that the relevance of inclusive abstraction for the task of identifying a duly inclusive, usefully substantive and politically basic idea of reasonableness depends on the value reasonable people place on equal acceptability in the first place.

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Multiculturalism as a Deliberative Ethic

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Abstract. Difficult questions regarding the so-called limits of toleration or accommodation are inevitable in today's diverse, immigration societies. Such questions cannot be satisfactorily answered through simple assertions of the majority's will or by retreating to a defense of 'core liberal values.' Rather, dealing with the challenges of diversity in a manner consistent with liberal-democratic principles requires that decision-making concerning the terms of collective life be informed by sincere and respectful deliberation. But how and where do we go about engaging in such deliberation? This essay suggests that the courts seem to offer an arena that is more conducive than other traditional democratic institutions in terms of enabling the type of dialogue and analysis essential to realizing meaningful deliberation. Paradoxically, then, the judicialization of politics can be understood to be an ally, not an enemy, of meaningful deliberation in diverse democracies.

Key words: diversity, meaningful deliberation, public reason, multicultural democracy, majority-rule decision-making.

Difficult questions regarding the place of minority practices – particularly those that have a religious basis – are inevitable in today's diverse, immigration societies. We must expect that debates over the so-called limits of toleration or accommodation will be frequent and often intense, as suggested by recent headlines (e.g. Peritz 2013; Ibbitson and Friesen 2011; Mansur 2011; Burns 2011; Weaver 2010). Such disagreement cannot be satisfactorily adjudicated by merely retreating to a defense of 'core liberal values,' because, more often than not, those values will be at odds with each other. Rather, dealing with the challenges of diversity in a manner consistent with liberal-democratic principles and procedures requires that the positions of all those affected be seriously considered prior to determinations being made about how best to respond to disagreement concerning matters of public import (e.g. Dryzek 2010; Christiano 2008; Cohen 2002). That sentiment is superbly captured by the *principle of equal consideration of interests*, which requires "that we give equal weight in our ... deliberations to the ... interests of all those affected by our actions" (Singer 1993, 21). To use a well worn cliché, integration must be a two-way affair, with compromise on the side of newcomers and the host society.

Moving beyond the simple assertion of that cliché has important consequences. Most critically, it requires that decision-making regarding the terms of collective life be informed by sincere and respectful dialogue and deliberation. Genuine deliberation, in which competing arguments are developed systematically and given a fair hearing, is radical; it demands that we be willing to regularly and conscientiously scrutinize longstanding beliefs, conventions and practices. Equally important, it requires that all sides in a dispute be prepared to seriously consider amending their beliefs, conventions and practices, when "a better argument recommends it" (Christiano 2008, 190).¹

[1] As John Stuart Mill (1998, 25) concluded, "The whole strength and value ... of human judgement

But how and where do we go about engaging in such deliberation? We offer a response to that question by examining the often tense relationship between diversity and the realization of meaningful deliberation. First, we briefly explore the character of diversity in Canada and other contemporary liberal democracies. Next, we present our understanding of meaningful deliberation and, in turn, suggest that majority-rule decision-making is often incompatible with such deliberation. We then examine two Canadian cases to observe the extent to which they incorporated what could be labelled meaningful deliberation. Specifically, we review the *Multani v. Commission scolaire Marguerite-Bourgeois* (2006) case – concerning the right of a Sikh boy to wear his ceremonial dagger (*kirpan*) to school – and the Ontario government’s decision in 2005 not to extend the province’s *Arbitration Act* to allow for “voluntary private arbitration of family law and inheritance disputes according to Islamic principles.” We contend that, while the *Multani* case offers an example of the kind of meaningful deliberation we believe necessary to respond effectively to difficult policy dilemmas (what Ronald Dworkin [1978, 83] has labelled “hard cases”²) in contemporary liberal democracies, the Ontario government’s decision clearly demonstrates the negative impact that partisan political considerations can have on efforts to realize meaningful deliberation on publicly sensitive matters. We then briefly consider whether, as a general rule, meaningful deliberation is more likely to occur in institutions insulated from the pressures of electoral politics: specifically, superior/constitutional courts. In turn, we conclude by advocating a reconsideration of the condemnation of the ‘judicialization of politics,’ and identifying some of the practical implications of our argument.

Of course, concerns about the judicialization of politics – “the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies” (Hirschl 2008, 94) – have generated a noteworthy amount of scholarship in recent decades. In turn, the fear that judicial activism is transforming the courts into “major political decision-making bodies” (Hirschl 2008, 95) and displacing (or worse, usurping) the legitimate democratic authority of popularly elected representatives and, by extension, the citizenry, has loomed large in that discourse (e.g. Leishman 2006; Cameron 2009; Morton 2003; Roach 2001; and Waldron 1999). However, when considering the most effective ways to facilitate meaningful deliberation in diverse democracies, the courts seem to offer an arena that is notably more conducive than other traditional democratic institutions in terms of enabling the type of dialogue essential to realizing such an end. Paradoxically, then, the judicialization of politics can be understood to be an ally, not an enemy, of meaningful deliberation in diverse democracies.

... [depends] on the one property, that it can be set right when it is wrong, reliance can be placed on it only when the means of setting it right are kept constantly at hand. In the case of a person whose judgement is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism on his opinions and conduct.”

2] Dworkin (1978, xii, 83) identifies a “hard case” as one for which “no settled rule” or practice requires or dictates a decision in favour of any given position.

For various reasons (some of which are noted in the preceding paragraph) such a claim is controversial, especially insofar as it seems to restrict the opportunity for genuinely *democratic* deliberation in the broadest possible sense. And to the extent that it suggests that the challenges of ‘official’ (that is, state-mandated) multiculturalism can be addressed in a manner acceptable to all (or, at least, the overwhelming majority of those) concerned, it might also be considered an optimistic conclusion given the (relatively) recent proclamations by political leaders such as Angela Merkel and David Cameron, regarding the “utter failure” of attempts to create “successful” multicultural societies.

I. DIVERSITY AND THE INEVITABILITY OF NEGOTIATION

Liberalism has long concerned itself with the socio-political challenges of diversity. The wars of religion that plagued Europe during much of the sixteenth and seventeenth centuries convinced John Locke (1983) and others that toleration of religious diversity was essential to the realization of a stable, peaceful society: Given the critical importance that many citizens attach to their religious beliefs, their ability to live (relatively) contentedly – or, at least, ‘acceptably’ – requires that they be allowed to pursue their lives in accordance with those beliefs, without fear of persecution for doing so. During the course of the preceding four centuries, the initial focus on religious diversity has broadened to encompass moral, cultural and philosophical diversity in general. In the latter half of the twentieth century, Isaiah Berlin (2002, 213-14; see also 2000, 11) eloquently and persuasively argued that *value pluralism* is an empirical fact, observing that there are many genuine, “ultimate” values that may, and often do, conflict with one another: “the world that we encounter in ordinary experience is one in which we are faced with choices between [many] ends equally ultimate, and claims equally absolute, the realization of some of which must inevitably involve the sacrifice of others.” Moreover, those values are at times irreconcilable and incommensurable, thereby denying the possibility of choosing between them based upon an objective or universally acceptable rank-ordering of them (Berlin 2002, 216). Accordingly, conflicts between values are “an intrinsic, irremovable part of human life” (Berlin 2002, 213; see also 216).

Although the acknowledgement and (at times grudging) acceptance of value pluralism has long been a staple of liberalism, the range of groups privy to liberal recognition and accommodation has shifted over time. As Alan Cairns (1999), Will Kymlicka (2007) and a host of others have persuasively demonstrated, the twentieth century marked a profound shift in our understanding of concepts such as race, ethnicity, nation, and human rights and, consequently, the relationship among groups separated along those lines. Prior to the Second World War, ethno-cultural and religious diversity in Canada and other liberal states was characterized by illiberal and undemocratic relations “between conqueror and conquered; colonizer and colonized; master and slave; settler and indigenous; racialized and unmarked; normalized and deviant; orthodox and heretic; civilized and primitive; ally and enemy” (Kymlicka 2010, 35). These hierarchical

relationships were justified by racist ideologies that cast white Europeans from the British Isles and northwestern Europe as superior and therefore worthy of rule over others. Liberalism was the preserve of ‘civilized’ Europeans; those outside the sphere of civilized peoples could be treated with coercion without recourse to justification.

The Nazis’ grizzly actions during the war demonstrated the perverse logic of racism taken to its extreme (Lauren 1996; Fredrickson 2002). Given their stand against fascism, liberal polities were forced to reconsider how they too understood and mediated difference; the racialized “hierarchy of peoples” that sanctioned a host of discriminatory public policies was discredited, forcing liberals to reconsider the scope and content of their doctrine. The consequences of this philosophical shift were profound, driving the human rights revolution, decolonization and the development of novel approaches to the management of cultural difference in liberal-democratic states. One of the key policy implications of this new era was the liberalization of immigration policies in Canada and other liberal-democratic countries. We now live in a world transformed by those reforms. In Vancouver, Toronto and Montreal, substantial cultural diversity – what Stephen Vertovec (2007) has labelled “super diversity” – is a fact of life. From a sociological point of view, Canada is *intensely* multicultural. And, as demographers and statisticians frequently remind us, that diversity will increase significantly in the years ahead (Statistics Canada 2003; Kunz 2009). Consequently, debates over the accommodation of difference are and will continue to be unavoidable, and the satisfactory resolution of those debates will require negotiations between the affected parties. Given the fundamental shift in normative contexts that has occurred since the end of the Second World War, those negotiations can only be meaningfully carried out in a spirit of respectful dialogue that rejects assertions of hierarchy and civilizational superiority (Mazower 2006).

II. DELIBERATION IN DIVERSE SOCIETIES

The resolution of conflicts over what is (un)acceptable in “super diverse” liberal-democratic societies will necessarily be a deliberative, two-way, process. There is a substantial and constantly increasing volume of scholarship devoted to exploring the idea of deliberation in contemporary multicultural democracies. In turn (and unsurprisingly), there exist a number of different definitions of ‘meaningful’ deliberation, offering various understandings of the specific characteristics associated with such an activity.³ For the purpose of this essay, ‘meaningful deliberation’ refers to a process whereby members of a political community engage in the critical examination and reasoned, respectful discussion of collectively binding public policies and, in so doing, engage the distinctive positions of individuals and groups affected by such policies, through recognizing their right to speak (and to be heard) and removing barriers to their participation. Such

3] For surveys of a number of the different understandings that have been developed, please see Rummens 2011, Dryzek 2010, esp. chaps.1-5, Thompson 2008, and Chambers 2003.

recognition is provided insofar as one can reasonably demonstrate that the efforts undertaken to secure and seriously consider the views of all interested parties represent the best possible ‘good faith’ attempt to do so, given the existing circumstances.

The contextualism associated with such an approach merely reflects the complex reality of public policy development in contemporary liberal democracies. The extent to which one can complete the desired processes and provide the preferred opportunities for involvement will fluctuate as a consequence of differing circumstances. The result is that decisions regarding the ‘meaningfulness’ of a particular deliberative exercise will need to consider elements of both procedural and substantive reasonableness and allow the importance of each to fluctuate depending upon the precise circumstances in question. For example, a complete satisfaction of the demands of procedural reasonableness (e.g. adequate meaningful consultation with affected parties during the development and implementation of policy) may need to be forsaken in times of public crisis, such as during the outbreak of Severe Acute Respiratory Syndrome (SARS) in 2003, when it was necessary (or, at least, desirable) that governments react quickly.⁴ Such a compromise may also be necessary when the issue in question is of an extremely sensitive nature, such as matters related to national security, effective responses to which might also ‘reasonably’ demand certain ‘substantive’ concessions.

So understood, meaningful deliberation ensures a *fair equality of opportunity* for all viewpoints to be expressed and seriously considered.⁵ One of the most effective ways to help achieve that equality is to provide the same political liberties to all individuals. So, for example, all citizens must possess an equal right and opportunity to vote in state-run elections, to stand for political office, and to comment publicly on government policies and practices. It is also necessary to assure the “fair value” of those liberties. What that means is that, regardless of an individual’s socio-economic status, the political liberties secured by the constitution, for example, will be of “approximately equal, or at least sufficiently equal” worth to all citizens in terms of enabling them “to influence the outcome of political decisions” (Rawls 1996, 327). Ensuring fair value “might, for example, require public funding of political parties and restrictions on private political spending, as well as progressive tax measures that serve to limit inequalities of wealth” (Cohen 2002, 88; see also Rawls 1996, 235 n. 22). Though ensuring the fair value of political liberties does not guarantee ‘perfect’ equality among citizens,⁶ it does “ensure that the political agenda is not controlled by the interests of economically and socially dominant groups” (e.g. Cohen 2002, 88; see also Rawls 1996, 325 and 360). Hence, when deliberation embodies

4] That is not to suggest that all believe that governments’ reactions were appropriate.

5] Rawls (2005, 488) limits the scope of inclusion to only “reasonable” views – as he understands such – and notes that a position is ‘unreasonable’ if it “reject[s] the essentials of a constitutional democratic polity.” However, many have argued that such a restriction is not only unnecessary, but also undesirable. For thoughtful recent arguments to that end, see Christiano (2008, esp. 190-230) and Dryzek (2010, esp. 85-116).

6] Regardless of whether it is desirable – and not all believe it to be so – ‘perfect’ equality in all senses is unachievable.

fair equality of opportunity, deliberators are not constrained by their lack of social power; rather, what counts is the strength of their claims and the persuasiveness of their arguments – “no force except that of the better argument is exercised” (Habermas 1975, 108).

As already suggested, meaningful deliberation also entails a particular mode of exchange: namely, *civil* discourse that embodies *public reason*. In John Rawls’s formulation, the “duty of civility” precludes appeals to comprehensive moral or religious doctrines – “moral ideal[s] to govern all of life” (Rawls 1985, 245)⁷ – to justify public policies, requiring instead the use of *public* reasons, which are reasons anchored in shared political values, such as those identified in the constitution. Such justifications respect the “guidelines of inquiry that specify ways of reasoning and criteria for the kinds of information relevant for political questions” (Rawls 1996, 223; see also, Rawls 1999, 132–39; and Rawls 2001, 89). Examples of such guidelines are “the general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science, when not controversial” (Rawls 2001, 89–90). By delineating the boundaries of what constitutes a legitimate consideration when discussing matters of fundamental public import, public reason helps to define the proper parameters of “the reasonable” and thereby reduces the likelihood of irreconcilably divisive conflict between deliberators.⁸

Public reason also requires that deliberators recognize and voluntarily accept what Rawls (2001, 35) labels the *burdens of judgment*, “the many obstacles to the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life.” Those obstacles include 1) the presence of conflicting and complex evidence that is difficult to assess and evaluate; 2) reasonable disagreement about the primacy of agreed-upon considerations which, in turn, may generate different judgments; 3) the unavoidable need to rely to some extent on judgment and interpretation when considering matters about which reasonable people might disagree; 4) an inevitable divergence of judgments “on many if not most cases of significant complexity”; and 5) the presence of different types of normative considerations that exert varying degrees of influence “on both sides of a question,” thereby making an “overall” evaluation of the related case very difficult (Rawls 2001, 35–36). Reasonable individuals will acknowledge that the burdens of judgment apply equally to all citizens, and freely and willingly accept the consequences of such a condition (Rawls 2001, 197).

Unsurprisingly, such an approach is not without its critics. Arguably, one of the most interesting and noteworthy challenges to Rawls’s approach is that offered by Jürgen Habermas. Like Rawls, Habermas promotes the public use of reason as a means for responding effectively to the political challenges generated by ineliminable religious,

7] Rawls (1996, 13, 175; see also 2001, 14, 198) offers utilitarianism, perfectionism, intuitionism, the theories of John Stuart Mill and Immanuel Kant, and the belief systems associated with most organized religions, as examples of “fully comprehensive” doctrines.

8] This approach generates what Thomas Christiano (2008, 190) has labelled the “*narrow conception* of public deliberation,” which he believes “imposes [unacceptably] severe constraints on a legitimate process of moral discussion and debate in democracy” (2008, 202).

moral and philosophical diversity. However, according to Habermas (e.g. 1995), Rawls's approach is problematic insofar as it generates constraints that undermine the ability of public political deliberation to achieve a truly democratic character. In particular, Habermas believes that Rawls's requirement that certain issues – such as the character of the principles of justice that regulate society's basic structure⁹ – be considered as “correctly settled once and for all” (2005, 151 n. 16)¹⁰ is both unnecessary and detrimental to the realization of genuinely democratic discourse. Habermas also takes issue with Rawls's distinction between “public” and “nonpublic” uses of reason, suggesting that the type of unfettered discussions that occur within the organizations that Rawls categorizes as “nonpublic” (e.g. churches, universities, professional groups, scientific societies, and other associations in civil society [2005, 213, 220]) are, in fact, critical to a healthy democracy and, contra Rawls, should *not* be excluded from public deliberation concerning issues of public policy. Moreover, Habermas contends that the parameters of public political deliberation should themselves be established via public deliberation (e.g. 1995, 1996).

While Habermas's argument is, in a number of respects, quite persuasive, it seems overly optimistic inasmuch as it suggests that a viable voluntary consensus on how to address extremely sensitive and (increasingly) volatile public policy issues can be secured without imposing any significant constraints on the character of the arguments that can be employed and the proposals that can be presented and *must* be considered. Surely even recent history suggests that such an unconstrained approach, especially within the context of contemporary liberal democracies, will often produce endless debate and deadlock and, in turn, render extremely difficult securing any noteworthy change to public policy. Indeed, Habermas acknowledges that “[t]he sphere of questions that can be answered rationally ... shrinks in the course of development toward multiculturalism” (1993, 91). Arguably, establishing a deliberative process that enables participants to move beyond debate and deliberation (i.e. establish new policy) in a peaceful, consensual and reasonably timely manner, requires that certain *a priori* constraints be placed upon deliberators; and, in that respect, the constraints entailed by Rawls's approach to public political deliberation – and, in particular, the proposal that one “[remove] from the political agenda the most divisive issues, serious contention about which must undermine the bases of social cooperation” (2005, 157) and adhere to the *duty of civility* when engaged in public deliberations concerning public policy – seem to better reflect the *Realpolitik* of public political deliberation conducted under the conditions of “super diversity” that characterize contemporary liberal democracies.

Having said that, satisfying the demands of fair equality of opportunity and civil discourse informed by public reason does not eliminate the possibility of disagreement.

9] The *basic structure* of a society is comprised of its main political and social institutions (e.g. Rawls, 2001, 4, 7–8).

10] That means that those issues “are no longer regarded as appropriate subjects for political decision by majority or other plurality voting” – they are “not a suitable topic for ongoing public debate and legislation, as if they can be changed” (Rawls 2005, 151 n. 16).

Reflecting that fact, meaningful deliberation also embodies what Charles Larmore (1996, 135) has labelled the norm of *rational dialogue*, which requires that deliberators respond to disagreement “by retreating to neutral ground, to the beliefs they still share, in order to either (a) resolve the disagreement and vindicate one of the disputed positions by means of arguments that proceed from this common ground, or (b) bypass the disagreement and seek a solution of the problem on the basis simply of this common ground.” However, the norm of rational dialogue by itself does not explain *why* individuals who disagree with one another would or should continue to dialogue. Consequently, it must be supported by the norm of *equal respect* for persons, which insists that all individuals be treated as “beings capable of thinking and acting on the basis of reasons” (Larmore 1996, 137). That means that “we should never treat other persons solely as means, as mere instruments of our will; on the contrary, people should always be treated also as ends, as persons in their own right” (Larmore 1996, 136). Exercising the norm of equal respect requires that deliberators recognize and accept both the fact of reasonable disagreement, and, in turn, the illegitimacy of seeking to use only force to control the direction of public policy (Larmore 1996, 137). Combined, the norms of rational dialogue and equal respect “work together to yield the liberal ideal of political neutrality,” the very foundation of a suitable deliberative framework for contemporary liberal democracies (Larmore 1996, 141).

Embracing the above requirements steers deliberation toward the defense of individual rights – a deliberator’s position is not advanced through reference to the ‘truth,’ as revealed by a sacred doctrine or philosophical position, but rather by its conformity to principles that are widely understood and generally shared. Put differently, in deliberation we are obliged to advance our positions using reasons and practices that are not only familiar to our interlocutors, but that we might expect that they, as free and equal citizens, could reasonably accept. Thus participants in deliberation are prepared to consider each other’s positions carefully and accept that they may have to revise their views in light of the arguments put forth by their opponents.

Deliberation structured by the above conditions creates the opportunity for conciliation between conflicting viewpoints and, in turn, sensible compromises in which claims to fundamental rights are carefully advanced, seriously considered and, when appropriate, sensitively balanced. Such an approach does not, however, eliminate all threats to the realization of meaningful deliberation.

III. DELIBERATION (UN)REALIZED

Democracy and majority-rule decision-making (MRDM) have long been associated with one another. Indeed, for some, the two are inextricably intertwined. According to Alexis De Tocqueville (1988[1835], 145), “The very essence of democratic government consists in the absolute sovereignty of the majority”; similarly, Thomas Jefferson concluded that “the *lex majoris partis* [that is the law of the majority] is the fundamental law of every society of individuals of equal rights” (quoted in Hampsher-Monk 1993, 228). Arguably,

such an understanding best reflects that embraced by the preponderance of citizens of contemporary liberal democracies (e.g. Sin et al. 2007; and Inglehart 2003). Yet, the relationship between democracy and MRDM can generate significant challenges for the realization of meaningful deliberation in diverse democratic societies. Perhaps most notably, politicians' concern with being (re)elected and obtaining or retaining political power renders them vulnerable to considerations that may run afoul of the demands of meaningful deliberation. In other words, the desire to 'win' may (and often does) overwhelm the desire to engage in good-faith dialogue and negotiation. The result is that not all democratic venues are necessarily conducive to meaningful deliberation – a point that Tocqueville conceded upon reflecting on his experiences as an elected member of France's Chamber of Deputies (Boesche 1985). Two examples will help to illustrate that point.

In its *Multani* decision (2006), the Supreme Court of Canada (SCC) upheld the right of a Sikh student, Gurbaj Singh Multani, to wear his ceremonial dagger, or kirpan, to school. The case was prompted by a Montréal school board's attempt to prohibit the wearing of kirpans on school property through a 'zero tolerance' policy on dangerous objects. School board officials argued that kirpans should be completely banned from schools in order to ensure students' safety, pursuant to its code of conduct. Multani and his supporters countered by arguing that such a ban would infringe upon his constitutional right to religious freedom under Section 2(a) of the Canadian Charter of Rights and Freedoms. They also noted that other provinces, including Ontario and British Columbia, allowed students to wear kirpans in school, so long as they were sheathed, blunt and worn under clothing. The fact that kirpans had never been used to threaten students' safety in Ontario or British Columbia – or Quebec, for that matter – was also noted, as was Multani's willingness to abide by a compromise solution reached initially by school officials and later upheld by the Quebec Superior Court, whereby he could wear his kirpan to school so long as it was sealed inside his clothing.¹¹

The SCC agreed with Multani, arguing that the potential threat to student safety posed by Multani's wearing of his kirpan in school was minimal and in no way sufficient to authorize the school board's infringement of his right to freedom of religion. The interpretation of the board's 'zero-tolerance' ban on all weapons in schools as applied to the kirpan was deemed an unreasonable infringement on religious freedom and, as such, was overturned in a unanimous 8-0 decision. Hypothetical threats to student safety could not serve as grounds for restricting the exercise of religious freedom, as allowing them to do so would undermine the value of the kirpan as a religious symbol and send the message "that some religious practices do not merit the same protection as others" (Supreme Court of Canada 2006, 7). Thus, as per the compromise initially struck by school officials,

11] The Superior Court's decision was subsequently overturned by the Quebec Court of Appeal. Details regarding the decision are presented in the SCC's (2006) decision.

Multani and other Sikh boys could wear their kirpans to school, so long as they were blunt, stored in a wooden sheath, and worn under the boys' clothing.

The SCC's decision marked the culmination of a sustained and thoroughgoing deliberative process, during which arguments for both sides were aired and carefully considered by school officials, school board officials, the Superior Court, the Court of Appeals and, ultimately, the SCC. The SCC's decision also reflected a deliberative approach, whereby contending positions were treated seriously and, ultimately, balanced in such a manner that the protection of Multani's right to religious expression did not impose an unreasonable burden on the parents, teachers and students whose foremost concern was school safety. In other words, the Courts provided a venue for meaningful deliberation that informed fair and effective decision-making.

If the kirpan case demonstrates Canadian institutions' ability to facilitate meaningful deliberation and balance competing rights such as safety and religious freedom through compromise, the Ontario government's banning of religiously-based arbitration in family law points to the limits of this impulse. The Ontario government's decision followed a sharp debate over whether the province's existing *Arbitration Act* might be extended to allow for "voluntary private arbitration of family law and inheritance disputes according to Islamic principles."¹² Opponents of so-called "Sharia tribunals" argued that the proposal threatened the rights of women and contravened the separation of church and state (Korteweg 2008). Conversely, supporters argued that the move would acknowledge that Ontario's Muslims enjoyed the same rights to voluntary arbitration enjoyed by other religious groups, while also upholding the liberal values of personal autonomy and toleration for cultural diversity.

A report commissioned by the Ontario government and prepared by former Ontario Attorney-General Marion Boyd (2004), similarly viewed the issue as one concerning the autonomy of individuals to voluntarily enter into private arbitration to resolve family disputes. As such, Boyd recommended that the existing *Arbitration Act* be extended to include Islamic personal law, subject to conditions, including the registration of arbitrators. As it stood, the *Arbitration Act* also required that agreements be in writing, signed by both parties in the presence of witnesses, and in accordance with the best interests of children and child support guidelines. Boyd's recommendations recognized that religiously-based arbitration was already a fact of life in Ontario that could not be denied to Muslims. However, safeguards could be extended to protect the interests of vulnerable parties, principally women and children.

As Donald Forbes (2007) and Anna Korteweg (2008) have noted, the ensuing debate demonstrated the difficulty in reconciling competing liberal values, namely, a secularized liberal conceptualization of gender equality and the separation of church and state, on the one hand, and individuals' right to autonomy and freedom of religious practice, on the other. Whereas the values of autonomy and freedom of religion pointed

[12] Background on the specifics of the issue and the related debate is provided in Boyd 2004.

to the extension of the Act, those of gender equality and secularism pulled in the opposite direction. This was most clear with regard to autonomy and gender equality. While Boyd and others felt that individual Muslim men and women should enjoy the right to enter into private religious arbitration if they so chose, their opponents claimed that such a view naïvely misjudged inequalities in power relations between men and women and neglected the inherently patriarchic nature of virtually all religions. As such, opponents argued that the government had to act to *protect* women, even if this meant limiting their range of choice in the area of religious expression.¹³

The battle over the *Arbitration Act* was waged in the opinion pages of newspapers, radio call-in shows and other highly politicized venues – including the front lawn of the Ontario legislature (Korteweg 2008). Meaningful deliberation based on a careful weighing of competing rights claims gave way to finger pointing and, in some cases, outright fear mongering, with opponents arguing that religiously-based arbitration would mean the denial of gender rights and a return to medieval barbarism. Premier Dalton McGuinty was assailed as both a naïve dupe, blinded by the mythology of multiculturalism, *and* a cynical political tactician “desperate for votes” (Gillespie 2005). A highly personalized politics of recrimination gathered steam as the Ontario government sat on the Boyd report through the spring and summer of 2005. By early-September 2005 the anti-*Arbitration Act* camp included high profile Canadian feminists, such as Margaret Atwood, June Callwood and Maureen McTeer, who in an “open letter” to McGuinty, “accused his government of undermining the ‘cornerstone of liberal democracy’ – the separation of church and state” (Urquhart 2005).

The ban on religious arbitration was hastily announced (on Sunday, September 11, 2005) and adopted without consulting the affected groups, including those that had been conducting religiously-based arbitration for many years (e.g. CTV News 2005). Arguably, the Ontario government’s decision was driven less by a principled stance on the issue than by political concerns, including the need to respond to intense pressure from within its own caucus (e.g. Freeze and Howlett 2005; Urquhart 2005; and Simmons 2010). The time and effort that went into the drafting of the Boyd Report was largely wasted and little thought was given to precisely how such a ban on hitherto legal private arbitration would be implemented. Observers also noted that religiously-based arbitration would continue, albeit without the oversight of the Ontario government and in the absence of the safeguards recommended in the Boyd report (Khan 2005). As some critics of the government’s decision pointed out, opponents of the *Arbitration Act* scored a pyrrhic victory, as Muslim women would find themselves “in exactly the same position they were in before the prospect of government regulated arbitration” (Emon 2005).

