Consensus Political Liberalism and Residues of Justice
A Reassessment of the Normative Relevance of the Inconclusiveness of Public Reason

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Abstract

How should a liberal democratic state deal with conflicting claims of justice, which – similarly reasonable – pull its action in opposite directions? Do the normative challenges posed by reasonable disagreement about political justice exceed the issue of how to settle them legitimately? By challenging the dominant position within the boundaries of so-called "consensus political liberalism," the thesis proposes an affirmative answer to the second question. Hence, it develops a more complex answer to the first question than the one offered by mainstream political liberalism.

As its most notable contribution, the thesis introduces the notion of *political-moral failure* to the normative landscape of political liberalism. When public reason is inconclusive, multiple outcomes can be defended as reasonable requirements of justice whose adjudication reaches an impasse. These "dilemmas of reasonable justice" – I contend – allow for the existence of "residues of justice" – i.e., genuine moral losses result from legitimate decisions. Political-moral failure captures an institutional shortcoming that, while not an instance of injustice, cannot be side-lined as "mere misfortune"; as an *a*moral characterisation of the inevitable costs of social cooperation under legitimate rule. The thesis provides an important normative category to illuminate the full complexity of the joint realisation of two core political liberal commitments – i.e., protecting certain basic interests of citizens' (e.g., basic liberties) and honouring the legitimacy of state action in conditions of reasonable disagreement.

The thesis shows that a sense of partial alienation and resentment is warranted on the part of citizens who are morally failed, demonstrating that the realisation of reasonable justice and political legitimacy has normatively significant limitations in even ideal well-ordered liberal democracies. The state has a *duty to acknowledge* residues of justice to sustain respectful relations toward "morally-failed citizens;" a duty that complements the duty of public justification, the investigation of which dominates current political liberal research.

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Author's Declaration

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as References. The word count, all included, is 90,475.

Introduction

Liberal democracies are characterised by pervasive disagreement about several issues – e.g., the permissibility of abortion and its limits, the justice of conscience-based legal exemptions from generally justifiable laws, and the permissibility of regulating forms of expression, to name but a few examples of (often highly) contentious political debates. Decisions concerning similar matters – instances of so-called "constitutional essentials and matters of basic justice"[1] – impact citizens' life-prospects at a fundamental level. Since the publication of John Rawls's *Political Liberalism* , so-called "consensus political liberalism" has proved one of the most influential frameworks in analytic political philosophy advancing a theory for how liberal states can be reasonably just and act legitimately.[2] By pointing out some blind spots of mainstream consensus political liberalism (while suggesting strategies to solve them), this thesis constitutes an internal critique and an attempt at enriching this influential theoretical tradition.

1. What is this thesis about?

In a nutshell, this thesis asks what the normatively appropriate response of a liberal democratic state is to cases such as those presented above – i.e., in which the adjudication of conflicting reasonable claims of basic justice reaches an impasse. The dominant answer in mainstream consensus political liberalism is that reaching legitimate decisions is what matters in such circumstances of stand-off. This thesis shows, contra the dominant position, that ensuring the legitimacy of state action via public justification, while crucial to the normatively appropriate response of a liberal democratic state, is not exhaustive of it.

In political liberal literature, similar stand-offs are conceived of as cases of "inconclusiveness of public reason."[3] Hence, in alternative but analogous terms, the thesis proposes a novel characterisation of how the inconclusiveness of public reason is normatively challenging in consensus political liberalism. According to numerous influential theorists – provided that appropriate constraints to deliberation are applied, and fair procedures for the adjudication followed – the principle of legitimacy is honoured. The thesis concurs and further defends this position. Still, I argue that decisions that are legitimate (and reasonably just) can still *politically-*

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1 John Rawls, *Political Liberalism*, 3rd edn (Columbia University Press 2005).

2 The "consensus" model of political liberalism contrasts with so-called "convergence" political liberalism. I shall return at greater length to the difference between "consensus" and "convergence" political liberalisms in Ch. 1. The major difference between the two lies in their account of what it means to *publicly justify* political decisions. While "consensus" theories emphasise the importance of common evaluative standards as unique ground for justification, convergence ones reject this restriction.

3 See, among others, Micah Schwartzman, "The Completeness of Public Reason" [2004] 3 *Politics, Philosophy & Economics* 191,220.

morally fail reasonable citizens and generate residual moral losses that, borrowing from ethical literature, I propose to call "residues of justice." Political-moral failure, I contend, is a problematic institutional shortcoming that risks triggering reasonable citizens' alienation from political society. The liberal democratic state's response falls short of respectful treatment toward citizens who are morally failed – i.e., "morally failed citizens" – unless it acknowledges both the validity of the peculiar kind of reasonable resentment that such citizens may permissibly feel and the very presence of residues of justice.

Mainstream consensus political liberalism: legitimating state action vis-à-vis inconclusiveness

The core of consensus political liberalism's normative answer to disputes such as those presented above lies in its "ideal of public reason."[4] This ideal needs to be honoured when decisions concern constitutional essentials and matters of basic justice (e.g., the regulation of basic liberties, the permissibility of legal exemptions, the determination of fair distributive principles). At least this basic type of decisions, public reason theorists hold, must be justifiable to all reasonable citizens. Defended by some influential theorists as required by a fundamental principle of respect for citizens as free and equal persons, this model of (democratic) public deliberation is aimed to honour legitimacy in political decision-making.

Crucially, the requirement of public reason-based justification makes sense against a social background of pervasive *ethical* pluralism.[5] Well-informed citizens, debating in good faith, will likely disagree about the truth and worth of ethical (religious or secular) doctrines. However, if they are reasonable, they will, at the same time, share several substantive political-moral ideals and values. That is, according to many consensus political liberals, the public political culture of liberal democracies embodies a family of values and ideals of political justice that reasonable citizens share, irrespective of the disagreement concerning ethical doctrines that deeply divides them. More fundamentally – seeing their fellow citizens as free and equal moral persons – reasonable citizens will see society as a fair system of cooperation, rather than a bargaining arena in which to maximise their interests at the expense of others. The ideal of public reason serves reciprocity in politics by placing a moral duty on decision-makers (be they public officials or voting citizens) to support

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4 See, among others, Andrew Lister, *Public Reason and Political Community* (Bloomsbury 2013); Jonathan Quong, *Liberalism Without Perfection* (Oxford University Press 2011); John Rawls, "The Idea of Public Reason Revisited," [1997] 64 *The University of Chicago Law Review* 765,807.

5 In this work, when referring to "ethical," I will follow Rainer Forst's use of the notion as equivalent to "doctrines about the good life" that are authoritative only within sectarian communities of value. On Forst's distinction between "ethics" and "morality," see Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (Columbia University Press 2012) 62ff.; Rainer Forst, *Toleration in Conflict. Past and Present* (Cambridge University Press 2013) 532ff.

only outcomes that can be defended based on shared political values. In this way, the resulting reasons can be acceptable to reasons-receivers and to reason-givers.

Still, decision unanimity should rarely be expected. While the constraints of public reason restrict the eligible set of potentially permissibly enforceable proposals to those that can be argued to instantiate reasonable requirements of political justice, reasonable citizens will disagree about which ones do so best. Even carried out in light of the requirements of public reason, public deliberation will still often prove inconclusive even in circumstances where decisions with dramatic impact on citizens' life-prospects are at stake.

Influential accounts in consensus political liberal research address the problem of guaranteeing legitimacy *vis-à-vis* the inconclusiveness of public reason.[6] Critics, indeed, have questioned the tenability of the deliberative model of consensus public reason.[7] If it is not necessary to abandon the perspective of public reason and resort to divisive ethical beliefs for reasonable disagreement to arise – i.e., if public-reason based political arguments (not only ethical values-based ones) are somehow also rejectable by reasonable citizens – can consensus political liberalism grant legitimacy on its own terms after all? Consensus political liberals, as we shall see, typically answer affirmatively. The inconclusiveness of public reason, I argue, is not a problem insofar as consensus political liberals are concerned with the legitimacy of contentious decisions about fundamental political matters. Still, in circumstances of inconclusiveness, the legitimacy of the relevant decisions is not all they should be concerned with.

Reorienting the debate: the inconclusiveness of public reason, "political-moral failure," and respect

In broad terms, the central claim of this thesis is that mainstream consensus political liberals have so far missed important implications of the inconclusiveness of public reason. As a consequence, they have failed to appreciate the full complexity of the normative challenges entailed by accepting the reasonableness of the disagreement about basic political justice. I will argue that to articulate such implications it is *not* to traditional categories of normative assessment, such as "legitimacy" or "justice" itself, that we should turn. Let me briefly illustrate the central points that I will articulate throughout the thesis.

One first aim of the thesis is to retrieve substantive commitments central to virtually all consensus political liberal accounts, but whose relevance has been side-lined by the overwhelming legitimacy-driven focus on the public justification of political decisions. Mainstream consensus political liberalism requires a highly abstract level agreement on several political values and goods

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6 See, e.g., Jonathan Quong, "Disagreement, asymmetry, and liberal legitimacy" [2005] 4 *Politics, Philosophy & Economics* 301,330: Schwartzman, "The Completeness of Public Reason."

7 See, e.g., David Reidy, "Rawls's wide view of public reason: Not wide enough" [2000] 6 *Res Publica* 49,72.

– e.g., equal basic liberties, equality of opportunities and civic status – and their fundamental function in constituting citizens' status as free and equal. One tenet of consensus political liberalism is a commitment to protecting reasonable citizens' access to fundamental goods and opportunities without which their life-prospects would be deeply undermined. Still, the theory assumes the impossibility of agreement on a single political conception of political justice to determine the concrete conditions of access to such opportunities and to honour the relevant values. Against this background, the thesis contends that influential consensus political liberals have so far failed to question the full implications of accepting that multiple proposals may be legitimate, even with respect to matters of fundamental importance to citizens.

Several questions need answering. If competing reasonable proposals for state (in)action are all constructed based on political values of basic justice, is it not possible – if not necessary – that the failed accommodation of some of them will prove morally problematic despite being legitimate? If so, how? Does consensus political liberalism currently have the categories to frame the relevant normative problem? Based on what assumptions can the legitimate failed accommodation of reasonable claims of basic justice be seen as fully unproblematic?

The novel critical angle from which I move to answer the above questions lies in integrating the literature on the inconclusiveness of public reason with ethical literature on *moral conflicts and dilemmas*. This integration provides the theoretical tools (i.e., the notions of "dilemmas," and – most importantly – "moral failure") necessary to show that reaching legitimate decisions can nonetheless leave behind "residues of justice" – i.e., authentic political-moral losses. Crucially, neither "justice" nor, clearly, "legitimacy" can help in framing the normativity of the "loss" at stake. Arguing that such notions are inadequate to this purpose, the thesis integrates a novel category of assessment into consensus political liberalism.

I show that circumstances of inconclusiveness of public reason should be seen as "dilemmas of reasonable justice." Decisions – dilemmatic for the constituency of reasonable citizens as a whole – can be taken legitimately despite persistent reasonable disagreement about the merits of competing public-reason based proposals. While not wronging those whose reasonable claims of justice are legitimately rejected, the state *morally fails* them.

"Moral failure" obtains when agents' action is inadequate to meet valid claims that others address to them. The category identifies a middle ground, so to speak, between wrongful conduct and misfortune. The agents do not wrong claimants, but their conduct cannot be described as mere misfortune – devoid of moral import – or treated as such. Within consensus political liberalism, the notion of moral failure is particularly useful. It allows us to grasp, rather than to theorise away, intuitions of normative suboptimality that arise out of (some) legitimate decisions.

More specifically, the notion of political-moral failure shows that characterising the legitimate failed accommodation of citizens' reasonable claims of basic justice as an *a*moral price of social cooperation under legitimate rule in conditions of pluralism is far from satisfactory. Moreover, it does this by proceeding from some of consensus political liberalism's own premises.

When it comes to assessing the state capacity to protect the basic social conditions of citizens' life-prospects in conditions of reasonable disagreement, consensus political liberalism needs to be more demanding with itself. Reaching legitimate decisions via public justification is necessary to respect citizens qua equal co-legislators. Still, I stress how citizens are not (and should not be seen) as only co-legislators with interests in joint rule and political autonomy. They are also reasonable right-holders with valid claims of justice to opportunities necessary to live by their reasonable conceptions of the good, and they are equals in terms of their civic worth. The appropriate state response in conditions of inconclusiveness cannot be theorised by uniquely focusing on the reason giving and receiving dimension of citizens' political identity.

Proposing a framework to explain how genuine moral losses can result from legitimate decisions, and how reasonable citizens' negative reactive attitudes toward the state can be justifiable as a result, is normatively important. What is currently missing, I contend, is a full awareness of the normative implications entailed by the likely impossibility of a consensual and harmonious resolution of conflicts about fundamental political issues. For instance, I will argue that more nuanced awareness of the tensions internal to *reasonable* citizens' "sense of justice," in conditions of inconclusiveness, and the risks of alienation of reasonable citizens who are morally failed, are needed.

The ultimate goal is to argue that normative theorising concerning post-decision processes to institutionalise the (minimally symbolic) acknowledgement of political-moral failure is an important component of a morally appropriate state response to conflicts leading to stand-offs of public reason. On principled grounds, the institutionalisation of the acknowledgement of "residues of justice" sustains valuable relations of political respect, something with which all consensus political liberals have reasons to be concerned.

2. Outline of the thesis

The thesis is divided into two parts. In Part I (Chs. 1, 2, and 3), I introduce multiple elements of consensus political liberalism while also adding to the current state of the debate on each of them. In Part II (Chs. 4, 5, 6) – by taking stock of the multiple elements presented (and enhanced) in Part I and drawing on insights from ethical literature – I move to develop the core of the thesis, and its major contributions. Namely, I argue for the *existence* of residues of justice and political-

moral failure in consensus political liberalism (Ch. 4). I show which ideals the existence of residues of justice calls into question, and what normative commitment grounds a duty by the state to acknowledge the occurrence of political-moral failure (Ch. 5). I close by sketching some "post-decision" strategies that the state (practically) *can,* and (normatively) *may* adopt to acknowledge the occurrence of political-moral failure (Ch. 6).

Chapter 1 has two main objectives. In the first part, it introduces the theoretical architecture of consensus political liberal theory and the circumstances of political-value conflicts with which the thesis is concerned – i.e., the (many) circumstances in which public reason proves inconclusive. In the second part, the chapter details the current state of the debate about the so-called "structure" of public reason – i.e., what reasons count as "public." In addition, it puts forward the account of the structure of public reason I will defend, "weak shareability." Lastly, the chapter sets out the problem the thesis aims to address. Namely, how is the inconclusiveness of public reason normatively problematic given that the legitimacy of contentious decisions about fundamental political matters is not threatened?

Chapter 2 investigates the normative status of the idea of *equal respect* in consensus political liberalism. Its role within the theoretical framework is contentious with some theorists defending it as a foundational principle of political morality and others side-lining it as ethically suspicious. The chapter has two main goals: contra those side-lining respect, it vindicates its relevance as the ideal shaping "vertical" state-citizens relations in consensus political liberalism. Contra those defending the relevance of respect, while discussing its relevance uniquely in relation to justifying the duty of public justification, the chapter defends a "pluralist" account of the ideal. Justifying fundamental political decisions is only one component of respectful treatment towards citizens as free and equal moral persons. A presumption in favour of guarding citizens against excessively sacrificing certain fundamental interests of theirs (within limits of reasonable enjoyment), as well as a commitment not to create and support hierarchies of civic worth, are constitutive of respectful political relations. The chapter is essential in order to argue, in Part II, that the state has a respect-based duty to acknowledge the presence of residues of justice.

Chapter 3 addresses two components of consensus political liberalism that, while underexplored, implicitly play important roles in multiple consensus political liberal accounts. That is, the idea of "primary social goods" (PSGs) – as a particularly important subset of values of political justice – and the notion of a "reasonable claim of justice." The latter is essential to complete my analysis of the claims that conflict in circumstances in which public reason is inconclusive. Thus, I aim to present at their best the positions concerning "reasonable claims" that most political liberals assume, but often fail to articulate in detail. Legitimacy-conferring

"arguments" are not merely based on shared evaluative standards but need to meet further criteria in consensus political liberalism. Such arguments (or claims), I contend, show "inclusivity" and "balancing." That is, they take into account all relevant values at stake and attempt to balance them reasonably in supporting legislative and policy proposals.

Chapter 4 is concerned with metaethical issues and aims to introduce the categories of "residues of justice" and "political-moral failure" in consensus political liberalism. I start by showing how circumstances of inconclusiveness of public reason should be conceived as "dilemmas of reasonable justice." After making sense of the metaethical characterisation of the validity of reasonable claims of justice that consensus political liberalism assumes, I move to show that the "losses" originating in circumstances of inconclusiveness of public reason have moral import. Reasonable claims of basic justice are genuinely valid – unlike *un*reasonable claims or claims that are not justice-relevant – irrespective of their actual accommodation (i.e., are *pro tanto* valid). The grounds of such validity, I show, is the joint importance of the interests underpinning the claim and the reasonableness of the claim itself. *Pro tanto* valid claims carry an expectation of accommodation that, while not conclusive, cannot be dismissed without normatively relevant loss. The notion of "political-moral failure" precisely characterises the shortcoming at stake: genuine moral loss involved in decisions that, while not wronging citizens, are inadequate to meet their well-grounded claims. The central aims of the chapter consist in showing that residues of justice *exist*, and in developing a normative category to make sense of their normativity in political-liberal morality.

In Chapter 5, I thus move to justify the prescriptive implications for state action that follows from showing that residues of justice obtain in consensus political liberalism. In particular, I investigate an under-explored dimension of reasonable citizens' moral psychology: namely, the emotional component of their sense of justice. After showing that a form of reasonable resentment is permissible on the part of "morally-failed citizens," I make sense of the troubling risk of (partial) alienation that political-moral failure can trigger. Drawing on themes addressed in Chapters 2 and 3, I argue that indifference towards the reasonable resentment of morally-failed citizens is incompatible with sustaining respectful state-citizen relations. Respecting citizens qua co-legislators is not under threat in conditions of inconclusiveness of public reason. Still, taking into due consideration their political identity as a whole allows appreciating the normative limits of the duty of public justification in conditions of inconclusiveness. The state has a respect-based duty to address residues and attempt to counter reasonable citizens' alienation.

Chapter 6 closes the thesis by analysing in-depth two real-world cases in which public reason is inconclusive, pulling state action in incompatible directions. These are Sikh citizens' claims for

exemptions from weapons bans to enable them to carry their *kirpan* in schools, and the issue of the regulation of inegalitarian pornography. The two examples are presented in some detail to allow me to sketch, in the second half of the chapter, some possible "post-decisional" strategies through which the state can practically (and may permissibly) *acknowledge* the presence of political-moral failure and residues of justice. The chapter does not have the ambition to address in full all the questions that arise from the existence of residues of justice. Nevertheless, it successfully proposes a starting point for future investigation concerning how the state should deal with them.

3. The contribution(s) of the thesis and its limits

The thesis contributes in several ways to mainstream consensus political liberal literature. The most significant contributions are two. Firstly, conceptually the thesis introduces the novel category of *political-moral failure*, adding to those of "justice" and "legitimacy," to assess the normative quality of political decisions on matters of fundamental political importance. Secondly, it defends the normative and prescriptive import of this idea.

This thesis embraces (and defends) the normative priority of legitimacy in cases of reasonable disagreement about how best to realise political justice. However, my characterisation of the consensus political liberal project proves more attentive than current proposals to how severely citizens may be burdened when their claims to basic justice are legitimately not accommodated, despite their reasonableness, and how this matters. Political-moral failure, I show, obtains precisely when the institutional system proves inadequate to protect some citizens' interests in goods of basic justice, despite their reasonable claims for their protection, as a result of *nonetheless legitimate decisions*. By showing that political-moral failure constitutes a consistent type of institutional moral shortcoming in consensus political liberalism, the thesis reframes the terms in which the inconclusiveness of public reason should be seen as normatively problematic. Critics of public reason are wrong in arguing that its inconclusiveness undermines consensus political liberalism's strategy with respect to legitimate state action. Still, consensus political liberals should recognise that inconclusiveness is more normatively challenging than they think. That is, it does not follow from the fact that inconclusiveness is not problematic for legitimacy that such inconclusiveness is not problematic *tout court*. Additionally, to make sense of the prescriptive implications of political-moral failure, the thesis investigates under-explored and neglected – but ultimately normatively fruitful – dimensions of consensus political liberal theories; i.e., the moral-emotional component of reasonable citizens' moral psychology.

Lastly, the thesis opens the space up for a novel perspective of prescriptive theorising which should be of interest to all those concerned with the effects that reasonable disagreement about

justice has on the fundamental reconciliatory spirit of consensus political liberalism, i.e., the "post-decisional" domain for the institutionalisation of processes of dialogue, continued discussion, and the expressing of troubling moral emotions.

Furthermore, each of Chs. 1, 2, and 3, offers contributions to specific debates within consensus political liberalism. In Chapter 1, to strengthen current defences of the legitimacy-conferring capacity of the consensus model of public reason, I defend a novel account of its structure, as that which at best honours the values upon which consensus political liberals' legitimacy rests, i.e., "weak shareability." Chapter 2 contributes to the dispute over the theoretical and normative role of equal respect that divides consensus political liberals. What the chapter adds is showing that rescuing respect as a central idea in consensus political liberalism requires looking at it as a relational ideal informing (primarily) the vertical relations that hold between the liberal democratic state and its citizens. Partially drawing on recent "relational" defences of the ideal of civic friendship, this move can rescue respect in consensus political liberalism while avoiding the many pitfalls of its traditional defence as a foundational principle of political morality. Lastly, in Chapter 3, I focus on the justification – always assumed and never articulated – of a list of "primary social goods" that appears in most consensus political liberal proposals. The chapter puts forward a "negative" account of the ethical salience of primary social goods; one that focuses on the vulnerability of citizens to "primary bads" rather than on the social conditions of their ethical flourishing.

Limits

Like any theoretical work, this thesis has its limits and has to start from somewhere. As an *internal* critique of consensus political liberalism, it takes at face value many assumptions shared by the most influential consensus politically liberal accounts of political morality. And, as an internal critique of *consensus* political liberalism, the thesis leaves (almost) completely aside the distinctive elements of so-called "convergentist" models of political liberalism.

I do not question the tenability of many of the structural foundations of consensus political liberalism as proposed by influential consensus political liberals such as Rawls and Jonathan Quong. These include: the basic ideas of society as a fair system of cooperation and the normative ideal of citizens as free and equal; the idea of reasonableness; reasonable citizens' commitment to public reason; and their acceptance of the burdens of judgement. I do not question either Rawls's account of politically moral personality as defined by the possession of the moral powers – i.e., the capacity for a sense of justice and a conception of the good – or the assumption that majoritarian voting procedures are the appropriate aggregative component of decision-making processes to take contentious decisions. I also do not investigate whether some kind of residues of political

morality may arise for citizens whose *un*reasonable claims to goods of justice are legitimately rejected. Let me say a few words about these limits.

As regards the first set of assumptions, the aims of the thesis itself impose the choice. The thesis aims to investigate the internal consistency of the most influential positions among consensus political liberals and how the theoretical framework can be strengthened. To this purpose, the thesis must assume the theoretical architecture of consensus political liberalism while proposing, I hope, its most charitable interpretation. Moreover, I will show – especially in Part I – that consensus political liberalism has multiple virtues that make it a normative paradigm worth defending and strengthening.

As regards the choice of leaving out of the scope of the research the analysis of possible residues of political morality that arise from legitimately set back *unreasonable* claims, the main (though not only) motivation lies in considerations of space. To illustrate, by working from an ideal theory perspective, the problems raised by unreasonable citizens are only relatively pressing. As I will point out shortly, the thesis assumes (almost) full compliance. Still, the distinctive problem of how to deal with unreasonable citizens in a well-ordered society may be worth investigating. The central point is that the claims of unreasonable citizens raise different normative questions. Theorising as to whether their legitimately set-back claims may leave behind some kind of normatively relevant residue needs a different theoretical apparatus that the thesis lacks the space to develop.

4. Methodology: ideal-theory and the "limits of practical possibility"

The thesis constitutes a work of so-called "ideal-theory."[8] In line with virtually all consensus political liberal theories,[9] I assume as the socio-political context of the thesis the "well-ordered" society in which (a) vast majority of citizens are compliant and reasonable; (b) "favourable conditions" obtain; and (c) it is effectively governed by some reasonable conception of political justice, something of which all citizens are aware.[10] Moreover, the thesis aims to be an instance of

8 For an analysis of the evolution of idealisations in Rawls's own philosophy, see D. C. Matthew, "Rawls's Ideal Theory: A Clarification and Defense" [2019] 25 *Res Publica* 553,570. For a broader analysis of the main coordinates of the debates about ideal-theory and non-ideal theory, see Laura Valentini, "Ideal vs. Non-ideal Theory: A Conceptual Map" [2012] 7/9 *Philosophy Compass* 654,664.

9 For an account that explicitly asserts to be dealing with "societies aspiring to justice" rather than well-ordered societies, while conspicuously drawing on a consensus political liberal perspective, see Martha C. Nussbaum, *Political Emotions. While Love Matters for Justice* (The Belknap Press of Harvard University Press 2013) 9.

10 See, Blain Neufeld and Lori Watson, "The Tyranny-or the democracy-of the Ideal?" [2018] 5 *Cosmos + Taxis* 47,57 on how the characterisation of the well-ordered society changes from Rawls's first formulations to the last characterisations under the recognition of the expectable impact of the burdens of judgement on principles of political justice. See also, John Rawls, *The Law of Peoples* (Harvard University Press 1999) 14, 16.

"realistic utopian" theorising.[11] According to Rawls, "political philosophy is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition."[12] This thesis aims to strengthen consensus political liberalism as such a theoretical project.

I will show that mainstream consensus political liberals are, at once, less demanding than they can be – as regards institutional requirements in an ideal just and legitimate state – and more optimistic than they should – as regards what can be practically expected of citizens' reasonable moral psychology. Consider the latter point: in Ch. 5, I will suggest that mainstream theories assume an excessively idealised account of the functioning of *reasonable* citizens' "moral faculty" of the sense of justice vis-à-vis reasonable disagreement about justice. As regards the former, by borrowing from Mark Jensen's articulation of the chief objective of ideal-theory, I contend that mainstream theories fail to "propose an ideal that, while something we can achieve, doesn't leave more attractive alternatives on the table."[13] This thesis has the ambition to offer an improvement of consensus political liberalism; to develop a "more attractive" option that mainstream theories have left "on the table."

That is, the thesis at its core argues that consensus political liberals should not easily reconcile themselves to the "fact" that some political-moral losses are inevitable in the following sense. Conceding that, in a reasonably just and legitimate state, fully eschewing political-moral losses is impossible, and is to some extent to be accepted, does not mean that these losses have no normative and prescriptive implications. The "fact" of political-moral losses is not to be accepted in the same way in which, for instance, the fact of reasonable ethical and justice pluralism is to be accepted; as something we have little or no hope of changing.

There are important prices to pay in taking at face value "pessimistic" feasibility constraints – i.e., that moral loss is inevitable (a position that is assumed rather than argued for in the literature). Vindicating the normative relevance of residues of justice is a way to challenge a sense of helplessness with respect to thoughts of practical inevitability. Political philosophy that is realistic yet utopian is distinctively well-suited to rise to that challenge. The spirit of Rawls's political liberal project itself, after all, is the plausible conjecture that what we think impossible even in ideal conditions affects our political imagination, and practice, in the world we actually live in.

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11 For an analysis of the very notion of a "realistic utopia," see, Marit Böker, "The Concept of Realistic Utopia: Ideal Theory as Critique" [2017] 24 *Constellations* 89,100.

12 Rawls, *The Law of Peoples* 11.

13 Mark Jensen, "The Limits of Practical Possibility" [2009] 17 *The Journal of Political Philosophy* 168.

PART I

Chapter 1

Reasonable Disagreement (about Justice) and the Inconclusiveness of Public Reason

1. Introduction

This chapter first presents the political circumstances relevant to this work. Namely, the likely presence of reasonable disagreement about political justice resulting from the incompleteness – qua inconclusiveness – of public reason.

Some critics of consensus political liberalism have argued that if public reason is incomplete and there is reasonable disagreement about justice (as well as about the good), consensus political liberalism – *pace* its proponents – cannot deliver on its promise of justifying state action based on public reasons and, therefore, cannot vindicate legitimate political decisions on its own terms. The core argument of this chapter, developed in its second half, is that consensus political liberals can successfully reject this charge. The inconclusiveness of public reason, I will contend, is not a problem for reaching legitimate state decisions. The charge can be rebutted by showing that the account of public reason*s* that consensus political liberals endorse does not aim to resolve disagreement about justice. Rather, it is meant to provide a justificatory common ground whereby citizens can frame such disagreement and manage it as equal co-legislators.

However, in closing the chapter, I introduce the intuitive idea underpinning this thesis and driving the reorientation of thought concerning the normative challenges posed by the inconclusiveness of public reasons that it proposes. I shall suggest that, while critics miss the target in pointing at the inconclusiveness of public reason as normatively challenging *for legitimacy*, they are not wrong in thinking that inconclusiveness is more normatively problematic than mainstream consensus political liberals assume. This thesis contributes to this debate precisely by showing a novel understanding of how inconclusiveness is problematic, though not in the way that critics have often argued.

In §2, I start by introducing the core theoretical components of consensus political liberalism: i.e., the main object of political justice – fundamental political decisions constituting the basic structure of society; ethical (comprehensive) doctrines and conceptions of the good; political conceptions of political justice. In §3, I introduce the idea of public reason against the background of a model of political liberalism found in the literature; one in which an overlapping consensus is thought of as possible on a single political conception of political justice. The purpose of this section is to show that public reason could fail to be complete even in conditions in which an overlapping consensus is assumed on a single political conception of justice. *A fortiori,* public

reason should be expected often to be incomplete in conditions in which this consensus is absent. Similar conditions are those that virtually all political liberals assume. In §4, I discuss the pervasiveness of the inconclusiveness of public reason once the reasonable overlapping consensus is only assumed on a set of political values and basic ideas which are differently specified by diverse political conceptions of justice. However, I show how the charge of inconclusiveness does not harm consensus political liberalism's strategy with respect to legitimate state action. By analysing the *structure* of public reason – i.e., clarifying what reasons consensus political liberals (should) hold as public – I argue that public reason is not meant to lead to an agreement. It only requires that state action be justified based on reasons that citizens can share in a *weak* sense. That is, I defend an account of justificatory reasons as *weakly shareable*. This account, while close to the account of "accessible" reasons often defended in the literature, is more sensitive to some of its logical implications.

I close the chapter by suggesting that inconclusiveness may be more problematic than consensus political liberals currently assume, even if it is not a threat to the legitimacy of state action, as critics have sometimes held.

2. The consensus political liberal project

This section aims firstly to provide a conceptual map for the rest of the thesis by clarifying the main ideas that constitute the consensus political liberal project.

The orthodoxy in political liberalism is that the object of justice is, primarily, the basic structure of society and its components – "constitutional essentials and matters of basic justice."[14] In Ch. 3, I analyse the account of "primary social goods" which is (explicitly or implicitly) at the basis of the vast majority political liberal theories. Fundamental political decisions, constituting the basic structure of society, are those that determine the distribution and access to "primary social goods" over time, determining the basic social conditions of citizens' life-prospects. Therefore, the basic structure is usually taken to determine citizens' (equal) access to: (i) "constitutional essentials" – e.g., political and civil rights (such as the right to vote and run for public office, associate, express political dissent, freedom of religion and conscience, the right to a fair trial). Constitutional essentials also comprise, for instance, the form of government and the relations between the political and legal powers of the state (i.e., the legislative, executive, and the judiciary). Also (ii) "matters of basic justice" are part of the basic structure, such as the organisation of the

[14] John Rawls, *Political Liberalism*; John Rawls, *A Theory of Justice* (Harvard University Press 1999). For a discussion concerning the rationale of the restriction, see Samuel Freeman, "The Basic Structure of Society as the Primary Subject of Justice" in Jon Mandle and David A. Reidy (eds) *A Companion to Rawls* (Wiley-Blackwell 2014) 88,111.

market and the forms and limits of the state regulation of it – e.g., (re)distributive principles; legal provisions to counter discrimination in the job market; the rules regulating rights and obligations constituting the family as a public institution. Disagreements about justice revolve around principles to regulate fairly these basic social conditions. At least debates concerning all these kinds of decisions fall within the jurisdiction of political conceptions of justice and require deliberation through the public use of reason – more on this below.[15]

Reasonable disagreement about the good: the impact of the burdens of judgment on ethical doctrines and conceptions of the good

Let me first clarify my use of several ideas such as so-called "comprehensive doctrines" and "conceptions of the good," as analytically distinguished from "political conceptions of (political) justice." This analysis allows me, on the one hand, to define some properties usually attributed to ethical doctrines and conceptions of the good (i.e., comprehensive, perfectionist, sectarian). On the other hand, I can clarify how these properties are thought (not) to apply to political conceptions of political justice.

All political liberals assume as a "fact" the likely presence of *ethical disagreement* (or "doctrinal pluralism"[16] or – more commonly – "disagreement about the good"). The vast majority of them explain this by accepting the presence of so-called burdens of judgement (hereafter, BoJ).[17] The idea of BoJ is introduced by Rawls to explain how disagreement should always be expected – provided citizens are allowed freely to exercise their capacity for reason – while, at the same time,

15 While discussing the composition of the basic structure – and its falling fully or only partially within the scope of the deliberative constraints of public reason – exceeds the possibilities of this chapter, it is important minimally to explain how I read that relation in political liberalism. For Rawls, constitutional essentials (e.g., basic liberties, the validity of the Rule of Law, limits and balances between the powers of the state) and matters of basic justice are part of the basic structure and fall within the scope of public reason (e.g., principles of economic and social justice, such as principles to tackle absolute poverty, but arguably also ethnic and religious discrimination). For Jonathan Quong, differently, even decisions such as whether to finance a stadium or a theatre with tax money should fall within the scope of public reason, irrespective of whether they are or not linked to the basic structure in any meaningful way; for a discussion, see Quong, *Liberalism Without Perfection* 256,90. I leave aside Quong's broadening strategy, and I shall focus throughout the thesis on cases which fall more clearly in the realm of constitutional essentials and matters of basic economic and social justice.

16 Colin M. McLeod, "Applying Justice as Fairness to Institutions" in Jon Mandle and David A. Reidy (eds) *A Companion to Rawls* (Wiley-Blackwell 2014) 168.

17 Among many, see, Stephen Macedo "In defence of Liberal Public Reason: Are Slavery and Abortion Hard Cases?" [1997] 42 *American Journal of Jurisprudence*; Quong, *Liberalism Without Perfection* 37; Lister, *Public Reason and Political Community* 8; Blain Neufeld and Chad van Schoelandt, "Political Liberalism, Ethos Justice, and Gender Equality" [2014] 33 *Law and Philosophy* 75,104. For some exceptions, see Martha C. Nussbaum, "Perfectionist Liberalism and Political Liberalism" [2011] 39 *Philosophy & Public Affairs* 3,45; Catriona McKinnon, *Liberalism and the Defence of Political Constructivism* (Palgrave Macmillan, 2002) 45ff.

assuming citizens' good faith, and normal cognitive capacities as reasoners. It is worth recalling Rawls's list of such burdens, given their importance in the rest of this work:

> a. The evidence – empirical and scientific – bearing on the case is conflicting and complex, and thus hard to assess and evaluate.
> b. Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments.
> c. To some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgment and interpretation.
> d. To some extent (how great we cannot tell) the way we assess evidence and weight moral and political values is shaped by our total experience, our whole course of life up to now; and our total experiences must always differ.
> e. Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an overall assessment.
> f. [Any] system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values that might be realised. [W]e face great difficulty in setting priorities and making adjustment. Many hard decisions seem to have no answer.[18]

Strictly speaking, (f.) is not particularly relevant in explaining why agreement should rarely if ever be expected. Rather, it seems to offer a reason why we should accept something like a "tragic" fact of political life, so to speak. That is, there will often be moral losses due to the "limited space" of social institutions. I shall return to these issues below. For now, the central point I want to emphasise is that I follow mainstream political liberalism in accepting the existence of the BoJ and their connection with the idea of *reasonable* disagreement. The BoJ make it unlikely that an agreement will ever be reached on any ethical doctrine or conception of the good life when people are free to reason.

By "comprehensive ethical doctrines" Rawlsians refer to more or less coherent and comprehensive systems of beliefs. They include "conceptions of what is of value in human life, and ideals of personal character as well as ideal of friendship and familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole."[19] A comprehensive doctrine is *fully* comprehensive if it organises in a coherent scheme virtually all values, covering virtually any sphere of citizens' lives. It is *partially* comprehensive when the range of included values is limited, and the articulation of relations among them is not strictly defined. A *conception of the good*, differently, is "an ordered family of final ends and aims which specifies a

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18 Rawls, *Political Liberalism* 56,57.

19 *Ibid.* 13.

person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life."[20]

Comprehensiveness is a function of the breadth of systems of beliefs in the realm of value. The more values and spheres of life are guided by them, the more they are comprehensive.[21] Comprehensiveness does not map onto the often-cited label of *perfectionism*. In keeping with the use I shall deepen in Ch. 3, I take "perfectionism" to identify a kind of ethical judgement distinctively promoting the search for perfection, and ideals of intrinsic value of life, character, or conduct. As Nussbaum clarifies, fully comprehensive doctrines can be non-perfectionist (e.g., a nihilist belief system that informs someone's whole life but rejects the very notion of value).[22] A further feature of so-called comprehensive doctrines and conceptions of the good is that they tend to contain *truth-claims* on metaphysical and metaethical matters. For instance, a devout Catholic will emblematically believe in a transcendent, omnipotent God; a nihilist that no value exists; an atheist might disagree with both. Additionally, comprehensive doctrines and conceptions of the good contain an *ethical source of the validity* of their claims, beliefs, and content. To the devout Catholic in the example above, this might be the Pope or the Gospels. I stress this point concerning the source of normative validity of value judgements because it is vital in determining a core difference from "moral conceptions," which are *political* (i.e., whose source of normative validity is the historically situated public political culture of liberal democracies – more on this below). Lastly, due to the impact of the BoJ, all ethical doctrines are necessarily *sectarian* in the sense that they can be expected to be embraced by only some citizens, while others will reject them.

As the next chapter discusses at length, citizens as free and equal moral persons have an interest in being treated as equal co-legislators of political power. The joint acceptance of such citizens' interests *and* the inevitability of ethical pluralism grounds the need for a normative system to regulate (at least) fundamental political decisions which can hope to gain authority from multiple diverse perspectives. If ethical pluralism is inevitable, no ethical doctrine can provide it.

Political conceptions of political justice: hope for an agreement?

With the idea of a "political conception of (political) justice," political liberals identify a set of moral principles, spelling out political values, suited for the design of the basic structure of society.

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20 John Rawls, *Justice as Fairness: a Restatement* (The Belknap Press of Harvard University Press 2001) 19.

21 Note that comprehensiveness is a feature of both doctrines and conceptions of the good. While as regards doctrines, it might depend, say, on sacred texts or recognised authorities' interpretations of the doctrine, in the case of conceptions of the good, the degree of comprehensiveness may depend on individuals' systems of beliefs.

22 Nussbaum, "Perfectionist Liberalism and Political Liberalism" 5.

Such systems also provide priority rules to settle conflicts between competing claims that citizens address to the state on matters related to the basic structure.

A political conception of (political) justice, conceptually mirrors comprehensive doctrines as a system of normative criteria to guide decision-making. Crucially, according to virtually all political liberals, it offers no directives for theoretical reason (in contrast to ethical doctrines). The point of the search for principles of justice, put differently, is not to single out the "true," in some metaphysical sense, principles of justice. Rather, the aim is to identify "reasonable" principles for cooperation that citizens as free and equal, divided by ethical (and justice) pluralism, can find acceptable in some way. Even as regards its own structural foundations – i.e., the ideas of society as a fair system of cooperation and citizens as free and equal – the dominant position among political liberals is to embrace a sort of historical contingency, surrendering claims to transcendental truth and universal application.[23]

A political conception of political justice must be anti-perfectionist. As a political doctrine, liberalism does not aim to educate citizens in leading more valuable or intrinsically worthwhile lives (be it in religious terms or as autonomous and flourishing in a perfectionist liberal sense). Contra perfectionists – for whom "governments may and should take an active interest in the goodness of their citizens' lives" and promote valuable virtues and traits of characters[24] – for political liberals, citizens' ethical education is not something with which the state should be concerned.[25]

Additionally, a political conception of (political) justice is sometimes argued to be restricted in *scope*.[26] This feature can be easily misunderstood, as it seems to track classical liberalism's public-

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23 More on this in Ch. 2. See, e.g., Burton Dreben, "On Rawls and Political Liberalism" in Samuel Freeman (ed) *The Cambridge Companion to Rawls* (Cambridge University Press 2003) 316, 346; Quong J, *Liberalism Without Perfection*. I shall return to this point in Ch. 2. In its latest production, Rawls himself points to a much more markedly historically determined perspective for its philosophy – of self-aware Hegelian inspiration – in contrast to the marked Kantianism of *Theory*. See, Rawls, *Justice as Fairness* 3, 5. For a discussion, see, Jeffrey Bercuson, *John Rawls and the History of Political Thought: The Rousseauvian and Hegelian Heritage of Justice as Fairness* (Routledge 2014) Ch. 2. To be sure, this is not the only interpretation of political liberalism's nature as a theory of political morality. For a critical position, aiming to rescue the "universal" character of (Rawls's) political liberalism, see Rainer Forst, "Political Liberalism: A Kantian View" [2017] 128 *Ethics* 123,144.