While the Ontario government’s decision successfully quelled concerns over the sanctioning of “Sharia tribunals,” it also demonstrated the degree to which democratic

13] For excellent summaries of the debate and the Ontario government’s decision, please see Forbes 2007 and Munro 2011.

institutions animated by partisan political incentives can fall short of settling debates over competing rights in a manner consistent with the norms of meaningful deliberation. Whatever one's opinion of the decision itself, the means by which it was arrived at were, from a deliberative democratic position, questionable at best. The actions of the Ontario government also underscore the importance of procedures in helping to facilitate and protect meaningful deliberation. The perceived fairness of the procedures through which decisions are made – which, in a democracy, includes the presence or absence of deliberative processes and opportunities – greatly influences the perceived legitimacy of, and, subsequently, support for and commitment to, society's governance framework and related political institutions. This relationship is a consequence of the ability of procedural fairness to 'cushion' the impact of what some will consider 'unpleasant' decisions. George Klosko (2000, 210) has referred to this cushioning as the "fair-process effect." A noteworthy volume of social science research – public opinion polls, surveys, and the like – suggests that, provided individuals believe decisions are the product of fair procedures, they seem willing to accept those decisions even should they disagree with them (Klosko 2000, 226). Conversely, decisions reached through the exercise of brute power or coercion alone are, unsurprisingly, much less likely to generate such voluntary acceptance.

Procedures are generally considered "fair" if the resulting decisions are "made honestly, on the basis of the facts, with a lack of bias, and not (unduly) influenced by political considerations; and if decision-makers are trustworthy, i.e. motivated to be fair, and respectful of people's rights" (Klosko 2000, 226). In turn, political institutions that exhibit procedural fairness are able to secure the support and allegiance of citizens who affirm a diversity of often competing and conflicting viewpoints. As already noted, the fact of value pluralism means that one should expect reasonable disagreement regarding what constitutes the correct response to a policy dilemma. However, when one supports procedural fairness, s/he is endorsing "the means through which decisions are made," as opposed to "what is decided" (Klosko 2000, 116). Procedural fairness thus enables the establishment and maintenance of a consensus on a general decision-making framework for pluralistic societies, "even in the absence of agreement on important moral principles and even if, as is inevitable, decisions are far more advantageous to certain groups than to others" (Klosko 2000, 228).

IV. MAKING DELIBERATION SAFE FROM DEMOCRACY?

A consideration of the Multani and Sharia examples suggests that meaningful deliberation is more likely in institutions insulated from the pressures of partisan politics, such as courts. For many, such a conclusion will seem obvious. After all, many of the principles and practices critical to realizing meaningful deliberation are also considered essential to the legitimate operation of courts. Providing an opportunity for all affected parties to be represented, allowing for the consideration of all available relevant evidence before a decision is rendered, and treating all involved equally and according to known

rules and procedures that are applied uniformly are features of both meaningful deliberation and court operations (for example, see Hausegger, Hennigar and Riddell 2009; and Van Hoecke 2001). Indeed, Rawls (1996, 235) famously identified the United States Supreme Court (USSC) as the *exemplar* of reasoned deliberation. According to Rawls (1996, 235), the USSC is “the only branch of government that is visibly on its face a creature of ... [public] reason and of that reason alone.”

Conversely, adherence to such principles and practices is unlikely in a politically-charged environment in which the parties involved are concerned more with securing a specific outcome – namely, continued or enhanced electoral support – than with necessarily arriving at a reasoned and balanced decision. The need for elected politicians and social movement leaders to constantly try to satisfy the wishes of as many of their constituents as possible frequently necessitates the use of general arguments that more often than not are “poorly argued, shallow or manipulative” and, consequently, unsuitable to “serve as acceptable justifications of public policy” (Chambers 2004, 389). It is not that such arguments cannot or do not “appeal to what ... [the speakers] think are common or public values,” but they typically “appeal to the worst that we have in common” (Chambers 2004, 393). As Simone Chambers has noted, “there is a great deal of research ... [that demonstrates] the poor quality of debate in the public sphere” (Chambers 2004, 393 n. 10; see also 399).

Of course, any suggestion that the courts be used as the default forum for deliberation about public policy issues like those identified above is likely to be met with the objection that to do so is to circumvent democracy. After all, the justices of superior/constitutional courts are neither elected by, nor accountable to, ‘the people’ – at least not in the same way as are members of legislatures.¹⁴ Furthermore, effective democracy demands inclusiveness and transparency in deliberation and decision-making concerning matters of public policy and, it might be argued, such qualities cannot be adequately realized if the courts are assigned as the primary forum for deliberation.

However, such a non-democratic characterization of the courts fails to consider the complete range of ways in which the courts might legitimately be considered to manifest meaningful democratic qualities (e.g. Greene 2007; Rush 2010; and Van Hoecke 2001). For example, insofar as the courts and their operations are themselves the product of democratic governments, they can legitimately be understood to represent and embody the democratic principles and authority upon which the polity is founded and with reference to which it continues to function (Ferejohn and Pasquino 2002, 24; see also Hirschl 2008, 96, 113; and Van Hoecke 2001). Similarly, to the extent that the decisions of the courts are grounded in the moral principles that animate the polity, they provide “indirect democratic justifications for public actions” (Ferejohn and Pasquino 2002, 24). As well, it is also possible to understand the courts as enhancing “the [democratic]

14] Hausegger, Hennigar and Riddell (2009, 206-9) offer a wonderfully succinct and informative summary of different types of judicial accountability.

authority of the people (either as a collectivity or as individuals)” by providing the latter with a voice and power distinct from that of their elected representatives (Ferejohn and Pasquino 2002, 24; see also, for example, Rush 2010; Kyritsis 2006; and Kelly 2002). Finally, the powers and operation of courts are, themselves, subject to the control of popularly elected legislators.

To the extent that concerns exist regarding the inclusiveness or representativeness of court-based deliberation, as John Dryzek (2010) has recently argued, the effective representation of all interested parties need not require that the parties themselves, or even multiple representatives of each position, be directly involved in the deliberations: “Democracy does not have to be a matter of counting heads – even deliberating heads” (Dryzek 2010, 40; also see Van Hoecke 2001, 422). Rather, what is vital is that the relevant “discourses” be adequately represented in deliberations. According to Dryzek (2010, 31), a “discourse” is “a shared way of comprehending the world embedded in language. In this sense, a discourse is a set of concepts, categories, and ideas that will always feature particular assumptions, judgments, contentions, dispositions, intentions and capabilities.” Importantly, “discourses are not just a surface manifestation of interests”; rather, they “help constitute identities and their associated interests” (Dryzek 2010, 32).

A *discursive* deliberative approach requires that we abandon “the idea that legitimacy must be based on a head count of (real or imaginary) reflectively consenting citizens” (Dryzek 2010, 30). Rather, deliberation can be considered legitimate insofar as the decisions generated by it “respond to the balance of discourses in the polity” (Dryzek 2010, 21), though, the range and number of discourses involved in a deliberation will vary depending upon the issue in question. However, Dryzek cautions that even in those instances in which the number of discourses involved is relatively few, it would be foolish to expect “any decision fully to meet the claims of all competing discourses” (Dryzek 2010, 35). The discursive approach does not guarantee that all affected parties will be completely or equally satisfied with the outcome of deliberations; but, of course, no approach can provide such a surety.

In the final analysis, there seems to be little reason to believe that court-based deliberation using the discursive approach and conducted in accordance with the other constraints noted above will necessarily be any less representative or procedurally acceptable than deliberation conducted in other official government venues, such as a legislature. Arguably, court-based discursive deliberation can just as easily and effectively produce an opinion that represents the “considered judgments of the people,” “the deliberative opinion the public would have” if it deliberated under conditions that enable “informed and balanced discussion” free from political pressure (Fishkin 2009, 26-28). Indeed, a study by Jeffrey Rosen (2006) suggests that, in fact, the decisions of the USSC, for example, historically have done a good job of generally reflecting public opinion. Similarly, Ran Hirschl (2008, 109) has observed that “the transfer of foundational collective identity questions to the courts seldom yields judgments that run counter to established national meta-narratives.”

V. CONCLUDING OBSERVATIONS

Canada is an extremely diverse society and, by all accounts, it will only become more so in the future. Though diversity offers many benefits, it also poses many challenges for policy-makers. Foremost among such challenges is that of trying to ensure that decisions concerning public policy are based upon thoughtful and careful discussion and deliberation of relevant facts and reflect an equal consideration of all affected interests. If we are genuinely interested in realizing meaningful deliberation and reasoned decision-making with regard to matters of public import, we should resist condemning the so-called ‘judicialization of politics,’ and instead recognize that the reconciliation of competing rights might be best pursued by avoiding the shrill sloganeering that so infuses the political marketplace and opting for reasoned arguments, evidence based on facts, and the conscientious, deliberative manner of the courts.

Genuine democracy requires an equal opportunity for all interested parties to be heard and considered. However, as many have noted, wealth and political and/or social ‘connections’ often significantly influence both the opportunity to be heard and the seriousness with which one’s opinion and proposals are considered, especially by those in positions of power. Arguably, among contemporary industrialized liberal democracies, the United States offers the most egregious example of the potential for wealth and connections to undermine the realization of ‘democratic voice.’

Because members of superior/constitutional courts are generally not subject to the political pressures that confront and typically guide the decisions of legislators and the strategies of social movement leaders, the determinations of the former can be guided by reasoning that focuses on “the good of the public” and produces decisions that rely upon publicly shared values for their justification (Rawls 1996, 213). Arguably, only decisions that embody such qualities effectively satisfy the fundamental principles of *liberal* democracy, at least as it is generally currently understood. That is not to suggest that members of superior/constitutional courts are “personally” politically neutral – that is, in their capacity as individual *citizens* – only that in fulfilling their official duties they are relatively free from many of the political considerations with which legislators must necessarily be concerned, and they are expected to base their decisions on nonpartisan considerations. As Simone Chambers (2004) has documented, there is good reason to believe that court-based deliberations can provide the environment needed to generate such decisions.

Given the significant (and seemingly expanding) challenges to realizing democratic voice within the public political realm, and in light of the democratic qualities possessed by courts operating in contemporary constitutional democracies, it seems both plausible and reasonable to suggest that courts offer the best opportunity for achieving meaningful democratic deliberation (as defined above) with respect to the difficult and extremely sensitive issues associated with the accommodation of diversity.

Of course, such a turn to the judiciary as a matter of standard procedure would need to be accompanied by a review of existing practices and procedures to determine whether any modifications are required to realize fully the potential benefits of such an approach. In particular, it would be necessary to think through how marginalized groups' access to the courts might be better facilitated. Here, the now defunct Court Challenges Program in Canada stands as a potentially useful example – all the more so given increasingly serious reservations regarding the public's access to the legal system (McLachlin 2007). One would also need to consider the range of issues that should be subject to such an approach. It would be absurd to suggest that deliberation concerning all public policy decisions be automatically referred to superior/constitutional courts. Rather, it seems appropriate to adopt such an approach when dealing with what Rawls (1996, 214; see also 2001, 28) labelled “constitutional essentials and questions of basic justice” – for example, “who has the right to vote, or what religions are to be tolerated, or who is to be assured fair equality of opportunity.”¹⁵

Assigning courts deliberative primacy in such instances does not preclude broader public deliberation on the issue(s) in question. We would expect some forms of deliberation to continue to occur in legislatures, the media and the broader public sphere. The point worth emphasizing, we believe, is that these differing venues will reflect and be driven by their respective logics. Whereas meaningful deliberation is more likely to be realized in the domain of the courts, a more partisan, polarizing and often incomplete discourse is likely to prevail in settings in which actors are tempted to score ‘political points’ by maligning ethno-religious and other marginalized minorities and unreflectively championing prevailing “national values.”

If non-judicial venues are to facilitate meaningful deliberation, we must expect more of our politicians, journalists, and fellow citizens. As we have stressed throughout this essay, sharp debates over the accommodation of difference are to be expected – they cannot be wished away. In the same vein, a liberal-democratic society cannot erect barricades and hide behind statements of principle, belittling newcomers in the process. Rather, its citizens, in all their roles, must live up to the standards of their regime and engage in the serious, difficult and often trialing work of meaningful deliberation.

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15] Alternatively, Ran Hirschl (2008, 94) has referred to the concept of *mega-politics* – matters of outright and utmost political significance that often define and divide whole polities. These range from electoral outcomes and corroboration of regime change to matters of war and peace, foundational collective identity questions, and nation-building processes pertaining to the very nature and definition of the body politic.”

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Some Remarks Concerning the Concept of *Glocalization*

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Abstract. The present study is aimed to scan the explanatory relevance of the concept of glocalization in some seminal works of George Ritzer. In the first instance, we will try to relate the manner in which Ritzer understands glocalization to the uses of other authors or other related concepts of the cultural globalization theory (hybridization, creolization, scapes). On this occasion, we will reveal the (partially “hidden”) cultural and philosophical assumptions, underlying Ritzer’s use of this concept: the understanding of the individual, mainly seen as a rational agent, as well as the positive value attributed to the postmodern type of cultural mixture. We will further argue that, despite its intentions, the manner in which Ritzer defines glocalization is in fact very close to a homogenized conception of globalization. In addition, we will show that Ritzer eludes the explanatory dimension of glocalization (much less the critical one), in favor of a descriptive stance, excessively used. We will give also a critical analysis of the way in which Ritzer attempts to enrich the explanatory quality of glocalization by linking it with a new concept that he elaborated, the grobalization. In the end, we would like to connect Ritzer’s concept of glocalization with a social/sociological model exposed by the French sociologist Alain Touraine, hoping to better clarify the mentioned problems.

Key words: glocalization, George Ritzer, globalization, grobalization, hybridization, creolization, scapes, Alain Touraine.

The purpose of our paper is, on one hand, to bring to light the specific philosophical presuppositions that George Ritzer articulates on the concept of *glocalization*, mainly in his books *The Globalization of Nothing* (2004, 2007), *Globalization: A Basic Text* (2010) and *Globalization: The Essentials* (2011), and, on the other hand, to highlight the difficulties that characterize its efficiency, considering that it does not provide an adequate response to some problems of the contemporary society. Our approach does not intend to become an exhaustive thematic analysis, but only a critical variation, allowing us the freedom of certain hermeneutic excursions.

It is generally accepted that *glocalization* is a concept introduced in the late 1980s in the space of the Japanese marketing, that became – according to *The Oxford Dictionary of New Words* – “one of the main marketing buzzwords of the beginning of the nineties” (as cited in Robertson 1995, 28), being popularized in the theoretical landscape of the next decade through the efforts of authors such as Roland Robertson (Robertson 1992, 1995) or Eric Swyngedouw (Swyngedouw 1997, 2004). Their studies attempted to free it from its original sense, narrowly related to the micromarketing or to the “capitalistic business practices” (Robertson 1995, 29), introducing new elements related to the social, cultural and political dimensions,² and to mainly use it as an alternative to the concept – much

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2] In this context, Swyngedouw speaks of the “socio-spatial power choreographies” (2004, 26) and Robertson of the “global culture” (1995, 31).

more used (but also vaguer than this one, at least in the first instance) – of globalization, an alternative that could capture much more from the complex reality of phenomena and processes ‘hidden’ by the latter.³

In his turn, in the 2000s, George Ritzer will try to use this concept through a sociological approach that captures the cultural and the economic factors. More precisely, Ritzer deals with the concept of glocalization from the explicitly assumed perspective of the “globalization of *culture* in general, especially the globalization of *consumer culture*” (Ritzer 2007, 6). His study leaves the purely economic theories of globalization aside, because they focused in his vision too much on production, neglecting consumption, and he turns instead to the cultural theories of globalization, more open to this essential phenomenon of the contemporary society. Ritzer’s alternative, based on consumption, is probably more responsive to the dynamics of the global cultural phenomena (in the *descriptive* sense), but it will create some problems concerning the *explanation* of the same phenomena, as we shall try to show.

I.

In the first phase of Ritzer’s analysis, *glocalization* appears as a key concept of one of the three major types of approaches to the cultural globalization, namely cultural hybridization, established as an alternative to the unilateral conceptions defined as cultural differentialism, respectively cultural convergence (focused on the cultural heterogeneity and cultural homogeneity); additionally, it may even end the disputes between them (Robertson 2003, 462).

The cultural hybridization studies “the mixing of cultures as a result of globalization and the production, out of the integration of the global and the local (...), of new and unique hybrid cultures that are not reducible to either the local or the global culture.” By amalgamation, blending, integration etc. of various global and local trends, new cultural forms arise, specific rather to a cultural effervescence than to a process of aggression or confrontation (typically for many political and economic theories on globalization). Thus, this view is *apparently* closer to the one of the cultural differentialism, almost becoming an alternative – more complicated and less clear – of it. In Ritzer’s own terms, hybridization is, consequently, “a very positive, even romantic, view of globalization as a profoundly creative process out of which emerges new cultural realities, and continuing, if not increasing, heterogeneity in many different locales.” (2011, 159)

3] Also, we could note that Robertson (1992, 5) believes that “cultural factors enter into the domain of *Realpolitik* much more than has been conceded by many, but certainly not all, of those specializing in the study of international relations and related matters. It might be said that, again in varying degrees, all of international politics is cultural that we are (but one must not certainly exaggerate the novelty of this) in a period of globewide *cultural* politics (and also, of course, in a period when culture has become more explicitly politicized, which has to do with the politics of culture).”

From this perspective, in a (very) general way, glocalization “can be defined as the interpenetration of the global and the local, resulting in unique outcomes in different geographic areas.” (Ritzer 2011, 159)

There are several things that can be said about Robertson’s theory to which Ritzer refers, but two of them seem to be essential for the present analysis: 1) “individuals and local groups have great power to adapt, innovate, and maneuver within a glocalized world,” they are “important and creative agents,” and 2) “social processes are relational and contingent (globalization provokes a variety of reactions – ranging from nationalist entrenchment to cosmopolitan embrace – that produce glocalization)” (Ritzer 2010, 255).

II.

The next level of analysis is configured by reviewing the concepts that can be seen both as synonyms and competitors, for capturing the defining aspects of glocalization.

Among neighbor or related concepts, Ritzer mentions hybridization itself, a cultural hybrid being understood as „the combination of two, or more, elements from different cultures and/or parts of the world.” The examples of hybridization that he offers from the area of consumption (events, products etc.) are particularly spectacular and touristic, even “defiant” sometimes: „the Ugandan tourists visiting Amsterdam to watch two Moroccan women engage in Thai boxing, Argentineans watching Asian rap performed by a South American band at a London club owned by a Saudi Arabian, and the more mundane experiences of Americans eating such concoctions as Irish bagels, Chinese tacos, Kosher pizza, and so on.” (Ritzer 2011, 160)

At this point, we believe that several necessary observations impose themselves. Naturally, Americans’ culinary experiences (and experiments) are, as Ritzer observes, “more mundane,” but we could not say the same thing about the previously mentioned Ugandan tourists who nonchalantly travel by plane from their poor country to one of the most expensive cities in the world only to watch... a Thai boxing match. But this is the advantage of an approach that restricts itself to the consumption aspect (as a constant reality), to the description of the elements involved in its composition, without questioning *the causes* of these phenomena and without trying to explain them more profoundly. Let’s suppose, in the particular case above, that those tourists are among *the very few* Ugandans who can afford such a luxury travel: they may be, for example, the children of a corrupt local leader,⁴ the local “result” of strong social imbalances/inequalities, created by the penetration of foreign economic capital in Uganda and by its associated corrupt political

4] It should be noted that Uganda is perceived as one of the most corrupt countries in the world, ranking 29 (immediately after Russia) in Corruption Perceptions Index 2012 published by Transparency International (see <http://cpi.transparency.org/cpi2012/results/>).

power etc. In other words, this case would undoubtedly be more relevant for the peculiar socio-political situation of Uganda, and not for the global hybridization.⁵

Next, not all scholars who study the glocalization phenomenon accept this theoretical framing or approximation. Khondker disagrees with the equivalence or the synonymy between the two terms, hybridization appearing to have a broader sense that includes the glocalization seen as a particular case, being its proximate genus in a logical sense: „In the discussion of glocalization some writers tend to conflate it with hybridization. This may be somewhat misleading. Glocalization involves blending, mixing adapting of two or more processes one of which must be local. But one can accept a hybrid version that does not involve local.” Shortly, „*glocalization to be meaningful must include at least one component that addresses the local culture* (emphasis added)” (Khondker 2004, 17).⁶

Another definition of hybridization, corresponding to Ritzer’s theoretical framing, is provided by Nestor García Canclini. For him, hybridization is equivalent to „sociocultural processes in which discrete structures or practices, previously existing in separate form, are combined to generate new structures, objects, and practices.” (García Canclini XXV) We don’t want to show that Ritzer’s examples are incompatible with the other definitions of hybridization (this would be incorrect and, considering the plethora of existing theorizations, an easy endeavor, generally speaking, not just in this case), and, in addition,

5] For instance, the distinction introduced by Sklair between “development” and development. He uses “‘development’ to denote ‘capitalist or distorted development’ and development (without the inverted commas) to denote a different form of non-capitalist (in fact, anti-capitalist) development.” Also, Sklair shows the difference between economic growth and development: “The crucial difference is that development includes everything that is already included in economic growth plus criteria of distribution of the social product, democratic politics and the elimination of class, gender and ethnic privileges.” (1994, 165) It is obvious that, in this case, we are dealing with an example of “development” and not of development, which indicates that it is a positive phenomenon only in terms of market-based mechanisms and consumption, the cultures/nations which include those individuals being totally excluded. We could supplementary develop this point by invoking the term he further introduced, the one of “culture-ideology of consumerism.” The effect of this ideology „is to increase the range of consumption expectations and aspirations without necessarily ensuring the income to buy. At its present stage of ‘development,’ capitalism is built on the promise that a more direct integration of local with global capitalism will lead to a better life for everyone.” (178) This happens especially in the “Third World,” as Russell W. Belk noted in the quote provided by the same Sklair: “quite unlike the evolution of consumption patterns in Europe and North America, Third World consumers are often attracted to and indulge in aspects of conspicuous consumption before they have secured adequate food, clothing, and shelter” (apud Sklair 178). Obviously, we could not deny the ‘reality’ of Ritzer’s examples, but only their meaning. And, in the light of such criticism, many examples cease to be the manifestation of glocalization, becoming instead a proof of disintegration of social values that expressed once the cohesion of the concerned groups. Anyway, this will not be a problem for the sociologists of the post-social society, as we will see later.

6] The same culture can provide examples for both phenomena. Restricting ourselves to the cases observed by Khondker in Singapore, we could mention the higher educational system, „a hybridized version comprising the original British model and the US model” (or, generally, „in matters of technology and business practices where two different systems or modes are combined for better results, system of values and practices”), and the examples of glocalization from „the area of mass communication and especially in the area of television programming” (Khondker 2004, 17).

that they often go too far than the existence of a somehow stable socio-cultural reality allows. Thus, if we remember one of García Canclini's definitions, the hybridization leads to the emergence of new realities, of new *structures, objects* or *practices*. However, beyond their spectacular nature in terms of consumption, the examples of Ugandan tourists or those of Argentinians listening Asian rap are conclusive for none of the previous outlined items that, we appreciate, define a socio-cultural space with a minimal crystallization (this is necessary even if we accept a sort of liquid postmodern reality).

Moreover, such an approach neglect also a deep dimension, which can be called political (and historical too). This is not a simple theoretical accessory, but a powerful explanatory element and its use is necessary for avoiding the distortion of the cases in question. The conflictual component (we avoid to call it dialectical) of the glocalization/hybridization process cannot be reduced to a simple opposition between the preferences or the interests of a consumerist type. There is something very serious – and for many people, very painful – at stake in these processes. Moreover, beyond this moral 'judgement,' we can observe the ability of these concepts to really be scientifically useful. As the previous author notes, „hybridization is not a synonym for fusion without contradiction but rather can be helpful in accounting for particular forms of conflict generated in recent cross-cultural contact and in the context of the decline of national modernization projects in Latin America.” (García Canclini XIV)⁷

*Creolization*⁸ is another related concept introduced by Ritzer's analysis. Originally used to refer to people who are a mixture of races, the term creole „has been extended to the idea of the creolization of language and culture involving a combination of languages and cultures that were previously unintelligible to one another.” (Ritzer 2011, 160)

Another author who practically equalizes creolization and glocalization is David E. Nye (2006, 608). Many previous observations will remain valid if we observe that what matters for Nye, in this process, is “how variety emerges out of intercultural negotiation,” and that his examples are similar to those selected by Ritzer: “combinations as Cuban-Chinese cuisine, Norwegian country-western music, and ‘Trini’ homepages.” (Nye 2006, 607) It is a process of “selective appropriation” in which “people at the periphery create

⁷] However, for García Canclini, the political resistance and struggle could be replaced by negotiation, which seems to have both conscious and unconscious character, moving itself from commercial to dialogical, from a rational activity to the existence itself: “The culturally hybrid features resulting from cross-class interaction force us to recognize that alongside struggle there is also negotiation. And negotiation does not appear as a process external to the constitution of the actors, to which they might resort on occasion for political convenience. It is a mode of existence, something intrinsic to the groups that take part in the social drama. Negotiation is located within collective subjectivity, in the most unconscious culture or politics and daily life.” (García Canclini 2001, 146) Moreover, consumption “to a certain extent constitutes a new mode of being citizens” (2001, 26). The key issue, indicated by García Canclini himself, is other and is well synthesized by Goodman: “The problem is that this new mode of social choice is dominated by for-profit corporations and no new models of consumer involvement have emerged that would provide a satisfactory replacement for citizen participation.” (2007, 345)

⁸] See Stewart 2007.

their own environment' and this creolized cultural production often may be re-exported." (608) Creative production, consumer choice, differentiation (and not standardization) by combining and mixing, individuality and individualism, re-export, all these take place at the periphery (at the periphery of the Western world, of course).⁹

Finally, Ritzer mentions the term "scape" proposed by Appadurai, with its five main instantiations ("ethnoscapes," "mediascapes," "technoscapes," "financescapes," and "ideoscapes"), conceived as some processes with „fluid, irregular, and variable shapes and (...) consistent with the idea of heterogeneization" (Ritzer 2011, 161). As in a "total" play, these scapes have not an objective character but they are „perspectival constructs", and they could be called „imagined worlds" (Appadurai 1996, 33).¹⁰ It is important to note that the individual seems to have here an unusually high power over the context (scenic, in this case). As Ritzer concludes, "while power obviously lies with those in control and their imaginings, this perspective gives to those who merely live in these scapes, or pass through them, the power to redefine and ultimately subvert them." (2011, 161)

We can justifiably ask, in order to draw a partial conclusion and beyond any discussion concerning their more or less complete intertwinement, definitions, and semantics, *what do all these terms and Ritzer's favorite examples* (used to mark out glocalization)¹¹ *have in common?* First of all, they point to the picture of a *strong individual/group*, an autonomous, emancipated, independent entity, having rational options and being culturally inspired from the Western tradition; this entity is capable of significant resistance in the "struggle against globalization," using his own "weapons" (values, resources etc.) without any suspicion that the development of these tools could generate the proliferation of the globalization itself, by perverting the "local" and creating another local element for the global consumption type.

9] The analogy used by Nye is conclusive for the spirit that animates sometimes these approaches: "Just as inside the United States former slaves and immigrants created their own cultural worlds, selectively appropriating elements of different cultures, so too other cultures that come into contact with Western society engage in a creolizing process. What results is not a standardized world, but a potentially endless process of differentiation. Just as in the 1920s mass production did not obliterate batch production, which was more flexible and responded to changing consumer demands, fears of standardization were exaggerated. 'Glocalization' or creolization is common. However much critics may focus on the supposed homogeneity of a machine culture, the owner of every house, car, and telephone in Levittown can express individuality through consumption." (2006, 608)

10] Appadurai notes that "[t]he suffix *-scape* allows us to point to the fluid, irregular shapes of these landscapes, shapes that characterize international capital as deeply as they do international clothing styles. These terms with the common suffix *-scape* also indicate that these are not objectively given relations that look the same from every angle of vision but, rather, that they are deeply perspectival constructs, inflected by the historical, linguistic, and political situatedness of different sorts of actors (...). These landscapes (...) are the building blocks of what (...) I would like to call *imagined worlds*, that is, the multiple worlds that are constituted by the historically situated imaginations of persons and groups spread around the globe" (Appadurai 33).

11] Ritzer explicitly notes that "[a]ll of the above – glocalization, hybridization, creolization, and scapes – should give the reader a good feel for what is being discussed here under the heading of cultural hybridization." (2011, 160)

If we are asked to give a concrete example, we should think how “local” and “authentic” (as a form of “cultural resistance”) is the rural tourism promoted by Romanian ‘peasants’-entrepreneurs, who cleverly sell and manipulate superficial folk traditions to the naive buyers. As Robertson wrote, “glocalization involves *the construction* of increasingly differentiated consumers, the ‘invention’ of ‘consumer traditions’ (of which tourism, arguably the biggest ‘industry’ of the contemporary world, is undoubtedly the most clear-cut example). To put it very simply, diversity sells.” (Robertson 1995, 29)

This rural tourism appears to be strongly accepted by two types of public audiences: local nostalgists, longing for the Golden Age of the Romanian peasants or for their own childhood,¹² and tourists from anywhere – but having a strong model in the Western tourist who sincerely appreciates all the ‘real’ cultures of the Earth – eager to live in the middle of a living culture – finally, they are mundane and peaceful victims of the illusion of recovering the original meaning of Life. Also, Robertson see how “[t]he proliferation of, for example, ‘ethnic’ supermarkets in California and elsewhere does to a large extent cater not so much to difference for the sake of difference, but to the desire for the familiar and/or to nostalgic wishes.” (1995, 29) Regarding the previously mentioned first audience, what they actually obtain, besides a pseudo-culture (or perhaps just because of it), is a capitalist spirit of the Romanian ‘village.’ This spirit is learning to grow from his previous mummified corpse;¹³ in fact, the resurrection consists precisely in selling his new aseptic and marketed body.

Of course, the modern tourism could open a special discussion on the meanings of glocalization. Without insisting on this subject, we will mention Zygmunt Bauman’s position, who argues that this phenomenon is not at all a democratic behavior of the human being in general (analyzed in the context of the *freedom of movement*, inherently associated to the contemporary tourism) but „a restratification of society based on the free mobility of some and the place-bound existence of others.” Therefore, the alleged or desired hybridization did not actually take place: “Tourist flows, for example, are mainly unidirectional (e.g., west to east or developed to less developed countries). For this reason, tourism has sometimes been described as a new form of imperialism, which causes acculturation and radical social change rather than hybridization (the inevitable consequence of sustained foreign influence over time).” (Smith 2011, 269)

Returning to the analysis of Ritzer’s use of glocalization, we believe that this case requires a specific observation, similar to the one that Kaufmann makes to Ohmae;¹⁴ shortly, the first appreciates that the latter’s views on his theory concern [only, we add] „the individual as an economically-determined agent”, which implies that “[the] individuals

12] To restrict ourselves to these very plausible reasons.

13] The neo-liberalism is not the only responsible for the disaster of the Romanian village – we speak about a victim of the communist period too. Communism accelerated a general (worldwide) process whose manifestations were elsewhere maybe slower (depending of the geographical area).

14] He contributed to the popularization of the glocalization idea, whose origin can be identified in the Japanese marketing space in the late 1980s.

can satisfy all of their needs for 'well-being' in the global marketplace." But, as Kaufmann comments, this is "a horrendous simplification that ignores a class of goods that cannot be priced and which economists like to bury in appendices and footnotes under the label 'non-pecuniary'. 'Non-pecuniary' goods, like a feeling of historical rootedness or a sense of immortality, cannot be priced, packaged and produced in a global marketplace." (1996, 343)¹⁵ In other words, the purely material goods prevail, while the other types of 'goods' (ineffable or spiritual, I dare to say) are judged by the marketing policies belonging to the first category, being reduced to a commercial-transactional dimension like a stock market game.

There is, consequently, something that could be called "*organic optimism*" (not considering the ideological aspects), which is shared not only by Ritzer's theory, but also by all those who reduce man to a simple consumer (mainly because they do not even mention other social dimensions of the human being), or by the glocalization theories in general. Kaufmann, as we noticed above, records Ohmae's optimism, though he simultaneously highlights the other side of this theoretical approach, the one of "forgetting" about "[the] persistent anomie and social dysfunction in the developed world." Obviously, under these circumstances, „he [Ohmae] has shown little inclination to acknowledge the social costs of his borderless world" (Kaufmann 1996, 343). Also, Thornton shows that the optimism determines the theory of glocalization, at least concerning Robertson's formulation of it (he speaks of "Robertson's optimism towards glocalization" [Thornton 2000, 81]); an *a priori optimism*, we add, which *already* decided the value and the future of the object of study from the manner in which it is previous theoretically constituted (the mixture of its various components, in this case). The problem here is not the optimism *in itself*, but the manner how it methodologically affects and determines the research results from the point of view of the (already formulated) conclusions. This optimism does not depend on the evaluation of some theoretical or practical effects, but on the original, underlying semantics, which implacably guides the investigation.

We mentioned above a characteristic element for Ritzer's theory, the presence of a strong, emancipated, independent, rational individuality, inspired by the Western cultural tradition. In the first edition of the book (the situation does not change in the second edition), Beckfield noticed what he called an U.S.-centrism, i.e. that "nearly all the examples offered in support of the book's claims come from the U.S. context" (2007, 171). On the other hand, as we have seen, even the (brief) examples extracted from the other geographical areas basically copy the Western consumer's pattern – the global citizen is the Western consumer. In other words, a global theory of consumption/a theory of

15] The continuation is instructive too, because any approach (even the one of Ritzer) shows that the state borders – a simple "artifact of the 18th and 19th centuries" to Ohmae (1995, 7) – seem to vanish, favoring all consumers: "It just so happens that nations are a major source of these non-market goods, goods essential to people's well-being. Hence, while the elimination of nations may increase people's consumption of marketed goods, it will eliminate crucial non-market goods and lead to less well-being, not more." (Kaufmann 1996, 343)

global consumption generalize – (un)consciously? – a particular type of human subject, a subject who acts all over the world.

However, Ritzer's examples send us also to the idea of *a mixture, beneficial in itself*, the mark of vitality, of a sharp postmodern creativity of the contemporary civilization. This time, the model seems to be the artist, as far as we refer to the individuals (and not to the groups), more or less explicitly; we could identify him to a romantic-Nietzschean type, whose main work is his own life, whose spirit is fortified by this game of continuous crises, someone who creatively subordinates the forces opposed to his will.

In addition, and not rarely in the case of such interpretations, the whole reality assumes the character of a scene, of a ludic space (in Appadurai's terminology) – life is conceptually subordinated to the art, and not vice versa.

In fact, in Ritzer's case, the human subject model intertwines the modernism with the postmodernism, creating a mixture of Apollonian and Dionysian where the human being becomes, on one hand, a rational individual eager to overcome the simple reason by participating to the other cultures, and, on the other hand, a ludic experimenter who remains lucid during his actions, understood in economic terms. According to Thornton's remark, with reference to Robertson, „by dissolving the simplistic either/or of modernist homogeneity versus postmodernist heterogeneity, Roland Robertson sets the stage for a trans-local or 'glocal' cultural studies" (Thornton 2000, 81), an observation which applies to Ritzer's case too.

We could say that we consider here a new type of man, understood as a new kind of consumer, an individual synthesis of reason and Romanticism. The most edifying references can be identified in the work of the neo-Weberian Colin Campbell, *The Romantic Ethic and the Spirit of Modern Consumerism*, which conspicuously thematize this aspect.¹⁶

Hence, in the first edition of *The Globalization of Nothing* and maybe not coincidentally, Ritzer confesses that he is inclined "to being both elitist and incurably romantic, nostalgic about the past, and desirous of a world more characterized by something than nothing" (cited in Beckfield 2007, 170). In addition, the manner in which he sees himself is perhaps "transferred" to the subjects of his examples, the nostalgic reflexivity impregnating his vision upon them.

III.

Further, Ritzer's works follow another level of conceptual construction, the glocalization being clarified/specified as a theoretical tool not only by itself, but also through a tandem or conceptual binomial. Thus, Ritzer is committed to a syncretic or eclectic approach, which necessarily combines the ideas of homogenization and heterogenization, forging a new concept, the *grobalization* (from the verb "to grow"). He believes that this

16] Usunier's lines, shown below, captures another form of the same idea.

action introduces a concept that “would give a more balanced view” of globalization, supplementing “the undoubtedly important idea of glocalization” (Ritzer 2004, 73).

A brief comment on this matter. The idea of a conceptual binomial aiming to hermeneutically link complementary aspects of the contemporary reality is not unique. For example, answering a question of Simon Dawes that envisaged to clarify the relationship between the two terms of the *solidity-liquidity* “dichotomic metaphor”, Zygmunt Bauman states: „I did not and do not think of the solidity-liquidity conundrum as a dichotomy; I view those two conditions as a couple locked, inseparably, in a dialectical bond (something like what probably François Lyotard had in mind when observing that one can't be modern without being post-modern first...).” (Dawes 2011, 132)

Let's now return to our analysis. First of all, we appreciate that Ritzer intended to add a touch of realism when he introduced the concept of glocalization into his analysis; in this way, he (re)integrates some economic, financial or political elements to a reality that seemed to evaluate on strictly cultural coordinates. Thus, glocalization “is the imperialistic ambitions of nation-states, corporations, organizations, and the like and their desire, indeed need, to impose themselves on various geographic areas throughout the world.” (Ritzer 2011, 319) It is multiform, being conducted on different levels, and assuming “sub-processes” like the capitalism, Americanization or McDonaldization – which are appreciated as some “central driving forces in glocalization” (172).

Ritzer's conceptual binomial combines two fundamental sides of reality and/or historical and cultural theories (which are generally separated and opposed, the chosen option being criticized in the light of the other), namely modernity and postmodernity: “it should come as no surprise that glocalization and glocalization offer very different images of the impact of transnational processes. After all, they tend to stem from the antithetical bases of modern and postmodern social theory.” (Ritzer and Ryan, 57) We appreciate that, for Ritzer, both aspects are co-essential and constitutive for the contemporary society, defining its specificity. The two elements are antagonistic, but they cooperate for making a (single) reality or even a different type (or a new type) of reality. From this perspective, we can argue that our contemporary society is, simultaneously, both modern and postmodern. Ritzer himself believes that „*In the real world, there is always a combination, an interaction, of glocal and global processes. Anywhere one looks in the world, one sees both the glocal and the global. (author's emphasis)*” (2007, 25)

There are, we believe, at least two kinds of primary issues arising in the function of this binomial. One of them is linked to the relationship between globalization and glocalization and it originates in the set of observations that we have previously introduced. Ritzer's conceptual binomial construction contains something like the action-reaction phenomenon, a physical interaction between two forces, introducing (even unintentionally) some logical and epistemological legitimacy to both of them. But do they really are so distinct and so opposite as they seem to be at the first glance? Relying on the previously mentioned observations, we appreciate that the heterogenization that Ritzer proposed through the concept of glocalization is false and misleading, and it only

subordinates the *sui generis* differentialization to the homogenizing trend of globalization (of globalization, in Ritzer's language), transforming it into a convergent component of this one (so not an *opposable* or *parallel* component). It only distorts the profound reality of a constant, continuous and real opposition through a perverse, intimate, indirect etc. assimilation; the local – at least in the examples offered by Ritzer – is this way conquered by the global force.

Theoretically, even if the glocalization is situated between homogenization and heterogenization, being proximate to the latter, its own function distributes it in the vicinity of the former one. Briefly, it describes how the global absorbs and perverts the local. Or, if you prefer a more spicy language, it presents the forced cohabitation or the concubinage between those two components, itself the result of a rape, as the great victory offered to the raped.¹⁷

We could even translate/replace these two components by introducing two other terms – “hard globalization” instead of “globalization” and “soft globalization” instead of “glocalization” – which would have (at least) the advantage of a more direct determination. This reminds somehow the distinction between *globalization from above* and *globalization from below*, introduced by Kellner and Pierce (2007, 389).

A second set of issues can be given through the relations between globalization and globalization, because, at least in the first instance, they seem to share certain phenomena (the driving forces of globalization mentioned by Ritzer), the general sense of capital expansion and the exercise or the augmentation of power (political, economic, and financial). In other words, why do we need a new term to designate, *within globalization*, a particular trend of it (the globalization), having the same characteristics of the former as a whole? According to the well-known Ockham's razor, why we cannot just keep glocalization (instead localization) in a clarifying, explanatory tandem with the globalization? Khondker' statement, unfortunately undeveloped, goes in the same direction: “Ritzer in discussing glocalization has added another – should I say, redundant – convoluted term ‘globalization’” (2004, 15). Of course, we could also keep both glocalization and globalization within the same reality, but doing this we must proceed to a *critique* of globalization as a descriptive term standing for this whole reality.

There are two theoretical approaches that are likely referring to the essences of the two opposed phenomena which, according to Ritzer, compose the reality of globalization (or they explain it). Shortly, in his view, “while modern theories like those associated

17] The idea of a metaphorical register of a couple, contained in the description of this kind of binomial, is to be found in Bauman; for him, the concubinage seems to resist, even if it is full of troubles: “Glocalization’ is a name given to a marital cohabitation that has been obliged, despite all that sound and fury known only too well to the majority of wedded couples, to negotiate a bearable *modus co-vivendi* – as the separation, let alone a divorce, is neither a realistic nor a desirable option. Glocalization is a name for a hate-love relationship, mixing attraction with repulsion: love that lusts proximity, mixed with hate that yearns for distance. They are (...) doomed to cohabitation. For better or worse. Till death do them part.” (2011)

with the Marxian and Weberian traditions are closely linked to the idea of glocalization, glocalization is more in tune with postmodern social theory.” (Ritzer 2007, 17-18)

We appreciate that Ritzer does not seem concerned about an explanation of a complex reality, but he rather tries to present (and justify) his own approach as a synthesis between theories that can (or want) capture only one of the opposite aspects of that reality. These theories (like the past realities/societies themselves, namely the modernity and the postmodernity) are depicted in a historical sequence, so that Ritzer’s approach seems to borrow something from a Hegelian overcoming, a theoretical (but in fact concrete) *Aufhebung*.¹⁸

Usunier and Lee suggest almost the same thing when they mention the three types of *globalized consumption*, though the Hegelian interpretation is excepted here:

The first component is based on modernity and on fordist consumption; it corresponds to low-cost/fair-quality, weakly differentiated, utilitarian products, embedded in fairly low-context consumption experiences. (...) The second element is a postmodernist type of consumption: fragmented, continually re-assembled and re-interpreted. (...) The third element corresponds to people who are aware that consumption is now a key driver for culture and that their choices as consumers will influence their culture. (2005, 138)

From this perspective, Ritzer’s theory seems to correspond to a new kind of person (or consumer, because, for some analysts, there is no difference between these terms) – we can notice this aspect if we look for *The McDonaldization of Society* (1993): “This radically modern type of person behaves both opportunistically and critically, with a willingness to display diversity in consumption” (Usunier and Lee 138). Nevertheless, whether the theory overcomes sometimes the reality, whether it voluntarily anticipates or even causes it, the question remains open.

Of course, we should be, maybe, more temperate in doing such historical valuations and we should take into account, for example, an analysis of Frederic Jameson’s hypothesis, stating that the postmodernism is only a new phase in the capitalist development. Thus, “[p]ostmodernism is not the cultural dominant of a wholly new social order (...), but only the reflex and the concomitant of yet another systemic modification of capitalism itself. No wonder, then, that shreds of its older avatars – of realism, even, fully as much as of modernism – live on, to be rewrapped in the luxurious trappings of their putative successor.” (Jameson 1991, XI)

And, as we can see above, this „new” postmodern era or a presumable time of a new consumer will certainly contain (and not reject) the realism of modernity...

Finally, we could discover that, even apparently opposed to a mechanical lifestyle, based on a certain type of material (and financial) accumulation, typical for modernity,

18] Let us note the Ritzer’s warning too: “I should make it clear that I am not arguing that those who emphasize glocalization are postmodernists; in most cases they certainly are not! I am simply arguing that at least some of the views of those associated with the idea of glocalization are in tune with postmodern thinking and perhaps are affected by the mood and orientation emerging from the ‘postmodern turn.’” (2007, 222)

the postmodernism served, in fact, the capitalist force that it often denounced, exalting, in the same time, the creativity, the variety and the difference. The postmodern approaches refuse any direct, coherent and 'logic' (op)position to the social reality (this type of approach would have required the obsolete and defective search for new "foundations") and they present the reality itself as a symbolic-linguistic expression, denouncing its dominant *language* and translating its elements (institutions, regulations etc.) through a symbolic terminology. Consequently, this vision becomes a 'necessary evil,' an instrument (and not an opponent) of the political and economic authority, provoking an axiological confusion which more supports than undermines the *status quo*.

IV.

In the end, we would like to connect Ritzer's concept of glocalization with a social/sociological model exposed by the French sociologist Alain Touraine, hoping to better clarify the mentioned problems. We probably "judge" Ritzer's position in the above paradigm because we fail to detach ourselves from a classical social model, ignoring what Touraine seemed to ask: „why should we not wonder today if this 'social' vision is not beginning to disappear or even whether it has not already been replaced by another vision?" (Touraine 230). In other words, we cannot accept that we are witnessing today to a 'social end'; this should not surprise us too much, at least theoretically, because, since Nietzsche, we discovered all kinds of 'deaths' or 'ends': of God, Grand Narratives, history, art etc.

For Touraine, the 'classic' sociology was formed through the idea of society, "the keystone of the whole social representation of social life" (Touraine 230), a holistic idea, accompanied by more or less explicit communitarian valuations. There was, historically speaking, an alternative to this vision:

The only powerful enemy of the idea of society has been that of rationalization, that is to say, the triumph of reason. Today, like yesterday, many defend the idea that human beings act, both individually and collectively, in function of the rational pursuit of their interests and that social organization calls on increasing rationality which can be seen both in the use of new technologies and in the capacity to forecast consumer behavior. (Touraine 2005, 231)

As a consequence, the alternative can be identified with an "elementary form of utilitarianism." (Touraine 2005, 231) However, we are facing today the phenomenon of "destruction of what was the sphere of sociological thought." Two categories of factors contributed to this situation. Some of them have an economic and technological nature, so the contemporary world cannot control them anymore (from a social perspective); this might be rephrased like that "we have gone from a period dominated by state interventionism to a period in which markets, financial and commercial networks, etc. predominate". On the other hand, "we are seeing a mobilization of beliefs, religious powers and political-religious demands which exceed what can be managed by the

institutionalized mechanisms for change.” In conclusion, for Touraine, “the social sphere tends to disappear somewhere between the economic world and the cultural universe, interests and beliefs.” (233)

What would be the effect of this new reality on the sociological approach? Shortly, we must eliminate the idea that one side represents reason, markets and liberalism and the other an identity often associated with a nation, an ethnic group or a religion. It is wiser to find in each actor the contradictory presence of these two orientations, neither of which is capable of elaborating the social mediations, institutional or representative rules which would enable the dual aspect of his or her behavior to be integrated. (Touraine 2005, 233)

Thus, the contemporary societies should be called “post-social” places, “meaning they no longer have internal control over themselves.” (Touraine 2005, 234) We could talk in this context about a (global) phenomenon of *desocialization*, which means the irreversible weakening of any classic social forms (from family to state), and Touraine approves this idea. Naturally, the present forces (the market is their emblem) cannot be defined through the old sociological/social categories. Still, in this case, the effect (i.e. the fluid social reality) seems to be taken as the cause itself. Would we still confuse the *explanandum* with the *explanans*?¹⁹ Maybe we should represent *the effect* of desocialization through the introduction of *causes* of those social actors who take – economically, politically, etc. – advantage from this (very confused) situation.-

Moreover, even if we do not make that critical remark, we appreciate that “desocialization” is a ‘hard’ word – descriptively speaking, this time – unsuitable for the new realities/identities of the contemporary world. We should use instead a term like *re-socialization*, namely *fast* re-socialization, realized through the whole variety of highly dynamic mechanisms of the present “global” market, including consumption, mass-media, internet, etc. In tandem with desocialization, re-socialization would indicate more accurately (at least) some social trends of re-coagulation of today’s society. However, this will certainly not cancel the previous observation.

If we interpret Touraine’s words, the postmodernism has (at least) the merit of questioning “any unitarian principle of thought and action, of any correspondence between a unitarian principle of this type and a historical period or a geographical region.” According to him, the postmodern theorists „introduce a profound dehistoricisation into the analysis, reinforced by the new insistence placed by the humanities on language, communication and signs, whereas in the previous generations the accent was on the description and analysis of societies.” (2005, 243)

On the other hand, for Touraine we should be able to overcome this position. Thus, he reintroduce a new form of historical explanation by appealing to the notion of

19] Bauman reproaches the same thing to the postmodern ethicists (like Gilles Lipovetski), in the beginning of his *Postmodern Ethics* (Bauman 1993, 3). This is maybe a kind of logical failure for the postmodern explanations in general.

the hypermodernity, for instance, which allows the synthesis (on a new social level) of the previous elements. It is, we believe, a structural approach, analog to Ritzer's proposal, requiring the existence of a new individual typology and cultural community, creating, in Touraine's terms, a new kind of social and actually post-social resistance – "the birth of a post-social, *cultural* model of representation and action. (author's emphasis)" We would deal, in this case, with real "units of conscious and autonomous action" (as we call them) acting on the contemporary world scene, resulting from the process of globalization and being perfectly adapted to this one. As Touraine assessed, "it is in this new model of representation and action that the self-transforming action of society appears to be the strongest and above all with the least intermediaries. (...) The creative capacity, instead of grappling with outside objects, has turned inwards to become an end in itself and to better resist both economic and military forces and communitarian ideology." (Touraine 2005, 244)

Beyond the undeniable sociological 'inventiveness,' is this cultural model (theorized by Touraine or used by Ritzer) the expression of a reality or is it rather a *desire* of reading the social reality in a different manner? Is the contemporary individual so 'strong' indeed, able to represent the most powerful force of resistance against a social otherness that is always threatening him? Actually, this vision is a kind of paradoxical reaffirmation of the modern individualism and an expression of a generalized (social, political, etc.) autism encouraged by postmodernism, a background where the mass-media and a continuous consumption offer *the illusion* of an unprecedented economic and historical power (at least for the favorites).

Finally, referring to what might be called the social limitation of Ritzer's work and the glocalization conception, arisen from his 'programmatically' set principles, we ask ourselves if we can sincerely reiterate (at least from a theoretical position, explicitly assumed) Jason Beckfield's interrogation. In the review of the first edition of *The Globalization of Nothing*, he synthetically expressed his reservations and his hopes: "There is substantial evidence that does globalization mean more than this, and I hope that future editions of *The Globalization of Nothing* will do more to connect the realm of consumption to other pressing social problems." (Beckfield 2007, 172) Obviously, *The Globalization of Nothing 2* (or the *Globalization: The Essentials*) has not reached those expectations. We will ask instead, rhetorically, if the *social* dimension can be recovered as a decisive (and independent) element of the theoretical approach, in the framing of the global *consumer culture* analysis...

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Helen Frowe's "Practical Account of Self-Defence": A Critique

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Abstract. Helen Frowe has recently offered what she calls a "practical" account of self-defense. Her account is supposed to be practical by being subjectivist about permissibility and objectivist about liability. I shall argue here that Frowe first makes up a problem that does not exist and then fails to solve it. To wit, her claim that objectivist accounts of permissibility cannot be action-guiding is wrong; and her own account of permissibility actually retains an objectivist (in the relevant sense) element. In addition, her attempt to restrict subjectivism primarily to "urgent" situations like self-defense contradicts her own point of departure and is either incoherent or futile. Finally, the only actual whole-heartedly objectivist account she criticizes is an easy target; while those objectivist accounts one finds in certain Western European jurisdictions are immune to her criticisms. Those accounts are also clearly superior to hers in terms of action-guidingness.

Keywords: action-guidingness, Helen Frowe, justification, objectivism, self-defense, subjectivism.

I. THE ACTION-GUIDINGNESS OF OBJECTIVIST ACCOUNTS

Frowe states:

We must clarify precisely what we are after when we think about permissible defence. Do we want an account of praise, blame and excuses that tells us how *we* may treat Victim after he uses force? Or do we want an account of permissible killing that tells Victim how *he* may treat someone who (appears to) threaten his life, bearing in mind, of course, that appearances are all that Victim will have to go on? It seems to me that we ought to want the latter[...] Thinking about this different [*sic*] points us towards the fact that an account of permissible defence should be action-guiding, or *practical*. By practical, I mean that an account of permissible defence must be able to tell Victim what he is permitted to do in self-defence in advance of his actually doing it. Given this requirement, we cannot deny subjectivism the central role in determining what Victim is permitted to do in self-defence. Objectivist accounts will require Victim to act differently in cases that he cannot tell apart. If it matters which situation Victim is in, and, *ex hypothesi*, Victim cannot *tell* which situation he is in, he cannot know how he is permitted to act at any given time. Accounts that yield Victim different permissions in subjectively identical situations cannot be action-guiding in the way that I have described, and must be rejected. (252)¹

This leads her to favor an account of subjective permissibility, which, however, she connects with an account of objective liability (esp. 260-68). That is, while she thinks that a person can be *justified* in killing an innocent and only apparent "attacker" in "self-defense" on the grounds of her subjective epistemic situation, the innocent pseudo-attacker would still not be *liable* to attack because objectively he is no attacker or threat at all. In the following, I will focus on Frowe's view about subjective permissibility.

[1] All page numbers in brackets refer to Frowe 2010.

To begin with, if Frowe were right about the "impracticality" of objectivist accounts of what we should do, then recipes and user manuals as they are written today could not be action-guiding. After all, according to Frowe's logic, the instruction "Take three cups of flour ..." cannot help very much since there is always the possibility that some people have put something into one's kitchen that only *looks* like flour (and perhaps has even been designed to taste like flour), but really isn't flour and will ruin the cake. Of course, that is not very *likely*, but that is irrelevant: the situation Frowe describes as "Innocent Apparent Threat," and which is fundamental for her argument, is not very likely, either.² However, obviously recipes and user manuals as they are written today *are* action-guiding – despite (or rather because of) the fact that they take an objectivist approach.

Here I have come across the objection that the comparison with recipes and user manuals is unconvincing since it runs together prescription (what someone should do) with permission (what someone is permitted to do), and thus that a permission to act that involves removal of a strong moral and legal constraint against the use of harmful force against another person is not analogous to other cases where we act on the basis of beliefs that might be false. However, it is this objection that is unconvincing. The cases at issue *are* analogues *in the relevant sense*, and what the relevant sense is here is determined by what Frowe sees as the problem in terms of the (allegedly missing) action-guidingness of objectivist accounts: the problem is supposed to be that objectivist accounts require persons "to act differently in cases that [they] cannot tell apart." Yet, this problem, if it exists, is obviously not different for permissions formulated in an objectivist way than for prescriptions formulated in an objectivist way. The latter would also require people to act differently in cases that they cannot tell apart. If someone disagrees and claims that the lack of certainty about someone being an unjust aggressor is more problematic with regard to action-guidingness in the case of the permissive norm "You may harm unjust aggressors in proportionate and necessary defence" than in the case of the prescriptive norm (for example directed at police officers) "You must stop unjust aggressors with proportionate and necessary force," then we should like to hear an argument for that curious claim.

Of course, the *consequences* of the alleged problem of a lack of action-guidingness will (normally) be much more dire in the case of a permission of legal self-defence than in the case of a recipe for a chocolate cake, but *the problem itself* would remain the same. If someone shouts "Get down" at a deaf person, then the lack of action-guidingness of this warning will have less dramatic consequences when the warning pertains to an approaching ball than when it pertains to an approaching and well-targeted spear, but the *reason* the warning is not action-guiding is exactly the same in both cases. If, however, the person is not deaf, then the warning can be action-guiding in both cases, whether a ball is approaching or a spear. In the same vein, if objectivist prohibitions or permissions in form

2] Innocent Apparent Threat: "Victim happens across Actor who, unbeknown to Victim, is rehearsing for his gangster play. Not noticing Victim, Actor points the replica gun in Victim's direction whilst saying the line, 'I'm going to kill you.'" (248) Frowe thinks Victim is permitted to kill Actor.

of recipes or user manuals are action-guiding, there is no reason why they should not also be action-guiding in the form of permissions or proscriptions with regard to defensive force.

Moreover, not only objectivist recipes and user manuals work perfectly well when it comes to guiding action. Penal codes all over the world are almost entirely written in an objectivist way (and penal codes in most Western European countries are also quite objectivist about self-defense and necessity), despite the fact that they involve the removal of strong moral and legal constraints against imprisoning people (or using force against them). Likewise, the international laws of armed conflict are stated in an objectivist fashion although they remove strong legal constraints against the use of harmful force against another person. Still, the laws of armed conflict, and in particular domestic penal codes in Western countries, clearly are action-guiding. Thus, the claim that objectivist accounts of permissions involving strong moral and legal constraints against the use of harmful force against other persons are not action-guiding is empirically simply wrong.

This, of course, is hardly surprising. For if, as Frowe rightly says, appearances are all an agent can go on, the permission to shoot the unjust aggressor will trigger *exactly the same* behavior as the permission to shoot *what appears to be* the unjust aggressor. If appearances are all we can go on, then adding an “what appears to be” to one’s instructions or norms or laws is completely superfluous if it comes to guiding actions. Worse perhaps – it might actually confuse people. Thus, objectivist accounts of self-defense do just fine in terms of practicality.

II. NOT STAVING THE TIDE OF MORAL SUBJECTIVISM, AND THE PROBLEM OF URGENCY

But is there not, one might object, *another* morally relevant distinction between self-defense on the one hand and recipes and certain parts of the penal code on the other, so that Frowe’s argument would not imply the necessity of rewriting all objectivist permissions and prohibitions? After all, Frowe wants to avoid this implication. She wants to “stave the tide of moral subjectivism,” that is, resist *general* moral subjectivism “by showing that we should treat defence as a special case within morality.” And she explains:

What morality can require of us is surely constrained by what it is possible for us to do, and these constraints are especially in force in the circumstances surrounding self-defence. Defence is by its nature urgent: it does not allow for the deliberation or investigation that we ought to require in other parts of morality. (257)

However, Frowe’s original argument did not turn on “urgency” but on the fact that appearances are all we can go on. But this is *always* the case and not peculiar to self-defense at all. It is very important to not confuse this argument with the very *different* argument from urgency.