24 George Sher, *Beyond Neutrality. Perfectionism and Politics* (Cambridge University Press 1997) 19.

25 McKinnon, *Liberalism and the Defence of Political Constructivism* 12; Quong, *Liberalism without Perfection*; Bernard Williams, Toleration, a Political or a Moral question?' in *In the Beginning was the Deed. Realism and Moralism in Political Argument* (Princeton University Press 2005) 131. For a critique of, distinctively, Rawls's reasons to reject perfectionism, see Simon Caney, "Anti-Perfectionism and Rawlsian Liberalism" [1995] 43 *Political Studies* 248,264.

26 Rawls, *Political Liberalism* 13.

private divide.[27] A classic reading of liberal politics, indeed, is precisely grounded on this idea of limiting state jurisdiction over citizens' private lives, as if there was a *pre*-political account of what is public and private to which political conceptions of political justice need to be sensitive. Whatever the influence this tradition exercises on it, consensus political liberalism need not (and should not) hold any concrete spheres of citizens' lives – e.g., congregations, family units, private clubs, and so on – as *per se* excluded from the reach of political justice. This point is one that, e.g., Rawls was ultimately (made) aware.[28] Namely, it has recently been argued that this divide – far from fixed and *pre*-political – is essentially negotiated through political deliberation.[29] Political conceptions of justice will have to reach into "spheres" of citizens' lives that classic accounts of liberalism would conceive as private if they are to regulate fairly the basic social conditions for citizens' exercise and development of their moral powers. However, as I argue extensively below, the liberal state forfeits a *particular way* of entering these "spheres," i.e., with no appropriate justification or with justifications based on perfectionist judgements and truth-claims about the content of the doctrines that citizens hold to guide their lives.

Lastly, the political conception of political justice will need *substantive normative content* – i.e., it is a moral conception, though constructed for the practical purpose of fairly regulating the basic conditions of social life. Such content must derive, and be presented as derived, from a proper political basis. For consensus political liberals, at the basis of this content are the two ideas implicit in the public political culture of liberal democracies: the ideas of (a) society as a fair system of cooperation among (b) citizens as free and equal.[30] That is, the normative source of the validity of political morality is the public political culture, rather than some (ethical) authority external to it.

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27 Some political liberals locate this jurisdictional idea at the very core of liberal politics. See, for an influential example, Judith Shklar, "Liberalism of Fear" in Shaun P. Young (ed) *Political Liberalism. Variations on a Theme* (State University of New York Press 2004) 149,166.

28 See, John Rawls, "The Idea of Public Reason Revisited" 791. For a pressing (comprehensive liberal) critique of Rawls's *Theory* on these points, see Susan M. Okin, *Justice, Gender, and the Family* (Basic Books, 1989) Ch. 5. For a reading of Rawls's *Political Liberalism* that mistakenly reads it as defending a classical liberal distinction between the public and the private deleterious to gender equality, see Susan M. Okin, "*Political Liberalism*, Justice, and Gender" [1994] 1 *Ethics* 23,43; Susan M. Okin, "'Forty acres and a mule' for women: Rawls and feminism" [2005] 4 *Political, Philosophy & Economics* 233,248.

29 For discussion, see Corey Brettschneider, "The Politics of the Personal: a Liberal Approach" [2007] 101 *American Political Science Review*, 19,31; Gina Schouten, "Restricting Justice: Political Intervention in the Home and the Market" [2013] 41 *Philosophy & Public Affairs* 357,388.

30 An important clarification is needed. I do not question this presentation of the political account of personality; but I accept it as it is presented in the Rawlsian tradition. There are many questions worth asking on this point, however; for instance, to what extent are we are justified in thinking that the two moral powers of the Rawlsian tradition exhaust political-moral personality? Or, are we justified in thinking that there are no contextual differences, e.g., between Anglo-American and Continental public political liberal cultures, relevant to articulate the account of political-moral personality salient in ideal liberal democracies? Unfortunately, these questions cannot possibly be addressed here. I shall limit my focus to the account of political-moral personality as Rawls first presented it, and as it survives in current political liberal literature.

Such a foundation is what makes the political conception a freestanding conception of *political* justice.

A first way of conceiving of liberalism as a project of distinctively political morality, thus, might be to show how some (overlapping) consensus of ethical doctrines can obtain on one single political conception of political justice. Being non-sectarian, it could be a suitable common basis to adjudicate competing claims and to offer justification for (coercive) state action to citizens subjected to it.

The next section sketches a similar "model of political liberalism," which I shall call *ordered political consensus*.[31] This is the first understanding of political liberalism as Rawls proposes it, or – at least – as some prominent critics of *Political Liberalism* read its core claim: i.e., a deep and broad disagreement about the good coupled with an agreement about political justice.[32] To be clear, this thesis rejects this picture. No political liberal currently argues that it is possible to have any consensus on *one* single political conception of political justice providing a common standard to guide public deliberation.

However, the discussion in the next section is useful for several reasons. First, it allows me to introduce the ideal of public reason along with the (alleged) desideratum of its *completeness*. I shall also clarify why a reasonable consensus on a single conception of political justice should not be expected. Crucially, this discussion allows me, in turn, to show that even if a similar consensus were possible, this would still not rule out reasonable disagreement about the *interpretation* of agreed-upon principles of justice. That is, even the public reason of a well-ordered society in which reasonable citizens accept one single conception of political justice would not necessarily be complete. *A fortiori*, the absence of such a consensus on a single conception of justice will make public reason much more likely to be incomplete. If incompleteness is a problem for political liberals' strategy to reach legitimate decisions, it will be even more worrying in conditions where no overlapping consensus on a single political conception of justice is available.

3. Ethical pluralism, but consensus about political justice? An untenable picture

In the ordered political consensus model of political liberalism, reasonable citizens can reach a consensus on – let us assume – Rawls' Justice as Fairness (JaF) as *the single* political conception of political justice. Such a conception has a moral content constituted by the two principles of justice;

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31 See, for the idea of different models of political liberalism within Rawls's work, Gerald Gaus and Chad van Schoelendt, "Consensus of What? Convergence for What? Four Models of Political Liberalism" [2017] 128 *Ethics* 145,172.

32 See, e.g., Jeremy Waldron, *Law and Disagreement* (Oxford University Press 1999) 152; Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge University Press 1998) 203; George Klosko, *Democratic Procedures and Liberal Consensus* (Oxford University Press 2004) Ch. 7.

several related political values (e.g., political autonomy, civic equality, toleration); a related *thin* political conception of the good; precise priority rules to rank claims based on such values and goods (e.g., the lexical priority of the first principle over the second and the principle of fair equality of opportunity over the difference principle); public reason as a common framework for political reasoning.

To illustrate, reasonable citizens are hoped to incorporate JaF as "a module" in their conceptions of the good life.[33] This might happen because some citizens' ethical doctrine is silent about each of the issues covered by JaF. Simply, Anne's doctrine does not prescribe anything as regards redistributive matters, as well as about the level of priority which basic rights should enjoy. Alternatively, there might be Bette who thinks, as part of her conception of the good, that the primary function of political authority is to provide some acceptable level of order in society. Seeing JaF as sufficiently ordering, she supports it. There might be Carl who praises the free flourishing of humans' individuality and thinks that JaF best serves the possibility of self-development by lexically prioritising the basic liberties. That is, while there is reasonable disagreement about conceptions of the good, citizens are assumed to reach an agreement on JaF. Hence, this conception can constitute a common basis for adjudicating competing claims and justifying the exercise of political power to Anne, Bette, and Carl, etc. That is, it can provide the substantive content of public reason in a society guided by JaF.

The (in)completeness of the public reason of Justice as Fairness

The idea(l) of public reason has been by far the most debated element of political liberalism in the last decades, sitting at the very core of political liberals' accounts of legitimate state action.[34] That is, all political liberals embrace a principle of public justification. They hold that exercises of

33 Rawls, *Political Liberalism* 144, 145.

34 For only some examples, among the many, see, Paul Billingham and Antony Taylor, "A framework for analyzing public reason theories" [2020] *European Journal of Political Theory*, https://doi.org/10.1177/1474885120925381; Bonotti M, *Partisanship and Political Liberalism in Diverse Societies* (Oxford University Press 2017) Ch. 4; James W. Boettcher "The Moral Status of Public Reason" [2012] 20 *The Journal of Political Philosophy* 156,177; Gerald Gaus, *The Order of Public Reason* (Cambridge University Press 2010); John Horton "Rawls, Public Reason and the Limits of Liberal Justification" [2003] 2 *Contemporary Political Theory* 5,23; Christie Hartley and Lory Watson, *Equal Citizenship and Public Reason. A Feminist Political Liberalism* (Oxford University Press, 2018); R.J. Leland "Civic Friendship, Public Reason" [2019] 47 *Philosophy & Public Affairs* 72,103; Andrew Lister, "The Coherence of Public Reason" [2018] 15 *Journal of Moral Philosophy* 64,84; Andrew Lister, "Public Justification of What?" [2011] 25 *Public Affairs Quarterly* 349,67; Lister, *Public Reason and Political Community*; Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Clarendon Press 1990); Fabienne Peter "Rawls' Idea of Public Reason and Democratic Legitimacy" [2007] 3 *Politics and Ethics Review* 129,143; Jonathan Quong, "The Scope of Public Reason" [2004] *Political Studies* 233,50; Quong, *Liberalism without Perfection*; Jonathan Quong, "On the Idea of Public Reason" in Jon Mandle and David A. Reidy (eds) *A Companion to Rawls* (Wiley-Blackwell 2014) 265,80; Rawls, "The idea of Public Reason Revisited;" Rawls, *Political Liberalism*; Micah Schwartzman, "The Sincerity of Public Reason" [2011] 19 *The Journal of Political Philosophy* 375,398.

(coercive) political power are legitimate only if justifiable based on reasons that citizens subjected to them can accept *at some level of idealisation* (more on this below).

In general terms (for now), for consensus theorists, abiding by the ideal of public reason requires justifying state action only on *grounds common* to all the parties to the justificatory process.[35]As seen above, ethical doctrines – e.g., detailing perfectionist ideals of the good life on which citizens will likely disagree – cannot provide this common ground. If an overlapping consensus were possible on JaF, that conception would constitute the relevant common ground to substantiate the justification of (coercive) exercises of political power and guide the adjudication of competing claims.

The ideal of public reason has been subjected to many critiques over the last decades.[36] For the purposes of this work, only one is of crucial importance. It points to the *incompleteness* of public reason as a threat to the account of public justification *via* public reason and, consequently, to consensus political liberalism's strategy to reach legitimate decisions.[37] What does it mean for a conception, and its public reason, to be complete? In Rawls's words:

> "we want the substantive content and the guidelines of inquiry of a political conception, when taken together, to be complete. This means that the values specified by that conception can be suitably balanced or combined, or otherwise united, as the case may be, so that those values alone give *a reasonable public answer* to all, or to nearly all, questions involving the constitutional essentials and basic questions of justice."[38]

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35 For the sake of precision, the point is that non-public reasons cannot be used with a justificatory force to motivate decisions. This thesis follows Rawls's *proviso*, presented in his formulation of a "wide view of public reason." The idea is that citizens can permissibly voice their non-public reasons, a practice that can in fact ease the deliberative interactions. Public reasons, however, must be advanced as well and it must be *the latter* – rather than the non-public reasons previously voiced – that properly justify decision-makers policy proposals. See, Rawls, "The Idea of Public Reason Revisited" 784ff. Additionally, following political liberal orthodoxy, the duty to offer public reasons is a *moral*, not a *legal* duty. For a critique of this widely accepted position, see Matteo Bonotti, "Political liberalism, free speech and public reason" [2015] 14 *European Journal of Political Theory* 180,208.

36 Many hold that, e.g., it would unfairly burden religious citizens – see, Christopher Eberle, *Religious conviction in liberal politics* (Cambridge University Press, 2002). For a discussion and powerful rejection, see, Cillian McBride "Religion, respect, and public reason" [2017] 17 *Ethnicities* 205,219. Others hold that it is a self-defeating principle; e.g., see Steven Wall "Is Public Justification Self-Defeating?" [2002] 39 *American Philosophical Quarterly* 385,394. According to others, it is simply unnecessary to honour the ideal of respect based on which some of its proponents defend it, see Joffrey Stout, *Democracy and Tradition* (Princeton University Press 2003) 63ff.; Andrew Mason, *Living Together as Equals. The Demands of Citizenship* (Oxford University Press 2012) Ch. 6. I will return to the relation between respect and public reason in Ch. 2.

37 See, e.g., Reidy, "Rawls's wide view of public reason: Not wide enough;" Horton, "Rawls, Public Reason and the Limits of Liberal Justification;" Ben Cross and Thomas M. Besch, "Why Inconclusiveness is a Problem for Public Reason" [2019] 38 *Law and Philosophy* 407,432.

38 Rawls, *Political Liberalism* 241.

At its core, the discussion about the (in)completeness of public reason concerns the interpretation of what "*a* reasonable public answer" means. One way of interpreting this idea is to hold public reason as (fully) complete if its values and lines of inquiry lead to *one and not more than one* solution to debates about fundamental political matters. This reading would require that reasonable citizens deliberating in public reason will ultimately reach an agreement through deliberation. This conclusion, however, is ultimately incompatible with the very idea of the BoJ. They are meant to explain precisely how citizens, deliberating in good faith and properly exercising their capacity for reason, are nonetheless unable to reach an agreement. However, this seems to be the account of the "completeness" desideratum that critics of consensus political liberalism assume at the basis of their critiques. Thus, I start by focusing on it.

The core idea is that if the content of public reason allows constructing multiple competing public reasons-based justifications over single disputes, then reasonable citizens will disagree about justice – e.g., ranking different values in different ways, interpreting values differently, etc. – as much as they reasonably disagree about the good life. Hence, critics ask, how can offering reasonably rejectable public reasons lead to justification, thus, to legitimate state action? Put differently, accepting the incompleteness of public reason (and reasonableness of disagreement about justice) leads to challenging the asymmetric treatment of political justice and the good – arguably the cornerstone of the consensus political liberal strategy to legitimate state action.[39] I return to how mainstream political liberalism deals with this charge in the next section. For now, I want to expand on the challenge further.

Here the relevant point is whether we should expect that public reason can be complete *at least* with an overlapping consensus of all reasonable citizens on one single political conception of justice. If the answer is no, then we should expect incompleteness to be an even more pervasive feature of public reason when such a consensus is assumed not to hold. A few examples can help in carrying out this assessment.

Case 1: Let us consider the famous case of the publication of the *Mohammad cartoons* by the Danish journal *Jyllands-Posten* in 2005.[40] As is well-known, the journal published twelve cartoons, some of which depicted Islam's prophet Mohammad, and one of which represented his turban as a bomb.

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39 This is the so-called "asymmetry objection' to consensus political liberalism: if reasons of justice are reasonably rejectable, and so are reasons about the good life, why is that the first can lead to legitimate decisions, while the latter cannot? For a discussion and rejection, see Quong, *Liberalism without Perfection* 192,220.

40 For discussions about the relevant (political) values involved and under threat in the example, see – for instance – Sune Lægaard, "Normative interpretations of diversity. The Muhammad cartoons controversy and the importance of context" [2009] 9 *Ethnicities* 314,333; Geoffrey B. Levey and Tariq Modood, "The Muhammad cartoons and multicultural democracies" [2009] 9 *Ethnicities* 427,447.

The aftermath of the publications saw a heated worldwide debate, with (at times violent) protests by Muslims around the world. Some of the images were targeting Muslims distinctively as incapable of civic virtues – e.g., of tolerance and endurance in the face of public critique – and in some cases were representing them as terrorists. Reinforcing this image of an already stigmatised minority can hurt the life of the members of such a minority – e.g., reinforcing ongoing processes of exclusion and marginalisation. Therefore, some may question – based on worries that the publication fuels further marginalisation – whether their free circulation should be left unchallenged under the protection of the free press.

From the perspective of the ordered consensus on JaF, any proposal supporting the permissibility of censuring the journal would count as unreasonable. Anyone disagreeing with this would be arguing from *outside*, so to speak, the public reason of JaF. Indeed, according to the substantive content of JaF, freedom of expression is a basic liberty that can be restricted only for the sake of other basic liberties. The public reason of JaF may seem to indicate a unique solution to this dispute, at least as long as the question is one concerning the censorious treatment of the publication.

Case 2: Some radical feminists hold that pornography negatively affects women's freedom of speech by undermining their authoritativeness as speakers, especially (but not only) when it comes to their capacity to function effectively in refusing sex.[41] Pornography would *silence* women by making certain speech-acts "unspeakable" to them.[42] Let us assume, for the sake of the present argument, that this reason is consistent with the lines of inquiry of public reason, thus offering a sensible articulation of the relevance of freedom of speech to the dispute. Based on this reason, let us assume, some citizens think that (at least certain kinds of) pornography should be censured. On the other hand, a classic defence of the free circulation of pornography is based precisely on the freedom of expression of producers.[43]

Would the public reason of JaF be complete in *case 2* as it was in *case 1*? The problem is that if the same value can be invoked on both sides of the same dispute, priority rules – even if shared – cannot help to identify a single decision as the only justifiable one. Different citizens, arguing from within the limits of JaF's public reason, reach different conclusions, in this case, based on different interpretations of the very same normative standard. Put differently, even the public reason of JaF

41 See, e.g., Catharine MacKinnon, "Pornography, Civil Rights and Speech," in C. Itzin (ed) *Pornography: Women, Violence and Civil Liberties* (Oxford University Press 1992).

42 Rea Langton, "Speech Acts and Unspeakable Acts" [1993] 22 *Philosophy & Public Affairs* 293,330.

43 See, Ronald Dworkin, "Is there a right to pornography?" [1981] 1 *Oxford Journal of Legal Studies* 177,212.

can be incomplete qua inconclusive – i.e., allowing for a multiplicity of competing (reasonable) claims for the resolution of the debate (more on this below).

The above conclusion is not surprising. Rawls himself writes that "controversial issues inevitably remain: for example, how more exactly to draw the boundaries of the basic liberties when they conflict (where to set "the wall between church and state"); how to interpret the requirement of distributive justice even when there is considerable agreement on general principles for the basic structure."[44] It is plausible to conclude that the interpretation mentioned above of the completeness desideratum could not possibly be what Rawls had in mind and certainly is not what mainstream political liberals aims to achieve. Before proceeding to expound the last remark, I close this first part of the chapter by briefly explaining why political liberals hold that no consensus should be expected on one single political conception of political justice such as JaF.

The picture of political liberalism I presented in this section requires that citizens reach a consensus not only on a range of political values but also on precise principles of justice as well as priority rules for ranking such principles and values. Recalling the *Danish Cartoon* case, for some citizens to argue that freedom of expression can, in some instances, be restricted to enhance other citizens' social equality would be a simple act of unreasonableness. It might be due, for instance, to an abandonment of the political point of view in favour of some comprehensive considerations or to mere self-interest – where both qualify as markers of unreasonableness. The point is that, from within this model, it would not be possible to reject elements of JaF and be reasonable at the same time.

Political liberals, including (the later) Rawls, accept that this picture is untenable.[45] In this thesis, I follow Jonathan Quong in holding that "reasonable citizens" are *defined* by their acceptance of a set of ideas and values that constitute the content of political morality, as derived from a philosophical interpretation of the public political culture of liberal democracies. I will return to this point below. Idealising the justificatory constituency to whom decisions need be justifiable is essential to ensure that positions rejecting the very fundamental commitments of liberal democratic morality do not influence the legitimacy of political decisions. That is, "reasonableness" *defines* a normative point of view.[46] Still, holding that the reasonableness of citizens should depend on their acceptance of, e.g., JaF is unnecessarily under-inclusive. In Sebastiano Maffettone's words, ultimately political liberalism is "a liberal meta-theory" that assumes consent on a minimal substantive politically moral content delimiting a *set* of reasonable political conceptions of justice.