As already pointed out, if we allow (and I do not say we shouldn’t) completely unlikely examples like the “Apparent Innocent Threat” in one area, we cannot simply disallow

them in another. If only subjectivist accounts can be action-guiding (as allegedly shown by such unlikely examples), then it makes no sense to claim that in some parts of morality (or of law, for that matter) objectivism is still quite all right – after all, it is the very point of law and morality to be action-guiding. Or to put it differently: to proclaim on the one hand that accounts that yield an agent “different permissions in subjectively identical situations cannot be action-guiding” and therefore “must be rejected” (252), while on the other hand claiming that objectivism is nevertheless acceptable in most of law and morality, is incoherent. Either objectivist accounts of what we ought to do are action-guiding or they are not. If they are not, we *need* a tide of subjectivism. If they are, Frowe’s whole point of departure is illusory.

But still, isn’t there something to Frowe’s point about urgency; is it not true that in “self-defence, as opposed to many other aspects of morality, [...] demanding a high epistemic standard is simply incompatible with the necessity condition that governs defence” (258)? First of all, in her main example of the Innocent Apparent Threat, there is *ex hypothesi* no necessity – the threat is only apparent, after all. To be sure, one may argue that in (real or apparent) self-defense situations (involving real or apparent lethal threats and counter-measures) the price for getting it wrong is the life of the agent, and that this gives the situation its urgency so that we cannot require a high epistemic standard. However, this argument is clearly a double-edged sword, for the price for getting it wrong the other way around is the life of an only apparent threat, that is, of an innocent person – and the need to avoid this seems to *require* a high epistemic standard.

Conversely, in situations where not much is at stake, it might not be correct at all that we “ought to require” a high epistemic standard. This seems to be true, for example, for a case where Frowe apparently sides with Ferzan: she does not want “Alice’s reasonable belief that an umbrella is hers” to “justify her taking it even when it in fact belongs to Betty” (255). But why not? Presumably because this situation does allow for “deliberation or investigation.” Yet, this is no longer so clear if we do not look at this case as a one-off situation. After all, we are confronted *all the time* with such banal day-to-day situations: if we were to invest very much deliberation or investigation into them each and every time, our lives would come to a halt.

Thus, one could also make the following alternative argument: Given that in those banal day-to-day situations so little is at stake, not much deliberation or investigation is required; and given that they happen all the time, high epistemic standards cannot be allowed lest our lives come to a grinding halt. Conversely, given that self-defense situations are so rare, higher epistemic standards can be allowed; and given that so much is at stake, high epistemic standards are actually also required. Thus, Frowe’s claim that self-defense is “special” in the way she makes it out to be is certainly far from evident.

Let me remind the reader again, however, that her original point of departure actually relies on the example of the Apparent Innocent Threat and on the claim that accounts that yield an agent “different permissions in subjectively identical situations cannot be

action-guiding.” But this problem is entirely independent of the problem of urgency, and therefore the talk about urgency seems to be only a distraction anyway.

To claim, in reply, that urgency exacerbates uncertainty will not do. First, again, urgency does not *produce* uncertainty. With objectivist accounts uncertainty will *always* be there, and if uncertainty is the problem, the tide of subjectivism cannot be staved. Second, urgency does not always exacerbate uncertainty. A person facing a (literal) crossroads contemplating whether she should now visit her grandmother on the maternal side or her grandmother on the paternal side might be quite uncertain what to do. But once she hears the screams of the child drowning at that very moment in the shallow pond a few feet away, she will probably be quite certain what she should do now, namely help the child.

Admittedly, however, in many situations urgency will indeed exacerbate uncertainty. Yet, third, and most importantly, the issue is *action-guidingness*, and that means that uncertainty or urgency are only interesting here to the extent that they prevent objectivist norms, proscriptions, permissions, recipes, and so on, from guiding actions. But they do not. Consider again the recipe example. Suppose we are dealing with a recipe for baking chocolate cake. In one situation, the baker has two hours to prepare the dough and then put it into the oven, which is plenty of time; in the other situation he has only 15 minutes, which puts him under considerable stress (he might be in a baking competition). What will he think now, in the second situation, when looking at the recipe? Will he think: “Oh, if only the recipe had been written in a subjectivist fashion, stating something like ‘Take what you believe to be one pound of flour’ instead of saying what it actually says, namely ‘Take one pound of flour,’ then I would know what to do, but now I am completely at a loss”? Hardly. And what formulation would the drowning person urgently in need of help use? The objectivist formulation “Help” or the subjectivist formulation “Do what you think amounts to helping me”? Which of the two formulations is more likely to guide action in the desired way? The answers to these questions, I submit, are quite obvious.

Of course, in many situations urgency will increase the likelihood of making *mistakes* in following objectivistically formulated permissions or prescriptions. But giving undemanding prescriptions or permissions that are easy to follow, like “Do what you please” or “Do what you think is best,” is not the same as *guiding action*. Conversely, the fact that urgency might increase the likelihood that someone makes mistakes in trying to execute an objectivist prescription or to act according to an objectivist permission does not in any way mean that the action-guidingness of the prescriptions or permissions is undermined by urgency. To claim otherwise is a non-sequitur and ignores how language, including normative language, actually works.

III. OBJECTIVISM, UNCERTAINTY, URGENCY, AND ACTION-GUIDINGNESS

A further problem for Frowe’s approach is that her views about objectivist accounts of self-defense ignore not only empirical and linguistic reality but also legal reality. Thus, she states, after having described Jonathan Quong’s objectivist account of self-defense:

It strikes me as a mistake to build our accounts of permissible defence around knowledge that Victim cannot have. [A]t best Victim can have a reasonable belief about those facts. He can predict, perhaps accurately, the way in which events will unfold. But that one's prediction turns out to be true does not equate to the claim that one knew what was going to happen. The myth of 'full and accurate' knowledge that underpins existing accounts of permissible defence is just a myth, and can hardly be the best starting point for the correct account of permissible defence. (250)

I completely agree that it is a mistake to build our accounts of permissible defence around knowledge Victim *cannot* have. But Quong's account is Quong's account, and whatever its other merits or demerits, it strikes me as misleading to pick out a particularly unrealistic objectivist account of one philosopher in an argument directed against objectivist accounts *as such*. It would certainly have made more sense to have taken a look at the objectivist accounts found in some Western European jurisdictions, such as Denmark, Germany, Liechtenstein or Sweden. These *are* existing and objectivist accounts of permissible defence³ – but they are certainly not underpinned by a “myth of ‘full and accurate’ knowledge.”

Indeed, Frowe seems to succumb to a myth of her very own – namely the myth that we can have knowledge only if we are certain of what will happen. But knowledge does not require certainty (if it did, we would know *nothing*).⁴ The fact of the matter is that in *almost all cases* where we are under attack we do know that we are under attack – we have a justified true belief⁵ that we are under attack. And while Quong says that you can permissibly kill X if X will otherwise kill you,⁶ the law in the Western European jurisdictions I just referred to does *not* claim that you may kill a person only if he would otherwise kill you (and Frowe is right that this is often difficult to know; the attacker's shots might have missed you even if you had not fought back); rather, it refers to *averting threats* and *repelling attacks*. This makes a big difference because killing the shooting aggressor can be a necessary means to *repel his attack* although it was *not* a necessary means to *save one's life* from his attack. Moreover, that the means in question are “necessary” to repel the attack can be known much more easily than it can be known that the means were necessary to save one's life – in particular since case law in jurisdictions such as Sweden or Germany gives a quite lenient interpretation of what “necessary” means (many philosophers writing about self-defense interpret the necessity condition in a literal way, a habit that is out of touch with case law). This leniency is *part* of the objectivist account. In other words, it is quite possible to deal with the urgency Frowe emphasizes so much *without* weakening the epistemic

3] They are objectivist in quite a number of ways, the most relevant one for our discussion being that they certainly do *not* deem “self-defense” against innocent and merely apparent “attackers” *justified*. Thus, they require the objective existence of the “triggering conditions,” to use Ferzan's term (see Ferzan 2005). For an authoritative account of German self-defense law (which influenced the self-defense law of a number of other countries), see for example Erb 2003.

4] Cf. Steup 2001.

5] Perhaps + factor X in order to deal with so-called Gettier problems. For this as well see Steup, *ibid*.

6] Quong 2009, 515.

standards – one can also weaken, as reasonable objectivist accounts do, the factual and “ontological” conditions triggering the right to self-defense.

Of course, people can get it wrong. (As we will see, they can still get it wrong under Frowe’s account as well.) For example, they might indeed be faced with an Innocent Apparent Threat. However, what is the problem supposed to be? Under such circumstances, an objectivist account can still *excuse* “Victim,” as Frowe knows very well (251). But why should it also justify him? Because, says Frowe, this makes the account more “action-guiding.” But this is not true, as we already saw. For what do you do differently if instead of acting on the conviction “I am permitted to kill the unjust deadly aggressor” you act on the conviction “I am permitted to kill what appears to be the unjust deadly aggressor”? Nothing.

Thus, Frowe’s account has no advantage with regard to “action-guidingness.” The objectivist account does, however, for it guides the actions not just of “Victim” but of *third parties*. Thus, by telling them that “Victim” is *not* permitted to kill Innocent Apparent Threat (the real victim here), it also tells them that they, the third parties, are (certain exceptional circumstances aside) permitted or, in case of the police, even required, to interfere and to save the innocent person.⁷ Conversely, police are not supposed to interfere in the permissible action of citizens.

One might perhaps think that Frowe can achieve this or an equivalent result, too, thanks to her distinction, already mentioned above, between the permissibility of the attack on the Innocent Apparent Threat on the one hand and his liability on the other hand. He can be permissibly attacked by “Victim,” says Frowe, but he is not *liable* to this attack (260-8). And one might conclude that this somehow implies that third parties are permitted to interfere to save Innocent Apparent Threat.

However, Frowe’s account implies nothing of this sort. After all, she argues that it can even be permissible to kill “non-liable people,” for example in pursuit of “the greater good or something similar” (264). (This is also a position that has been taken by the US Model Penal Code, and certain US states seem to have implemented this position into their own statutory law.⁸) Therefore it is not sufficient for police (or other *neutral* third parties – special responsibilities of parents etc. can change the picture) to merely know that somebody, for example another police officer, is attacking a non-liable person. They need to know whether he is attacking the other person permissibly or not. And if he does so permissibly, they better not interfere. If, however, he attacks a non-liable person impermissibly then they had better interfere.

Finally, legal and moral norms do not just tell us what to do – they also reflect values and express what is important. Consider another situation that is marked by urgency: emergency measures in a hospital ER. If Frowe’s remarks on the benefits of subjectivism

7] In my view, incidentally, they are even allowed to *kill* “Victim” if this would be necessary to save Innocent Apparent Threat. See Steinhoff 2007, 93-4.

8] See Nourse 2001.

under conditions of urgency applied to self-defense, they would apply here too for the same reasons. However, it would be strange to tell medical students that they are *permitted* to inject what appears to be 100mg of drug XY into a patient in a situation that appears to be Z. Such loose talk only suggests that it doesn't really matter what the *actual* situation is and what substance they *actually* inject. However, nothing could matter more. Therefore one should tell them what is *objectively* best in a given situation; and excuse them if they make a reasonable mistake. Similarly, it matters enormously whether an "attacker" is real or only apparent. Frowe's "subjectivist" account glosses over this fact.

IV. THE CUMBERSOME RESIDUAL OBJECTIVISM OF FROWE'S ALLEGEDLY "SUBJECTIVIST" ACCOUNT OF PERMISSIBILITY

Ironically, in the end Frowe herself does not even offer a fully subjectivist account of permissible self-defense. Rather, her account goes like this:

[I]f defensive force is ever permissible, its use must be justified on the grounds of Victim's reasonable belief that (a) if he does not kill this person, then they will kill him, and (b) that he is innocent. (252)

It should be noted that, as Frowe surely knows, defensive force is permissible against a lot of things, not just potentially lethal force. And even lethal defensive force is permissible against more things than just potentially lethal attacks; and it is permissible also against attacks on *others*.

More important in our present context, however, is that the reference to *reasonable* belief introduces an objectivist element into Frowe's avowedly "subjectivist" account of permissibility. Of course, there are different meanings of the terms "subjective" and "objective" in this context. In one sense, "objective" refers to the situation outside of the agent, while "subjective" refers to her mental state. In this sense of "subjective," a belief, whether reasonable or not, is subjective because it is something in her mind, so to speak. In a second sense, however, "objective" refers to facts that exist whether the actor believes them to exist or not, while "subjective" does not refer to such facts. In this sense of "subjective," the reference to a reasonable belief is *not* a reference to something subjective, for an actor's belief is not reasonable merely because the agent *thinks* it is. I use here the terms "subjective" and "objective" in the second sense, for the problem Frowe identifies, namely that "[o]bjectivist accounts will require Victim to act differently in cases that he cannot tell apart" (252), cannot be solved by using accounts that are merely subjectivist in the first sense; instead, they would have to be subjectivist in the second sense. Yet, the account Frowe finally offers is *not* subjectivist in the second sense since her account continues to refer to something the agent can be *wrong* about.

Retaining the objectivist element of reasonableness is even more ironic given that Frowe repeatedly chastises Kimberly Kessler Ferzan for not having

done anything but move the bump in the carpet. The criticism she levels at objectivism is that it unfairly condemns Victim's risk taking, because "[t]he objectivist must acknowledge that the defender acts under uncertainty, yet simultaneously condemn him if he guesses wrong." Ferzan changes which guess can be the wrong guess. Victim's justification no longer rides upon the guess about whether defence is necessary, but upon the guess about whether the target is culpable. But this guess is also a guess, and should Victim guess wrongly, he "is not justified" on Ferzan's account. Her Victim also acts under uncertainty, and is condemned by Ferzan if he guesses wrong. (257)⁹

One of the reasons why Victim cannot escape the state of uncertainty, according to Frowe, is that even "a person shouting threats or abuse might be drugged or hypnotised" (258). That is true, but clearly Victim might also be drugged or hypnotized – yet, a drugged or hypnotized person will not necessarily *know* that he is drugged or hypnotized. Moreover, and more generally, an unreasonable person or a person acting on unreasonable beliefs or out of unreasonable thought processes might not know when he is unreasonable. Indeed, how can even a *reasonable* person *tell* that he satisfies Frowe's conditions that he has a *reasonable* belief that (a) if he does not kill this person, then they will kill him, and (b) that he is innocent? In an appendix Frowe discusses "reasonable belief" and claims that

the sort of reasonable belief that Victim needs on [her] account is a belief in his moral innocence. And it is much harder to imagine how one might be reasonably mistaken about this sort of belief. (270)

Leaving aside the question of how hard this really is, it is noteworthy that Frowe is not quite honest here: on her account Victim needs still a *further* reasonable belief, namely precisely the belief that "if he does not kill this person, then they will kill him." Yet, it is not hard at all to imagine how one might be reasonably mistaken about *this* sort of belief. Thus, Frowe hasn't done anything but move the bump in the carpet.

I conclude that Frowe's account of self-defense is not more practical than a wholeheartedly objectivist account – quite the opposite. It is also less plausible.

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⁹] Frowe quotes here Ferzan 2005, 716. Frowe repeats the reproach about only moving the bump in the carpet on page 268. It should be noted that Ferzan's talk of "condemnation" is misleading. The objectivist account is quite able to *excuse* would-be defenders if they make a reasonable mistake.

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Water and Justice: Towards an Ethics of Water Governance

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Abstract. Water is recognized to pose some very urgent questions in the near future. A significant number of people are deprived of clean drinking water and sanitation services, with an accordingly high percentage of people dying from water borne diseases. At the same time, an increasing percentage of the global population lives in areas that are at risk of flooding, partly exacerbated by climate change. Although it is increasingly recognized that adequate governance of water requires that issues of “equity” or “social justice” are taken into account, political philosophers or applied ethicists have so far not or only barely been involved in the debate on water governance. In this paper, it is argued that political philosophers or applied ethicists should become more involved in the debate on water governance. Their role can be twofold: (1) clarifying the debate; and (2) help analyzing some urgent distributive questions related to water governance. The paper is concluded with an outline for an ethics of water governance.

Key words: risk, scarcity, human rights, distributive justice, responsibility.

I. INTRODUCTION

Water is essential for human life. However, due to its scarcity, the management of water is a topic of great concern. Inadequate management may lead to famines, food insecurity, ecological destruction, and resource-based conflicts (Gleick 1998), and eventually to human suffering and the loss of millions of human lives. Whereas some official organizations speak of a water crisis (World Bank 2006; World Water Forum 2009), others argue that there is sufficient water but that the water sector need to be reformed to avoid a water crisis in the future (FAO/Kijne 2003). Whether or not one uses the term “water crisis,” the numbers are not encouraging. In 2010, one out of nine people (0.8 billion people) lacked access to safe drinking water, and more than one out of three (2.5 billion people) lacked adequate sanitation (WHO 2012). The World Health Organizations has calculated that 2 million people die every year from water borne diseases, most notably diarrhea.¹ There are no official numbers on resource-based conflicts, but fact is that there are over 260 river basins shared by two or more countries, which may provide a source of (regional) instability or even conflict when strong institutions and agreements are missing. In the light of climate change, the impact of the global water crisis is expected to increase in the coming decades.

Traditionally, water management has been seen as a primarily technical issue, belonging to the field of engineers and hydrologists. However, it is increasingly recognized that an adequate management of water requires that the institutional constraints and juridical context be taken into account. Both in academia and policy circles, the attention

[1] http://www.who.int/water_sanitation_health/facts_figures/en/index.html (last accessed: August 24, 2013).

has therefore shifted from water management towards water governance, requiring the combined and coordinated effort of both technical (engineers, hydrologists) and non-technical experts (lawyers, economists, political and social scientists). Although different definitions of water governance exist, most of them refer to something like “the range of political, social, economic and administrative systems that are in place to develop and manage water resources, and the delivery of water services, at different levels of society” (Rogers and Hall 2003: p. 18), mostly also including a reference to conflicting or diverse interests and cooperative action (cf. Bakker 2003: p. 360; CGG 1995; WWDR 2006: p. 44). With the shift from water management to water governance, the principle of equitable utilization has emerged in the literature as an important principle for allocation.²

Notwithstanding recurrent pleas to include issues of “equity” (Gleick 1998; Rheingans, Dreibelbis, and Freeman 2006; Cai 2008; Gupta and Lebel 2010) and “social justice” (Paavola 2007; Abbott and Vojinovic 2010; Huby 2001; Khepar et al. 2000), or to develop an “ethic of care” in the governance of water (Bakker 2007), political philosophers or applied ethicists have so far not or only barely been involved in the discussion (see also Walsh 2012 for a similar observation). Water or water governance does not seem to be high on their agenda, if discussed at all. This lack of involvement has had consequences for the content of the current literature on water ethics.

In a recent – and thorough – review of the water ethics literature, Martin Kowarsch identifies a lack of comprehensive water ethics. There are only few papers directly about water ethics (cf. Falkenmark and Folke 2002; Anand 2007a; Feldman 1991), but these papers deal with particular aspects of the water crisis only or they mainly aim at defining the ethical issues raised by the water problem, according to Kowarsch. Recent edited volumes and monographs include (Brown and Smith 2010; Anand 2007b; Llamas, Martinez-Cortina, and Mukherji 2009; Sandford and Phare 2011). Though interesting, these books suffer from the same limitations as the academic papers. That is, they do not contain a comprehensive account of water ethics, nor do they provide a clear, consistent, coherent position (Kowarsch 2011). The problem is that most literature on “water ethics” is actually written by scholars that are not trained as philosophers, which may sometimes come at the expense of ethical reflection (Kowarsch 2011: fn. 22).

In addition to very casuistic papers on specific (local or regional) water issues, Kowarsch distinguishes a third branch of water ethics literature, viz. more general ethical studies about certain aspects related to the water crisis, but which are not applied to water explicitly (for example, the literature on environmental ethics, climate ethics, development ethics). The water crisis is sometimes discussed under the heading of one of these topics (see, for example, (Adger et al. 2006; Broome 2008) on water in relation to climate change; (Pogge 2001a) on the development of a Global Resource Dividend to

²] Cf. Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992 (“Helsinki Watercourses Convention”) [art. 2]; United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (“UN Watercourses Convention 1997”) [art 5]; ILA Berlin Rules on Water Resources 2004 [art 12].

allow the global poor an inalienable stake in their natural resources; or (Armstrong 2006; Brown 2004) for a non-anthropocentric approach to water derived from environmental ethics). These topics are indeed related to the water crisis: climate change may exacerbate water scarcity; developing countries suffer most from the water crisis, which prompts questions related to global justice; and the various uses of water prompt questions related to its value. As such, these fields may provide a good starting point for developing an account of water ethics. However, as I will argue in this paper, the water crisis is also distinct in several ways and a comprehensive account of water ethics can therefore not straightforwardly be derived from the current debate in these more elaborated fields in applied philosophy. A separate ethics of water governance is needed and this requires the involvement of political philosophers and applied ethicists.

The outline of this paper is as follows. In the section following this introduction, I discuss five characteristics of water, which should be part of a comprehensive ethics of water governance. After having read this section, the reader will hopefully understand why I prefer to talk about water governance rather than water as a topic for reflection. In the subsequent section, I briefly discuss the related fields of climate ethics, environmental ethics, and development ethics. In the current philosophical literature, water or water governance is usually discussed under one of these headings. I show how neither of these fields captures the full characteristics of water governance. A warning is due though. By arguing for the development of an “ethics of water governance,” the reader may mistakenly assume that I deny the relevance of these other topics for water governance or try to create yet another discipline. The opposite is true: I think that water governance includes environmental elements, elements of climate change, and of global development and social justice. What is needed is an integrated account of water governance, linking insights from policy sciences, new institutional economics (which has identified “social justice” as one of the key design principles for the design of governance institutions), (international) law, applied science, technology and engineering, *and* applied philosophy. Ultimately, by including these different perspectives, we can develop conceptually clear and useful moral principles of water governance that are firmly rooted in practice.

II. WATER AND ITS CHARACTERISTICS

I ended the previous section with the plea for an integrated account of water governance. This raises the immediate question: what are the necessary elements of an integrated account of water governance? In other words, what are the characteristic aspects of water that should be captured by such an integrated account? In this section, I discuss five points that are particularly relevant for water (governance). In the current literature on water governance, the discussion of these points is often ambiguous, blurring the debate on what is needed to address the water crisis. In the subsequent section, we can then assess to what extent the related fields in applied ethics (environmental ethics, climate ethics, and development ethics) do or do not capture these aspects.

(i) Water as a risk, a scarce resource, and a service

Water is both a source of risks and a scarce resource. Most of the literature on water governance focuses on the scarcity of water, operationalized in the notion of access to water. Yet the risk of flooding is, in some areas at least, equally or even more urgent. Especially in places where the local hydrological circumstances are affected by large infrastructural projects (such as hydro-power plants), both the risk of flooding and potential water scarcity may be present and solutions to the one problem may exacerbate the other problem.

This brings us to a second point. One of the complicating issues of water governance is that access to water includes the need for an adequate infrastructure for delivery and sanitation services. Discussing access to water solely in terms of available quantities misses (a) the fact that people have to travel unequal distances to collect their water, (b) the importance of water *quality*, and (c) the issue of infrastructure maintenance. Concerning the first point, in most developing countries, an extensive range of people is deprived of adequate access, most notably women, people with disabilities, children, refugees, prisoners, and nomadic communities (Langford 2005).³

Concerning water quality, current discussions on water governance seem too one-sidedly focused on water supply, overlooking sanitation and wastewater management. The latter are equally important for human health and they should therefore be taken into account when talking about water governance. This holds even more in situations where the use of water leads to pollution of traditional water sources, for example due to agricultural run-off or industrial waste. As for the issue of maintenance of water infrastructure, insufficient funding may aggravate water shortage problems. With water services increasingly being privatized, it is important that the different actors' responsibilities are identified and that some regulatory system is put in place to guarantee compliance (Lundqvist 2000; Meinzen-Dick 2007). The issue of maintenance is also important for large water infrastructures intended as flood risk measures (Lejon, Malm Renöfält, and Nilsson 2009).

(ii) Type of good and property rights (the nature of water)

The second point relevant for water governance concerns the type of good that water actually is (its attributes), and the related question of property rights. Although often taken together, these are two separate questions. The debate concerning the

3] Apart from the fact that some people do not have access of water at all, inadequate access has some indirect effects as well. In most developing countries, women are responsible for collecting water. Oftentimes, the women spend considerable time collecting the water without any saying in the decision making on water issues. Time spent on the collection of water cannot be spent on work, education, or other activities, which may preserve or even increase gender inequalities. In 1992, at the UN International Conference on Water and the Environment (ICWE), the role of women was explicitly recognized in the principle stating that "[w]omen play a central part in the provision, management and safeguarding of water" (third of the four "Dublin Principles").

typology of goods mainly takes place in economics and public administration, with an ongoing discussion on the role of government on allocating resources. In these fields, it is common to classify goods along two dimensions. The first is the “subtraction criterion,” proposed by Samuelson (1954) for distinguishing private consumption goods from public consumption goods. In case of private consumption goods, each individual’s consumption of the good leads to subtraction of the amount of that good available for others. Common or collective goods, to the contrary can be enjoyed “in common in the sense that each individual’s consumption of such a good leads to no subtraction from any other individual’s consumption of that good” (p. 387). The second criterion is the exclusion criterion, proposed by Richard Musgrave (1959), indicating whether or not someone can be excluded from benefiting once the good is produced. Combining the two criteria yields a two-by-two matrix with four types of goods, as shown in Table 1: Typology of goods (Source: Ostrom and Ostrom 1977). (Ostrom and Ostrom 1977).

Table 1: Typology of goods (Source: Ostrom and Ostrom 1977).

	One person’s consumption subtracts from total available to others	One person’s consumption does not subtract from total available to others
Exclusion is feasible	Private goods	Toll goods
Exclusion is not feasible	Common-pool resources	Public goods

Although classification along the subtraction criterion seems more or less given, property regimes and both technical and physical boundaries can affect the capacity to exclude potential beneficiaries (Cornes and Sandler 1994; Ostrom, Gardner, and Walker 1994). Hence, it is possible – to some extent at least – to shift between the rows in Table 1: Typology of goods (Source: Ostrom and Ostrom 1977).. Unlike public goods, common-pool resources face problems of overuse, because they are both subtractable and without exclusion mechanisms to limit individual people’s use, which may ultimately lead to a tragedy of the commons (Hardin 1968). In order to avoid or solve this problem, it has been proposed to implement exclusion mechanisms such that the common-pool resources turn into private goods. This “common-versus-commodity” controversy is now also topic of debate in water governance. Given the scarcity of water, water should be assigned a price in order to avoid overuse, some people argue (cf. the fourth of the Dublin principles stating that “Water is a public good and has a social and economic value in all its competing uses”).

Empirical data suggest that some exclusion mechanism is indeed required for the sustainable management of scarce resources (cf. Agrawal and Goyal 2001; Twyman 2001). However, exclusion has its price, be it not (only) in monetary terms. Treating water primarily as an economic good in an attempt to accommodate its value may result in affordability problems and paradoxically deprive people of access to water, even

though the exclusion mechanism was implemented to reduce water scarcity. Alternative exclusion mechanisms are therefore required to allocate the scarce water resources and this is where the property rights come into play. Especially in the field of economics, work is undertaken to show how differentiation between various forms of property regimes can affect the incentives that people face to manage scarce resources (cf. Aggarwal and Dupont 1999; Ostrom, Gardner, and Walker 1994; Ostrom and Ostrom 1977; Schlager and Ostrom 1992; Ostrom 2003).

Although space does not allow going into detail about the particularities of the different property rights, the key message here is that the *type of good* – though related – is conceptually distinct from the *property rights* that people can exercise on these goods. However, the two are related in the sense that the different property regimes affect the possibilities of effective management and the question to what extent the good is prone to collective action problems. The fact that water management requires allocating property rights for both the water resource and the infrastructure further complicate this already complex topic.

(iii) *The human right to water*

The third point related to water governance concerns its relation to fundamental human rights. Over the past decade, and partly as a response to the economic approach to water governance, the discussion on access to water is increasingly framed in terms of human rights. Although often presented as an antidote to a pure economic approach to water governance, the human right approach to water does not exclude an economic or commodity approach to water. Whereas water as a human right refers to *people's* legal endowments, the common-versus-commodity controversy is an issue of property regime, which is applicable to *resources* (Bakker 2007).

In 2010, the human right to water was officially recognized by both the UN's General Assembly⁴ and the Human Rights Council.⁵ In the resolution by the Human Rights Council, it was explicitly stated that "States have the primary responsibility to ensure the full realization of all human rights, and that the delegation of the delivery of safe drinking water and/or sanitation services to a third party does not exempt the State from its human rights obligations." Although the discussion on the human right to water has its origin in the late 20th century, the first step to political recognition of this human right came in 2002, when an expert body of the UN Economic and Social Council (ECOSOC) assessed the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In its now famous General Comment 15 (GC 15), the committee asserted that "[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses."⁶ The GC 15 prompted

4] General Assembly Resolution 64/292 of July 28, 2010.

5] Human Rights Council Resolution 15/9 of September 30, 2010.

6] Committee on Economic, Social and Cultural Rights (2002). Right to Water, General Comment

discussion on the nature of this right; the formulation was not clear on whether it was to be interpreted as a subordinate right necessary to achieve a primary human right (e.g., the right to food, health, or life) or as an independent human right (Bluemel 2004). The committee was explicit, though, in the obligations it imposed on States.

Irrespective of the (in)dependency of the human right to water, the ECOSOC Committee identified four key elements to provide normative content to this particular right.⁷ First, water should be available in sufficient quantity for personal and domestic use. Second, water required for each personal or domestic use should be safe. Third, water and water facilities and services have to be accessible to everyone without discrimination. This element is further specified in terms of (i) physical accessibility (distance from each household, educational institution and workplace); (ii) economic accessibility (affordability); and (iii) non-discrimination (accessibility to all). Fourth, information concerning water issues should be accessible.

The idea of water as a human right has also been criticized because it lacks (1) enforcement mechanisms and arrangements concerning water use (Grafton 2000); and (2) specificity and detail. Equity and sustainability, for example, would seem to require specific mid-level principles concerning “minimum water rights” and “maximum water use” (Hoekstra and Chapagain 2008). Concerning the first point, whatever one’s view on water as a human right, it *is* a legal endowment that will probably gain importance in the coming years now the right is explicitly recognized by the UN’s General Assembly and Human Right Council. The second point (the lack of specificity and detail) should be taken into account when further substantiating the human right to water on the basis of philosophical theories of justice and human rights.

(iv) Transboundary flow and the global dimension of water

A fourth characteristic of water (governance) is its global dimension. Only rarely is water flow confined within state boundaries. In most situations, rivers flow through several countries, making water essentially a global issue. Upstream activities in one country may affect water availability in downstream countries, which may pose a source of potential conflict. In international law, the principles of equitable and reasonable utilization and of diligent prevention of significant transboundary harm have been introduced to facilitate peaceful cooperation with respect to scarce water resources (Dellapenna 2003). These global arrangements seem indispensable for coordinating water withdrawals with transboundary impact.

However, at the institutional level, the subsidiarity principle requires addressing water issues at the lowest community level possible. As a result, the water sector has seen a significant change, with water users and other stakeholders gradually playing a much

No. 15, 20 January 2003, E/C.12/2002/11 (Geneva: CESCR).

7] ECOSOC (2002), paragraph 12.

more active and constructive role; a trend which is widely supported by academics and field workers alike. There is a potential tension between the need for global arrangements and a meaningful mandate at the lower community levels. The question how to strike the balance between local and global arrangements and how to distribute the responsibilities (between states and between the different management levels) is one of the pressing challenges for water governance at this time (Hoekstra and Chapagain 2008).

(v) *The values of water*

A last aspect which is typical for water is the multitude of meanings attached to water. Water is recognized to be essential for life, a basic human need, both in terms of drinking water and in terms of sanitation. Additionally, water is equally important for agriculture and, in some countries, for transportation as well. In its most simple form, the debate on water scarcity is about prioritizing different kinds of water use. In this discussion, the value of water is primarily instrumental, a basic human need indeed, yet a relatively tangible one. This holds for the environmental value of water as well. With utilitarianism as the dominant principle in modern resource policy, attempts have been made to quantify the environmental values of water in order to include them in economic analysis (cf. Bateman et al. 2006; Anderson and Leal 2001). However, other values are still excluded from the debate about priorities for water use and water management. In many cultures and religions, water has a symbolic meaning or value as well (Gerten and Bergmann 2011; Chamberlain 2008; Sandford and Phare 2011). In many religions, the symbolic meaning of water is associated with its ability to remove sin and purify (Pradhan and Meinzen-Dick 2010). In the Hindu tradition, for example, ritual bathing in sacred rivers is considered to purify the soul and the body (cf. the famous *Kumbh Mela* in the river Ganges, where up to 60 million pilgrimages gather). Additionally, in both Hindu, Muslim, and Christian tradition, water is associated with social relations of cooperation and conflict. Providing thirsty people with water is an important religious imperative that may trump a person's right to quench one's own thirst first.

Both from a liberal perspective but also for reasons of efficacy, it seems necessary to take these religious and cultural values into account as well. Liberalism requires that people should have the freedom – within limits – to practice their own religion, including the associated rituals. From a more pragmatic point, it has been argued that interaction between the different values and water claims may provide leverage to empower marginalized groups, such as women or poor households, especially if religious and community norms contribute to better stewardship of water resources (Farouqui, Biswas, and Bino 2001; Sadeque 2000; Gerten 2010). Adequate water governance principles could therefore not be formulated on the basis of instrumental considerations alone.

III. DISCUSSION OF WATER GOVERNANCE IN THREE FIELDS OF APPLIED ETHICS

In the previous section, I discussed five points that should be taken into account when developing a comprehensive account of water ethics. Let me briefly summarize these points:

Water governance is both about risks and scarce resources, and it requires an adequate infrastructure for delivery, sanitation, and flood protection;

Different property regimes may affect the possibilities of effective management of scarce resources;

Access to water has recently be recognized as a human right. This right is currently still rather ill-defined and should be further substantiated;

The transboundary flow of water requires global agreements on water governance issues, while taking into account the subsidiarity principle;

Water represents a multitude of meanings or values, which cannot be reduced to one overarching value.

From this overview, one could derive some urgent distributive questions: distribution of risks, distribution of access rights, allocation of resources, and distribution of responsibilities.⁸

When we look at the literature on water governance, we see two dominant sets of criteria for adequate governance. Not surprisingly, the empirical literature has a focus on efficiency and efficacy (instrumental values), whereas most legal literature is focused on equity and reasonableness (normative values). However, these latter terms are only weakly substantiated, whereas it is recognized that they play a vital role in building cooperative relations in water networks (Meinzen-Dick 2007). Given the urgency of the water crisis, it is remarkable how little attention political philosophers or applied ethicists have paid to these distributive questions or have tried to substantiate criteria for equal and reasonable utilization.

My claim is that political philosopher and applied ethicists should become more involved in the discussion on water governance, in particular for (1) clarifying the debate, and (2) analyzing the distributive questions that are characteristic for water. As explained in the introduction, these questions pertaining to water ethics are, if discussed at all, usually treated under the heading of environmental ethics, climate ethics, or more general theories of global justice or development ethics (mostly in relation to or derived from the discussion on food and famine). In the remainder of this paper, I argue that water governance is currently not adequately discussed in any of these other fields. In order to do so, I explore how the five characteristics of water are currently discussed in the three fields.

8] Cf. (Gupta and Lebel 2010), who derive a similar set of questions from a more general analysis of earth system governance.

My discussion is supported by a rough inventory of the debates in the respective domains (see the Appendix for brief description of this inventory). The aim of this inventory was not to obtain a full review of the current literature, but rather a representative sample of articles on the basis of which I could derive the current focus of the ongoing debates in the respective fields.

This inventory led to the following findings. In the literature on environmental ethics and climate ethics, the terms risk and resource frequently occur. However, only rarely are these topics discussed in relation to a service. Neither are the risks of abundance and the scarcity of resources discussed in one and the same paper. Resource scarcity is discussed in the development ethics literature, most notably in relation to food scarcity. There is also a more general field of food ethics, in which genetically modified (GM) crops and organisms are often presented as a possible solution to food scarcity. The potential risks of these GM crops and organisms are widely discussed in this branch of applied ethics literature, be it only scarcely in relation to food scarcity in developing countries (see (Millar and Tomkins 2007) for an exception). The discussions in food ethics often focus on risk perception by the public (Guehlstorf 2008; Myhr and Traavik 2003) and epistemic controversies on how the risks are assessed (Devos et al. 2008; Korthals and Komduur 2010) rather than the alleged moral acceptability of particular risks and the distributive aspects of risks. The “service-aspect” is to some extent discussed in development ethics, be it in different phrasings and focusing on different questions.⁹

To recap, neither of the three fields (environmental ethics, climate ethics, and development ethics) has a debate that reflects the intricate relation between resource scarcity, abundance (or risks), and the importance of infrastructure or service. The debate on GM crops and organisms comes closest, but this debate seems too much focused on risk communication and epistemic controversies to be fully comparable to the questions that need to be addressed in relation to water.

Property rights are discussed in all three fields. In environmental ethics and climate ethics, property rights are discussed in relation to the management of scarce resources and prevention of the tragedy of the commons (cf. Sagoff 2010; Rose 2009; Sheard 2007). However, property rights are certainly not at the heart of the debate (also witnessing the relatively low percentage of papers addressing this issue). This is different for development ethics, where much has been written on intellectual property rights and pharmaceuticals and ways to provide poor people with access to the most necessary drugs. The field of water governance will probably gain most from this debate in development ethics.

9] Although the combined search terms “risk”, “resource,” and “service” did not lead to any hits in the literature search on development ethics, these topics are to some extent discussed, be it with a different terminology. The topic in relation to which the “service-aspect” is most widely discussed, is the so-called ICT4D movement, a general term that stands for the application of Information and Communication Technologies (ICTs) in development aid (Cf. Unwin 2009). However, the infrastructure needed for water delivery is also significantly different from the infrastructure needed for ICT infrastructure, which therefore prompts different questions.

Not surprisingly, the discussion to what extent access to water is a human right is to a large extent similar to the discussion on the human right to food (cf. Anderson 2008; McMichael and Schneider 2011; Pogge 2001b). However, there are also differences. We could both argue that the right to food is more complex to substantiate (adequate food requires that the food must satisfy certain dietary needs, taking into account the individual's age, living conditions, health, occupation, sex, etc.), but also that the right to water is more complex (for example because drinking water may compete with agricultural use, required to grow crops). Hence, substantiating the human right to water seems to involve more questions related to prioritization of *different* uses. In climate ethics, we also see a rights-based discussion, viz. the right to safety against harm (cf. Bell 2011; Turnheim and Tezcan 2010) and the rights of future generations (cf. Davidson 2008; Caney 2009; McKinnon 2009). With its aversion for anthropocentrism, human rights are not central to environmental ethics.

Similar to water, both environmental degradation, climate change, and human development have an explicitly global dimension. This aspect is central to any of the three fields. The fact that this global dimension poses a potential source of conflict is also a recurring theme in the respective fields. What is lacking in the debate in environmental and climate ethics, though, is the need to balance local and global governance arrangements. Climate change and environmental degradation are often seen as problems requiring a global approach. One uncontested lesson from the past decades is the need to address water issues at the lowest community level possible (subsidiarity principle). This means that water governance, more than solutions to climate change and environmental degradation, requires a mixture of local and global solutions, a principle which is also widely accepted in development ethics (Goulet 2006: p. 202). Hence, also with respect to this element of water governance, the overlap with development ethics is more profound than with environmental or climate ethics.

Lastly, in terms of the diverse values and uses attached to water, it seems that water is most comparable to the environment. Although values are widely discussed in relation to development ethics as well, these discussions seem to focus more on the diversity of value systems between different countries and the need to adapt development aid to these local cultural and religious value systems (which is of course a very wise and important lesson to bear in mind but it is different from the point I tried to make when I discussed the different values and meanings attached to water). Focusing on values in the debate in the environmental ethics, we see that both the environment (or "nature") and water are recognized to have more than strictly utility value (cf. Thompson 2000; Bhagwat 2009). However, where the debate in environmental ethics is primarily about the value of biodiversity and wilderness, water governance also has to deal with the question how to prioritize competing utility values (e.g., clean drinking water versus agricultural use). This suggests that this question of prioritization in relation to water governance is presently not fully captured by the ongoing debate in environmental ethics.

IV. CONCLUDING REMARKS

In this paper, I have argued that water has until now not received the attention it deserves in the field of moral or applied philosophy. The line of argumentation was as follows. First, I described five points that should be part of an integrated account of water ethics (or ethics of water governance). Second, I mentioned three fields which could potentially cover water governance as well and I showed that neither of the three fields addresses all five points identified. How are we to proceed? As this paper starts “from a concern with addressing social ills and contributing to justice-enhancing practice” (Robeyns 2008: p. 343), I feel committed to the so-called tradition of non-ideal theory within political theory and philosophy. Addressing real-world problems also requires empirical insight in these processes. I therefore argue for a multidisciplinary approach and to join forces with disciplines like law, hydrology, policy science, and new institutional economics (see (Gupta and Lebel 2010) for a similar plea).

The current debate on water ethics is obscured by unclear conceptions, and consequently false oppositions (for example between commodification and human rights). Here I see a clear role for philosophers. If the ethical aspects of water governance are to be adequately addressed, profound knowledge of water, including partly technical (hydrological) knowledge, knowledge of the prevailing legal constraints and insights from policy sciences and institutional economics, should be applied with philosophical rigor. The fact that this will be a multidisciplinary enterprise does mean that it will be superficial. Addressing the water crisis requires that debate is conducted at various levels of generality and specificity and so must a proper account of water ethics contain various levels of abstraction.¹⁰ At the most abstract level, basic moral concepts, such as justice, autonomy, and democracy need to be developed, which requires the involvement of political philosophers and applied ethicists and scholars of other disciplines with a strong conceptual method (like legal and political theorists). At the mid-level, principles of equity and efficacy need to be taken into account. This cannot be done without also paying attention to local socio-cultural *and* hydrological circumstances. Additionally, the legal context (international treaties, national water law, etc.) determines the room for maneuver and should therefore be taken into account as well. At the most concrete level, specific institutions and strategies need to be designed. At this level, the involvement of policy theorists and scholars from institutional economics may play a crucial role. Only in concert with these other disciplines can we develop an account of water ethics that can help solving the water crisis.

10] Different names for these levels exist. Some prefer to talk about (1) basic ethical principles, (2) development goals and models, and (3) specific institutions, projects and strategies (Crocker 1998), others call these levels (1) moral background theories, (2) moral principles, and (3) considered judgments (Rawls 1999[1971]).

APPENDIX

The aim of this inventory was not to obtain a full review of the current literature, but rather a representative sample of articles on the basis of which I could derive the current topics of discussion in the respective fields.

For the field of environmental ethics, I checked the journals *Environmental Ethics*, *Journal of Environmental and Agricultural Ethics*, and *Environmental Values*. For the field of climate ethics, I did a search in the database Philosopher’s Index on the search term [climate ethics OR climate change]. For the field of development ethics, I did a search in the database Philosopher’s Index on the search string [develop* AND ethic* AND (countr* OR world)]. For all three searches, I limited the time spam to articles between 2000-2011. This resulted in 1183 hits on environmental ethics, 252 hits on climate ethics, and 919 hits on development ethics. In these respective samples, I searched on the five topics with the following search terms: (1) [(risk OR resource) AND service]; (2) [property AND right*]; (3) [human right*]; (4) [global OR transboundary]; and (5) [(cultural OR spiritual) AND value]. This led to the results as shown in Table 2: Number of hits on five search topics in three respective academic fields..

Table 2: Number of hits on five search topics in three respective academic fields.

	Number of articles in sample	Search topic 1: risk/resource/service	Search topic 2: property regime	Search topic 3: human rights	Search topic 4: global/transboundary dimension	Search topic 5: multitude of values
Environmental ethics	1183	-	9	8	53	10
Climate ethics	252	2*	6	8	81	2
Development ethics	919	-	14	50	158	11

*These two articles were not relevant since they referred to the term service as in profession or occupation.

On the first search topic, there were no relevant hits in any of the three fields. I also did a search on the simultaneous occurrence of the terms [risk AND resource]. Only in the field of climate ethics did this lead to two relevant articles.

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Substantive Representation in a Post-Democratic Environment

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Abstract. Political and economic internationalization and globalization, the rise of sub-national self-governing regions and spheres, governance replacing government and many related processes change the role and context of the nation-state, the protector of mass democracy. The concept of (*substantive*) representation, representation as 'acting for,' can help develop answers to the threat that this 'loss of polity' poses to equal and universal access to decision-making, i.e., the ideals behind mass democracy. Examining the reasons why the two most prominent conceptions of representation – substantive and descriptive – would be valuable, I argue that we can only make an uncontroversial case for substantive representation. I show that currently popular cures for 'loss of polity' cannot be construed as new versions of or alternatives for mass democracy. Finally, I discuss two ideal-types of more reasonable interpretations of the ideals behind mass democracy.

Key words: political theory, representation, democracy.

The role and context of the nation-state, the protector of mass democracy, is changing - in Europe more so than elsewhere, perhaps, but the phenomenon is becoming increasingly common. Processes of political and economic internationalization and globalization, as well as the creation of sub-national self-governing regions and spheres bind the hands and limit the reach of the state. The replacement of classical hierarchical government by egalitarian governance and the replacement of democratic by efficient modes of control gnaw at the domain and grip of mass democracy. The rise of subpolitics, institutionalized deliberative democracy, stakeholder participation and so on also signal adaptations of the formal political structure to the evolution of economic and political reality, away from sovereign nation-states towards a more fragmented society with unequal access to the *loci* of power. National electorates may still control national parliaments, but both now control the terms of social cooperation far less directly, far less exclusively, and therefore far less effectively.

Against this background of 'loss of polity,' the disappearance of the single, unequivocal and all-embracing political community, I argue that one of the defining elements of liberal democratic societies, representation, can help us develop viable answers to its most important drawbacks, chief among which is the threat to mass democracy, a cornerstone of the modern polity.

Mass democracy understood as equal and universal access to decision-making is a means to an end, the end being characterized by the idea that "no person is insignificant" (Bush 2001). Mass democracy demands representation of all, but representation is a complex concept. Focusing on the two most prominent interpretations of representation, substantive representation (roughly, the representation of interests and views) and

descriptive representation (the representation of sociological traits like gender, colour or craft), I discuss the reasons why either one would be valuable. I conclude that we can only make an uncontroversial case for substantive representation, only in the context of mass democracy, and only in the sense that mass democracy is one possible environment in which substantive representation may be feasible. I then argue that currently popular cures for ‘loss of polity’ cannot, except with considerable imagination, be construed as new versions or vessels of mass democracy. Finally, I discuss two ideal-types of more feasible interpretations of the ideals *behind* mass democracy: adaptations of deliberative democracy, and a basically inegalitarian construction I call consultative elitism. Although ideal-types, neither one turns out to be really ideal.

I. THE RISE AND FALL OF MASS DEMOCRACY

“Ein Gespenst geht um in Europa.“ At the dawn of the 20th Century, few foresaw the rise of mass democracy. Even fewer would have believed that a political decision-making procedure based on a widely dispersed right to elect representatives and be elected as a representative could survive until the end of that century. Previous experiments in democracy had, after all, not inspired great confidence in the system.

If we look for factors explaining this improbable success story, we shall probably find that one idea had very little to do with it: a sudden belief in the universal and equally distributed goodness and rationality of all humankind. Other explanations are more likely: the extension of the right to vote in response to threats of social disorder, even revolution, from the side of those previously excluded; extension of suffrage even as a counterrevolutionary act – for instance where conservatives supported the women’s right to vote, expecting women to be more pliable than hot-headed socialist working class men. More important, two systemic factors are involved: constraints and limits to democracy. Democratic decision-making systems operate under a long series of formal and informal constraints inhibiting the direct translation of non-reflexive immediate preferences into policy: representation rather than direct democracy, selection of ‘fit’ representatives by parties, general elections every three to ten years rather than referenda for every single issue, constitutional rights, qualified majority constraints on constitutional change, legal constraints on anti-constitutional parties, and so on. In addition, there are limits to mass democracy – areas where democracy was never introduced, from the choice of the ruling coalition to suffrage for the youngest, for (most) non-nationals, for neighbours across the state border whose lives are affected by what happens within a country’s borders.

How important each of these factors (or any other) is in explaining the emergence and survival of democracy is first of all an empirical question, and secondly - in the present context - an irrelevant one. What matters here is that democracy cannot be explained by a sudden Kingdom Come faith in universal wisdom, and that there is reason to believe that ‘mass democracy’ is more wrapping than gift, more rhetoric than substance. Mass democracy appears to be less massive and less democratic than the term suggests. There

are, admittedly, many definitions and interpretations of the term democracy, yet all share two idea(l)s: those of *universal* and of *equal* access to power, thus distinguishing democracy from feudalism, tyranny, monarchy, elite and mob rule and the like. If then we compare the theory of mass democracy to the practice, there is good reason to be less surprised by the rise of democracy. The ideal of equal access to power is realized only once every few years during the hours of a general election, the ideal of universal access to power has never been fully realized - and as announced above, both ideals are increasingly victims of 'loss of polity.'

'Loss of polity' is shorthand - some might say code - for the cumulative effect of a series of not necessarily related processes reducing the actual power of the nation-state (with power understood simply, perhaps simplistically, as the ability to make another do what she would otherwise not do). It is the effect, loss of polity, that is interesting in the present context, rather than the causes, but both are worth clarifying.

As to causes: three types of transformation processes are reducing the state's role. First, there are international processes 'from above': cultural and economic globalization and migration, but also (partly in response) the increasing number, task and authority of international organizations from treaty organizations to judicial institutions, none of which existed roughly a century ago, when international cooperation was almost by definition limited to promises of non-interference and military assistance against interference. While international cooperation increases the power of the collective, self-binding reduces that of the individual members.

Second, political institutions and authorities emerge alongside, parallel to, nation-states. This is one of the more popular interpretations of the evolution of the European Union, whose ever increasing numbers of directives, permissions and subsidies enter the member-states less and less at the national level through national administrative institutions, but do so more and more directly at the sub-levels of regions, provinces and municipalities. Over the past decade, cooperative ventures of states on both sides of the Pacific, in South-America, and in Africa, have budded, with members expressing the ambition of developing them in ways similar to the European Union, thereby hoping to promote trade and welfare and to increase the price of internal conflict. Finally, the continued existence of traditional structures of cooperation and authority in places where the nation-state never really took hold (Africa, the Arabic world, parts of Asia) can also be construed as a parallel drains on the power such states could at least theoretically have.

Note that the states left relatively unaffected by parallel and international power drains are the (would-be) superpowers or hegemons that can afford limited cooperation. The third and final process affects even some of these states: the internal redistribution of power. An obvious example is the creation of sub-national (border-crossing or internal) self-governing regions, usually with an ethnic, religious or cultural character - a process that may sometimes prevent secession and keep a state together, at least in name. More recent is the evolution of cooperative structures of relatively consensual, egalitarian governance, structures in which "private parties" like NGOs, enterprises participate as

more or less equal partners alongside the representatives of the state - sometimes even regional or local governments participate as equal partners of central authorities. Other examples of the internal redistribution of power include the replacement of democratic by efficient modes of control (Jun and Blühdorn 2006), the rise of subpolitics (*pace* Beck 1997), institutionalized deliberative democracy or stakeholder participation. All of these bind the hands and limit the reach of the state and signal an adaptation of *formal* political structures to the evolution of economic and political reality, away from sovereign nation-states towards a more fragmented society with unequal access to the *loci* of power (Wissenburg 2008). And there's the rub.

These three processes not only affect the power of the state as a set of administrative and executive central institutions, they also change the character of the state as a polity, i.e., as uniting all members of society and all their cooperative ventures inside one arena where either social intercourse is directly coordinated or from which authority is delegated to distinct social spheres. It would be an exaggeration to say that any one state (short of a totalitarian regime) ever approached this kind of perfection - but it is clear that the processes sketched move societies further away from it: they result in fragmenting responsibility for policies and states of affairs over numerous, often anonymous and opaque institutions, in hiding or deleting points of access to control and decision making, and in the splitting or even fragmenting of citizens' loyalties and identities (which might help to explain the rise of reactionary populist movements in Europe and the former USSR). It is these results that I refer to as 'loss of polity.'

Since the state is not only the ultimate protector and definer of mass democracy, but also its object, loss of polity undermines the import and relevance of mass democracy. While electorates still control parliaments, parliaments' control over the terms of social cooperation is diminished: it is far less direct, far less exclusive, and therefore far less effective.

There is reason to deplore this development. Democracy as equal access to power is, for one, the rule rather than the exception in a non-normative, logical sense: to count as rational, it is the deviation from equality, for instance the deviation from equal access to power, that requires a defence, i.e., proof that relevant differences between individuals exist. Democracy is, in addition, closely connected to the classic, even ancient Stoic, Christian and liberal half-normative, half-positive ideal of fundamental human equality and our equally distributed potential for reason. Finally, democracy is linked to basic moral values like responsibility and accountability. Contrary to overoptimistic rational choice analyses, we can hope but not expect that no one ever suffer from social cooperation, and hope but not expect mutual advantage in every individual exchange and project - but we can believe that no one deserves not to have a say in what touches his or her life, that no one deserves to be unheard or to be sacrificed or injured without proper explanation.

II. THE COMPLEX CONCEPT OF REPRESENTATION

We owe to Hannah Pitkin a standardized language of (political) representation. In her seminal *The concept of representation* (1967), she first of all pointed to the surprisingly close connections between political representation and other forms of representation (in law, literature, art, thought, etc.). To avoid confusion, I shall from now on use the term representation to refer to political representation only, unless explicitly indicated otherwise.

From the point of view of political scientists and theorists, Pitkin's most important contribution is her description of three conceptions of the concept of representation: descriptive representation as 'standing for,' symbolic representation as 'standing for,' and representation as 'acting for' – which I shall call "active" or "substantive representation."¹ The basic distinction is that between standing for and acting for: in the first sense, the representative physically 'reflects' the represented; in the second sense, representation is reflection of ideas instead. The further distinction between symbolic and descriptive representation is based on what the representative (flag, king or MP) stands for: the represented itself, or information about the represented (Pitkin 1967, 99) – the 'meaning' of that which is represented.

One might say that Pitkin also introduces a fourth conception of representation when she argues for an understanding of active representation as acting in the best interest of the represented ('representation of interests,' substantive representation), rather than on the direct preferences of the represented (representation of preferences) – although Pitkin herself thinks of this distinction as one between a valid and a non-valid interpretation of the concept.

In addition to her taxonomical contribution, Pitkin offers at least two other important ideas of a more normative nature. First, there is the argument just referred to in favour of substantive representation and against that of preferences. Pitkin sees this distinction as more fruitful and realistic than the classic free/constrained agent scale (or mandate/independency controversy; cf. Pitkin 1967, 144). Here the constrained agent is a mere delegate, the arm of the represented, his actions owned by the represented, his behaviour governed by the represented, in sum, a mere extension of the represented, whereas the free agent, at the other extreme of the scale, is as fully autonomous as possible – think of the guardian of a severely mentally handicapped person. In the end, she argues, the question is not which type of agent is the 'best' representative (i.e., what is the best interpretation of representation) but rather what it is that should be represented. The free/constrained agent dichotomy tends to obscure that there are, in fact, two issues at stake, not one: there is the question of the meaning of the concept of representation, and there is fleshing out a *particular* conception. Pitkin does the latter by arguing that representation, as making

[1] I use the terms conception and concept, in line with Rawls (1973) and Gray (1980), in a relatively stringent way: conceptions are logically consistent interpretations of an overarching concept.

present what is somehow not present (cf. Pitkin 1967, 92 ff.), is only taken seriously when the representative understands and respects the represented as a human being endowed with moral capacities, reason and so forth. Only then can the representative be truly responsive, truly in discourse with the represented and his or her claims.

Secondly, Pitkin offers a forceful argument in favour of active representation as the politically most important (normatively best) conception of the concept. While admitting the relative merits of descriptive and symbolic representation, she maintains that it is active representation that catches the deeper meaning of representation. Ultimately, disputes about the non-representativeness of a legislature relate not to the legislature as a symbol, nor to its composition in terms of sex, age, colour or creed – but to ‘non-response,’ to the voice of the represented remaining unheard: to their interests and ideas being excluded. Note one possible implication of this perfectionist line of thought: since it is substantive exclusion that matters, not formal exclusion, the actual degree to which (for instance) a legislature reflects the composition of the electorate is in itself irrelevant to any question of good representation. Even a plea to limit the class of potential representatives (e.g. to adults, adult males, wise old men, anyone with a university degree, the nobility) can be consistent with good (substantive) representation.

Over the course of the years, both Pitkin’s categorization and her normative theses have been the subject of deserved critique. Her three or four conceptions of representation, for one, are less clearly distinct than they appear to be. For instance, the conceptions of descriptive and symbolic representation only seem to make sense against the background of the third, active representation. Consider the political symbol of symbols: a flag hanging in a legislature. Contrary to Pitkin, one could argue that a flag either does or does not carry information: it either sends out a call for unity, a message of shared culture and history – or it just hangs there. In the first case, it reflects the composition of a country, it perhaps even represents substantive ideas (shared values and interests); in the second case, it just hangs there as a piece of colourful cloth hiding an ugly stain on the wall but not making something present that is not somehow present. Or, from another direction, one could argue that Pitkin introduced descriptive representation as a kind of straw man, merely to be aimed at and shot down in the end as being a confused mix of two more really distinct ideas – symbolic and active representation.

As for Pitkin’s normative theses, since the sheer amount of literature on political representation makes an adequate overview of the critique impossible, I shall limit myself to three (presently) interesting lines of comment. I shall not, for instance, discuss objections from the side of empirical political science, to the effect that Pitkin’s categories are virtually impossible to operationalize and therefore of little help to empirical research into the quality of democracy. Perhaps this says more about the theoretical relevancy of empirical political science than the other way around.

First, there is George Kateb’s (1981) discussion of direct versus representative democracy, where he argues that to construe these two as opposites, as if only direct democracy is truly representative and representative democracy basically exclusive,

is to misconstrue representation. The real opposites are representation and exclusion. In a representative democracy, the represented are not excluded – but, to use Pitkin's phrase once more, made present where they are not present – in fact, cannot be present: modern democracies are often too large to let the whole electorate gather under a tree. Direct democracy is just one mode and method of representation among others – the real question is which of these methods can best reflect what truly matters about people: their mere presence, or their ideas.