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44 Rawls, *Political Liberalism* 152.

45 *Ibid.* xlvii. See also, for a discussion, Neufeld and Watson, "The Tyranny-or the Democracy-of the Ideal?" 51ff.

46 I will return in greater detail in Ch. 4 to explain how such a normative point of view can be conceived as a "single" perspective, though a "conflicted" one.

Rawls's JaF is only one instance.[47] As the sketchy presentation of *case 1* above showed, citizens who reject (some elements of) JaF need not be non-cooperating members of society, driven by self-interest, nor need they reject fundamental ideals of freedom and equality as political values.

4. Reasonable disagreement about justice and the (in)completeness of public reason

The previous section has shown that even assuming consensus on one single conception of political justice, public reason would still fail to be complete, leading different citizens – committed to arguing from "the" common conception of political justice – to reach different conclusions concerning what justice requires. That is, it would still be possible *reasonably* to disagree about justice. Before I explain in what ways public reason can be incomplete, I need to define more precisely what characterises "reasonableness" as a property of citizens. This, in turn, is essential to explain in what sense(s) the disagreement can be reasonable.

Reasonable disagreement about justice

As seen above, "reasonableness" is partly an epistemic notion. Disagreement is reasonable, in this sense, as caused by the BoJ. However, the notion of the BoJ is entangled with moral considerations in its very formulation. The BoJ explain why well-informed people, applying their normal capacities for reason, and discussing *in good faith*, will normally fail nonetheless to reach any agreement on many ethical and political matters. That is, people among whom the disagreement is the exclusive result of the action of the BoJ have a certain moral attitude towards one another. In consensus political liberalism, this "moral attitude" is a component of the reasonableness of citizens, who – guided by their sense of justice – try to offer one another fair terms that they sincerely expect their fellow citizens to be able to accept. In this sense, reasonable disagreement is the disagreement that occurs – as an exclusive result of the effect of the BoJ – *among reasonable citizens*.

What is the moral content that can give guidance to citizens as they attempt to deliberate and propose fair terms to one another? Following Jonathan Quong, the relevant overlapping consensus holds primarily on the two basic ideas of *society as a fair system of cooperation* and *citizens as free and equal moral persons*.[48] That is, reasonable citizens do not see society as a venture for self-advancement in which they press unfair bargains on fellow citizens to maximise their advantage. Reasonable

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47 Sebastiano Maffettone, "Political liberalism. Reasonableness and democratic practice" [2004] 30 *Philosophy & Social Criticism* 548.

48 Quong, *Liberalism without Perfection* 161,192. See also, Jonathan Quong, "What Do Citizens Need to Share? Citizenship as Reasonableness" in David Laycock (ed) *Representation and Democratic Theory* (UBC Press 2004) 141,161. For a broader discussion, see Allyn Fives, *Political Reason. Morality and the Public Sphere* (Palgrave Macmillan 2013) Ch. 5.

citizens see their fellow citizens as free and equal and therefore conceive of society as a scheme of cooperation where no one should be, at the very minimum, too excessively sacrificed for the benefit of others.[49] They see one another as having two moral powers consisting of a capacity to conceive the good – and an associated higher-order interest in living by their conceptions of the good – and a capacity for a sense of justice. As a consequence, each will hold (different) political conceptions of justice that aim at securing the basic conditions for their political autonomy and the development of such powers. Thus, the conceptions that each of them will endorse will present structural analogies (allowing differences in the articulation of further content).

To wit, political conceptions of political justice all will fall within a "family," whose constitutive essential elements give the substantive content of reasonableness (and public reason). According to Rawls and Quong, politically liberal conceptions of political justice have three features in common: (i) a list of equal basic liberties for each citizen; (ii) some priority (though not necessarily lexical as in JaF) to these liberties; (iii) a degree of access to all-purpose means for all citizens so that they can make effective use of such liberties.[50] The main idea is that, rather than having a single freestanding derivation from the basic ideas, there will be multiple ones; i.e., multiple reasonable conceptions of political justice. A core assumption in consensus political liberalism, however, is that conceptions of justice which do not respect (i), (ii), and (iii) do not take the basic ideas seriously.

Reasonable citizens also accept the BoJ and, as a consequence, accept the reasonableness of disagreement (about the good and justice). As briefly touched upon above, seeing their fellow citizens as free and equal, while accepting at the same time the inevitability of disagreement, they embrace public reason as the most appropriate model of public deliberation. Therefore, the substantive and epistemic content – i.e., common guidelines of inquiry – of political conceptions of political justice will constitute the common ground for discussion among reasonable citizens.

The incompleteness of public reason

As just seen, in mainstream consensus political liberalism, the overlapping consensus of reasonable citizens obtains on a loose set of political values and on guidelines of inquiry to articulate claims of justice. In light of this, it should be evident that public reason is likely to prove incomplete in many circumstances. Plausibly, the incompleteness of public reasons should be expected to be the norm rather than the exception.

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49 I here follow Gabriele Badano, "Political liberalism and the justice claims of the disabled: a reconciliation" [2013] 17 *Critical Review of International Social and Political Philosophy* 401,422 in seeing the idea of citizen as primitive, and that of society as a fair system of cooperation as derivative.

50 John Rawls, "Reply To Habermas" [1995] 92 *The Journal of Philosophy* 134; Quong, *Liberalism without Perfection* 175.

To recall, public reason is incomplete when deliberation only based on its content leads to more than one reasonable solution or none.[51] In the first case, public reason proves incomplete qua *inconclusive*. In the second, it is incomplete qua *indeterminate*; that is, reasoning only through public reasons would lead to *not even one* solution to some dispute. This would obtain because, e.g., no competing position can be articulated without implicitly or explicitly taking a position on some ethical truth appeal to which is prohibited by the deliberative constraints of public reasons.

It is often held that indeterminacy would be highly problematic for the theory of public reason. Instances of indeterminacy would leave decisions that must be taken – e.g., state *in*action may well be one of the competing contentious courses of state action – with no guidance. However, no consistent application of public reason can yield any solution. It would seem necessary to infringe the requirements of public reason, resorting to non-public reasons. Nevertheless, decisions taken without following public reason, for political liberals, are illegitimate. As an example, think of the issue of abortion. The point, some hold, is that it is impossible to take a stance on it without taking, in turn, an implicit stance on the moral status of the foetus, thus assuming highly controversial ethical truths.[52] Some have recently argued that this is not the case.[53]

In any case, I am not interested in entering this debate here, nor do I aim to argue that public reason is never indeterminate. This assessment falls outside the scope of this work. As I shall make clear at many points below, the relevant circumstances in which I am interested – i.e., in which, I will argue, residues of justice obtain – are those in which public reason proves incomplete qua inconclusive. These are cases in which requirements of justice can be reasonably interpreted in multiple ways, rather than in none. Let me then turn to *inconclusiveness*.

Cases of inclusiveness are cases in which different reasonable citizens – advancing reasons based on only political values and following common guidelines of inquiry – reach different incompatible conclusions. More precisely, they are cases in which there are multiple (collectively)

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51 Schwartzman, "The Completeness of Public Reason;" Andrew Williams, "The Alleged Incompleteness of Public Reason" [2000] 6 *Res Publica* 199,211. For a discussion, see also Cécile Laborde, "Political Liberalism and Religion: On Separation and Establishment" [2013] 1 *The Journal of Political Philosophy* 67,86.

52 Kent Greenawalt, "On Public Reason" [1993] 69 *Chicago-Kent Law Review* 683ff. appears to make this point. For more explicit articulations, see, e.g., Cécile Laborde, *Liberalism's Religion* (Harvard University Press 2017) 108; Matthew Kramer, *Liberalism with Excellence* (Oxford University Press 2017) 92ff. For discussion, see Schwartzman, "The Completeness of Public Reason" 196ff.

53 For some recent arguments, see Robbie Arrell "Public Reason and Abortion: Was Rawls Right After All?" [2019] 23 *The Journal of Ethics* 37,53; Jeremy Williams "Public reason and prenatal moral status" [2015] 19 *The Journal of Ethics* 23,52. Notably, one of the most influential papers on abortion rights, Judith Jarvis Thomson's, precisely aimed to establish that – even granting the full moral personality of the foetus – permissive stances on abortion were still be possible and appropriate. The point, for the sake of the present argument, is simply that it is possible to reason counterfactually on the issue of abortion and defend arguments leading to determinate, though certainly highly controversial, conclusions. See, Thomson, "A Defence of Abortion" [1971] *Philosophy and Public Affairs* 47,66.

"undefeated" but "inconclusive" reasons.[54] Notably, this sort of stand-off obtains regarding some matter that is related to constitutional essentials or basic justice, as per the requirement of the priority of the basic structure that I accept in the thesis. How is it legitimate to implement any of the competing proposals – the reasons in support of which some reasonable citizens somehow reject? From this perspective, inconclusiveness shows that public reason is flawed, for it cannot meet its requirement for political legitimacy: justifying state action to all reasonable citizens based on public reasons. Therefore, it is crucial to explain with far greater precision *what public reasons exactly are*. This analysis will provide the theoretical tools necessary to explain how consensus political liberals resist the charge that incompleteness, and reasonable disagreement about justice, undermine the project of legitimating state action through public reason.

The "structure" of consensus political liberals' public reason: a defence of weak shareability

As seen, political liberals hold that the legitimacy of state action depends on its justifiability. Therefore, what reasons count as "justificatory" is crucial in understanding when decisions are legitimate. In the next chapter, I shall argue that what criterion reasons need to meet to be justificatory depends, in turn, on the rationale that seeking legitimate state action aims to honour in the first place. For now, this section presents and assesses the core points of the debate about the so-called *structure* of public reason and positions my account within it. That is, it covers the categorisation of "justificatory reasons."

Kevin Vallier has offered the most influential categorisation of justificatory reasons in the literature; his typology is tripartite.[55] For so-called "convergence political liberals," he holds, reasons have to be *intelligible* within a public. By contrast, consensus theorists may want reasons to be either *shareable* or *accessible*. Since Vallier's distinction has set the terms of this debate, I shall start by presenting it. Specifically, in line with the focus of this work, I am interested in *consensus* conceptions of public reasons. However, touching briefly on the convergentist account will serve both comprehensiveness and clarity. I will also present Cécile Laborde's account of "accessibility" – *thin* accessibility – which I distinguish from the commonly accepted one in the literature, which I call "*thick* accessibility."

Ultimately, I will argue that some elements of Vallier's categorisation are partially misleading. Namely, the category of shareability needs further internal differentiation – taking a cue from

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54 Gerald Gaus, *Justificatory liberalism: An essay on epistemology and political theory* (Oxford University Press 1996) 150ff.

55 See, Kevin Vallier, "Against public reason liberalism's accessibility requirement" [2011] 8 *Journal of Moral Philosophy* 366,389; Kevin Vallier, *Liberal Politics and Public Faith* (New York: Routledge, 2014); Kevin Vallier, "In defence of intelligible reasons in public justification" [2016] 66 *The Philosophical Quarterly* 596,616.; Kevin Vallier, "Public Justification" in Edward N. Zalta (ed)*The Stanford Encyclopedia of Philosophy* (Spring 2018 Edn), URL = <https://plato.stanford.edu/archives/spr2018/entries/justification-public/>.

Quong's nuanced account of "consensus."[56] Relatedly, the distinction between shareability and thick accessibility – as Vallier and others following him present the latter – is not as stable as it seems. *Thin* accessibility is more analytically distinctive, but that account explicitly does not aim on its own to lend legitimacy to decisions and, therefore, is not suitable as a criterion for justificatory reasons, where justification is meant primarily to lend legitimacy to decisions. I shall argue that consensus political liberals, defenders of thick accessibility included, all embrace what I call "weak shareability." The distinction may seem merely terminological; as said, the distinction between one sense of shareability and one of accessibility is not as stable as it is often held to be. However, embracing a "shareability" category, suitably qualified, is more helpful when it comes to making sense of the logical and normative implications of the consensus account of public reason and the ideal(s) it aims to promote (more on this in Chs. 2 and 4).

A few clarifications of relevant terms are needed before presenting Vallier's categorisation since it rests on a distinction between, respectively, *citizens' assessment of reason* and the *standards* based on which such an assessment can be carried out. According to Vallier, "A reason to Φ is simply a consideration that counts in favor of Φ-ing."[57] Reasons need to be, in some sense which I shall analyse in greater detail below, "justified" to individuals to count as proper justification. Evaluative standards, differently, are the substantive and epistemic norms based on which individuals can assess the normative and epistemic validity of reasons; i.e., whether they are acceptable justifications or not. In consensus accounts of public reason, at least the evaluative standards must be shared; in the convergence account, they need not be. As seen above, in consensus political liberalism, appropriate substantive evaluative standards will be the basic ideas of society as a fair system of cooperation and citizens as free and equal, as well as the political values that can be constructed on the basic ideas (e.g., basic liberties and some priority attached to them, a social minimum, primary social goods). Epistemic evaluative standards are the guidelines of inquiry, e.g., rules of inferential logic and evidence-based reasoning. Let us now turn to Vallier's categorisation.

A reason is intelligible within a justificatory constituency iff its members can see that reason as justified to *the individual who offers it* according to *that individual's (sectarian) evaluative standards*.[58]

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56 Quong, *Liberalism without Perfection* 264. Quong's internal differentiation is spelled out in terms of "strong" and "weak consensus." I shall use "shareability" instead to remain consistent with the terminology as it is most commonly used in the debate.

57 Vallier, "Public Justification."

58 *Ibid.*

A reason is (thick) accessible within a justificatory constituency iff its members can see that reason as justified to *the individual who offers it* according to *evaluative standards shared within the constituency*.[59]

A reason is shareable within a justificatory constituency iff its members can see that reason as justified to *all of them*, the person offering it included, according to *evaluative standards shared within the constituency*.[60]

Intelligibility requires that neither the reasons offered nor the evaluative standards, are shared. The whole justificatory constituency, on this account, only need to be able to see that the reason is justified to the citizen affirming it as her own in light of the premises *she* endorses. The distinctive feature of convergentist models is that (coercive) decisions, not reasons for decisions, need to be acceptable to all citizens.[61] Such laws are justified, and thus legitimate, within the relevant public – provided each member has some reason to accept the law – but the reason need not be public in any sense. This account is the most inclusive, allowing any ethical doctrine to provide valid evaluative standards for the construction of justificatory reasons. For instance, John Stuart Mill's account of the primary importance of individual self-development could figure in public deliberation as the ground, say, for an argument in support of a highly permissive policy on abortion. Clearly, the intelligibility criterion is ruled out if political justification consists in offering reasons that are, in some sense, acceptable *to all in their role as reasonable free and equal citizens*. Indeed, it allows, as *justificatory* reasons, precisely those ethical reasons that consensus political liberals typically want to exclude.[62] I shall not return further to the intelligibility criterion as it is not directly relevant to this work.

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59 See, e.g., Gabriele Badano and Matteo Bonotti, "Rescuing Public Reason Liberalism's Accessibility Requirement" [2020] 39 *Law and Philosophy* 35,65; Matteo Bonotti and Anne Barnhill, "Are Healthy Eating Policies Consistent with Public Reason?" [2019] 36 *Journal of Applied Philosophy* 506,522; Vallier, "Against public reason liberalism's accessibility requirement."

60 See, e.g., Gabriele Badano and Matteo Bonotti, "Rescuing Public Reason Liberalism's Accessibility Requirement;" Matteo Bonotti and Anne Barnhill, "Are Healthy Eating Policies Consistent with Public Reason?;" Laborde, *Liberalism's Religion*; Vallier, "Against public reason liberalism's accessibility requirement."

61 Andrew Lister articulates a feature differentiating "consensus" from "convergentist" models of political liberalism based on the *object* of public justification. Convergentists, in this account, embrace a "decision" model of public justification, whreas "consensus" theotists embrace a "reasons for decisions" account. See, Andrew Lister, "Public Justification of What?". The significance of this distinction *per se*, however, may be overstated. After all, when consensus theorists hold that the reasons for decisions are to be publicly justifiable they also by this entail that the way to proceed to justify political decisions is to resort to public reasons, i.e., the only justifyinfg reasons for certain political decisions. On this point, see Fabian Wendt, *Compromise, Peace and Public Justification. Political Morality beyond Justice.* (Palgrave Macmillan 2016) 126.

62 Strictly speaking, the first account can be properly considered as an account of "public" reason only in the sense that the law is justified *for the whole public*; not in the relevant sense here, i.e., somehow based on "public" terms, see Vallier "Public Justification".

By looking both at what some consensus theorists currently endorse and at the critiques of convergentist theorists, it would seem that (thick) accessibility is the most common criterion in the consensus camp. The main reason for this is that shareability seems to many too strong a criterion, making public reason excessively under-inclusive as well as setting the bar too high for legitimate decision making.[63] In the shareability model, all members of the public need to share both reasons for decisions *and* evaluative standards. What does this precisely mean? And who endorses the shareability model?

The account of shareability identified by Vallier is not endorsed by any of the political liberals that currently refer, arguably often vaguely and misleadingly, to the category of "shared" reasons.[64] To understand this, it is essential to analyse further what "*sharing* a reason" can mean. According to Vallier, a reason is shareable if "each citizen will *affirm* [emphasis mine] the reason as *her own* at the right level of idealization."[65] This way of interpreting what "affirming a reason as one's own" means is informed, in turn, by Vallier's – and convergentist accounts more generally – of what "holding a reason as justified to oneself" means. A reason is justified for an individual, or affirmed as her own, when it is "justifiably affirmed by that person and when the member has no other reason that *overrides or defeats* it in the relevant circumstances."[66] Thus, each member of the public needs to think that reason *the best one*, so to speak – i.e., not overridden nor defeated by other reasons – concerning the relevant political decisions.

It is not surprising that theorists reject the shareability criterion to identify the reasons that should be offered to negotiate political disagreement. This requirement would be incredibly demanding. This criterion could arguably be met only in circumstances of *agreement.*[67] I shall return to this last conclusion in the next section when discussing the alleged problem of the incompleteness of public reason.

There is a way of interpreting the shareability model, which is not as demanding as the one just presented. This second account, call it "weak shareability," would require that a reason is shareable iff all reasonable citizens can share it as *sufficiently valid*, based on shared substantive and epistemic evaluative standards. Different citizens will *affirm as their own* different reasons for decisions but will share as sufficiently valid – based on shared evaluative standards – many more.

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63 See, e.g., Badano and Bonotti, "Rescuing Public Reason Liberalism's Accessibility Requirement" 44.

64 For instance, see Quong, *Liberalism without Perfection*; Lister, *Public Reason and Political Community*; Schwartzman, "The Sincerity of Public Reason;" Leland, "Civic Friendship, Public Reason."

65 Kevin Vallier, *Liberal Politics and Public Faith* 109.

66 Vallier "Public Justification". Emphasis mine.

67 This may be speculative, but arguably the only place where we can find an adoption of this criterion is in Rawls's *A Theory of Justice* when delineating the reasoning of the representatives in the original position. That is, of course, a case of *agreement*.

More precisely, all public reasons are shareable by all reasonable citizens as "sufficiently valid," whereas each reasonable citizen will affirm one – within this set – as her own. I shall further unpack this model shortly when arguing that it is a logical implication of "thick accessibility" as it is usually presented in the literature.

In the accessibility account, citizens need to share substantive and epistemic evaluative standards, but not the reasons for the decisions.[68] Citizens can advance reasons as justificatory – those they consider the best ones for the relevant decisions – provided these reasons are exclusively based on, e.g., values they share with their fellow citizens and rules of reasoning that are also shared. This is a very appealing model for consensus political liberals. Unlike the strong shareability model, the accessibility one does not cancel the possibility of disagreement. For instance, different reasonable citizens will rank differently multiple political values at stake in political disputes, so that it should not be expected that they all affirm as their own the very same reasons for action. Citizens can permissibly advance contentious reasons – that others will reasonably reject – provided such reasons are based on substantive and epistemic evaluative standards they expect those others to share. However, accessibility is well-equipped to reject the sort of problematic reasons that an intelligibility model would let in; e.g., reasons that are grounded on religious revelation and, thus, not amenable to assessment based on shared epistemic standards, or based on sectarian values such as Mill's account of the intrinsic value of individuality. In this model – where reasons are declared *not to be* shared – the elements that provide the normative force allowing reasonably rejectable (as not the best) reasons to still lend legitimacy to decisions is the shareability of the evaluative standards on which such reasons are grounded. Still, how much are weak shareability and thick accessibility actually different from one another? That is, in what sense is it true that reasons are not shared in the thick accessibility model?

An example can help in answering those questions. Gina and Jack are deliberating about the permissibility of wearing the *kirpan* in schools. They agree that both religious freedom and security concerns are relevant to the matter and are critical values; they should be somehow balanced to reach a reasonable decision on the matter.[69] Gina thinks that religious freedom is an extremely important value. She, therefore, favours a solution in which the *kirpan* is allowed in schools provided access to it is hindered the kirpan should be tightly sealed into a wooden sheath and kept under clothes). This, she points out, is a less invasive solution compared to prohibiting the *kirpan*. This provision would still take into account safety concerns relevant to the matter. Jack is not

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68 Badano and Bonotti, "Rescuing Public Reason Liberalism's Accessibility Requirement" 38; Bonotti and Barnhill, "Are Healthy Eating Policies Consistent with Public Reason?" 5.

69 I will return to explaining the relevance of such balancing exercises to the identification of "reasonable arguments" in Ch. 3. For now, I shall leave the issue aside.

persuaded that this is enough. He thinks feeling safe is paramount. The mere presence of the *kirpan* will still lead some to feel unsafe, and this will jeopardise the serenity of the learning environment. Jack thinks that Sikhs should only be allowed to wear replicas. Gina and Jack are debating based on shared evaluative standards, as they share the substantive values and appreciate that each other's reasons appropriately follow common rules of inference. Gina's reason is (thick) accessible to Jack, and vice-versa.

In what sense, then, is it possible to say that Gina does not share Jack's reason and vice-versa, as the received reconstruction of the thick accessibility account holds? If they share the substantive standards relevant to the dispute and see that the opponent has followed, e.g., common rules of inference in constructing a reason, it is not very clear in what sense they could avoid appreciating the *minimal validity* of that reason. Of course, they need not *affirm as their own* that reason – in light of the terminology I introduced above to make sense of weak shareability. In Sune Lægaard's words, "if people share premises, isn't understanding a reason in relation to these shared premises tantamount to endorsing the reason? If I understand a reason in relation to a premise that I share, how can I not also endorse the reason?"[70] The core point is that the distinction between shareability and thick accessibility is not analytically stable.[71] What distinguishes the two accounts is the wrong assumption that accessibility reasons are not shared *in any sense*. If the relevant account of shareability is what I called "strong shareability" that assumption is correct. However, as I showed, this is not the only – nor the most plausible – account of what consensus theorists mean when referring to the idea that reasonable citizens should offer one another "shared" reasons. Gina will share Jack's reason as minimally valid, but not as her own – and vice-versa. Crucially, each will not think the reason offered by the other as the one that at best ranks and balances the relevant interests and claims. Compared to the one they prefer, they will see it as suboptimal, less successful in articulating fair terms. However, they will see it as a reasonable articulation of fair terms, "even if barely so"[72] – by sharing the relevant epistemic and substantive standards.

For reasons of completeness, I shall clarify a further point. As anticipated above, Laborde has recently presented a *thin* account of accessibility as distinctively epistemic.[73] In this account, a reason is accessible within a justificatory constituency iff members can see that reason as "understandable" and amenable to be assessed based on shared epistemic standards. However, there is no need for the reason also to be based on shared substantive standards. In Laborde's

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70 Sune Lægaard, "Laborde's religion," [2020] 23 *Critical Review of International Social and Political Philosophy* 12.

71 On this point see, also Cécile Laborde, "Three cheers for liberal modesty" [2020] 23 *Critical Review of International Social and Political Philosophy* 121.

72 Rawls, "The Idea of Public Reason Revisited" 770.

73 Laborde, *Liberalism's Religion* 118,132.

words, citizens should not be "coerced in the name of reasons that they *do not understand* and *cannot engage with*."[74] This account, of course, avoids the excesses of strong shareability. Members need to offer to one another reasons that are merely epistemically accessible, amenable to assessment based on common rules, say, of reasoning and logic. Hence, thin accessibility allows excluding reasons that, e.g., refer to divine revelation, a paradigmatic example of a reason whose premises would fail to meet any evidence-based assessment. Still, accessible reasons, on this account, need not be shared in any sense; nor is any substantive common ground needed, unlike in thick accessibility.[75]

Within the model of consensus political liberalism that I accept as the theoretical background of this thesis, the criterion identifying justificatory reasons must lend those reasons enough normative force to confer "legitimacy" on the laws they support. Laborde's "thin" accessibility does not meet this requirement. The fact that (reasonable) citizens can understand and appreciate the epistemic validity of reasons falls far short *per se* of conferring legitimacy to laws justified on their basis. This is no problem for Laborde, as she explicitly rejects the idea that justifications can be on their own legitimacy-conferring.[76] However, if thin accessibility cannot serve as a criterion for justificatory reasons that can legitimate decisions, it is not a competitor to the "weak shareability" account that I have defended in this section.

Table 1 below summarises the distinction between the different accounts of public reasons presented in this section.

To sum up, I have shown that thick accessibility accounts are in fact forms of weak shareability. Once it is accepted that reasonable citizens share the substantive evaluative standards and see that epistemic common standards have been plausibly applied by other fellow citizens whose reasons they do not affirm as their own, it is possible to appreciate that reasonable citizens share reasons

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74 *Ibid.* 119. Emphasis mine.

75 For the sake of precision, Laborde also offers a seemingly (more) substantive criterion for public reasons. Reasons may be public if they are "detachable" from ethical doctrines, irrespective of the inaccessibility of the ethical doctrine within which they originate. See *Ibid* 126. For discussion, see Aurélia Bardon, "Is Epistemic Accessibility Enough? Same-sex marriage, tradition, and the Bible" [2022] 23 *Critical Review of International Social and Political Philosophy* 32ff. Now, if "detachability" merely tracks reasons that happen to figure in other doctrines than the one in which they originate, this does not tell much in itself concerning their normativity as "reasons" *tout court*. I suspect the point is different. As Laborde has recently clarified to refine her account of public reasons, "detachability" refers to "reasons that *have some weight* in different evaluative frameworks" see, Cécile Laborde, "Three cheers for liberal modesty" [2020] 23 *Critical Review of International Social and Political Philosophy* 122 (emphasis mine). In this second, thicker, sense – however – the criterion gets very close to thick accessibility or weak shareability as presented above. I.e., for reasons to be seen as "having some weight" by all, their normativity still needs to rest on some substantive standard which is shared.

76 *Ibid.* 123,129.

in a "weak" sense. They can appreciate the minimal validity of the arguments of others, while not affirming them as their own (as a strong shareability model would require).

Table 1

Possible assessment of *r* of A within the whole public	Evaluative Standards (ES)		
	Sectarian substantive and epistemic ES	Shared substantive and epistemic ES	Shared epistemic and non-shared substantive ES
Understanding as a reason	Intelligibility	Strong and weak shareability - Thick accessibility	Laborde's thin accessibility
Affirmation of *r* as one's own for all (best *r*)	/	Strong shareability	/
Recognition by all why *A* affirms *r* as her own	/	Thick accessibility	/
Recognition of minimal validity of *r* for all (*r* as a minimally valid reason)	/	Weak shareability	/

Rescuing legitimacy vis-à-vis incompleteness

Given the analysis in the last section, it is now possible to explain why the inconclusiveness of public reason is not a problem for consensus political liberalism insofar as justification, and hence, legitimacy is concerned. The point of the incompleteness charge, to recall, is to question how reasons, no matter how public, can justify state action if they are reasonably rejectable. When public reason is inconclusive, multiple public reasons pull state action in different directions, and reasonable citizens disagree about the relative merits of one another's public reasons. If the state acts in any inconclusively justified way, does it not fail to offer justifications to those who disagree with the relevant decisions, based on competing public reasons?

The answer is negative, for a similar question makes sense only by assuming that the relevant account of justificatory reasons is what I called "strong shareability." Public justification, on this picture, would consist in offering all reasonable citizens reasons that they can affirm as their own, not overridden or defeated by competing public reasons. However, as we have seen, to my knowledge no consensus political liberal defends such a strong position, and they need not do so. Public reasons to be justificatory need only to be "weakly" shareable, in the sense that different

reasonable citizens can appreciate the minimal validity of one another's reasons as long as all argue from shared premises and follow common guidelines of inquiry. Still, each affirms a certain reason as her own (that others will hold as countervailed by competing public reasons that they believe stronger). The core point, however, is that reasonable citizens will all argue from shared evaluative standards and can, thus, appreciate that only (and all) reasons eligible as justifications support fair terms. From the perspective of each, some such reasons will barely do so, but it will be apparent to all that they do.

Acting in ways that are not justified to some based on reasons that they affirm as their own is still offering them reasons that are (thick) accessible to them. In fact, it is offering reasons that they can all share as minimally valid articulations of what political justice reasonably requires. The inconclusiveness of public reason, with its multiplicity of competing reasonably defensible solutions is not a problem for consensus political liberalism. Solving the disagreement is not the point of public reason as much as legitimate state action does not equate to "conclusively justified" to each reasonable citizen.

Facing competing reasons that are, at the collective level, undefeated and inconclusive will make it necessary to resort to some fair aggregative procedure to decide what course of (state) action is ultimately legitimate. As regards what is the best second-order procedure to settle the issue while staying within the limits of public reason, different commentators, of course, further disagree. Rawls and Quong mainly refer to voting procedures for aggregation, while, e.g., Schwartzman briefly sketches further possibilities, in addition to recourse to voting procedures (e.g., further compromises, lotteries).[77] Ultimately, though, it is clear that for consensus political liberals, the legitimacy-conferring capacity of public reason does not stem from an implausible claim that it will lead to an agreement. Rather, it arises due to the provision of a framework for discussing fundamental political matters within which citizens can see the exercise of power as (minimally) justified to all of them on terms they can accept together with their fellow citizens. As anticipated above, I shall unpack in the next chapter what ideals a similar account of public reasons aims to honour by guaranteeing the legitimacy of state action.

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[77] See, Schwartzman, "The Completeness of Public Reason" 209,212. To be sure, there is disagreement about which aggregative procedures best honour democratic legitimacy (e.g., majority rule, lotteries – to cite just a couple of examples). In this work, I cannot possibly deal with issues of procedural design and how they impact the legitimacy of decisions – or the residues they leave behind. What I can say is that, in this work, I shall simply follow the mainstream approach in political liberalism assuming voting procedures under majority rule as the designed aggregative process to settle disputes at an impasse. For an example of alternative strategies, see Ben Saunders, "Democracy, Political Equality, and Majority Rule" [2010] 121 *Ethics* 148,177.

The normative significance of inconclusiveness: some preliminary observations

Before closing this chapter, I want to focus attention on two points that lie at the core of this work. One concerns a complexity inherent in conditions of inconclusiveness of public reason that has to do not with its alleged negative impact on the strategy of legitimising decisions in consensus political liberalism. The second concerns the last item in Rawls's list of BoJ quoted above.

Firstly, I have shown that circumstances of inconclusiveness of public reason are such that multiple reasonable arguments can be advanced as to what course of state action best realises political justice. Consensus political liberals by now concede that public reason is inconclusive. As seen, the justification of state action is not undermined if some reasonable citizens can reject it based on competing public reasons (that they affirm as their own as best articulating requirements of political justice). Put differently, it will be legitimate *not* to act in ways that are reasonably defensible, in line with public reason, as reasonable requirements of justice. Each proposal will prioritise some values while sacrificing others, and will distribute burdens and benefits in different, reasonably defensible ways.

Let us recall, now, that cases of inconclusiveness of public reason obtain on decisions that specify constitutional essentials and matters of basic justice. Cases of inconclusiveness are then cases where the decisions impact interests of importance to the exercise of citizens' moral powers. These are decisions about the specification of the basic liberty of religious freedom – as in the *kirpan* example above – or decisions about equality of opportunity for women and the right to life, as in the abortion debate. Put differently, these are decisions about components of the basic structure of society that highly impact citizens' life-prospects.

Can consensus political liberals safely assume that their theories address all that morally matters in similar circumstances, by showing how prioritising certain publicly well-grounded decisions – while rejecting others that are symmetrically situated – is legitimate? Is there anything morally amiss in the (legitimate) failed accommodation of some (or any) proposals that reasonable citizens can appropriately defend based on values of political justice? Are burdens imposed on citizens in similar conditions somehow morally problematic, even if the decisions that impose them are legitimate? Put differently, is the inconclusiveness of public reason problematic after all, though not in the way critics of consensus political liberalism usually hold? And, if so, how? These are all questions that this work will answer in the attempt to offer a more internally consistent and hopefully normatively more appealing account of consensus political liberalism. I shall close this chapter by clarifying that a hidden assumption at the core of consensus political liberalism makes all these questions opaque to analysis, and indeed they have never received any attention.

The last burden of judgment, as I anticipated, is peculiar. Recalling it in full will be useful. Rawls writes:

> "f. Finally, […] any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values that might be realized. This is because any system of institutions has, as it were, a limited social space. In being forced to select among cherished values, or when we hold to several and must restrict each in view of the requirements of the others, we face great difficulties in setting priorities and making adjustments. Many hard decisions may seem to have no clear answer."[78]

The first thing to be noticed is that this "burden of judgement" is different from the others. Strictly speaking, it does not (or at least only) explain how disagreement will likely arise even if people discuss in good faith and at the best of their capacity for reason. Its seemingly playing a different theoretical function presumably affects its normative function, in turn. That is, it is not meant to explain why reasonable citizens should accept public reason as the appropriate conception of political deliberation *vis-à-vis* the inevitability of the disagreement. However, I want to speculate that it does play – a never explicated and, therefore, never assessed – normative function. Namely, it requires reasonable citizens to reconcile themselves with the "tragic," so to speak, nature of political life; no system can accommodate all political values or avoid moral losses.

Looking at the circumstances of the inconclusiveness of public reason from this perspective – and at the few questions I sketched above – while taking the last burden at face value would straightforwardly suggest that it will be perhaps regrettable, but nothing more, that reasonably defensible proposals based on values of political justice will be ruled out (e.g., by voting to decide a stand-off between arguments that are similarly valid in terms of their reasonable defensibility).

The core point of this work is to investigate the inevitable moral losses of legitimate decisions taken in conditions of reasonable disagreement about political justice and what, if anything, consensus political liberalism can say about their morally appropriate treatment. The answer to the questions I raised above is far from self-evident, at least, within the realm of ideal theory; the realm where assuming highly idealised conditions is justified to push the practical politically possible to its limits. Entrenching this burden at the core of the *assumptions* of political liberalism, without any investigation of whether it is actually possible to imagine ways to deal with it, betrays consensus political liberalism's project as a realistic utopia. In Rawls's own words, "political philosophy is realistically utopian when it extends what are ordinarily thought of as the limits of

[78] Rawls, *Political Liberalism* 90.

practical political possibility."[79] Holding political liberalism more accountable to this ambition guides the investigation carried out in the rest of the thesis.

5. Conclusion

The main purpose of this chapter has been to introduce the core focus of this work, by making sense of circumstances of reasonable disagreement about justice and the associated idea of the inclusiveness of public reason. I also presented the core ambitions of consensus political liberalism and situated the account of 'public reasons' with which the following chapters will work. That is, I defended a novel account of public reasons for consensus political liberalism, "weak shareability." The core argument I have defended is that the claim that the inconclusiveness of public reason is a threat to consensus political liberals' strategy in reaching legitimate decisions can be rebutted. However, in closing the chapter, I suggested that this does not mean that circumstances in which public reason is inconclusive should not be troubling to consensus political liberals. A consensus political liberalism more attentive to some of its hidden assumptions may be more well-equipped to investigate this possibility.

[79] *Ibid.* 6.

Chapter 2

Equal Respect in Consensus Political Liberalism. An Ideal for Political Relations

1. Introduction

In Ch. 1, I presented what I take to be the strongest account of consensus political liberalism's strategy to honour the principle of legitimacy when decisions of fundamental political importance are at stake. That is, I defended a model of public justification via weakly shareable reasons. Why is public justification so conceived required to legitimate state action in consensus political liberalism? As anticipated in Ch.1, answering this question is one of the things I do in this chapter. More generally, I will focus on the concern underpinning – more or less explicitly – public reason and, as I will show, other normative commitments central to consensus political liberalism, i.e., the normative quality of political relations they sustain.

Specifically, this chapter has two main aims. Firstly, it vindicates a central, not foundational, role for the ideal of *equal respect* in consensus political liberalism. I will argue that consensus political liberals should care about equal respect. Still, its normative function is not that which the most influential respect-driven political liberals have traditionally attributed to it. Secondly – and crucially for this thesis – the chapter challenges the public justification-centred angle that political liberals concerned with respect tend one-sidedly to adopt. That is, I will argue that the significance of respect does not *uniquely* relate to whether fundamental political decisions are publicly justified, as the overwhelming focus of the current literature may suggest. Thus, respect should be seen as an ideal of valuable political relations that certain political practices realise (and others undermine), not a fundamental principle of political morality to be upheld. Moreover, abiding by the deliberative constraints of public reason, protecting citizens' basic interests of justice, and refusing to support or reify hierarchies among citizens based on their social identities, all count to making sense of how the liberal democratic state realises political relations of equal respect toward citizens (and among citizens).

Such a twofold argument is critical to support a core argument of this thesis. The defence of the pluralist account of the ideal of respect in consensus political liberalism that I propose in this chapter provides me with the normative ground to argue that, we should recognise the existence of residues of justice (Ch.4), and that the state has a *respect-based duty* to address them (Ch. 5). Additionally, such a defence is important in itself as a systematisation and contribution to the ongoing dispute among consensus-driven theorists about the role of respect in political liberalism.

The chapter unfolds as follows. In §2, I briefly present Stephen Darwall's influential analysis of "appraisal" and "recognition" respect (hereafter, respectively, AR and RR). I argue that RR, if any at all, must be the concept of respect working within political liberalism. In §3, I correct several mistakes that those analysing the role of respect in political liberalism make. Against those side-lining respect due to worries about its comprehensive nature, I make sense of how this worry is not necessarily apt. What matters is characterising the "ground" of political respect correctly. Having shown that focusing on respect is not *ipso facto* inconsistent with political liberal freestanding political morality, I move to answer the question of why political liberals should be concerned with it at all. That is, what "function" can it perform that consensus political liberals have good reasons to find valuable? To answer this, I take a cue from civic friendship driven theorists' explicit attention to the normative quality of political relations. I argue that political liberals should recognise the importance of respect because it makes sense of valuable political relations that are constituted through certain kinds of treatment and institutional practices. In §4, therefore, I present the politically liberal conception of the person: the "object" of political RR is citizens endowed with the moral powers. Treating them in accordance with such powers, I contend, realises respectful political relations. In turn, it is on this treatment that citizens' status as free and equal rests. More precisely, I propose that the constitutive grounds of such a status are multiple. Citizens' are to be treated as: (a) co-legislators; (b) reasonable right-holders; (c) civic equals. Therefore, §4 is divided into three subsections. Each clarifies how the relevant forms of (dis)respectful treatment *logically and normatively* differ from, and relate to, one another. Crucially, I clarify that the different dimensions are not fully reducible to one another, a point to which I will extensively return in Chs. 5 and 6.

2. What "kind" of respect matters in consensus political liberalism?

The ideal of equal respect is commonly recognised as a significant component of liberal political morality broadly construed.[80] Consensus political liberalism, as anticipated, is not an exception. Since there are many ways of conceiving of respect towards different kinds of objects, it is firstly imperative to engage in some conceptual clarifications.

In the present context, the only relevant meanings of respect are those that understand it as directed to *individuals*. In this sense, respect is a relation,[81] with both a behavioural and an attitudinal

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80 Among many, see, e.g., Ronald Dworkin, "Liberalism," in *A Matter of Principle* (Harvard University Press 1985) 190; Amy Guttman and Dennis Thompson, *Why Deliberative Democracy?* (Princeton University Press 2004); Sarah Song, *Justice, Gender, and the Politics of Multiculturalism* (Cambridge University Press 2007) 41ff; Thomas Hill Jr., *Respect, Pluralism, and Justice* (Oxford University Press 2000).