Secondly, and predictably, a large number of theorists have pointed out that Pitkin too easily, too optimistically, discards descriptive representation. Protest by groups that feel excluded (i.e., non-represented), like pensioners who see their pension decrease year after year, or disabled who feel persecuted by social security agencies, may signal 'bad' representation yet cannot be seen as arguments against the possibility of adequate active representation. But there is more.

For one, as Anne Phillips (1995) for instance argued, the constant and systematic exclusion of one group from among the representatives (people of colour, persons of the other gender) may justify protest even when the represented would be meticulously precise and sincere in representing, even championing, the interests of the excluded. Exclusion from representative functions – whether formal or informal – signals exclusion from full membership of the community: it is like, or perhaps is, being classified among the infants, the insane, the feeble-minded, cattle and other 'things' that apparently cannot speak for themselves.

A further reason to distrust Pitkin's dismissal of descriptive representation is that the chosen few may not even be capable of representing the excluded, simply because they do not live their lives, do not share their experiences, do not know their perspective on life: as the song goes, 'it's different for girls.' Although this argument is dangerous (it's different for everyone, whatever 'it' may be), it is not without merit.

Finally, the most obvious comment of all: Pitkin's model has too few dimensions. She recognizes the mandate-independency dilemma, although translated into terms of the best interpretation of substantive representation, but she silently passes over e.g. the problems involved in representing diverging opinions of different individuals on separate subjects, or those in representing one's own voters versus the interests of a nation, platform, ideology or party. Moreover, Pitkin's interpretation of representation remains coloured by its background: mass democracy. She offers no analysis as to who is, or should be, or can be, represented – a question that may make all the difference in the world for the substance of substantive representation.

Returning to the question of alternatives to mass democracy that still represent all and deny no one's significance, we face a problem, viz., the absence of one unique clear-cut criterion of good representation, even if we throw out symbolic representation – by many considered to be a red herring in the school of conceptions of representation. We have a choice to make between (further) conceptual reductionism and pluralism. The first comes down to claiming that there can either be only one correct interpretation (conception)

of the concept of representation (monism) or that where two conceptions contradict one another, at least one or even both must be false. Note that this does not necessarily imply realism or neoplatonic idealism; the claim is epistemological not ontological. The alternative is pluralism: two or more conceptions may contradict one another without any of them necessarily being wrong. On this view, the overarching concept is called 'complex.' Representation is such a complex concept – its different conceptions can all be valid interpretations of the concept.

Let me illustrate the complexity of representation with an example derived from Temkin's analysis of the complex concept of equality (Temkin 1993). Imagine God and the devil discussing Job's faith. Rather than testing one Job, God suggests three Jobs for a fair test: Job1, Job2 and Job3. Job1 is miserable all through his eight decades of life: physically handicapped, covered with swears and dirt, dressed in rags, and generally unattractive. Job2 is doubly miserable during the first half of his life (more handicapped, more dirty, poor, unattractive etc.) but has a life of bliss for the remaining forty years. Job3 is the reverse image of Job2: blissful until he hits forty, then twice as miserable as Job1. Job1 is a socialist, as is Job2 until he is cured; Job3 is irreversibly liberal. Job2 and Job3 are politicians, Job1 an ordinary voter. Jobland being a three-person state with a one-person parliament, Job1's vote is crucial for the Sanhedrin elections. For a long time, Job1 votes for Job2 – that is, until liberalism takes over Job2's body and he no longer voices Job1's concerns. At that moment, Job1 changes his vote and elects Job3 to the Sanhedrin: Job3 may be a liberal, but is at least someone with whom Job1 can identify – and hope that, being new to being cursed, Job3 will at least understand Job1's plight which Job2 is now likely to forget (being by definition in a state of eternal bliss) – occasionally, Job3 may even voice some of Job1's anxieties.

Job1 chooses substantive representation for the first forty years, descriptive or perhaps symbolic representation for the rest. The two (as personified by Job2 and Job3) are mutually exclusive. Job1's reasoning is reasonable – we can understand it, we can identify with it, we can accept it. In other words: we can accept both types of representation as valid and consistent with our intuitions, yet the two are incompatible and lead to different results. Representation, then, even when modelled in a simple example as this, is a complex concept.

III. MASS DEMOCRACY AND REPRESENTATION

Can we defend descriptive and substantive representation as instruments of equal and universal access to power for all? As we just saw, each separate conception of representation requires a separate defence. For each such defence we have three options.² Descriptive and substantive representation may be:

2] I assume that a fourth possibility, hypothetical value given a context, is included in the third.

- (1) *Intrinsically* valuable, i.e., ethically desirable 'as such,' meaning that standing for or acting for are 'absolute' goods;
- (2) *Categorically* valuable, i.e., desirable against the background of mass democracy, but not, for instance, in a theocracy; and
- (3) *Hypothetically* valuable: desirable within representative democracy, but only under circumstances, only where it is 'fitting' (cf. Cupit 1996). I shall take representative democracy in a very broad sense as majority decision-making by elected representatives, with or without all possible extra's like qualified majorities, deliberation, feedback loops, etc.

Is representation, first of all, *intrinsically* good, good as such, an absolute good? The fact that it takes three non-synonymous expressions to pose this question already indicates how complicated the question is, particularly because of the complexity of and confusion surrounding 'intrinsic value.' It may indicate value regardless of valuers, value regardless of being actively valued, value independent of its results or effects, and a long series of other things (cf. Wissenburg 1998, Van Hees 2000). An important aspect all these conceptions share, however, is that they describe a kind of final value. If *x* is intrinsically valuable in whatever sense, then there is no room for further argument - what makes *x* intrinsically valuable is by definition not something that is in turn valuable for a deeper reason.³ By implication, *x*'s intrinsic value must be beyond dispute - if *x* were a person, *x* would have to be 'of impeccable character.' Representation, whether substantive or descriptive, is not an *x* of that kind: representation has a bad reputation.

Representation, if we may believe Plato (cf. Lock 1990), is falsification, cheating, insincerity; it is second-hand presence, pretending to be what one is not; it is acting - in the way an actor in a play does, or a child denying guilt after committing a transgression. One may disagree with Plato and the general tendency in philosophy to distrust all non-philosophers' attempts at reflecting reality. Yet his objection is a forceful one in that it reminds us of several ways in which representation may be undesirable, and by implication of several criteria that forms of representation have to meet before they can be qualified as desirable or even tolerable. Representation hides the truth: the representative's own identity, for one - how can it be 'intrinsically' good to hide one thing and create the illusion of another? Representation plays the truth: it is not whatever is represented but interprets it - what is wrong with the represented that it needs representation; hence, what aims - or whose aims - does representation serve?

Perhaps we do not even need Plato to cast doubt on the impeccable moral character of representation. Ordinary language itself already indicates that we distrust representation: we can use the adjectives 'good' and 'bad' for it, qualifications that indicate that representation is a means to an end, not an end in itself. Imagine for instance

3] Although there may be other reasons why *x* is valuable as well as reasons why that-which-makes-*x*-intrinsically valuable is *also* valuable for other reasons - but the *also* is a contingent factor.

a national-socialist bureaucrat who argues that the Jews hate themselves and that it is the wish of the Jews to be gassed. There is no account or interpretation of 'acting for' that would qualify this as 'good representation,' nor any according to which the mere fact that the Jews are represented here can be interpreted as good. Similar arguments can be made, *mutatis mutandis*, for descriptive representation. However good the performance, the act of representation, may be, it remains a representation. It will always have to be defended and measured against the real thing for which it stands (if that is possible at all, given Plato's critique). In our case, this means that we cannot defend representation but in the context of the desire to warrant universal and equal access to power.

Moving on to the possible *categorical* value of representation, then, we should note that neither substantive nor descriptive representation is necessarily linked to mass democracy. Neither form of representation is a necessary or sufficient condition for equal and universal access to power, nor does either one necessarily serve equal and universal access to power, nor, finally, is equal and universal access to power always desirable. Hence, neither one can be a categorically desirable instrument of mass democracy.

Consider first substantive representation. There are ultimately two categories of reasons why substantive representation of all (and all equally) might be desirable: because it may contribute to good government, however defined, and because it may contribute to stable government. Let us start with the former argument.

As the critics of democracy have maintained since Plato, democracy (or universal and equal substantive representation) and good government are not synonymous. A benevolent despot's policies can be as good, a tyrant's policies as bad as the democratic reflection of all substantive interests - and in Mill's book, democracy might even do worse. If substantive representation and equal and universal access are connected by ties of necessity, then neither one is necessarily desirable. But they are not: equal and universal access to the tyrant or the benevolent despot, who may or may not desire to be a substantive representative of the people, is as imaginable as, say, representative democracy, and is just as much a necessary or sufficient condition of good government. Finally, substantive representation is not sufficient to guarantee equal and universal access. It can, after all, be interpreted as any reflection of ideas, from a necessarily selective representation of opinions and (best) interests that matter (i.e., that meet a certain standard of substantive quality) to 'unreflective' mirroring of actual preferences at any given moment in time. Not every one of these interpretations guarantees either equal access, or universal access, or both.

Representation as acting for might, secondly, contribute to stable government. It is not impossible that a defence in terms of stability will in the end boil down to a particular interpretation of good government: the survival of the body politic can be desirable because it contributes to further, substantive goals like the effectiveness of government, a stable basis of expectation, peace and security. What matters here, however, is the Machiavellian or *realpolitische* interpretation of stability, an equilibrium of powers, as a goal in itself. From this positive as opposed to normative perspective, substantive representation turns out

to have equally contingent ties to mass democracy. It can, for one, be used to represent weighted substantive interests, weighted relative to the power of political forces.

Mass democracy with its ideal of equal and universal access attaches the same weight to each individual, reflecting the popular notion in contract and bargaining theories of “roughly equal power” (cf. Rawls 1999a) in a potential war of all against all. The assumption here is that individuals can form coalitions to counter domination and that every possible coalition can be blocked by another coalition, hence that no coalition or individual can ever dominate in politics for more than a limited period of time. It is against this background that the rise of mass democracy can be explained as Realpolitik: once one coalition discovered the politically non-represented masses, managed to organize part of it and proved its power, the dynamic of mass organization ultimately made inclusion of every individual both expedient and inevitable.

However, the contractarian assumption of roughly equal power is incorrect, particularly in a world where borders are porous: it is for instance, and regardless of legal, political and economic obstacles, always easier for employers to move to another country than it is for the employed. Where the contractarian assumption is invalid, where some coalitions are less easy to block than others, the stability of the polity is better served by a system of substantive representation that reflects these differences in power - financial, technological, spiritual and other. It follows that substantive representation is not sufficient to guarantee, nor necessarily serves, equal and universal access to power.

In conclusion then, substantive representation through mass democracy is not categorically desirable for three reasons: (1) substantive representation does not necessarily imply equal and universal access to power; (2) since equal and universal access through substantive representation does not necessarily contribute to good or stable government, it is not necessarily desirable; and (3) we can imagine alternatives to mass democracy that guarantee substantive representation.

Similar lines of argument can be brought in against descriptive representation as categorically valuable. Descriptive representation can but need not guarantee equal access to power: if properly interpreted, it should include representation of differences in power. It - obviously - does not necessarily or sufficiently contribute to good government, unless good government is defined in purely formal terms as descriptive representation and nothing more - and that would amount to a *petitio principii*. Finally, for the same reasons that substantive representation fails to do so, descriptive representation need not contribute, and is insufficient, to guarantee stability. To see this, it is enough to imagine a divided society: Catholics in a Protestant nation, Muslims in a Christian or secularized nation, serious academics on a bible belt school board, women in an 1840s parliament, and so on: their presence may be an affront to the rest.

Thus, if substantive and descriptive representation by means of mass democracy are valuable things, they can only be so *hypothetically*, i.e. under the right circumstances or side-constraints, say, when no majority wants anything immoral, and when the will of the majority poses no threat to the survival of the polity. In the remainder of this section, I

shall try to give a more positive swing to this observation by formulating more definite criteria for the desirability of both forms of representation.

Starting with descriptive representation, I have already discussed a number of reasons why Pitkin's conclusion that descriptive representation can easily be replaced by substantive representation is flawed. 'Non-descriptive' representatives may be physically unable to identify with the represented, it was argued, and their existence may create the impression that the non-represented are denied full membership of the polity. Moreover, as argued earlier in this section, if the two were interchangeable, the descriptive representative would by definition be a good substantive representative, and vice versa - which is also a good reason, by the way, for rejecting the counterhypothesis that substantive can be replaced by descriptive representation.

Yet in defence of Pitkin it must be said that these objections are less strong than they appear to be. The argument from experience is ultimately an argument in favour of a more adequate (substantive) representation of ideas and interests, while the argument from membership is actually an argument for the representation of a group's legitimate claim to full membership, i.e. another idea suitable for substantive representation. The two arguments are neither arguments directly in favour of 'standing for,' nor directly against 'acting for' - rather, they are arguments based on belief in the principal desirability of 'acting for,' yet pointing to practical obstacles for the adequate or effective representation of ideas.

These two are only examples, of course, of normative arguments pointing to the practical restrictions of the theoretically desirable conception of representation as acting for. By the same token, we could introduce a long series of descriptively non- or underrepresented categories in, say, parliaments - non-academics, non-whites, Muslims, homosexuals, etc. The point however is that 'representativeness' as such, the degree to which representative bodies reflect the sociological composition of a polity, is utterly irrelevant from a theoretical perspective. The degree of reflection becomes interesting only when it becomes a political problem - when discomfort about perceived or experienced non-representation surfaces.

As arguments in favour of 'standing for,' all these objections derive their force from the practical shortcomings of substantive representation. They support the desirability of descriptive representation as contingent rather than hypothetical, i.e., as contingent on the failure of substantive representation - while making the prior assumption that substantive representation is valuable.

The only thing that can save descriptive representation is a normative argument straightforwardly defending it as hypothetically valuable. However, such an argument is conceptually impossible. Normative arguments necessarily refer to the value of things. Values are ideas; they are the substance to which the term 'substantive' in 'substantive representation' refers. If there is a positive argument for descriptive representation that does not require the prior failure of substantive representation, it will have to be *realist* argument, arguing for a kind of representation that properly reflects the composition of a

polity in terms *other* than their values as such – i.e., in terms of the popularity of specific values: the number of people supporting them, the intensity with which they do so, the significance they have for the smooth running of society. What this boils down to is a defence of descriptive representation as a means of reflecting of the perceived distribution of *power* in society. While that need not imply a cynical view of social cooperation – accounting for the actual distribution of power in the legitimization of policies may well be a morally valid concern – it cannot support descriptive representation in the context of mass democracy, since we expect that to imply *equal* and universal access to decision-making, not as the perpetuation and affirmation of the *insignificance* of some citizens relative to others.

This then leaves us with only one possibility for an affirmation of mass democracy: because of the hypothetical desirability of substantive representation. So when is substantive representation through mass democracy desirable? We may, again, expect little help from political realism: there, the representation of ideas is only interesting if it contributes to stability. Whatever arguments in favour of substantive representation that goal may support will be arguments in favour of the representation of *relevant* voices and ideas only, i.e. the powerful. For the realist, the powerless are of no consequence; hence universal and equal access to political decision-making is redundant.

What remains are normative arguments. Textbook defences of (mass) democracy mention hosts of functions of democracy: adequate information on the preferences and desires of citizens and on alternative policies, the creation of legitimacy and legitimate authority, opportunities for accountability, and so on. However, functions and arguments are not the same. The functions just mentioned can be equally well performed by systems other than mass democracy - for again, the powerless are of no consequence and universal and equal access is redundant. What we need is a reason why the powerless, the ‘insignificant,’ would matter, in particular, why their opinions and ideas matter.

The significance criterion (“no person is insignificant”) reflects two philosophical traditions dating back to Stoicism: (inclusive) egalitarianism and (exclusive) anthropocentrism. Egalitarianism is the belief that, in relevant respects, humans are equal (which calls for a defence of equality) or, formulated more carefully, that since it is rational to treat like cases alike, it is artificial inequality that needs to be justified. Anthropocentrism argues that not everything is equal: there is a relevant and fundamental difference between human beings on the one hand, rocks, trees and animals on the other, a difference that makes humankind superior and turns the non-human world into means to human ends. Ever since John Stuart Mill, we refer to the combination of egalitarianism and anthropocentrism as ‘the plan of life,’ shorthand for self-consciousness, rationality, sense of future, sense of good and bad, sense of pleasure and pain, and other reasons for moral concern, the mix of which would be typical of humans only.

In an enlightening discussion of the plan of life doctrine, Robert Nozick (1974) showed the combination of the two theories to be inconclusive in one important respect: if we humans believe ourselves to be morally superior to the rest of nature due to one

or more characteristic – characteristics that, since we share them, make us humans fundamentally equal – then an alien creature could claim moral superiority to us in virtue of a further, as yet unidentified, characteristic. And in fact, this – or an attitude very much like this – is precisely what kept philosophers from defending mass democracy until, in the course of the 20th Century, reality had long overtaken them. On one version of the anti-democratic argument, humans may be equal in their capacity for having a plan of life (if we may reinterpret e.g. classic liberalism in such Millian terms), yet they differ in their abilities to realize this potential. Hence, women, ruled as they are by dark passions, children, not yet grown to full rationality, and dependents, whose careers and lives are not of their own making, differ sufficiently from independent grown men to justify the political exclusion of the former to the advantage of the latter. The second, older version of anti-democracy argues that by nature, humans differ among themselves: some are born to rule, others to grow potatoes – in other words, a special natural capacity for politics exists that either cannot be changed from potential into actual in some people, or that simply lacks in them.⁴

The philosophical debate on (representation in) democracy, then, is inconclusive: although modern science has shown most obstacles to universal political participation to be repairable, and although political reality in Western liberal democracies has invalidated the old discussion, support for universal and equal access to political decision-making remains contingent on the absence of convincing arguments for ‘relevant’ intra-human inequality – and for admissible alternatives to equal and universal access. The least we can argue for, on the basis of the plan of life doctrine, is equality of respect, i.e., ‘one man, one voice’: a universal and equal right to speak for one’s interests, and an obligation on the side of the rulers to listen to that voice. To argue for equality in more respects – guaranteed influence, a real vote, an equal number of votes, etc – requires proof that one qualifies; to argue for more universality requires proof of equality. The plan of life doctrine, in brief, offers no specific support for mass democracy – it does not exclude it as (onto)logically impossible or ethically objectionable, but neither does it offer clear principles for the circumstances under which it would be possible or desirable. The doctrine is and remains, until proof to the contrary is formulated, equally compatible with the existence of a ruling class of Nozickian aliens from outer space or a benevolent aristocracy or enlightened despot.

The plan of life doctrine does, however, support the idea of substantive representation as such, more precisely, the idea that majoritarian representative decision-making is a context in which substantive representation is ‘fitting.’ Since what matters about humans, what differentiates them from the rest of creation, is their capacity for a plan of life, it is the

4] It is interesting to note that both arguments for political inequality and the argument for fundamental human equality can all be traced back to one source: Socrates, who in his dialogue *Meno* (Plato 1978, 82b ff.) proves that a slave, despite his lack of education, *knows* and *understands* Pythagoras’ theorem (support for rational equality and social obstructions to actual equality) – while in the *Politeia* (Plato 1974, 412b ff.) he argues that some are by nature more capable of realizing their potential for philosophy (rule) than others.

plans of life that need to be represented, more, and rather, than the individuals themselves. Note however that even here the victory for mass democracy is limited: if it is plans of life that matter, even those of the powerless, then their preferences as such do not matter since they do not necessarily express what is 'really,' on reflection and after due consideration, in the best interest of an individual's plan of life. Obtaining adequate information on preferences may be a function of (mass) democracy, what makes it ethically admissible is not the reflection of those preferences but the system's ability to on the one hand translate them into 'real' interests, and on the other shape real existing preferences to conform to these interests, to what individuals' plans of life are really about. Note that despite the rather unfamiliar choice of words, this reflects some of the ideals of deliberative democracy as opposed to purely 'formal' democracy of the general election type, the former being more 'fitting' to guarantee equal and universal access of ideas to the decision-making process.

IV. UNIVERSAL AND EQUAL ACCESS VERSUS 'LOSS OF POLITY'

There are grounds for not taking the ethical desirability of mass democracy for granted; as argued above, there are also quite practical reasons to fear for its viability. The appropriate context for mass democracy, the sovereign and relatively self-sufficient nation-state, if ever it existed, seems to evolve into a fuzzy context characterised by what I called 'loss of polity.' Political power becomes more fluid and uncontrollable, and – as I shall now argue – democracy does not appear to be an appropriate means of regaining control.

A direct consequence of 'loss of polity' is that even in formal terms, equal access to power for all ceases to exist, and that there no longer is universal access, either direct or indirect, to all the forums and political arenas where our future, our freedoms, our options are determined. In fact, in many places there no longer exists one unique clearly identifiable forum where the democratic formulation and ultimate assessment of policies takes place. Universality and equality are disappearing. Given that what matters is the representation of ideas, substantive representation, this is not necessarily a disaster – provided the new decision-making processes are representative in this latter sense.

Politics without a clear polity works flawlessly only where win-win-situations can be created, situations in which everyone, or at least enough actors with enough power, can profit from the same policy. A classic example is the environment: environmental policies are most successful where ecology and economy both profit, where e.g. cleaner production goes hand in hand with cheaper production. Unfortunately, like coal and oil, win-win-situations are a depletable resource. When they are gone, what remains are the real political conflicts in which interests are diametrically opposed and any solution will produce losers. This forces us to look at worst-case scenarios: what can happen in the worst case – what does it mean to have lost grip on power but more importantly, how to get a grip again?

If we ask ourselves if any of the possible solutions discussed so far offers a democratic grip on power – the answer must be negative. Equal and universal access to power requires either one forum or a clear and distinct hierarchy of forums where ‘the voice of the people’ can be expressed; without such clarity, access will again be distributed unequally and incompletely. None of the realistic solutions just sketched offers this kind of clarity.

As an alternative to institutional solutions, i.e., more and better forms of consultation, one might suggest that instead citizenship offers hope: it is, after all, not the formal and informal structures but how one uses them that determines whether individuals have a grip on power (cf. Wissenburg 2004, 2008). Ever since Alfred Marshall (cf. Marshall 1997; see also Benhabib 2002) it is customary to distinguish between three forms (political, economic and social) and two types of citizenship (liberal and republican). Ever since Dobson (2000, 2003), green political theorists have added ecological citizenship to the list of forms - and they will soon add post-cosmopolitan citizenship to the types. There is a substantial difference between the first three conceptions and the fourth.

Marshall’s citizens are constitutional citizens: they have rights against a government, whereas government has duties to protect but not interfere with the private sphere. ‘Loss of polity’ is both good news and bad news for the Marshallian citizen, but the bad news completely outweighs the good news. On the one hand, individuals and (thereby for instance) environmental associations can profit from a *divida et impera* approach to ‘loss of polity.’ It may become easier to influence distinct political institutions in a fragmented political landscape by playing them out against each other or by threatening their (relatively more sensitive) power basis among a population. Yet the disadvantages outweigh the advantages. ‘Loss of polity’ gnaws at the borders between the public and the private, the foundations of Marshallian citizenship rights. It brings diffusion of not only powers but also of responsibilities - hence, there is a risk that no party can be singled out who is accountable to the public, or responsible for or even capable of listening to and answering citizens’ demands. *Divida et impera* also cuts both ways: parties involved in a game where no clearly dominant player exists can best reach (or approach) their objectives by creating minimal winning coalitions, coalitions that guarantee on the one hand sufficient power to effectuate the coalition’s demands, on the other sufficient stability to keep the coalition together. It is rational to economize as much as possible on the representation of citizens, hence to exclude as many as possible. In other words, ‘loss of polity’ may formally offer opportunities for citizens to raise their voice, be heard and have influence - but no incentives, only disincentives. Constitutional rights have a fairly limited role; it is the citizens themselves who would need to become more reactive, proactive and the very least defensive about their rights.

In green political thought, topics like deliberative, participatory and direct democracy, environmental awareness, individual responsibility, the green consumer, the role of NGOs and so on are ubiquitous. It is only fairly recently that Andrew Dobson combined these and similar topics under one heading (Dobson 2000, 2003): post-cosmopolitan citizenship. Post-cosmopolitan citizenship differs fundamentally from republican and Marshallian

citizenship by among other things including the private sphere, by rejecting territoriality as a basis of citizenship, and by regarding the obligations of citizens not as contractual but as ‘historical,’ i.e., determined by the capacity to influence others’ existence. Yet post-cosmopolitan citizenship, apart from other disadvantages (cf. Wissenburg 2004), is at odds with moral pluralism and the liberal perspective on emancipation as defended here. One may question whether the virtues that post-cosmopolitanism would install in the minds and hearts of citizens are desirable, and whether it is desirable to prescribe any virtues at all, thus immunizing them against critique. This touches on a classical argument in favour of political pluralism: the real existence and irreducibility of a plurality of views on the good life (cf. Rawls 1993, 1999a). It also raises the question why citizens should do the ‘right’ thing only for the right reasons (i.e. out of the correct virtue), rather than to leave room for ‘deviant’ motives (cf. Wissenburg 2001). The argument applies to the value of citizenship in itself as well: one will not be the active and concerned citizen of the republican polity if one does not have to be one - that is, if it was not a necessary condition for the flourishing of community and (sic) individual. Like other Arendtian interpreters of Aristotle, republicans thereby tend to rank political activity as a more worthy, more valuable existence than other occupations - not just other “creative activities” (cf. Rawls 1993) but also and foremost the work of the common man and woman, toiling to make a living from dawn to dusk. By definition, this makes the lives of all those who make society run less worthy: on any conception of the good life other than Arendt’s, an unwarranted attack on the dignity of humanity.

And yet all is not lost: there are still ways to satisfy the criterion of civilization. Substantive representation can still be served in other ways – as can other 20th Century ideals like deliberation, emancipation and protection of fundamental human rights. Substantive representation, after all, does not require equal and universal access to power for all individuals or all preferences. In the context of a politically plural world where equal and universal access to power have disappeared, we can no longer, at least technically, call whatever system of substantive representation that emerges a democracy – but neither was the medieval city with its guilds democratic, and yet it had the potential and sometimes even the practical courage to let each opinion be voiced, each interest be taken into consideration. The same applied to medieval Academia, for that matter. ‘Loss of polity’ by no means excludes substantive representation.

V. TWO FUTURES FOR SUBSTANTIVE REPRESENTATION

Let me briefly summarize the preceding argument. I have argued that mass democracy understood as equal and universal access to decision-making is a means to an end, the end being defined by the significance criterion. This criterion demands representation of all, but representation is a complex concept allowing multiple interpretations. Examining the reasons why the two most prominent conceptions of representation – substantive and descriptive – would be valuable, I claimed that we can only make a case for substantive

representation, only in the context of mass democracy, and only in the sense that mass democracy is one possible environment in which substantive representation may be possible. Descriptive representation is valuable only when substantive representation fails. Finally, I argued that the political basis of mass democracy is disappearing due to ‘loss of polity’, and that cures to the defects of a fading polity cannot, except with considerable imagination, be construed as new versions of mass democracy.

If we care about substantive representation, about representing the plans of life of all by definition significant individuals, then we will need to devise new representative institutions and new systems of representation. Among the side constraints for such institutions and systems are, apart from (1) a focus on acting for, (2) the exclusion of no one, and (3) recognition of the significance of every individual, two more controversial conditions: (4) they must not require the existence of state or polity (with incorporated ideas like territory, hierarchy) and (5) they must be operational wherever power is exerted. Above, I claimed that such institutions are not logically impossible; in this final section I want to support this argument by introducing two models that may be chosen in future attempts to develop post-mass democratic forms of substantive representation. Before I do this, however, I shall first discuss a worst case scenario.

In (political) realistic terms, we would not expect the rise of new forms of substantive representation, but instead a continuation of classic power politics in the new context of politics without clear polity. As Bernard Crick (2000) argued, politics without equal and universal access is not necessarily politics without any form of representation. It is rational for any ruling elite to consult experts, powerful supporters and powerful opponents – they can provide the information needed to ensure the physical and political viability of policies. Moreover, rational rulers will be open to a dialogue with these parties, both in the hope of gaining support and in the knowledge that the dialogue may result in change or even abandonment of the original plan. This consultation model is compatible with (read: not by far necessarily identical to) what John Rawls (1999b) calls a decent society: a basically just society that nevertheless lacks equal access to power. With its stress on serious consultation, it is also compatible with (but again not necessarily identical with) deliberative democracy. Since it remains rational in a context of ‘loss of polity’ to gather as much relevant information as possible and to be open to good suggestions, Crick’s consultation model will lose nothing of its relevance. Yet since it does not meet the civilization criterion, since it does not guarantee substantive representation – and that still demands in a way equal and in a way universal access to the ears of the rulers – it can hardly count as a post-state alternative to mass democracy.