81 Carl Cranor, "Toward a Theory of Respect for Persons" [1975] 12 *American Philosophical Quarterly* 309,319.

component.[82] To illustrate, *A* (the subject of respect) respects *B* (the object of respect) who has some feature *x* (the *ground* of respect) if *A* judges or recognises *x* of positive value (attitudinal dimension) and treats *B* in ways appropriate to *B*'s having *x* (behavioural dimension). With this concept in mind, consider Stephen Darwall's influential analysis. Darwall argues that there are "two kinds of respect": appraisal and recognition respect.[83] The few political liberals who explicitly clarify what notion of respect is relevant to their analyses refer to Darwall's RR. I shall briefly explain why this is the case, after briefly presenting both notions.[84]

As the name suggests, AR constitutes a form of *esteem*, depending on the respecter's assessment of the value of some feature of the respected individual.[85] AR operates when we react to someone's forms of excellence (e.g., as brilliant theorists, especially kind human beings). The object of respect is the person, while the *ground* of respect is the particular excellence that the individual displays. Two main aspects characterise AR, distinguishing it from RR: (i) it is *not owed* and, relatedly, it cannot be claimed; (ii) it admits of degrees, being *necessarily* attributed unequally to individuals. To illustrate, irrespective of, say, *A*'s excellence as a pianist, *A* should not take it as a ground for some claim-right to others' AR towards them as an excellent pianist. Relatedly, *A* should not think themselves entitled to any specific behaviour signifying it, (i). The crucial point is that the concepts of "claim-right" and "entitlement" are alien to the logic of AR. Concerning (ii), for "excellence" to be worthy of any attention, instantiations of the relevant feature at lower levels must be at least a logical possibility. Therefore, it does not make sense to think of AR to be *equally* given to everyone. AR admits of degrees, in virtue of people's relative approximation to some ideal of excellence. Hence, unequal attribution to individuals is inherent to the logic of AR.

According to Darwall, RR is the form of respect relevant when it is said that persons as such *ought to be* respected. In his words:

> "[saying that people ought to be respected] is to say that they are *entitled* to have other persons *take seriously* and weigh appropriately the fact that they are persons in deliberating about what

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82 See, Anna E. Galeotti, "Respect as Recognition: Some Political Implications" in Michel Seymour (ed) *The Plural State of Recognition* (Palgrave Mcmillan 2010) 78,97; Sune Leagaard, "Attitudinal Analysis of Toleration and Respect and the Problem of Institutional Applicability" [2015] 23 *European Journal of Philosophy* 1064,1081.

83 Stephen Darwall, "Two Kinds of Respect" [1977] 88 *Ethics* 36,49.

84 See, James W. Boettcher, "Respect, Recognition, and Public Reason" [2007] 33 *Social Theory and Practice* 226ff.; Blain Neufeld, "Civic Respect, Political Liberalism, and Non-liberal Societies" [2005] 4 *Politics, Philosophy & Economics* 284; Blain Neufeld, "Shared Intentions, Public Reason, and Political Autonomy" [2019] *Canadian Journal of Philosophy* 781.

85 Stephen Darwall, *The Second-Person Standpoint. Morality, Respect and Accountability* (Harvard University Press 2006) 43.

> to do. […] To respect something in this way is just to regard it as something to be reckoned with (in the appropriate way) and to act accordingly."[86]

RR consists of the recognition of some relevant feature "given" in its object, rather than of one's assessment of the degree to which another exhibits some feature (like in AR). RR (i) is *owed* to its object and (ii) is *equally owed* to all those equally displaying the relevant recognised feature.[87] To illustrate, *A* recognises *B* as a constraint on her behaviour (toward *B*) in virtue of some "fact" of *B*, constituting the ground of respectful treatment. In virtue of it, RR is *owed* to *B*. RR can be conferred unequally on individuals, based on grounds differentiating individuals from one another. However, if all individuals equally instantiate the relevant ground of respect, then RR not only can, but also must, be equally given to all the ground holders, irrespective of the many further features differentiating them from one another – which explains the point in (ii).

Based on this brief presentation of AR and RR, it should be clear that if any notion of respect is to be an element of political morality in political liberalism, it must be RR. Indeed, the notion of AR helps in further refining a feature of political liberalism that I introduced in the previous chapter. The basic structure of society, and state action more generally, should not be organised so that more favourable life-prospects or any state-sanctioned morally privileged status are conferred on some, but not on others, as a way of paying appraisal respect to the former but not the latter. Any similar differentiated attribution of value to citizens, and public promotion of, e.g., excellence, are inherently at odds with political liberal anti-perfectionist morality. When political liberals argue, typically, that public justification of state action is necessary to respect citizens as free and equal, they do not have in mind a form of differentiated esteem, but an egalitarian ideal.

Still, what is precisely the role that RR is usually attributed in consensus political liberalism? And – crucially for my present purposes – why should consensus political liberals care about respect at all? To answer these questions, in the next section, I explain how the *ground* of political respect needs to be conceived and the *function* respect should play in consensus political liberalism. As respect is overwhelmingly linked to a requirement for justification of coercion in the literature,

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86 Darwall, 'Two Kinds of Respect' 39-40 – emphasis mine.

87 Notoriously the identification of an empirical characteristic that humans display equally and that it can thus ground moral equality (and equal recognition respect) is a deeply debated issue in ethical theory, see – for a discussion – Bernard Williams, "The Idea of Equality" in *In the Beginning was the Deed. Realism and Moralism in Political Argument* (Princeton University Press 2005) 97,114. I will return below on how Rawls solves the problem, with respect to politically-moral equality, by making the assessment of the moral powers (the bases of politically-moral equality) relevant uniquely as a *range property*, irrespective of variations in citizens' exercise of them. See, Rawls, *A Theory of Justice* 444ff. For a discussion, see Carter, "Respect and the Basis of Equality" [2011] 121 *Ethics* 538,571.

I shall uniquely refer to this requirement in §3. It will only be in §4 that I show how relations based on respectful treatment do not only rest on the requirement of public justification of state action.

3. The normative status of "respect" in consensus political liberalism

According to Martha Nussbaum, "at the heart of Rawls's philosophical project are two closely related ideas: the idea of respect (or equal respect) and the idea of 'fair terms of cooperation'."[88] While there can be no doubt about the centrality of fair terms of cooperation to (Rawls's) political liberalism, that the same is true of the notion of "equal respect" is far from clear. *Pace* Nussbaum, Rawls has paid relatively little attention to respect, in particular after his "political turn." Notably, this neglect of respect lies at the core of Charles Larmore's critique of Rawls.[89] Such a difference of views divides, in turn, consensus political liberals. Some argue that respect is *the foundational principle* of political morality, motivating the normative cornerstone of the framework: i.e., justifying political authority to all reasonable citizens subjected to it. At the same time, others are more reluctant to extensively articulate what role (if any) respect plays in political liberalism. For example, Quong follows Rawls in side-lining respect in political liberalism, whereas others – Nussbaum, but also Blain Neufeld and James Boettcher – argue for the centrality of respect in the political liberal project. The bone of contention consists fundamentally in two points: the characterisation of the *ground* of respect and the normative *function* attributed to it. Getting both points right is crucial to make sense of the importance of respect to, as well as its compatibility with, the political liberal project.

Respect: a moral foundation for political liberalism?

I start by presenting Larmore's and Neufeld's accounts of both the ground of respect and the role that respect plays in their proposals. Notably, Larmore's and Neufeld's accounts differ concerning the "ground" of respect but overlap in their presentation of respect as a foundational moral principle providing the normative ground for public justification through public reason. I shall start with Larmore's more influential position.

Larmore sees the political liberal project as aiming primarily at the public justification of state action and the principles of political justice in conditions of reasonable disagreement. What

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88 Martha C. Nussbaum, "Rawls's *Political Liberalism*. A Reassessment" [2011] 24 *Ratio Juris*, 1. On the alleged centrality of "respect" to Rawls's thought, see also Martha C. Nussbaum, "Introduction" in Martha C. Nussbaum and Thom Brooks, *Rawls's Political Liberalism* (Columbia University Press 2015) 4; Martha C. Nussbaum, *Liberty of Conscience. In Defence of America's Tradition of Religion Equality* (Basic Books 2008) 57ff.

89 See, e.g., Charles Larmore, *The Morals of Modernity* (Cambridge University Press 1996), 121,144; Charles Larmore, "The Moral Basis of Political Liberalism" [1999] 96 *The Journal of Philosophy* 599,625; Charles Larmore, *The Autonomy of Morality* (Cambridge University Press 2008) 139,164. On the centrality of "equal respect" to Rawls's *Theory*, see, Ronald Dworkin, "Justice and Rights" in *Taking Rights Seriously* (Bloomsbury 2013) 159, 210.

Larmore thinks that Rawls did not make explicit in his proposal is the very reason why public justification should be sought in the first place. Put differently, Larmore asks why state authority and fundamental political decisions are legitimate only if justified by reasonably acceptable reasons. To Larmore, the answer lies in the moral principle of equal respect for persons as ends in themselves, endowed – qua humans – with rational capacities. It is because of this principle that coercive exercises of state action need to be justifiable to be legitimate.[90]

Larmore indicates the ground of respect in individuals' capacity for reasoning upon, and reflectively endorsing, laws and moral principles and, more generally, "for developing beliefs justifiable within their own perspective."[91] Crucially, Larmore repeatedly identifies this capacity as distinctively characterising people's moral personality; in his words, it is persons' "distinctive capacity as persons."[92] Larmore holds that treating persons as primarily "justificatory beings" – as we may say by borrowing from Rainer Forst's very similar position – demands public justification of coercion.[93] Importantly, Larmore clarifies that his account of respect for persons as ends in themselves, qua rational beings, does not need any contentious element of Kant's metaphysics, while it is nevertheless self-consciously of unequivocal Kantian descent. Therefore, according to Larmore, his account does not compromise political liberalism's refusal to rely on contentious metaphysical assumptions (more on this below).

As regards the function that respect plays in political liberalism, Larmore is very clear that it is a foundational principle of political morality that has "a deeper kind of validity" than any further "principles worked out on its basis."[94] That is, while the validity of political claims and principles of justice rests on their reasonable justifiability, the validity of the principle of respect – commanding justification – does not. Thinking otherwise would reverse the logical relation that Larmore sees between reasonable acceptability and respect. It is not that the principle is morally valid because it is reasonably acceptable; it is because the principle of respect is a valid moral principle that reasonable acceptability of reasons supporting coercion is morally required.[95] For Larmore, the principle of respect is morally valid and binding universally – i.e., in every society

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90 I will return in §4 on Larmore's distinctive focus on "coercion" as uniquely in need of justification. For now, note that Larmore never discusses in any detail his account of justificatory reasons. However, his frequent references to the necessity to resort to 'common ground' in public justification place him firmly among 'consensus' political liberals, thus, embracing an account of 'shareability' as the criterion identifying justificatory reasons – see, e.g., Charles Larmore, "Political Liberalism" [1990] 18 *Political Theory* 146; Larmore, *The Autonomy of Morality* 205; Charles Larmore, "Political Liberalism: Its Motivations and Goals" in David Sobel, Peter Vallentyne, Steven Wall (eds) *Oxford Studies in Political Philosophy, Vol. I* (Oxford University Press 2015) 80.

91 Charles Larmore, *Patterns of Moral Complexity* (Cambridge University Press 1989) 64.

92 See, e.g., Larmore, "Political Liberalism" 348.

93 See, e.g., Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*.

94 Charles Larmore, "Political Liberalism. Its Motivations and Goals" 80.

95 *Ibid.*

divided by reasonable disagreement. However, he relativizes the conditions of rational access to its validity.[96] While the latter point consists of an epistemological thesis, the former is normative, and it claims the truth of the principle of respect as universally valid for people as endowed of capacity for reasoning.

Neufeld defends an account of "civic respect" which resonates in important ways with Larmore's. Namely, he concurs with Larmore that the principle of respect is foundational in political liberalism and universally binding in pluralistic societies. In fact, Neufeld is even more explicit than Larmore in arguing that "political liberalism must assert the 'truth' of its fundamental principle [of respect]."[97] The crucial difference with Larmore lies in how Neufeld characterises the ground of respect. He sees "civic respect" as elicited, in a Rawlsian fashion, by features of the person *conceived as a political construct* – i.e., citizens as free and equal with the two powers of politically moral personality. Similarly, Boettcher has focused distinctively on citizens' (qua citizens) moral powers to conceive justice and the good to argue in favour of the role of respect in justifying political liberals' commitment to public justification via public reason.[98] These features of Neufeld's and Boettcher's accounts critically differ from Larmore's account, which as we have seen defends respect as grounded in "an essential feature of what it is to be a person."[99] As I shall shortly explain, by drawing on a conception of the moral person as a political construct, Neufeld and Boettcher provide an appropriate ground for the construction of an ideal of respect that may be consistently accommodated in consensus political liberal morality. The last remark allows me to turn precisely to the reasons why some political liberals are sceptical as regards the role of respect in political liberalism.

Side-lining and rejecting respect in political liberalism

As anticipated, Rawls introduces the notion of respect a very few times mostly in connection with the requirement of public reason and the special importance of the protection of the basic

96 In Larmore's words, "principles may be regarded as binding on everyone, independent of time and place, but universal bindingness does not necessarily entail universal justifiability; to grasp the reasons for their validity, we may have to have had a certain history and gone through certain experiences. Just this, I believe, is the situation with the principle of equal respect […]. It has a universal validity, but there is no reason to suppose that all reasonable persons must find grounds to agree." See, Charles Larmore, *The Autonomy of Morality* 165.

97 Neufeld, "Civic respect, political liberalism, and non-liberal societies" 277.

98 Boettcher, "Respect, Recognition, and Public Reason;" James Boettcher, "The Moral Status of Public Reason."

99 Larmore, "Political Liberalism. Its motivations and goals", 77. On Neufeld's different account of the ground of respect, see, Neufeld, "Civic Respect, political liberalism, and non-liberal societies;" Neufeld, "Shared Intentions, Public Reason, and Political Autonomy;" Blain Neufeld, "Why Public Reason Involves Ideal Theorising" in Michael Weber and Kevin Vallier (eds) *Political Utopias. Contemporary Debates* (Oxford University Press 2017) 73,94.

liberties.[100] Crucially, Rawls offers no detailed analysis of the notion and its role at any point. Indeed, in closing his earlier *A Theory of Justice*, Rawls briefly argues that equal respect for persons should *not* be assumed as a first moral principle from the validity of which principles of justice or the contractualist method as a whole follow.[101]

Larmore speculates on the reasons for Rawls's neglect of respect, identifying them precisely in political liberalism's refusal to introduce within its justification any ethical notion.[102] However, he argues that Rawls's (alleged) worry is misplaced and that it is possible – Larmore's proposal being a case in point – to vindicate the centrality of respect to political liberalism without jeopardising the "political, not metaphysical" nature of the project. To what extent is Larmore right? Answering this question requires correctly identifying both the *ground*, and *function*, of respect in consensus political liberalism. Larmore, ultimately, fares badly on both counts, while Neufeld goes astray in following Larmore's foundationalist perspective. Let me first focus on the "ground" of political respect.

Quong and Andrew Lister have rightly argued that Larmore's conception of respect is still too rooted in metaphysical claims to work within a freestanding political liberal morality. The reason for this has already been presented. Larmore's account rests on the idea that citizens are to be respected as ends in themselves due to *their human capacity* for justificatory reasoning.[103] As I clarified above, Larmore's defence of the ground of respect is difficult to reconcile with political liberalism since, while not reliant on a full Kantian metaphysics, it is still essentialist. Namely, it is by vindicating a normative ground for respect as a feature identifying what it is to be a "human" – i.e., people's, qua humans, capacity for reasoning – that Larmore's account exceeds the limits of political liberalism. For sure, one may question his position: what if humans' fundamental normative capacity lies in a complex faculty of experiencing emotions, following less rationalist accounts of moral personhood? Clearly, the point is that this kind of metaphysical evaluation should be alien to consensus political liberalism. Thus, as concerns the ground of respect,

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100 For a few examples, see, respectively, Rawls, *Justice as Fairness* 91; Rawls, *Political Liberalism* 315. Note that there are multiple points in which Rawls refers to the importance of *expressions* or displays of "mutual respect," holding that they would be essential to citizens' "self-respect" – to which Rawls traditionally attributes high importance. See, e.g., *A Theory of Justice* 155, 477. The point, however, is that this kind of argument is importantly different from the dentological one that political liberals who defend the importance of a principle of equal respect endorse.

101 Rawls, *A Theory of Justice* 513.

102 Larmore, *The Autonomy of Morality* 164 ff.

103 See, respectively, Quong, "On the idea of Public Reason;" Lister, *Public Reason and Political Community* 66, 67. To be sure, there are, in fact, recent proposals arguing that political liberalism should be intended as a "non-comprehensive Kantian moral-political philosophy" – see, Rainer Forst, "Political Liberalism: A Kantian View." Unfortunately, though, I have no space to unpack the consistency of a similar proposal.

Larmore's account is in tension with political liberalism's commitment to avoid contentious metaphysical claims.

However, Quong rightly concedes that the principle of respect need not to be necessarily defended in such a problematic way.[104] As we have seen, Neufeld and Boettcher are careful in identifying the ground of respect in features of personhood as a political construct. To be sure, the difference is not that Larmore's ground is moral, while that relied upon by Neufeld and Boettcher is not. The basic idea of the person as free and equal is a moral notion in Rawls-inspired political liberal proposals. Still, it need not contain any essentialist claim concerning human nature, aiming to identify capacities – i.e., the moral powers – as definitive of humanity's moral personality. Instead, those capacities can and must be conceived as components of the understanding of political personhood historically situated within the public political culture of liberal democracies.

What about Larmore's and Neufeld's claims that respect constitutes a foundational moral principle in consensus political liberalism? Is it permissible, or necessary, to assert the truth of the principle of respect, provided that its ground is properly political? My intention here is not to offer a full refutation of Neufeld's (or Larmore's) position. The main reason will shortly be clear. If it turns out that the function that political liberals should attribute to respect is not that of a foundational moral principle, refuting similar positions becomes irrelevant to the task of making sense of the role of respect in political liberalism. That said, I will suggest one difficulty that Neufeld's argument will likely encounter, and I will briefly recall that consensus political liberalism does not have, or need, any foundational moral principle.[105]

According to Neufeld, the point is not to impose the principle of respect and the requirements it supports, on citizens' "non-public relations," but only to assert its truth concerning the regulation of political relations in circumstances of reasonable disagreement about the good and justice. Thus, Neufeld holds, even if there is a truth-claim on a fundamental matter of principle, that is not threatening to political liberalism's abstemiousness towards truth.[106] The extent to which Neufeld's defence is successful rests primarily on whether truth-claims on moral matters are problematic in political liberalism for reasons independent of their impact on legislation that, in turn, impacts citizens "non-public relations" and opportunities. As I shall discuss at length below (§4.a and §4.c), this is the case. Claims of moral truth are problematic in political liberalism in that

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104 Quong, "On the idea of Public Reason" 271ff.

105 On how Larmore misunderstands Rawls precisely in thinking that any such foundational principle is necessary, see Patrick Neal, *Liberalism and Its Discontents* (New York University Press 1999) 98ff. His is also the useful distinction between a "structural foundation" – that any theory needs – and a "substantive foundation," intended as a one of which truth is predicated. More on this shortly below. For a broader discussion, see Paul Weithman, *Why Political Liberalism?* 347ff.

106 Neufeld, "Civic Respect, political liberalism, and non-liberal societies" 285.

they treat those who cannot be reasonably expected to accept them as if their disagreement was irrelevant, as excluded from political co-legislation (and possibly as second-class citizens).

Additionally, as already anticipated in Ch. 1, the "foundation" of political liberalism ought not (and need not) be located in any true principle of political morality, but in the public political culture of liberal democracies. Identifying the fundamental building blocks of the political liberal project in ideas embodied in the public political culture of liberal democracies has precisely to do with rejecting the need to claim the truth of any moral principle. The task and the ambitions of political liberalism, then, become primarily to work out the implications of such historically situated basic ideas (i.e., the idea of society as a fair system of cooperation and the political construct of the person as endowed with the two moral powers). The idea of respect, in this sense, is derivative and the content of the public political culture is the "structural foundation" with respect to which no truth is claimed. Institutions that aim to honour those basic ideas, as I will show in the next section, are such that citizens can see their relation with them as one of respect toward them as full members of society, as free and equal citizens.

The Normative Quality of Political Relations

Up to now, I have shown that while some prominent political liberals have argued for the importance of respect in political morality in ways that others have rightly found problematic, this is not necessarily the only way to proceed. More precisely, I have clarified that some theorists are careful appropriately to identify a "political" ground of political respect. Still, why should consensus political liberals care about respect at all?

In a nutshell, I shall argue that respect identifies valuable political relations. If consensus political liberals care about the normative quality of political relations, and they do, then they have good reasons to care about respect. That is, I take that for political liberals, when it comes to assessing the normative quality of institutional systems, what matters is not only how resources are distributed, but also – and perhaps primarily – what kinds of social and political relations such institutional systems establish and sustain.[107] Indeed, recently, some consensus political liberals

[107] I do not aim – nor am I interested in attempting – to argue that political liberalism can be straightforwardly counted as a "relational egalitarian" theory for a number of reasons – e.g., the ideal-theory perspective, the chief focus on "public" relations. Still, I take that the underpinning interest in the normative quality of political relations – while rarely explicitly articulated as a core concern in political liberal literature – constitutes an important element of contact between the two bodies of literature. In Forst's words, "the fundamental question of justice is not *what you have* but *how you are treated*," see, Forst, *Justification and Critique* 20. I do not expound these points further, as I am not interested in trying to build on it any further than pointing out this consonance. For discussion on the importance of the "relational egalitarian" literature, see, among others, Elisabeth Anderson, 'What is the Point of Equality?' [1999] 109*Ethics* 287,337; Jonathan Wolff, 'Fairness, Respect and the Egalitarian Ethos' [1998] 27 *Philosophy & Public Affairs* 97,122; Jonathan Wolff, 'Fairness, Respect and the Egalitarian Ethos Revisited [2010] 14 *The Journal of Ethics* 335,350.

have placed political relations more explicitly than ever before at the centre of their proposals. These authors argue that certain political practices – most notably, the requirement of justifying state action via public reason – constitute,[108] or instrumentally serve the promotion of,[109] relations of "civic friendship" among citizens. For reasons of space, I cannot offer a comprehensive evaluation of the merits, limitations of, and differences between various civic friendship-based proposals. However, presenting some features of (some of) them is important to my present analysis.

Firstly, and importantly, I intend to borrow from Lister the idea that there is a *constitutive relation* between certain forms of treatment and the kind of relations that obtain among agents treating one another in the relevant ways.[110] Secondly, in defending the idea that public justification is important because relations of civic friendship are valuable, the critical target of civic friendship-driven theorists is precisely Larmore's respect-based version that I criticised above. Notice an important point: if it is not the ideal of respect *per se* that is problematic – but only one, however influential, specific formulation of it – then it is possible to locate a role for respect in political morality by, for example, arguing that respect constitutes a valuable form of political relation on its own. This is precisely what I will do below by taking a cue from Lister's work. I will present substantive details of the civic friendship-based defence of public reason when I argue for a different, respect-based one, in the next section. What matters for now is the *formal* structure of Lister's argument.

According to Lister – pace Larmore – the point of public justification is not that failing to offer reasons that others can be expected to accept in support of state action is insulting in virtue of "subverting their moral agency." Rather, "the joint commitment to making political decisions on public grounds realizes a valuable kind of relationship."[111] Lister's primary claim is, more precisely, that "mutual performance of this duty [of public justification] *constitutes* a relationship of

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108 See, most notably, Lister, *Public Reason and Political Community*, Ch. 5; Andrew Lister, "Public Reason and Democracy" [2008] 11 *Critical Review of International Social and Political Philosophy* 273,289.

109 See, R.J. Leland, "Civic Friendship, Public Reason;" R.J. Leland and Han van Wietmarschen, "Political Liberalism and Political Community" [2017] 14 *The Journal of Moral Philosophy* 142,167.

110 One of the differences I lack the space to unpack concerns precisely the logical relation holding between discharging one's duty of justification and the relations of civic friendship according, respectively, to Lister and Leland. Leland's account is *consequentialist* in contrast to Lister's constitutive perspective. From this difference substantial prescriptive differences follow in turn. The most noticeable is that, while Lister's perspective can back a strong duty in support of public reason-based justification, Leland's account aims precisely to weaken the latter's demandingness. Thus, notice that what I say below concerning the similarity between relational defences of respect and civic friendship does not apply if one has Leland's account in mind. The point, which I cannot defend, is that Leland's account may, in fact, not be as "relational" as it claims to be. See, Leland, "Civic Friendship, Public Reason."

111 Lister, *Public Reason and Political Community* 106.

civic friendship."[112] The commitment to justifying state action on the common ground between reasonable citizens and, importantly, the shared knowledge of such a commitment, are both elements upon which the relevant relation rests. Put differently, the justification of public reason grounded on civic friendship is "relational" in the sense that a political practice is justified in that it constitutes, by its very performance, a valuable relation. By staying in this kind of relationship, in turn, reasonable citizens collectively constitute "a political community" in which they care about one another (crucially, as political agents, not as private individuals).[113] I do not aim here to argue against the civic friendship account. However, there are two points that I want to emphasise.

Firstly – and as some civic friendship-driven theorists concede – the distinction between a defence of public reason premised on a relational civic friendship-based account and a relational respect-based account may not be so significant, after all, once the account of respect is properly corrected (more on this in the next section).[114] A point I cannot unpack, but that is worth suggesting, is that there may very well be distinctive differences between an ideal of "civic friendship" and one of "mutual respect." For instance, one may conjecture that relations of respect are more fundamental – hence justifying more fundamental duties such as public justification – and that civic friendship builds on relations of respect, supported by further civic virtues and duties. Leaving this suggestion aside, my first core point is that civic friendship-driven theorists have so far failed to explain how civic friendship provides *per se* a better relational ideal than respect (mostly because they targeted a problematic account of the latter). For sure, as I will show below, the formal element of Lister's defence of public reason, as a "relational" justification, is indeed powerful. The point, admitted by Lister, is that it can be substantiated by an idea of respect with no apparent losses. However, the respect-based relational justification allows for one significant gain to which I now turn.

Even if civic friendship could be convincingly defended as a distinctive valuable ideal for "horizontal" citizens-citizens relations – when it comes to justifying public reason – it can hardly be seen as apt to make sense of "vertical" institutions-citizens relations. That is, an important feature of liberal democratic regimes is that they place citizens in certain normatively worthwhile relations with one another, qua democratic citizens and right-holders – e.g., toleration,[115] respect

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112 *Ibid.* 116. Emphasis mine.

113 *Ibid.* 118.

114 Lister, *Public Reason and Political Community*, 121 recognises this possibility, and – in fact – multiple times substitute directly in his text "mutual respect" for "civic friendship." See also Leland, "Civic Friendship, Public Reason" 100, 102.

115 See, Peter Jones, "Making Sense of Political Toleration" [2007] 37 *British Journal of Political Science* 383,402; Peter Jones, "Toleration, Religion and Accommodation" [2015] 23 *European Journal of Philosophy* 542,563; Leagaard, "Attitudinal Analysis of Toleration and Respect and the Problem of Institutional Applicability."

– through the very establishment of institutional processes such as democratic decision-making procedures and the enactment of laws. At the same time, it makes sense to ask what ideal informs the relations that the institutional system as a whole establishes with each and every citizen in turn.[116] The kind of relations that obtain in this "vertical" dimension depend on a number of factors, ranging from the very content of laws and decisions as well as the reasons offered in their support by public officials.[117] For instance, when state officials (e.g., judges, MPs) – representing the state by acting in their various institutional roles – discharge their duty of public justification by abiding by the requirements of public reason they contribute to supporting certain kinds of relations between the state and citizens. Still, it would be odd to think that an ideal of "civic friendship" provides us with an apt model to think descriptively, and to vindicate normatively, these relevant relations. The speech of public officials (whether implicitly or explicitly expressed)[118] – as well as the very content of laws and decisions and the way in which institutions are structured – all contribute to making sense of the kind of relations that obtain between the state as the whole of the institutional system and the citizens. The core point is that, when the citizens of a liberal democracy think of their relations with their state, it is not civic friendship that they claim, but primarily respect.

In light of these remarks, let me go back to what *function* consensus political liberals should see equal respect as playing within their theories. What I am arguing is that, insofar as political liberals are concerned with the normative quality of political relations, they can find powerful reasons to care about respect in their theories. As I explain in the next section, certain forms of treatment, public justification included, constitute valuable relations of respect – especially between the state and citizens – upon which citizens' status as free and equal rests.

The move I am proposing – defending the central relevance of respect by borrowing the "relational" account that civic friendship-driven theorists have developed – contributes to the

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116 More generally, note one point: this "vertical relational" perspective need not rest on a problematic reification of a collective agent. While the problem of the applicability of attitudes and emotions to institutions is highly debated, a growing body of literature points out that problems of institutionl applicability can prove far less problematic than it appears at first sight. On how a "relational" perspective solves precisely this problem in relation to attitudinal virtues such as toleration and respect, when attributed to the state, see Leagaard, "Attitudinal Analysis of Toleration and Respect and the Problem of Institutional Applicability." For a discussion of a similar problem as regards the institutional expression of emotions, see Stephanie Collins, "'The Government Should Be Ashamed': On the Possibility of Organisations' Emotional Duties" [2018] 66 *Political Studies* 813,829.

117 I will argue in Chs. 4 and 5, that the normative quality of such relations can be inferred, in addition, based how the state – through the speeches of its officials, or the content of new laws, or the institutionalisation of processes – react to the presence of residues of justice.

118 For a presentation of an expressivist argument that characterise state speech as implicit – inferred on the basis of allowance or withdrawal of taxes benefits, see Brettschneider, *When the State Speak, What Should it Say?* (Princeton University Press 2012).

current debate on respect and political relations in political liberalism in multiple ways. While avoiding the complications that Larmore's and Neufeld's accounts meet in trying to make sense of its foundational role as a true moral principle, my account vindicates many theorists' intuition that respect does matter in political liberalism.[119] That is, a "relational" account of the value of respect grasps a precious insight that the strand of consensus political liberalism has recently had the merit to place centre stage: a more explicit focus on the conditions of valuable political relations in consensus political liberalism. As I shall shortly argue, a number of normative requirements central to political liberalism support valuable relations of respect. These relations include vertical ones between institutions or state officials and citizens, and horizontal ones among citizens when performing political functions (e.g., voting and deliberating based on shareable reasons).[120]

Before proceeding, I shall sum up the points established in this section. I explained above that it is possible to find a distinctively political ground for respectful relations. In light of this, political liberals need not fear introducing the notion of respect into their frameworks. Additionally, I argued that political liberals should rethink the logical connection between respect and public reason (and other normative requirements of political liberalism). By borrowing the "constitutive" logic of Lister's argument in favour of relations of civic friendship, I argued that the powerful reason consensus political liberals have to care about respect in their theories is that it provides political liberalism with the core ideal informing (at least) valuable political relations between a state and its citizens.

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119 The move I propose also avoids a further complication routinely encountered by respect-based proposals, to which I cannot devote the attention it would deserve for reasons of space, but that is worth mentioning. Brian Leiter has defined RR a "morally otiose" principle as it requires of us to do what we ought to do anyway, in light of the 'ground' of respect; i.e., respecting persons qua persons only requires that we treat persons as they should be treated in light of the moral features upon which their moral personality supervenes. But then, the reference to 'respect' seems redundant – see, Brian Leiter, *Why Tolerate Religion?* (Princeton University Press 2013) 71. In Leslie Green's words, the problem would be that "there is actually no independent duty to respect persons but only an exhortation to perform the (other) duties that we already owe them." See, Leslie Green, "Two Worries about Respect for Persons" [2010] 120 *Ethics* 213. For discussions, see, Emanuela Ceva, "How should we Respect Conscience?" in Cécile Laborde and Aurélia Bardon, *Religion in Liberal Political Philosophy* (Oxford University Press 2017) 321,334; Joseph Raz, *Value, Respect, and Attachment* (Cambridge University Press 2001) 125ff. In the account I am proposing, "respect" is not a rhetorical tool or an exhortation. It identifies, differently, what is valuable in discharging one's political duties, e.g., offering public reasons.

120 It is worth pointing out that the abstractness of the philosophical analysis about public reason at times obscures the fact that more often than not in liberal democracies it is relatively rare for citizens to exercise their public role as citizens in the first person – when voting in elections and referenda. On this point, see Aurélia Bardon, "Two Misunderstandings about Public Justification and Religious Reasons" [2018] 37 *Law and Philosophy* 639, 669.

4. Respecting Citizens as Free and Equal

As we have seen, the account of moral personhood relevant within political liberalism is a construct based on the public political culture of liberal democratic regimes and not on claims about the truth of comprehensive ethical traditions' conceptions of humans' freedom and equality (including a comprehensive liberal one). Misconstruing this point, I have argued, is one major flaw in Larmore's argument. However, one can concur with Quong's and Lister's critique of Larmore, while consistently investigating further what it means to respect citizens as political persons. This is the issue that this last section addresses.

To provide an interpretation of political personhood, I rely on Rawls's understanding of it, since it survives unchanged throughout the whole (consensus) political liberal literature. Recalling the analysis of RR that I developed in §2, it can be now appreciated that the object of political respect is each person *as a citizen*. The ground of respect for citizens is the moral powers that underpin their politically moral personality.

Treating citizens in ways appropriate to their possession of the moral powers is constitutive of valuable qua respectful relations. Citizens' *status* as free and equal depends, in turn, on such morally appropriate treatment and relations. Taking a cue from Cécile Laborde's method of analysis of the relevance of religion in liberal politics, I "disaggregate" the political status of citizens as free and equal.[121] I will read the relation between the disaggregated "dimensions" and citizens' status as free and equal in light of Jeremy Waldron's description of "the relation between a status and its *incidents*." According to Waldron, such a relation "is not the same as the relation between a goal and the various subordinate principles that promote the goal; it is more like the relation between a set and its members."[122] Failing to treat citizens in appropriate ways threatens citizens' status. Let me now turn to Rawls's political account of the person, and his general characterisation of citizens' status as free and equal.

Rawls's political-moral personhood

According to Rawls, citizens' possession of the two moral powers determines the *equality* of their political-moral personality. The definition of their political freedom is more complicated. I shall address equality first.

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121 Laborde, *Liberalism's Religion*. My disaggregation of citizens' status somehow maps – though with important differences – onto Laborde's disaggregation of the category of religion, based on its treatment by liberal institutions. This, I think, is far from surprising. My reconstruction of the "incidents" of citizens' political status is based on core normative themes in the political liberal tradition; this tradition self-consciously sets its reconstruction of its historical origin in the modern wars of religion and has retained a constant focus on religion's relation to politics and liberal politics' relation to religion.

122 See Jeremy Waldron, *Dignity, Rank and Rights* (Oxford University Press 2012) 26.

Citizens are politically moral equals in virtue of having two *moral powers*: the capacity for a sense of justice and the capacity to conceive the good. The former consists of a capacity to engage in cooperation with one's fellow citizens, proposing fair terms of cooperation, and being willing to abide by them – provided others do the same – even when such terms conflict with one's interests.[123] The latter consists of a capacity to conceive and revise a conception of the good, meaning – in a general sense – the capacity of forming, pursuing, and revising plans informing their lives. All citizens are equally considered to hold both the powers to any degree, falling within a *range*.[124] The minimal threshold of possession, delimiting the range at the bottom, is a sufficient empirical ground for citizens' political *equality*.

Rawls also offers a characterisation of citizens' *freedom*.[125] He argues that citizens are free if they can see themselves, and be seen by their fellow citizens and treated by state institutions, as having a *status* as (equal) "self-authenticating sources of valid claims."[126] But to what does this idea specifically amount? More precisely, as anticipated above, what treatment is constitutive of such a status that citizens hold equally? What are its "incidents"? Here I start by briefly sketching three dimensions constituting such citizens' status. The various sections below address each dimension and offer a reconstruction of how they are all relevant to political liberals' accounts of what it means to respect citizens as free and equal. Based on the normative commitments central to mainstream (consensus) political liberalism, I shall argue that fully enjoying the status as free and equal – i.e., treated as equal self-authenticating sources of valid claims, in Rawls's terms – depends on being respected as:

a) Co-legislators;
b) Right-holders;
c) Civic equals.[127]

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123 I will offer a more in-depth account of the sense of justice, in particular by focusing on both its cognitive and emotional components in Ch. 5, for now this standard articulation of the core idea will have to suffice.

124 John Rawls, *A Theory of Justice* 441, 449; John Rawls, *Political Liberalism* 19, 79.

125 For the sake of completeness, Rawls presents three understandings of how citizens should be thought of as "free" from a political point of view. The first two are not relevant to the present discussion. They refer, respectively, to citizens' freedom to leave any private associations to which they belong without this impacting on their political rights, and their sufficient independence from their ethical commitments to be able to redirect their life-plans, according to reasonableness, in conformity with the requirements of political justice. See, Rawls, *Political Liberalism* 30,34.

126 *Ibid.* 32.

127 The term is taken from Laborde's *Liberalism Religion*. As I anticipated above, my disaggregation maps to some extent onto Laborde's. In addition to "civic equality," she also points out two further dimensions of citizens' political identity which partially map onto those I am proposing here. She holds that citizens should be respected also as "democratic reasoners" and "self-determining agents." While the latter partially maps onto the dimension

The following subsections present the three dimensions which, I am proposing, constitute citizens' political status in political liberalism.

4.a) Respecting citizens as co-legislators

As noted above, the debate within which respect appears most often is that over public justification. Larmore holds that "if our aim is to devise principles of political association and if we are resolved to respect each other as persons in this effort, then the principles to be established must be ones which are *justifiable* to everyone whom they are to bind."[128] Similarly, "only laws that are 'publicly justified,' […] those that can be shown in some sense to be *endorsed by the reasons* of all members of the public […] can respect all citizens as free and equal."[129] As shown above, Neufeld and Boettcher also ground the requirements of public reason on respect for citizens.[130]

Recall, that towards the end of Ch. 1, I anticipated that determining what criterion reasons need to meet to count as justificatory – i.e., legitimacy-conferring – depends on why and how having legitimate, *qua* justified, laws matters in the first place. I am now in a position to motivate this assertion. Why exactly does public justification *via shareable reasons* support respectful political relations and in what sense?

Two different assumptions appear in many discussions concerning *why* justification of state action matters to ground legitimacy (and, hence, respect for citizens):

(i) State power in liberal democracies is citizens' power, exercised in their name as a "collective body;"[131]

(ii) exercises of state power are (always) coercive, and citizens are to be able to see themselves as free.

What I shall argue is that (i) and (ii) lead to two *logically* distinct rationales motivating the justification of state action and its role in legitimating state action. The rationale in (i) justifies consensus political liberalism's commitment to public reason. To illustrate, it is one thing to argue that public justification is morally required because citizens should equally share in the authority determining the exercise of state power – the point in (i). It is another to ground the requirement

I label "citizens as reasonable right-holders", the former only very partially overlaps with the dimension I call "co-legislation."

128 Larmore, "Political Liberalism" 351 – emphasis mine.

129 Gerald Gaus, "Coercion, Ownership, and the Redistributive State: Justificatory Liberalism's Classical Tilt" [2010] 27 *Social Philosophy & Policy,* 235 – emphasis mine.

130 See also, Colin Bird, "Mutual Respect and Neutral Justification" [1996] 107 *Ethics* 62,96.

131 John Rawls, *Justice as Fairness* 40.

on the *pro tanto* badness of coercion,[132] which – in conjunction with the putative fact in (ii) – grounds the requirement to justify state action, qua coercive. The two points are sometimes conflated. One reason for such conflation might be that they *practically* overlap if political power is always coercive – and some hold that this is the case.[133] However, even accepting this point for the sake of argument, they are still two logically and normative distinct points. The assumption in (i) grounds a requirement for the justifiability of *all* state action.[134] That is, non-coercive exercises of state power are also exercises of *all* citizens' power. This involves a different concern from that grasped in (ii) – i.e., even non-coercive state action – assuming there is any – needs justification if (i) is normatively relevant by itself. At the same time, coercive laws might need justification not *only* because they are coercive, but because they are exercises of state power, which is *all* citizens' power.[135]

Notably, giving weight to either of the two points above leads to defending different rationales for why justifying state action is necessary *for legitimacy*. Namely, respectively, (a) *joint rule* and (b) *self-rule*. Public justification thus can support relations of respect for citizens as (b) *co*-legislators of political power or (b) *self*-legislators. As an example of justifying the moral appropriateness of public justification based on (b), one can look at Larmore's work. He explicitly restricts the requirement of justification, arguing that coercing citizens without offering reasons they can accept amounts to ruling them with the "threat of force."[136] This constitutes a form of exploitation of their rational and moral capacities in virtue of which citizens can endorse reasons as applying to themselves. However, those very capacities also allow citizens to see that they will be forced into compliance even if they *do not* find such laws justifiable; citizens' capacities for reason are hence exploited, rather than reckoned with.[137] By contrast, civic friendship-driven theorists are primarily concerned with (a). They have the merit of most explicitly articulating "joint rule" – a distinctively democratic value – as the relevant one honoured through public reason-based justification in consensus political literature. They build on Rawls's suggestion that shareable public reasons are

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132 See, e.g., Gerald Gaus, *The Order of Public Reason* 484ff. For a discussion, see Andrew Lister, *Public Reason and Political Community* 58,80.