A first way to meet this criterion and avoid the exclusiveness of political realism is to formalize processes of consultation and deliberation and extend participation to the powerless, i.e. to translate deliberative democracy to the new context of political fragmentation. In practical terms, this model would suggest more direct public control of international organizations (instead of control through representatives of states), more openness in the processes of preparation of, decision-making on and implementation

of policies, public debates and opportunities for consultation, responsiveness and accountability of global economic and civil actors, dialogues between NGOs and corporations, and so on. Obviously, a development in this direction will keep the classic problems of deliberative democracy theory unsolved, such as how to guarantee public interest and universal participation, how to ensure a quality of deliberative procedures sufficient to transform preferences into considered judgements, how to prevent domination by the rhetorically and financially superior, how to reconcile political consensus as regards wishes, means and goals with viable, effective and efficient policy (cf. Talshir 2004; Jun and Blühdorn 2006). Given 'loss of polity,' attempts at substantive representation through deliberation will also encounter a new problem: that of co-ordination. Nothing except a highly suspicious faith in an objective good guarantees that a deliberative consensus reached in one policy arena – say, Mediterranean trade – will concur with that reached in another – say, that of European environmental policy.

Unlike the deliberative strategy, the second path to substantive representation, that of consultative elitism, does not try to equate equal and universal access to power with equal and universal distribution of power. Consultative elitism is more economic in terms of formalities and institutional reforms: all it demands is that existing political institutions and those developing as a result of 'loss of polity' extend their consultation processes as much as is needed to include anyone potentially excluded. It sees the existence of potentially excluded groups and ideas as a political reality and can use its willingness to represent the actually and potentially powerless as an ethical recommendation. There is also a rational motive behind this *noblesse oblige* attitude – in other words, it is not totally non-self-serving: now that the 20th Century has unleashed the power of mass organization, it has become impossible to drive the spirit back into the bottle (cf. Ortega y Gasset 1932). Wilfully neglecting any group can be suicidal: it can induce them to organize (and in the times of internet, even a small organization can cause a lot of trouble) or drive them into the arms of opponents. The first politician or elite who manages to associate with an excluded but potentially powerful group usually has an advantage (albeit temporarily) over others, but also has to beware of second parties mobilizing other non-represented groups - hence, it usually pays for all rulers to include rather than exclude.

On this model consultation is not the standard operational procedure of political institutions; the initiative for consultation can also lie with the ruled and potentially excluded. This may give consultative elitism an interesting psychological and strategic advantage over the deliberative strategy: in line with Machiavelli's views on opposition, it cherishes and to a degree fosters protest, rather than filtering and perhaps suppressing it by imposing the demands of reasonable and rational debate.

The two models presented here are archetypes, and are, as extrapolations of existing strategies (cf. for instance current debates on the democratization of the European Union, and Beck and Grande's theses (2007) on the European Empire), inherently imperfect: they sketch options for the 21st Century, not existing realities or historical necessities. Our sympathies may lie with one or the other, but for reasons that go beyond the value

we attach to substantive representation and the civilization criterion. What matters, in the present context, is that both satisfy the latter criterion, that both offer viable alternatives to the brave new world of political realism on the one hand, and to the unsatisfactory side of mass democracy on the other.

What I want to suggest then is not that we develop a new perspective on citizenship under conditions of globalization and fragmentation, but instead that we look at another, in modern times often ignored, aspect of citizenship itself: the ruler as citizen. In a politically fragmented world, rulers can sometimes be as difficult to identify as they were in medieval times, if not more so - they may not even recognize themselves as such. The ruler's responsibilities towards the ruled used to be one of the main topics of debate in political philosophy - as the existence of the *Mirror of Princes* genre testifies. In democratic times, however, it has become slightly odd to think of politicians, ministers, governors, high-ranking civil servants or administrators of regimes or supranational organizations as 'rulers.' Although the term is used quite frequently, its meaning nowadays is more what 'minister' used to describe: a servant, an executor of the general will. Any debate on the responsibilities of rulers is usually translated into a debate on different conceptions and degrees of representativeness and responsiveness. It is acknowledged that rulers have other criteria to meet - but with the ruler turned into an employee of the people, this is seen as a matter of professional ethics. In fact, in olden times as much as today, the princes of industry are usually not thought of as political actors even though they also determine who gets what, when and how. If they are seen as ministers at all, the people they administer are first and foremost the shareholders, although modern business ethics also acknowledges their responsibilities towards stakeholders like workers, environment and society as a whole - a point raised before the rise of capitalism as well (De Pizan 1994).

Yet the ruler still exists. No one in a position carrying political responsibility meets his or her supervisor, the people, more than once every four years or so; most never do but only meet the relatively (quite) independent delegates of the people, or the delegates' delegates. People in power wield their power autonomously most of the time - even more under conditions of 'loss of polity,' conditions under which no clear structures of responsibility or control exist. The ruler is a citizen too, even if it is unclear of what he or she is a citizen. He or she is a very special citizen: one in whom powers have been vested no ordinary citizen has and most will never have. With power comes responsibility; the citizen as ruler has a far more extensive opportunity structure than, but is as morally accountable for his or her actions as, any other citizen.

I have sketched a dark picture of the future of citizenship. If uninhibited, 'loss of polity' will result in a 'realistic' approach to the representation of ordinary citizens by citizen-rulers, that is, to the exclusion of the powerless and therefore of inconsequential interests - *pace* Beck and Grande (2007). Of the two alternatives to realism that I discussed, I indicated that institutionalizing new deliberative processes stands a far worse chance of success, and of drawing the realist rulers' interest, than consultative elitism. This is admittedly a pessimistic scenario - and that is exactly what a worst-case scenario is

meant to be. It is also only part of the picture. One conclusion that I did not draw is that citizenship is not valuable - merely that it is difficult to defend in a new and fragmented context. Nor can we infer that even if citizenship in its present form(s) cannot be saved, that its core cannot survive either: representation, and behind that the idea 'that no insignificant person was ever born.'

There are two things worse than a worst-case scenario. One is a truly and thoroughly pessimistic scenario offering no alternatives whatsoever. Although idealism itself is a prerequisite of survival, the other is any idealistic scenario that ignores that (some) humans are not angels. Prescriptive political theories that do not prepare for the worst - their refutation - can never help bring better futures closer.

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BOOK REVIEWS

Paul Weithman, Why Political Liberalism? On John Rawls's Political Turn, New York: Oxford University Press, Pp. 379, ISBN: 9780195393033

The question of stability has remained on the margins in discussions of Rawls's political philosophy, despite the considerable attention that Rawls devoted to the topic. Multi-author edited volumes on Rawls often will not include a single essay concentrating on the stability problem.¹ Moreover some who have addressed the problem have worried that Rawls conceives of stability in an unusually narrow and empirically questionable way (Klosko 1994; McCarthy 1994). Others have cast doubt on the overly rationalistic character of Rawls's approach to the problem in *Political Liberalism*, suggesting that perhaps overlapping consensus is not best seen as a model for achieving actual stability (Hill 2000, 237-59). Still others think that devising the theory of political liberalism in response to the stability problem was generally a mistake on Rawls's part (Barry 1995).

Paul Weithman's *Why Political Liberalism?* attempts to determine why the solution to the stability problem from part III of *A Theory of Justice* was thought to fail.² As its title suggests, Weithman's book attempts to explain why "Rawls rebuilt his cathedral," i.e., why he made the so-called political turn over the course of the 1980s, leading to the publication of *Political Liberalism* in 1993 (WPL, 16). The short and familiar answer is, of course, "stability." But Weithman believes that the key ideas presupposed by this answer – i.e., the nature of the problem along with the particular arguments addressing it in both major texts – have not been understood as well as we might think.

In an earlier book on religion and citizenship, Weithman had presented a sympathetic critique of Rawls. There he had called the Rawlsian conception of citizenship a "very attractive ideal" (Weithman 2002, 211). At the same time, his praise was tempered by concerns that Rawls's standard approach to public reasoning is somewhat at odds with the empirical conditions necessary for educating and socializing citizens, securing equal opportunities for political participation, and sustaining serious and fruitful political discourse and deliberation.³ Weithman defended an alternative to this standard approach to public reasoning (2002, 3). Thus he is sometimes cited as a critic of Rawlsian political liberalism, at least with respect to its idea of public reason.⁴

Why Political Liberalism? is not critical of political liberalism. It is a defense. More precisely, it is a defense of political liberalism as providing a successful solution to Rawls's stability problem and of justice as fairness as presenting an especially compelling vision of a politically liberal and just society. The central thesis of Weithman's book is that Rawls understood the stability problem as a kind of generalized prisoner's dilemma and designed arguments that can and should be appreciated in game-theoretic terms.

1] Indeed, a quick scan of the tables of contents from six different multi-author volumes in my office finds that the term "stability" neither appears in nor is directly implied by the titles of the books' combined 69 essays.

2] *Why Political Liberalism?* is cited hereafter as WPL.

3] Here I draw on my review essay of Weithman's *Religion and the Obligations of Citizenship* (Boettcher 2006).

4] For a noteworthy example see Habermas 2006.

A second main thesis is that *Political Liberalism* follows *A Theory of Justice* in adopting the same basic argumentative strategy with respect to stability, presenting different arguments that nevertheless aim to resolve a collective action problem and establish congruence between the right and the good.

In sections I-III of what follows, I summarize Weithman's reconstruction and critical evaluation of *Theory's* congruence arguments. I pose a few questions along the way, particularly with respect to the comparisons Weithman makes with several other interpretations from the secondary literature. But on the whole I find this part of *Why Political Liberalism?* – the majority of the book – convincing and genuinely illuminating. I then turn to Weithman's account of the failure of *Theory's* congruence arguments and the reconceptualization of stability in *Political Liberalism* (section IV). The next two sections (V-VI) pursue the following challenges to Weithman's view: His interpretation of political liberalism does not fully account for either the obligatoriness of public reason's requirements or the possibility of politically justified decision-making in the context of disagreements about justice. These are challenges, and not necessarily objections, since presenting a complete picture of political liberalism is beyond the main scope of Weithman's book. I conclude by looking briefly at Weithman's important reflections on the morally urgent and redemptive character of Rawls's philosophical project, which Weithman reads as an "exercise in naturalistic theodicy" (WPL, 8).

I. THE "PUBLIC BASIS VIEW"

Weithman sets the stage for his own interpretation of Rawls's political turn by criticizing an alternative account that he calls the *Public Basis View*. According to the *Public Basis View*, the fundamental problem that motivates the transition to political liberalism concerns the metaphysics of the person sometimes associated with *Theory*. It is this metaphysical view, according to the *Public Basis View*, that would serve as the "publicly available justification of justice as fairness" (WPL, 18). Such a reading of justice as fairness is exemplified by the communitarian critique with its claim that the so-called unencumbered self is essential to the case for the two principles of justice. A strong version of the *Public Basis View* reads political liberalism as abandoning this metaphysical conception of the person while a weaker version suggests that political liberalism aims mainly to clarify that a metaphysical conception was never meant to ground principles of justice in the first place.

The *Public Basis View* includes a particular understanding of justice as fairness that Weithman labels the *Pivotal Argument* (WPL, 21-23). This argument begins with the premise that persons are by nature free and equal rational agents who are capable of reflecting on their ends and interests and evaluating social arrangements in light of them. The *Pivotal Argument* then cites Rawls's claim that our nature as free and equal is the decisive determining element in the original position. Respecting persons as free and equal entails that the distribution of primary goods must be acceptable in a choice situation in which our nature is in fact the decisive determining element. Thus we arrive at the two principles of justice.

Weithman believes that something like the *Pivotal Argument* does indeed appear in *Theory* and is subsequently recast in more strictly 'political' terms during the transition to political liberalism. Yet, against the *Public Basis View*, he avers that it was not dissatisfaction with this argument or more generally with the analysis of part I of

Theory that motivated the political turn. After all, Rawls explicitly observes that all of the changes introduced in *Political Liberalism* are the result of the need to rethink the account of stability developed in part III of the earlier work (Rawls 2005, xv-xvi).⁵ Neither the strong nor the weak version of the *Public Basis View* can adequately explain all of these changes.

While Weithman hopes to shed light on “underexplored” questions about Rawls’s political turn, the contrast in this first chapter of his book is not especially helpful. For it is not at all obvious who holds the *Public Basis View* or whether it is indeed the “standard explanation” in the literature, that is, the “prevailing interpretation” of the development of political liberalism (WPL, 17, 32). Weithman acknowledges that the *Public Basis View* is a kind of “ideal type” based on related interpretations, and he also observes that it has “some very prominent defenders” (WPL, 31). Yet, while Michael Sandel’s criticism of the Rawlsian conception of the person has certainly been influential, it is also widely considered mistaken. A footnote refers to Charles Larmore and Bruce Ackerman as proponents of the weak version of the *Public Basis View*, though the article by Larmore appeared several years before the publication of *Political Liberalism* (WPL, 31, n. 11).

In my view, Weithman’s important investigation of Rawls’s political turn does not really need this rather stylized contrast with the *Public Basis View*. We know from Rawls’s own writings that a concern with stability led to the changes introduced over the course of the 1980s. What we want to know, and what Weithman helps us to understand more deeply, is exactly why the stability problem resisted the solutions that were proposed in *Theory*. Weithman’s book examines these solutions in detail, tracks the subsequent changes in Rawls’s view, and even points to some important differences between the 1980s essays and the “Lectures” that appear in the published version of *Political Liberalism*.

II. STABILITY AND THE GENERALIZED PRISONER’S DILEMMA

A central thesis of *Why Political Liberalism?* is that the question of stability should be understood in terms of one or more collective action problems. Indeed, toward the end of *Theory*’s section on congruence (§. 86), Rawls observes that the match between the right and the good removes the “hazards of a generalized prisoner’s dilemma” (Rawls 1999a, 505). While this claim might otherwise be seen as merely suggestive, Weithman argues that it generally informs Rawls’s treatment of stability as a whole. One basic problem is mutual assurance: Even persons with an effective sense of justice need some assurance that compliance with the rules of justice will not significantly work against their interests because of the fact that others may refuse to comply. Second, even with confidence that others will follow the rules, certain individuals might still be tempted to ignore the demands of justice when doing so is sufficiently advantageous for them. Enough persons reasoning similarly would threaten institutions of justice.

That the social order can be destabilized by difficulties of this sort is a point familiar to students of political philosophy since Hobbes. After all, the one who is “modest and tractable” and performs all of his promises when others fail to do so would thereby

⁵All references to *Political Liberalism* herein are to the expanded edition (Rawls 2005). All references to *Theory* are to the revised edition (Rawls 1999a). Weithman’s WPL cites both editions of *Theory* and the 1996 “Paperback” edition of *Political Liberalism*.

“make himself a prey to others, and procure his own certain ruin” (Hobbes 1994[1651], 99). Hobbes’s well-known solution is to use the fear of the sovereign’s power to guarantee compliance and to reassure subjects, thus averting the prisoner’s dilemma that is our natural condition. But justice as fairness aspires to achieve a kind of internal stability – or, what Weithman calls “inherent stability” – as an alternative to both the externally imposed stability exemplified by the Hobbesian contract and the manufactured social unity exemplified by Plato’s noble lie or the coercive enforcement of a state religion. For Rawls, collectively rational principles of justice should also be, “when institutionalized, ‘self-reinforcing’ and so... immune to the instability that results from collective action problems” (WPL, 55). Just institutions would thereby reach a state of general equilibrium and remain stable with respect to individual deviations from justice.

Recall that in *Theory* there are two necessary conditions for the stability of a just society. First, its members must acquire an effective sense of justice. And, second, they must find that doing justice is congruent with their conceptions of the good (Rawls 1999a, 397). Weithman explains that congruence essentially requires that persons maintain a supremely regulative desire for justice, so that they do not attempt to decide on a case-by-case basis whether or not to act justly. Hence Rawls needs to show what Weithman calls the “*Congruence Conclusion*” (C_c):

Each member of the WOS [well-ordered society] judges, from the viewpoint of full deliberative rationality, that her balance of reasons tilts in favor of maintaining her desire to act from principles of justice as a highest-order regulative desire in her rational plans (WPL, 62).

One way to arrive at C_c is to rely on the following two claims. First, from the standpoint of full deliberative rationality, members of the well-ordered society also “want to live up to the ideals of personal conduct, friendship, and association included in justice as fairness” (WPL, 81). Second, these ideals entail that one must maintain a regulative desire for justice. But an inference of this sort does not address the most pressing concerns about stability, namely, whether persons would maintain their regulative desire even on the basis of the thin theory of the good. The thin theory includes neither the desire to do justice for its own sake nor the ethical ideals of justice as fairness. Thus resolving the congruence problem also means demonstrating (C_c):

Each member of the WOS judges, *from within the thin theory of the good*, that her balance of reasons tilts in favor of maintaining her desire to act from principles of justice as a highest-order regulative desire in her rational plans (WPL, 63).

And, given the mutual assurance problem noted above, persons will be wary of maintaining this desire if they believe that others will not do so. So (C_c) ultimately depends on the truth of what Weithman calls the “*Nash Claim*” (C_n):

Each member of the WOS judges, from within the thin theory of the good, that her balance of reasons tilts in favor of maintaining her desire to act from principles of justice as a highest-order regulative desire in her rational plans, *when the plans of others are similarly regulated* (WPL, 63).

The emphasis on the *Nash Claim* (C_n) illustrates the game-theoretic approach to stability. Reasons to cooperate – in this case, reasons to recognize a supremely regulative desire for justice – must defeat or outweigh competing reasons to defect. Moreover,

the willingness to cooperate depends in part on the expectation that others will reason similarly, and the assurance that they will act accordingly. In sum, the main congruence arguments in *Theory* begin with a conception of our nature and the desires associated with our nature, then provide grounds for establishing the *Nash Claim* (C_n), and conclude by moving from (C_n) to (C_6) to (C_7).

III. THE CONGRUENCE ARGUMENTS

Chapters three through seven of *Why Political Liberalism?*, roughly half of the book, are devoted to working out the fine details of these arguments. What unfolds in these pages is a rich and insightful interpretation of stability, a reading that is at the same time carefully and firmly grounded in Rawls's texts. Here I can only highlight some of the more essential ideas from Weithman's analysis of *Theory*'s "intricate" arguments in support of congruence (WPL, 220).

The conception of human nature at work in *Theory* enables Rawls to identify four desires that members of the well-ordered society would share as part of a "partial but thin" conception of the good (WPL, 121). These are the desires to (a) express our nature as free, equal, and rational; (b) avoid the psychological costs of hypocrisy and deception; (c) maintain ties of friendship; and, (d) participate in forms of social life that cultivate human talents (WPL, 93). Rawls's "Aristotelian Principle" and its companion effect, which together imply that we enjoy the realization of human capacities, especially complex capacities, both in ourselves and others, support the claim that members of a well-ordered society would acquire these four desires and hope to satisfy them. Satisfying these desires typically commits one to honoring and maintaining the sense of justice. So, if the four desires can best or only be satisfied by maintaining a supremely regulative sense of justice, and if each knows that the others have the same desires along with an effective sense of justice, then the *Nash Claim* (C_n) would be established and congruence could be shown even from the standpoint of the thin theory of the good (WPL, 148).

The challenge, however, is not simply to locate strong reasons to be just but also to demonstrate that these reasons would be *decisive*, that is, that each person's overall balance of reasons would ultimately militate against deciding case-by-case whether to forego justice for the sake of competing desires and goods. Just as in a prisoner's dilemma, we want to know whether the typical payoffs associated with these various goods, given the possible choices of others, would lead a representative member of the well-ordered society – Weithman's running example is a fictional member named "Joan" – to maintain a regulative desire to act from principles of justice or decide case-by-case. Should Joan worry that she will later deeply regret one of these choices? A key step in answering this question is what Weithman calls a *Balance Conditional*. The *Balance Conditional* suggests that if, even in the world as it is, a particular good would tilt Joan's balance of reasons in favor of replying to the justice of others by maintaining her own supremely regulative desire for justice, then that good would also tilt her balance of reasons toward justice in the well-ordered society of justice as fairness (WPL, 162).

Theory ultimately presents two main congruence arguments. Weithman explains that each argument begins with the thin-theory desires associated with our nature and arrives at the *Nash Claim* (C_n) via a *Balance Conditional*. First, there is the *Argument from Love and Justice* that begins with our desires for (b) integrity, (c) friendship, and (d) par-

icipation in social life. Desires for friendship and association are realized in forms of love, and loving others includes treating them justly. So the relevant *Balance Conditional* holds that if a person's balance of reason tilts in favor of answering love with love in the actual world, then the balance of reasons in the well-ordered society would tilt in favor of answering justice by maintaining a supremely regulative desire for justice. This is particularly the case in a well-ordered society because its history of just practices and institutions transforms the motives and expectations of its members, disposing them even further toward justice.

Rawls recognized the limitations of this argument. So, the second argument, the more familiar *Kantian Congruence Argument*, begins instead with desire (a), namely, the desire to express our nature as free, equal, and rational. Recall that our nature is the decisive determining element in the original position. Wanting to express our nature means wanting to act from principles chosen in the original position, and so this desire is practically equivalent to the desire for a supremely regulative sense of justice. It is the finality condition, a formal constraint of the original position, that supports this inference, since our rational plans are coherently unified only if they are pursued in accordance with final (i.e., supremely regulative) principles of right (WPL, 211).

In short, the very unity of the self depends upon organizing one's life-plans in terms of such regulative principles. Once again, Weithman introduces a *Balance Conditional* to explain that if the balance of reasons points to preserving a supremely regulative sense of justice in the world as it is, then that balance would point in the same direction in the well-ordered society where our characters are shaped toward justice. The latter point, that justice as fairness would have a "transformative effect" on desires and aspirations, turns out to be essential to both congruence arguments (WPL, 127). Because each member of a well-ordered society would reason similarly about the balance of reasons, even from the standpoint of the thin theory, the *Nash Claim* (C_n) can be established and, with public knowledge of that claim, (C_6) would follow. Thus "desires to be unjust are outweighed by other desires members of the WOS have, quite apart from their desire to be just" (WPL, 219). Including this latter desire for justice from the standpoint of full deliberative rationality only provides further reason for "Joan" and her fellow citizens to see the sense of justice as supremely regulative. Thus Rawls moves from (C_n) to (C_6) and then reaches the *Congruence Conclusion* (C_c).

Weithman's reading of *Theory* has the virtue of revealing how various claims and arguments advanced throughout the book are complementary to or presupposed by the rather compressed analysis of congruence in §. 86. Indeed the original position itself functions not just as a device of representation for arriving at principles of justice, but also as the "bridge" bringing together the right and the good. Contrary to utilitarianism, the Rawlsian approach can account for Joan's choice without having to posit the existence of a single dominant end (WPL, 158). Moreover scholars have generally failed to appreciate how Rawls's critique of intuitionism returns in part III of *Theory* as part of the effort to find determinate and decisive grounds for tilting the balance of reasons toward the choice to maintain a supremely regulative sense of justice (WPL, 214).

Weithman's reading also responds to several misconceptions in the secondary literature. For instance, some have challenged Rawls's claim that *Theory* presents a partial comprehensive doctrine (Barry 1995). Weithman explains that justice as fairness is comprehensive in the sense of specifying partial ethical *ideals*, i.e., conceptions that are rational to value. The ideals of conduct, friendship, and association help to specify the

desires supporting the *Argument from Love and Justice* (WPL, 74). Weithman's reconstruction of that *Argument*, already a significant scholarly contribution, also suggests how misguided it is to interpret Rawls as presupposing or defending a kind of atomistic individualism. For Rawlsian stability crucially depends on our natural desires for sociability and the effects of just institutions on the development of the desires for association and a social union of social unions. A person like Joan who lives under such institutions will have "wide-ranging loves and attachments" that affect what she values and how she acts with and for others (WPL, 178).

Another interesting feature of Weithman's book is his *Two Conjunct* interpretation of Rawls's Aristotelian Principle. Recall that the Aristotelian Principle states:

[O]ther things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity (Rawls 1999a, 374).

Weithman claims that scholars have tended to focus on the "second conjunct" of this principle, concerning our greater enjoyment from increasingly complex realized capacities. Yet the first conjunct is essential to the congruence arguments, since it supports the claim that we enjoy the exercise of our natural powers and abilities and so we value the expression of our nature and the activities of friendship and association (WPL, 130).

Yet Weithman's appeal to the *Two Conjunct* reading as a difference between his interpretation of Kantian congruence and Samuel Freeman's is somewhat questionable.⁶ Freeman's presentation of the Aristotelian Principle does in fact emphasize its second conjunct, concerning the good of *complex* capacities. Nevertheless, when Freeman actually sets forth Rawls's congruence argument in twelve steps he cites the Aristotelian Principle mainly in order to vindicate the claim that it is "rational to realize one's nature" (2007a, 159; 2007b, 275). The "role" of the Aristotelian Principle, Freeman writes, is to "suggest that it is intrinsic to persons' good to realize their nature (as free and equal rational beings)" (2007a, 159). So while Freeman introduces the principle by discussing its second conjunct, it's not obvious that his formulation of Rawls's argument depends on that reading.

Either way, much of what Weithman has to say about congruence is indeed quite distinctive. Precisely because Weithman lays out both congruence arguments in such detailed fashion, only one chapter, "The Great Unraveling" (WPL, 234-69), is needed in order to identify just what goes wrong with them. In short, the conceptions of conduct, friendship, association, and autonomy that support several premises of the congruence arguments – namely, those premises referring to the above mentioned thin-theory desires (a), (b), (c), and (d) – are *ethical ideals* that not all citizens will value or value highly enough. Moreover, the so-called companion effect to the Aristotelian Principle does not accurately characterize all citizens, since some will find the activities of others to be trivial or immoral and will refuse to value pluralism as such just because it is the product of human freedom. This judgment may, in turn, significantly alter a person's desire to take part in a social union of social unions and thus change the balance of reasons relevant to the *Argument from Love and Justice*. Finally, some individuals will hold

⁶Weithman cites this reading as one difference, but not the only or even the most important difference, between his interpretation and Freeman's (WPL, 129-30, 267).

conceptions of human nature or the unity of the self that are incompatible with a key step in the *Kantian Congruence Argument*, namely, the claim that our nature is expressed by – and, indeed, is the decisive determining element in – the original position.

To be sure, some of these difficulties, particularly the last one, will be familiar to most readers who are well aware that Rawls came to doubt the ideal of autonomy implicit in *Theory*. But Weithman's rigorous analysis enables us to understand more clearly how the failure of the congruence arguments results from problems with several quite specific premises and inferences in light of the concern to avoid a generalized prisoner's dilemma.

IV. THE POLITICAL TURN

Weithman believes that political liberalism also addresses the question of congruence and answers that question by following a more strictly political version of the same game-theoretic argumentative strategy pursued in *Theory*. Once an overlapping consensus obtains, then citizens would know that the *political* ideals of conduct, friendship, and association in justice as fairness normally outweigh other values that might conflict with them. Each member of the well-ordered society is able to recognize this fact, at least when others reach the same judgment, and so we are led to a politically liberal version of the *Nash Claim* (C_n):

Each member of the WOS judges, from within her comprehensive view, that her balance of reasons tilts in favor of maintaining her desire to live up to the values and ideals of justice as fairness, at least when others live up to those values and ideals as well (WPL, 275).

Public knowledge that a reasonable overlapping consensus obtains solves the mutual assurance problem and enables citizens to determine that, as Rawls writes, “the political values either outweigh or are normally (though not always) ordered prior to whatever nonpolitical values may conflict with them” (2005, 392; WPL, 280). Citizens can reach this conclusion even without presupposing the desire to do justice for its own sake. Once that desire is also included we have even more support for (C_{pl}):

Each member of the WOS judges, from the viewpoint of full deliberative rationality, that the balance of reasons tilts in favor of maintaining her desire to live up to the values and ideals of justice as fairness (WPL, 281).

This is a state of general equilibrium comparable to that of (C_c), i.e., a “state which would be stabilized by the enduring character of the forces that bring it about” (WPL, 281). Weithman acknowledges several textual obstacles to this reading. Yet what emerges from the final chapters of the book is a generally persuasive account of how the stability question in political liberalism continues to present a type of congruence problem and how that problem would be resolved by the emergence of an overlapping consensus.

Weithman's interpretation of stability also fits especially well with several important aspects of political liberalism. First, it reflects the significance of the *ideals* of fair cooperation, citizenship, legitimate democratic governance, and public reason stressed by Rawls in his later writings. Weithman explains that Rawls came to understand (political) ideal-dependent desires for conduct, friendship, and association to be “at the

center of a sense of justice" (WPL, 297). This marks something of a shift, albeit a largely unnoticed one, in what "the sense of justice" means to Rawls, even though the development of an effective sense of justice is still the first step to the inherent stability of a well-ordered society (Rawls 2005, 141).

Second, Weithman rightly calls attention to passages from *Political Liberalism* explaining that comprehensive doctrines are far from fixed and can and do change over time (WPL, 311). Part of what makes reasonable overlapping consensus possible is that political conceptions of justice are likely to have a liberalizing effect on religious and other comprehensive doctrines. Rawls observes that there is "lots of slippage" in world-views, so that the political conception "may bend comprehensive doctrines toward itself, shaping them if need be from unreasonable to reasonable" (2005, 160 and 246).

Third, Weithman's reconstruction suggests that the revised stability argument depends on the recognition, and eventually the mutual recognition, that political values outweigh nonpolitical values in cases of conflict. Of course the relations between comprehensive doctrines and the values of a political conception may take different forms even within an overlapping consensus, since each doctrine may be "either congruent with, or supportive of, or else not in conflict with" these values (Rawls 2005, 169; WPL 276). Weithman interprets Rawls's model case of overlapping consensus in terms of these distinctions. The upshot is that the emergence of a reasonable overlapping consensus suggests that adherents of *each* reasonable doctrine have found *comprehensive* reasons to see the political conception as comprising *politically overriding* values. According to Weithman, this is a crucial step in the revised stability argument.

V. THE PRIORITY OF THE POLITICAL

Whether political values and ideals outweigh or take priority over nonpolitical values in the public political domain is clearly a crucial question. Call it the priority question. It is introduced in *Political Liberalism's* Lecture IV as a more specific version of the question of how "political liberalism is possible" (Rawls 2005, 139). The priority question is posed again several pages later with roughly the same two-fold answer (Rawls 2005, 156). First, political values are very significant and, second, the existence of overlapping consensus reduces the conflict between the political and nonpolitical. Rawls emphasizes the second part of the answer in the "Reply to Habermas," clarifying that political liberalism's priority of the political does not "express a comprehensive moral point of view that ranks the duties owed to just basic institutions ahead of all other human commitments" (2005, 392, fn. 29).

The priority question is also connected to the "paradox of public reason," concerning how citizens can be expected to set aside the whole truth in their political activity (Rawls 2005, 216). Honoring public reason means giving "very great and normally overriding weight to the ideal it prescribes" (Rawls 2005, 241). The paradox "disappears" with the existence of an overlapping consensus, since citizens will have affirmed public reason's ideal "from within their own reasonable views" (Rawls 2005, 218).

Nevertheless, there's something not fully satisfactory about the claim that the existence of overlapping consensus is what establishes the priority of political over nonpolitical values in public reason. A first concern is circularity. For Rawls also appeals to the practice of public reasoning to explain the stability of a constitutional consensus out of which an overlapping consensus would emerge. Public reasoning engenders the nec-

essary trust in institutions, democratic procedures, and fellow citizens (Rawls 2005, 163). This claim is certainly consistent with Weithman's argument that the practice of public reasoning helps to solve the mutual assurance problem and thereby supports the revised *Nash Claim* (C_n^*) (WPL, 327). But it is not consistent with the notion that overlapping consensus is a precondition for successful public reasoning. Instead, the passage from Rawls suggests the possibility that citizens recognize and honor public reason's ideal without having first achieved overlapping consensus on a political conception. Moreover, when Rawls briefly discusses overlapping consensus in "The Idea of Public Reason Revisited" he appeals to the reasonable itself – that is, "the idea of the politically reasonable as set out in political liberalism" – rather than to the *existence* of reasonable overlapping consensus, in order to address the priority question (2005, 483-84).

Even more, if public reason's requirements really are moral duties, part of the so-called duty of civility, then it would seem that they should be considered obligatory in a range of non-ideal conditions and not only in the still unlikely case that a reasonable overlapping consensus obtains and is recognized by all. Citizens who honor public reason must acknowledge the priority of political values even without the assurance that all other reasonable citizens have done so. As we have seen, one reason that a citizen would answer the priority question in the affirmative is that she endorses public reason's ideal from within her reasonable comprehensive doctrine. But this does not really vindicate the morally charged expectation that others should honor public reason, whatever their particular comprehensive views, or the moral criticism of those who fail to do so. It is here, I submit, that Rawls should have appealed more directly to a foundational duty of *mutual respect* formulated in public political terms, i.e., equal respect for one another as cooperating free and equal citizens with an interest in exercising the two basic moral powers (cf. Larmore 2008). Yet this is a move that Weithman finds unnecessary.

VI. WHAT IS POLITICAL LIBERALISM?

Weithman thinks Rawls opts for a "conception-based" rather than a "respect-based" approach to "justice as fairness" (WPL, 353-57). But what Weithman fails to appreciate is that it is political liberalism that seems to require a duty of mutual respect in order to ground its requirements of public reason. For political liberalism seems to present conceptions of legitimacy and public reason that are ultimately independent of the arguments for the two principles and that might apply in a liberal-democratic society in which no citizen happens to endorse justice as fairness. Weithman is mainly interested in answering the question of *why Rawls turned* to political liberalism. But his powerful answer to that question does not necessarily tell the whole story about *what political liberalism is*, either in the sense of how Rawls eventually came to understand political liberalism or how we should understand it in its most plausible form.

We can underscore the difference between Weithman's question and these latter concerns by considering the possibility that a *family* of reasonable political conceptions might support a legitimate liberal-democratic society and provide the content for its idea of public reason. Rawls acknowledges this possibility in the original edition of *Political Liberalism* and emphasizes it in the "Paperback Introduction" as well as in the later essays (2005, l-li, 164, 167, 226, 374-75, 451-53). Political liberalism is itself a "kind of view" and justice as fairness is "but one example of a liberal political conception" (Raw-

ls 2005, 226). Indeed some commentators have suggested that the liberal principle of legitimacy mainly responds to the possibility that reasonable citizens might disagree about the content of justice (WPL, 319).⁷

Weithman also acknowledges the possibility of multiple reasonable political conceptions, but he generally sets it aside in order to focus instead on how a “society well-ordered by *justice as fairness* could be stable” (WPL, 273). This aim leads him to interpret public reason and the liberal principle of legitimacy accordingly. Weithman claims that this latter principle applies mainly to constitutional authority rather than ordinary legislation (WPL, 313; Rawls 2005, 137, and 393). The liberal principle of legitimacy would be adopted in the original position to guide the application of the two principles of justice at the constitutional stage. Guidelines of public reason would also be chosen in the original position. The liberal principle of legitimacy and the idea of public reason together “constrain the exercise of legislative power and interpretive authority” and help citizens to realize a form of social unity that Weithman calls the *Ideal of Democratic Governance* (WPL, 316). This ideal contributes to the stability of justice as fairness insofar as citizens are able to appreciate the politically overriding weight of political ideals and values without having to deny the truth of their doctrinal commitments.

It is not that this interpretation is wrong or without textual support. But as an interpretation of liberal legitimacy and public reason it is decidedly partial and incomplete. The most obvious lacuna concerns Rawls’s later formulation of the liberal principle of legitimacy based on the criterion of reciprocity, to which Weithman pays far less attention. In “The Idea of Public Reason Revisited,” Rawls writes that:

our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions – were we to state them as government officials – are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons. This criterion applies on two levels: one is to the constitutional structure itself, the other is to particular statutes and laws enacted in accordance with that structure. To be reasonable, political conceptions must justify only constitutions that satisfy this principle” (2005, 446-47).

Of course we might still read this passage as consistent with the notion that the principle of legitimacy, including the call for reasons that are sufficient and reasonably acceptable, applies directly only to the constitutional structure. The idea would be that other laws and statutes are legitimate just insofar as they are “enacted in accordance with” the procedures of that already reciprocally justified structure. But there are several considerations that militate against such a reading.

First, Rawls says that public reason instructs citizens to accept the criterion of reciprocity and apply it directly to laws and statutes, “*as if they were legislators,*” in order to hold their elected officials accountable (2005, 444-45). Second, the idea of public reason applies not only to constitutional essentials, but also to matters of basic justice and, by implication, to laws and statutes that have direct implications for constitutional essentials and matters of basic justice (Rawls 2005, 476). Indeed “The Idea of Public Reason Revisited” lists several examples of laws or legislative questions to which requirements of public reason – and so the criterion of reciprocity – should apply (Rawls 2005, 456-57, 476, 478-79). Furthermore, without “substantive guidelines for admis-

⁷See Dreben 2003, 316-7.

sible reasons” even a justified institutional procedure based on a legitimate constitution can fall prey to the problem of “garbage in, garbage out” (Rawls 2005, 431). Weithman is surely right to observe that citizens will not agree about particular laws and statutes. But the principle of legitimacy still applies to laws and statutes directly insofar as deliberating citizens and officials are expected to satisfy the criterion of reciprocity in their public reasoning.⁸

A second problem with Weithman’s interpretation concerns the guidelines of public reason being chosen in the original position (Rawls 2005, 225). This feature of public reason, from Lecture VI of *Political Liberalism*, is meant to apply to *justice as fairness*, and the subsequent paragraphs in the text indicate that the original position is not essential for developing principles and guidelines of public reason *as such*. For if the content of public reason may be based on any complete and reasonable political conception, and if one or more of these political conceptions does not include the original position as a methodological device, then it must be possible for a citizen to adhere to public reason’s requirements without having those guidelines selected in the original position.

In fact, in “The Idea of Public Reason Revisited,” Rawls does not refer to the original position at all in describing either the five “aspects” or the “content” of public reason, other than to suggest that the original position provides but *one way* to identify public reason’s “principles and guidelines.” He notes that “[o]thers will think that different ways to identify these principles are more reasonable” (Rawls 2005, 450). Weithman argues throughout his book that the original position is indispensable for Rawls’s account of the stability of justice as fairness. Perhaps it is. But it is clearly not indispensable for political liberalism’s account of either liberal legitimacy or public reason.

My point is not that the liberal principle of legitimacy is somehow foundational for justice as fairness, a position Weithman attributes to Larmore and then criticizes (WPL, 319). If anything is foundational in political liberalism, it is the idea of free and equal citizens seeking fair terms of cooperation under conditions of reasonable pluralism. Weithman is right to highlight these fundamental ideas of the person and society as a starting point for justice as fairness and political liberalism (WPL, 355). We should see conceptions of justice, liberal legitimacy, and public reason as based on these ideas. However, if public reason and liberal legitimacy are to be formulated without relying on the original position, then, *pace* Weithman, the norm of mutual respect may very well play a crucial role in an argument connecting these fundamental ideas as premises to the conclusion that all citizens must adhere to requirements of public reason and prioritize the values of a reasonable political conception when addressing fundamental political questions.⁹

Political liberalism is a theory that defends a principle of legitimacy and requirements of public reason that enable us to understand how politically justified laws and policies are possible under conditions of reasonable pluralism, even when citizens fail to reach an overlapping consensus about justice as fairness or any other single conception of justice. That is not all that political liberalism is, but it is that.¹⁰ This understand-

8] See also Quong 2011, 210.

9] Or so I argue in Boettcher 2012.

10] Freeman argues that in addition to addressing the stability problem “*Political Liberalism* also can be understood independently of *Theory* and as responding to different problems” (2007b, 324). Maffetone

ing of political liberalism is most obviously on display in “The Idea of Public Reason Revisited.” And I think that it is confirmed by what Rawls later says about that essay (originally published in 1997) and political liberalism as a whole. In the 1998 letter to Columbia Press Rawls states explicitly that *Political Liberalism* is “not about this idea [of justice as fairness]” and that “Public Reason Revisited” is “the best statement I have written on ideas of public reason and political liberalism” (PL, 438-39).¹¹

VII. CONCLUSION

To summarize: Weithman’s interpretation of political liberalism does not fully account for either the obligatoriness of public reason’s requirements or the possibility of politically justified decision-making in the context of disagreements about justice. Perhaps Rawls’s own texts do not fully and explicitly account for them either (Boettcher 2012). I said earlier that my concerns are challenges rather than objections to Weithman’s view. Whether they are serious challenges presumably depends on whether a full explanation of public reason and political justification is somehow inconsistent with the case for the stability of a just society. That is a question for another day (cf., WPL, 333).

Weithman’s book pursues a more specific goal, consistent with the originally stated aim of *Political Liberalism* (Rawls 2005, 3-4). He attempts to explain how a politically liberal society organized by justice as fairness could be inherently stable. His explanation of that possibility is inspiring and persuasive. More generally, his treatment of *Theory’s* stability problem, with its careful attention to Rawls’s texts alongside its use of the prisoner’s dilemma and other collective action problems, is original and insightful. *Why Political Liberalism?* should be the starting point for subsequent scholarly discussions of the stability problem and the origins of Rawls’s political turn.

I conclude with a comment on the book’s final section, which depicts the vision of the world and human nature encouraged by a serious engagement with Rawlsian political philosophy. Weithman is not the first to discuss his former teacher’s Kantian conception of philosophy as the defense of reasonable faith (Rawls 2005, lx, 101).¹² But the final pages of *Why Political Liberalism?* are the best discussion of that topic that I’ve encountered. At the deepest level, Rawls’s philosophy is a reply to what he took to be the “dark minds of Western thought, Augustine and Dostoevsky” and to the cynicism according to which the catastrophic violence and oppression in human history should lead us to abandon the hope for a just society.¹³ The success of Rawls’s stability argu-

makes a similar point, though he generally stresses the overall continuity between Rawls’s texts (2010, 222).

11] See also Dreben 2003: “*Political Liberalism* and the subsequent papers connected with it are not always consistent” (320). Dreben also observes that what Rawls says in “Public Reason Revisited” “goes beyond the book [*Political Liberalism*]” (338).

12] See also Rawls’s claim in “Justice as Fairness,” referring to the possibility of reaching an uncovered agreement about justice in light of our social and historical conditions: “Until we bring ourselves to conceive how this could happen, it can’t happen” (1999b, 395).

13] Weithman cites Rawls’s *Lectures on the History of Moral Philosophy*, identifying these two figures as the tradition’s “dark minds” (WPL, 362, n. 31). See also Freeman’s Memorial Service remarks, observing that Rawls rejects the “desolate view of humankind” according to which “our nature is so selfish, scarred, and corrupt as to put justice beyond human capabilities” (1997a, 323).

ment shows not only that it is reasonable to hope for such a society, but that its realization fundamentally fits our nature. Weithman quite plausibly suggests that Rawls's project has an enduringly religious aspect, addressing a version of the problem of evil. His concerns are "not unrelated to the question of theodicy," as Rawls himself writes in an unpublished version of the "Paperback Introduction" to *Political Liberalism* (WPL, 368). Affirming our moral nature is necessary if we are to understand God's judgment that the world itself is good, "worthy of devotion and reverence" (WPL, 368). Weithman's excellent book helps to sustain that judgment.

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Mathew H. Kramer, *Moral Realism as a Moral Doctrine*, Oxford: Wiley-Blackwell, 2009, Pp. 387, ISBN 9781405194020

Understanding morality includes our perceptive knowledge of moral permissibility and moral unjustifiability on the one hand, and its correspondence to our actions in the real world on the other. Moral philosophy is characterized by moral universalists downgrading moral relativists (including those of subjectivists) and vice-versa. The never ending fit between the two compels us to reevaluate the notions of “variance” and “invariance” of moral principles with respect to moral adjudication. What are the claims that both the sides are unwilling to reconcile? What is it that they are not able to grasp in each other’s perspective? Are moral universalists merely obsessed with objectivity, and are relativists too much caught up with variance? These rival claims also bring us back to the initial position of the nature of morality and what it refers to.

Mathew Kramer’s book *Moral Realism* is a fine contribution on the nature of morality. He very strongly asserts that most of the principles that guide our moral behavior are objective and universal – somewhat characterized as observationally mind-independent and existentially mind-independent (26). This is how the moral realm is designated. While doing so, he elaborates three genus of ethical objectivity: Ontological (Mind-Independence, Determinate Correctness, Uniform applicability, Invariance); Epistemic (Transindividual Concurrence, Impartiality) and Semantic (truth-aptitude) (15). Much of the argument of Kramer centers around his own example to defend his thesis on moral realism: “The practice of torture perpetrated against babies for pleasure is wrong, as the practice of torturing babies for pleasure is wrong”. Kramer’s primary concern is the ‘invariant’ nature of moral principles that have universal validity irrespective of the context as long as one is not treading into the non-moral realm. Kramer’s argument is that relativists’ claims indicate a departure from the moral, and forces one into the non-moral realm, violating the application of reason as well as the “supervenience of the moral over the empirical.” This argument consistently runs throughout the book – invariant moral considerations prevail over all others invariably.

Kramer treats morality as a distinct realm and is concerned with what morality hinges on to. He refers to analytical and metaphysical truths, which make moral claims true in all possible worlds. But, what is not clear here is how do we arrive at the understanding that “torturing babies for pleasure is wrong”? One significant way that Kramer directly or indirectly argues for is *a priori* moral truths. Even if we admit that nothing more can guide us than a universal moral principle (taking into account the greater scope of morality), we are not enlightened on how we come to know it as a universal principle (especially *a priori*). Particular to morality, we tend to think reason is sufficient enough to grasp the moral, making existential mind-independence one of the necessary conditions for arriving at such moral axioms. Kramer directs us to a very important issue: determinacy and demonstrability explained along with intractability. We may have determinately correct answers yet indemonstrable. He asks two very pertinent questions: what could account for the intractability of moral conflicts? Why would people not converge in detecting the correct answers to the problems on which those conflicts are centered? (94) The argument that runs through the book is: if the basic principles of morality are properly complied with, intractability has no place in moral reasoning as we would be able to arrive at determinate answers even on perplexing questions (following the rule of non-contradiction). Kramer seems to assume that

perplexity does not imply irresolvability. However, intractability is not to be shunned away in totality.

Signifying moral realism, is Kramer denying the collision of basic moral values altogether? (not speaking in the line of Ronald Dworkin referred in the book: presence of a unique correct answer to every legal question.) Kramer claims that relativism and subjectivism need to take account of the infinite regress principle. Moral realists presume that relativists have either none or a minimal commitment to morality – for instance, they may not morally deplore Hitler's action (Kramer's analysis of Gilbert Harman). In a way Harman is talking what Kramer explained as the difference between indeterminacy and indemonstrability. There are many aspects that are difficult to put across all individuals for consensus, because of which moral frameworks are significant. This does not prove amorality as central and integral to relativism. All our analysis depends upon how we take morality to be, i.e., the base parameter, like for some, "life is beautiful," and for some others, life is nothing but "experiencing the pain." To analyze our choices, preferences and actions is one thing and understanding the complexity of life is another. One of the most significant concerns that emerge out of the book is the ontological status of moral relativism and moral subjectivism? What is missing in Kramer's argument is this: there is a difference in the way we understand two different instances like "torturing babies for pleasure is wrong" from "burning Tolstoy's book in public in Russia is wrong."

Kramer further makes interesting clarifications about categorical prescriptiveness, uniformity and neutrality. The principle that proscribes murders proves the fact that the principle partakes at the level of consequence. He must have had in mind moral proceduralism, where rules and laws are grounded in some definite moral standards. How do we explain these two in the example mentioned in the previous paragraph? His linking of categorical prescriptiveness and uniformity of moral duties seems to have an a priori attribution to the notion of a moral duty – meaning there is certainly a presumptive clear distinction between moral and non-moral, though not explicitly stated. Kramer takes a strong stand committing that whenever various 'oughts' compete, then the moral prevails over all others (thus negating all other considerations). Any morally competent person, for Kramer, does not face the dilemma of choosing between a moral duty and a non-moral duty. Though this kind of supervenience 'may' be considered, we cannot be happy with Kramer's thesis on prudential, aesthetic and supererogatory factors. Nevertheless, the challenge Kramer poses to a moral agent is the capacity to identify something moral by virtue of morality. Morality takes priority but a critical reflection is needed here in reconciling how one fulfills a life-project constitutive of desires, choices and preferences.

It would be interesting to see how Kramer's existential and observational mind-independence entail on social morality. Here, we need to admit that both moral universalism and moral relativism are insufficient in addressing conclusively questions related to common morality, be it abortion, euthanasia, corporeal punishment, public morality etc. This takes us to Kramer's concern for invariance *contra* variance. Like other moral realists, Kramer ignores the fact that substantial amount of moral principles are varyingly invariant in the sense that they 'evolve' over a period of time through thoughtful reflection. It does not deny a sudden abrupt change in our moral outlook – both individually and collectively. This is evident from the fact that humanity was not born with ready-made answers to perennial moral questions raised since ancient times. For in-

stance, woman's say in abortion was not considered a few decades back as is considered now. So is the way we treat corporeal punishment and many other moral questions.

Implications of basic moral principles are seen as problematic when we extend them to rather a larger scope. Supposing that "a world is morally possible if and only if every normative state of affairs within it is consistent with the existence of all the basic principles of morality (158)" is apt, moral realists need to identify the difference of 'spheres of human life' while applying reason. The assertion is not to make the point 'necessary'; that basic moral principles, of the kind Kramer refers to, cannot be extended across frameworks. Moral knowledge, whether perceptive or relating to the conduct of human affairs, individual or collective, ought to account for both invariant and contingent principles. It is a very complex task to list out where moral objectivity and moral relativism applies exactly. This is backed up by a subsidiary assertion that the mere fact that the domain of natural sciences and mathematics is featured with strong existential and observational mind-independence does not entail the same in the domain of morality. Any such imposition is reflective of presupposed rightness being placed in the former's domain and making it imperative upon other domains of human inquiry.

Kramer is right in so far he states that people might have mistaken convictions individually or collectively. These misapprehensions, at times, will certainly influence the invariant application of a moral principle. For instance, stating the example of cannibalism, Kramer asks us about the moral status of it across societies. As a moral principle, a supposition that cannibalism is morally impermissible is applicable across all moral frameworks. It cannot be morally impermissible in S and permissible in S_1 . Referring to the actual world itself, we can say that modes of moral inquiries differ at various levels of human existence and the kind of examples we take. Asking someone whether cannibalism is permissible or not has different moral force from that of asking someone whether her/his choice to pursue the career in the field of arts than in sciences has any ethical value.

Kramer's reference to objectivity *vis-a-vis* existential mind-independence and trans-individual concurrence in fields like cosmology and natural sciences, in terms of recognition-transcendence is interesting in comparison to moral understanding. For him, epistemic objectivity seems to be domain specific, and different from trans-individual concurrence. It is right that epistemic objectivity is unaffected by differences even under optimal conditions; however, assuming that divergences are due to corrupting factors is too predisposed an inference drawn against moral difference. Epistemic objectivity of law in most situations is robust is to be carefully analyzed. The separation between moral and legal domains is a dubious distinction as the latter is dependent on the former substantially. He may seem to be claiming that morality is mostly dependent on what people agree them to be that connects trans-individual concurrence and consensus. The latter two are different from recognition-transcendence in the sense that people may have consensus over a thing that is not part of it. Divergences in everyday life are not due to corrupting factors.

By denying any epistemic value to variance, Kramer's 'moral realism' attempts to make recourse to dependence on existentially and observationally mind-independent principles. To comment on the example taken by him: let us suppose that jurists exhibit epistemic objectivity by passing the judgment that 'racial segregation of children in school' is not morally permissible. On the contrary, what if the 'normal' norm of functioning of a school brings no better social prestige to the child of a colored race? Kram-

er's perspective is over conscious of treading into the zone of divergence. Like other moral realists, his idea too presupposes that divergent answers resemble misconceived 'wild assumptions' and 'unwarranted' knowledge. If there exists a right answer to every question despite its inaccessibility to human beings (even reason), non-cognitivism must be equally meaningful to cognitivism.

The issue implicit in all perspectives of moral realism is non-persistence of divergences - convergence is ought to be obtained albeit intractability is the initial condition. Here, the reference is made to Crispin Wright's idea of representational capacities of human beings within robustly objective domains. Any sort of intractability or disagreement is indicative of lack of objectivity of that domain or cognitive incapacity of some of the persons involved in reasoning. This is only one side of the argument. The other side is 'moral questions' aren't raised in such a way that yields the desired/anticipated outcome. The ability to judge morally is somehow linked to our understanding of moral properties - where, for majority of moral realists (unlike for Simon Blackburn), supervene empirical properties. Kramer takes an interesting stand stating that there are overwhelmingly strong reasons for the reality of moral properties. Let us take his own example, 'wrongness of genocide', how does one come to know the moral property of 'wrongness of genocide'? Is it not observationally mind-dependent? If it isn't a natural property, then is it the product of human reason or intuition? Supervenience of moral over empirical does not mean any lack of dependence on the latter, even though the reality of a moral property is itself a moral matter. However, the causal inefficacy thesis has substance in it; the difficulty of empirical verifiability of moral properties. Kramer's thesis gains more points in that it attempts to make understanding morality more than a descriptive enterprise (as is seen in Frank Jackson's theory). The challenge to moral properties is not confined to the question of their presence and knowability, but also to explain how certain moral principles acquire those properties of rightness or wrongness, real or unreal etc.

The demands of impartiality take us to another level. Demands of morality might be imperative on us theoretically, but practical morality may be something else to some extent. Partially it has to do with the knowability of moral precepts. The impartiality condition faces a paradox here: It is apt to think that one ought not to be impetuous, whimsical and partial. It is counterfeited by people's inability to rise above their partial conditional circumstances. Here, no defense is drawn for partial or complete agent-centered behavior - some have argued that agent-centrality and agent-neutrality can be overlapped (Thomas Nagel's "personalizing the impersonal"). We are only talking about the reasonableness of moral demands; that a moral agent should possess the ability to let her verdict be unaffected by the belief that he has a stake in there. Does it mean to say that, for instance, if Christian morality is corrupt, the moral agent will by virtue of existentially mind-independent knowledge be impartial enough to relinquish, by the virtue of self-critique, that morality altogether?. How does he identify the moral truth-conduciveness of certain moral traditions? How far we can go ahead with the logic that morality or the truth about moral principles are independent of our beliefs. For a capitalist, the belief that 'socialism is driven by false principles' is an impartial belief. Does a mathematician's way of seeing the world is more impartial than a sociologist? Does the former possess more moral value than the latter? The terrain of morality at a particular level is always characterized with dilemmas and contradictions. For instance, who has violated the principle of humanity more: Hitler against Nazis or Israelis against the

Palestinians or Communists against Liberals or West as colonial rulers? Moral realists should also be self-critical about why their exemplifications feature only particular than the rest.

Kramer argues for impartiality for two reasons; truth-conduciveness and epistemic reliability. It is further illustrated by the fact that moral judgments aim to fit the correct principles of morality. Once again our argument takes a reversal. Truth-conduciveness is very much integral to any form of moral reasoning, but how those truth assertions are placed in the domain is of utmost importance. For instance, a particular claim is of moral importance if and only if it is the case that P is x . It all depends upon what is x and how it is formulated. Racial inferiority is morally insignificant unless it is the case. All social and common morality too is understood likewise. It is the responsibility of a moral realist to come up with those principles of morality, lest, moral relativist can challenge the validity of these moral standards. Kramer does not go on to inquire about how these set of moral standards are arrived at – except for him they are outcome of rational enterprise involved in existential and observational mind-independence. It is fine to say that impartiality is preferred to save moral judgments from prejudices and ignorance. Moral realists claim that a fully informed moral agent cannot be morally ambiguous from the judgmental point of view. The assumption itself may be misleading – in the sense that how is it possible that a moral agent is fully informed about moral matters. S/he is fully informed in the sense that they abide by the assumed ‘correct principles of morality’ without further thought-reflection over why they are correct.

It is always a matter of intense debate as to how our beliefs and desires fit into the real world, and a more convincing account is required to purport the point of fitting the world in our desires and beliefs. The latter cannot be evaded altogether. Rationally compelling moral principles too stand fragile here. The question posed for moral realists is – on what basis moral principles are in conformity with the laws of logic? Or is it mere obsession with the terms like logical necessity and objectivity? Kramer’s point escapes this kind of criticism as he claims that moral necessity and logical necessity are different. However, it is interesting to see how Kramer claims that mostly our rejection of moral principles is violation of moral requirements i.e., moral obedience, shows us ‘unreasonable behavior’ than logical incoherence or irrationality. There is some problem in such an assumption. Anyone can violate moral principles without being irrational – without being entangled in logical contradictions but in most of the cases the immoral behavior is unreasonable. Kramer is right in so far as he departs from Hare’s notion that logical-moral nexus is stated very simplistically. Clarification is needed on irrationality of moral agents i.e., a better way to assert that a person is morally mistaken. Kramer only tends to differ with Hare on how moral universalizability is to be obtained; nevertheless, prompting that it is the desired condition.

An assumption that any kind of morally qualitative distinctions is immoral is itself in one significant way unreasonable on the part of moral realists. It is not a necessary condition, hoping that moral philosophy has gone well ahead, that if two persons are perfectly identical in natural properties, they are identical in moral qualities too. Moral consensus is not always an instance of progress of our capacities for ratiocination. But for moral realists we cannot conceive of a possible moral order that licenses different moral ascriptions for situations that are in all aspects identical in nature. There are instances when non-moral considerations prevail over the moral – does not mean failure of the latter. The distinction between moral and non-moral is always problem-

atic. The supervenience of ethical over the empirical is reasonable but assumption that relativism is tantamount to 'non-moral' *per se* is itself unreasonable. A contrary picture to this goes like this: moral consensus cannot be imagined in all morally relevant and identical conditions. It may otherwise mean that morally non-identical conditions if any would certainly lead to morally divergent judgments and would still remain moral.

On the whole, Kramer's book is completely refreshing in its detailed account of moral realism. It can be said that the book made marked progress in moral philosophy in two significant ways. First, Kramer's very lengthy discussions of most contentious issues provide progressive insights for researchers in moral philosophy. Second, he poses strong challenge to relativists and subjectivists on the one hand, and ethical naturalists on the other. Issues discussed by Kramer are most compelling in nature – the most pertinent question being the entailment of existential and observational mind-independence of basic moral principles. It remains an open question as how invariant is this assumption. The richness of debates in this book take us back to have a thoughtful reflection, on the one hand, on the nature of morality possessing epistemic value, and the complexity existent and complexity attributed to our understanding of ethical dimension of human behavior on the other. However, Kramer's defense of moral realism doesn't end the debate between objectivity and subjectivity, and between universality and relativity.

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