133 Rawls, *Justice as Fairness* 40; Larmore, "Political Liberalism." Still, it is possible to argue that there are exercises of state power which are not necessarily coercive (e.g., policies determining public subsidies to social associations – for a discussion see, Corey Brettschneider, *When the State Speaks, What Should it Say?*.

134 This applies, in line with the assumption of this thesis, provided the decisions concern fundamental political matters.

135 Notably, holding this position still allows for arguing that if coercion is at stake, the requirement of justification ought to be made more demanding – e.g., by requiring that more compelling reasons are offered to justify coercion than to justify non-coercive laws.

136 Larmore, "Political Liberalism" 347,348.

137 *Ibid.*

especially apt to justify state power as the power of "citizens as a collective body," hence supporting – in their view – relations of civic friendship.

Civic friendship-driven theorists rightly ask why "shareable" reasons are needed if what matters for legitimacy is respect for citizens as self-rulers subjected to coercion. Indeed, think of convergentist models of public reason where policies are justified based on different reasons provided each citizen is given reasons acceptable to them (irrespective of whether such reasons are shareable by fellow citizens). These models seem capable of supporting relations of respect for citizens as self-rulers. If consensus political liberals are concerned *exclusively* with self-rule and the threats that coercion poses to it, they are ill-placed to explain why distinctively consensus accounts of justificatory reasons are needed to legitimate state action. It is a commitment to an ideal of joint rule which is distinctively captured by the consensus accounts of public reason.[138] In these accounts, reasons – as argued in Ch.1 – are to be weakly shareable by all reasonable citizens as minimally valid to count as justificatory reasons and support legitimate state action. These are reasons they hold together, though with different levels of endorsement. Notably, I am not denying that weak shareability also allows for self-rule (or, in more traditional Rawlsian parlance, "political autonomy"). The point is that if this is all that matters, a convergentist account of justification may suffice, while what is distinctively made possible through a consensus model of justification would be lost.

Therefore, civic friendship-driven theorists are right in raising their critique toward received respect-based justifications. However, this is not enough to conclude that realising joint rule has distinctively, and uniquely, to do with realising relations of civic friendship. The point is that striving for an ideal of joint rule via public justification based on (weakly) shareable public reasons – that one can sincerely expect others to be able to weakly share as fellow reasonable citizens in turn – is what constitutes relations of respect for citizens as *co*-legislators of political power. Only by receiving and offering these kinds of reasons to one another citizens can treat one another (and be treated by state officials) as equally sharing in political authority.[139]

Notably, Colin Bird has recently defended – precisely in terms of "civic respect" – a similar account of the importance of rejecting "usurpation[s] of co-authorship," as a distinctively democratic ideal.[140] In liberal democracies, political decisions are taken in the name of all citizens. That is, citizens share in some level of responsibility for their enactment and must be able to

138 On this point, see also Christie Hartley and Lory Watson, *Public Reason and Equal Citizenship* 41ff.

139 For a similar account seen Colin Bird, "Coercion and Public Justification" [2014] 13 *Politics, Philosophy & Economics* 189,214. Bird has defended precisely the relevance of democratic 'co-legislation' in political liberal accounts against convergentist proposals.

140 Bird, "Coercion and Public Justification" 203.

evaluate their validity in order to discharge some of their duties of citizenship (e.g., think of one's assessing the justice of a law because some of the reasons in its support do not speak at all to your sense of justice as a citizen). From this perspective, the relevance of public reason is firmly linked with allowing citizens to assess the extent to which laws and decisions may or may not realise political justice. The realisation of relations of respect toward citizens as co-legislators, who have a functioning sense of justice and are interested in exercising it in a context *where all must jointly be able to do the same*, is made possible by the very commitment to public reason. Once again, the problem is not "respect" *per se*, but its characterisation.

Before moving to the next sub-section, let me take stock of what I have shown in this section. The first, and most often investigated dimension of citizens' political status as free and equal, is their identity as "reason-givers and receivers." In my terms, this dimension grasps the crucially relevant dimension of free and equal citizenship of being *equal co-legislators* of political power. By offering weakly shareable public reasons in support of fundamental political decisions, citizens treat one another – and, crucially, state officials treat citizens – in a way appropriate to their having an effective sense of justice and that is essential for co-legislation. By doing this, they constitute relations of respect and sustain their status as equal co-legislators.

Now consider an important point. In the current political liberal literature, the impression is that the debate over the justification – and, hence, legitimation – of basic institutions and state action exhausts the merits of the ideal of respect for citizens as free and equal persons. One aim of the next and final section is precisely to challenge this idea, thus setting the stage for some arguments to come (Chs. 5 and 6). More precisely, I aim to show how different institutional requirement are all supportive of political relations of respect towards citizens, and the extent to which they are analytically and normatively independent from one another.

4.b) Respecting citizens as reasonable right-holders

One of the issues associated with the idea that citizens are owed respect as free and equal persons is that of the recognition/attribution of their (basic) rights, as well as that of having access to a range of fundamental goods and resources necessary to live *a* life.[141] While some citizens' rights are "political" (e.g., those necessary to protect their co-legislative political role *stricto sensu*), many protect citizens "private interests," so to speak. This section concerns primarily this second set.

Supporting respectful relations toward citizens, from this perspective, has to do with an institutional commitment to protecting their access to "primary social goods" to a level adequate

[141] See, e.g., Brettschneider, *When the State Speaks, What should it Say?*; Martha Nussbaum, 'Perfectionist Liberalism and Political Liberalism' 35, where – for instance – Nussbaum writes: "we will show respect for citizens by creating and protecting spaces in which they can live according to their own views."

for the effective development and exercise of their moral powers. Citizens are conceived of as having a higher-order interest in living by their conceptions of the good and, more generally, highest-order interests in exercising both their moral powers.[142] The idea of "primary social goods" captures precisely that bundle of resources and opportunities that citizens *need* for the protection of their highest-order interests.[143] My main aim is to recall that distributive matters are central to the task of supporting political relations of respect for citizens as free and equal in consensus political liberalism.[144] Crucially, my point is that this holds partly for normative reasons *independent* of how being denied access to them can, at times, impinge upon citizens being respected as co-legislating political agents – as seen above – or as civic equals (as I shall discuss below, §4.c).

Rawls conceptualises primary social goods as:

> "the various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good […] these goods are things citizens *need* as free and equal persons."[145]

They comprise some of the constitutional essentials covered, in Rawls's "Justice as Fairness," by the first principle of justice: political rights, the rights of freedom of conscience and religion, association, and expression – only to refer to some of the most commonly cited.[146] Here, I restrict the discussion in particular to these kinds of goods – the basic rights – in that they are commonly conceived as in need of special protection and priority in ranking exercises (though, for sure, these are not the only goods relevant to sustain the dimension of free and equal citizenship on which I am focusing here).

For Rawls in particular, the special (though not necessarily lexical) priority and protection of the basic liberties, is a core dimension of how the institutions of a liberal democratic state realise relations of respect for citizens as free and equal.[147] These are the most fundamental of citizens' *needs*. In Rawls's words, "citizens' needs are objective in a way that desires are not. That is, they express requirements of persons with certain higher-order interests who have a certain role and

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142 See, Rawls, *Political Liberalism* 72ff.

143 Identifying such rights and resources in a non-perfectionist way and analysing what kind of value they have, are matters for Ch.3.

144 Note that I use the expression "matters of distribution," loosely, in order to clarify that the focus is the "content" or the "what" of political claims. I do not want to convey the idea that the issue at stake are only or primarily 'material' resources – which probably are better grasped by the reference to the idea of "distribution" than rights.

145 Rawls, *Justice as Fairness* 57, 58.

146 For a detailed analysis of the list of primary goods and its functions, see John Rawls, "Social Unity and Primary Goods" in Samuel Freeman (ed), *John Rawls. Collected Papers* (Harvard University Press 1999) 359,387. I shall return to these points in Ch. 3.

147 Rawls, *Political Liberalism* 315

status. If these requirements are not met, they cannot maintain their roles and status or achieve their essential aims."[148] Crucially, Rawls's intuition is that one's life chances can be significantly reduced if one loses out, so to speak, in relation to these goods.[149] Similarly, in a powerful rendering of the political liberal project, Waldron calls one of its core desiderata "the liberal algebra."[150] The idea is that social cooperation is to be regulated so that the relevant institutional scheme can (hopefully) prove adequate to protect each reasonable citizens' most fundamental interests while granting a similar protection to all other reasonable citizens. In Waldron's words, "we are trying to reconcile something that is important and adequate in each person's case with something that is important and adequate in the case of each of the others."[151]

The point relevant to the present analysis is the distinctive normative concern underpinning Rawls's and Waldron's claims that, I take it, is also central to consensus political liberalism in general. Namely, a state in which religious rights, for instance, are granted only to group *A*, but not to *B*, and *C* – because, say, *A*'s religion is held to be the true and only valuable one – is not only a society in which *B's* and *C's* members are not appropriately treated as equal co-legislators (and civic equals), compared to *A*'s members. They are *also* deprived of the basic social conditions for their reasonable enjoyment of a basic liberty, which covers a salient dimension of citizens' – qua citizens – good. The latter aspect is not fully reducible to whether citizens are treated as equal co-legislators and civic equals (both analytically and normatively). It distinctively concerns the fundamental function that certain goods play in supporting citizens' personal projects and life-plans.

Of course, an arrangement such as that in the example just sketched jeopardises the legitimacy of the organisation of the basic structure from a political liberal perspective, thus failing to treat citizens as co-legislators concerning the most fundamental political matters (and as public equals). However, I contend that it is also problematic to the distinct extent that it undermines citizens' ability to live by their conceptions of the good. Supporting respectful political relations in political liberalism is not only to do with justifying state action but also with protecting citizens' fundamental interests; e.g., enjoying basic liberties within limits imposed by principles of justice.

Citizens, in this sense, are to be treated (and see themselves) as *right-holders*, provided that their claims are reasonable.[152] Citizens who see themselves as "self-authenticating sources of valid

148 *Ibid.* 189.

149 On this point, see – e.g. – Andrew Koppelman, "A Rawlsian Defence of Special Treatment for Religion" in Cécile Laborde and Aurélia Bardon, *Religion in Liberal Political Philosophy* (Oxford University Press 2017) 31,43.

150 Jeremy Waldron, "Toleration and Reasonableness" in Catriona McKinnon and Dario Castiglione (eds) *The culture of toleration in diverse societies. Reasonable tolerance* (Manchester University Press 2003) 7.

151 Waldron, *"*Toleration and Reasonableness*"* 16.

152 John Rawls, "Kantian Constructivism and Moral Theory" [1980] 77 *The Journal of Philosophy* 543.

claims" – as seen the relevant account of political freedom as a status for Rawls – see their reasonable claims as having weight "on their own apart from being derived from duties or obligations specified by the political conception of justice, for example, from duties and obligations owed to society."[153] These remarks grasp an essential element of how liberal democratic institutions support citizens' status as free and equal.[154] That is, the citizens of liberal democracies see themselves not only as entitled to advance claims. They also see those claims as having at least *pro tanto* validity, thus reasonably expecting others' compliance and the state accommodation of such claims when such claims are reasonable and the interests at stake are of basic importance (hence relevant in terms of justice).[155] The right to freedom of religion, the right to freedom of expression – to name but a couple – have this kind of structure, protecting citizens' status as free and equal.

Put differently, a desideratum to meet citizens' reasonable claims to enjoy these rights lies at the core of what is of value in living in a just liberal democracy. Note now an important point concerning the normative relation between respecting citizens as co-legislators and, in the terms I am currently developing, as "reasonable right-holders." It is paradigmatically – though for sure not only – laws specifying citizens' conditions of enjoyment of basic rights that are in need of justification via public reason. The exact determination of the conditions of enjoyment of similar rights is what the deliberative decision-making process constrained by the rules of public reason aims to legitimate in cases in which, for instance, such rights somehow conflict. Hence, it is precisely as regards similar decisions that public reason can (and often is) inconclusive. Therefore, there are cases – lying at the core of this thesis – in which, as Waldron correctly argues, "the liberal algebra" does not succeed. That is, conflicting reasonable claims arise whose accommodation is practically incompossible, with even great costs in terms of reasonable citizens' access to fundamental resources and goods. As will become clear in the following chapters, this thesis hopes precisely to mitigate the tensions entailed by similarly complex circumstances.

4.c) Respecting citizens as civic equals

Political liberals are concerned with the state's establishment of (elements of) conceptions of the good. As typical examples, think of the debates over the permissibility of displaying religious

153 John Rawls, "Justice as Fairness: Political not Metaphysical" [1985] 14 *Philosophy & Public Affairs* 242; Rawls, *Political Liberalism* 32.

154 For a discussion of the connection between the liberal protection of certain spheres of action and interests of citizens' and their "standing," see Niko Kolodny, "Standing and the Sources of Liberalism" [2018] 17 *Politics, Philosophy & Economics* 169,191.

155 Following Joel Feinberg's influential work, in fact, this kind of logic is precisely the one that captures the very idea of having claim-rights; see, Joel Feinberg, "The Nature and Value of Rights" [1970] 1 *The Journal of Value Inquiry* 243,260. I will return extensively to these points in Chs. 4, 5, and 6.

symbols in public buildings (such as crucifixes in schools), or over the exclusivist (e.g., heteronormative and monogamous) definition of civil marriage.[156] Such forms of establishment work, according to some (consensus) political liberals, as forms of state-sanctioned expression of inferiorisation of members of certain social groups, hence publicly treating some citizens as less than civic equals.

This dimension of citizens' status, as I see it, thus pertains to the relation between (a) ascriptive and/or elective identities and (b) the political identity of "citizen" itself. Put differently, being (recognised as) a member of certain social groups is linked in a privileged (or disadvantaged) way with citizenship. That is, respecting citizens as equal in their civic worth requires refusing to associate civic identity with any sectarian (ascriptive or elective) identity to the exclusion of others. Recalling the distinction between AR and RR, doing otherwise would introduce relations of AR (i.e., towards the conceptions of the good whose elements are endorsed by the state) into the public arena.

In §4.a, I explained how exercises of state power can be made legitimate, respecting citizens as co-legislators sharing in joint rule. As I argued, this requires a restriction of the kinds of reasons which can be used publicly to support the exercise of state power. In this sub-section, I present a way of failing to support respectful political relations which is analytically and normatively distinguished from that analysed in §4.a. However, according to some influential political liberals, *one of the ways* to fail to support relations of respect for citizens as civic equals originates precisely in failing to comply with the deliberative constraints of public reason.

Martha Nussbaum has focused distinctively on this issue. Nussbaum's point is that there is something "insulting" in grounding the exercise of collective (and possibly coercive) power on non-public reasons.[157] Two components of the "insulting nature" of this public act can be distinguished in Nussbaum's argument. The first has to do with the exclusion, in my terms, of citizens from joint rule and co-legislation (see §4.a). I shall leave this aside as I have already presented the relation between public reason and the legitimation of state power *per se*.

However, there is a second sense in which offering non-public reasons can be argued to be disrespectful, which distinctively relates to citizens' *civic (in)equality*. According to Nussbaum, "when the institutions that pervasively govern your life are built on a view that in all conscience you

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156 See, e.g., Elizabeth Brake, "Minimal Marriage: What Political Liberalism Implies for Marriage Law" [2010] 120 *Ethics* 30, 37; Tamara Metz, "The Liberal Case for Disestablishing Marriage" [2007] 6 *Contemporary Political Theory* 196,217. For a broader discussion, see Stephen Macedo, *Just Married: Same-Sex Couples, Monogamy, and the Future of Marriage* (Princeton University Press 2014).

157 See Nussbaum, 'Perfectionist Liberalism and Political Liberalism;' Martha C. Nussbaum, "Political Liberalism and Respect: A Response to Linda Barclay" [2003] 4 *Northern European Journal of Philosophy* 25,44.

cannot endorse, *that* means that you are, in effect, in a position of second-class citizenship."[158] Nussbaum refers to this as "expressive subordination" and describes it as a form of (comprehensive) establishment. The issue is not merely that citizens who fail to receive a justification they can accept are not in the position to recognise themselves as co-legislators on a par with others. The relevant point, from the perspective of civic equality, is what *this exclusion means* for their public recognition – as members of a certain group – within society. From this perspective, grounding laws on reasons that some citizens cannot accept without abandoning their conception of the good and embracing another one is tantamount to treating them as citizens who do not count in the determination of the use of state power. This, in turn, sends an inferiorising message to them, by elevating the civic standing of others. Put differently, being excluded from political authority is not only disruptive of relations of respect for citizens as co-legislators but, by this, it further means that some identities publicly become *ipso facto* markers of political inferiority. That is, by saying something like "only the perspective of members of groups *x* and *y* matters to decide on political issues", the justificatory exclusion makes other identities into markers of civic inferiority.

As I anticipated, "justificatory establishment" – as we may call it – is only one part of the problem of granting equal civic status to all citizens. There may be cases in which some form of unequal establishment (of religion) may be publicly justifiable, but in which – nonetheless – civic inequality may follow. David Miller has recently put forward an ingenious argument inspired by David Hume's reflections on possible prudential benefits of single-church establishment. Having "an established church," Miller contends, may "moderate religious extremism" in society. It may do this by, for instance, incentivising more compromising positions and tones within the established church in light of the need to be responsive to a far broader audience than the religion's own adherents.[159]

I am not interested here in the merits of this argument. However, it is a public one, defensible based on values such as public order and social peace. If this is the case, there may be reasonable disagreement over the strength of the argument but it may in principle justify and legitimate single-church establishment (especially, in a context in which, as per Miller's example, this does not imply any infraction of the rights or unfair disadvantage in the material social conditions of citizens who do not embrace the established religion). Still, the overlap between the public identity and the relevant religious identity that the establishment creates, irrespective of its justifiability, may still

158 Nussbaum, "Perfectionist Liberalism and Political Liberalism" 35 – emphasis mine.

159 David Miller, "What's Wrong with Religious Establishment?" [2019] *Criminal Law and Philosophy* https://doi.org/10.1007/s11572-019-09496-7.

be problematic in terms of respect for citizens of different (or no) faiths. Hence, citizens can be respected as co-legislators but not qua civic equals; the dimensions are both analytically and practically irreducible to each other.

Furthermore, there are cases in which citizens are not respected as civic equals while their treatment as reasonable right-holders is not under threat. Think, as a paradigmatic example, of a decision not to extend equal marriage to same-sex couples – assuming, for the sake of argument, that it is in some way justifiable based on public reason – but to only allow for equal provisions protecting same-sex couples' interests (e.g., civil partnerships granting kinship benefits). Now, one of the most heated points concerning the inclusion of same-sex couples in the public institution of marriage is that it is indeed a *public* institution.[160] To the extent that *marriage* matters for civic identity – and, for sure, many hold it should not[161] – the inclusion of only heteronormative (and monogamous) nucleuses within it associates these identities in a preferential way with civic status. Being a same-sex nucleus, or a non-monogamous one, (or a combination of the two) work as traits disadvantaged in terms of association with civic identity – irrespective of whether one has been granted the benefits associated with inclusion through some other legal tool.

These further examples, again, show that the extent to which treating citizens as co-legislators and reasonable right-holders and civic equals do not necessarily fully overlap. Citizens may be given public-reason based justifications, hence treated respectfully as co-legislators, in support of arrangements that, nonetheless, threaten to some extent their respectful treatment as reasonable right-holders and civic equals. Establishing and maintaining respectful relations for states divided by reasonable pluralism about justice is more complex than consensus political liberals have thus far appreciated. Or so I shall argue in Ch. 5, in light of the points developed in this chapter.

5. Conclusion

The main aim of this chapter has been to propose a novel understanding of the role of respect in consensus political liberalism. To do this, I first clarified how respect need not be a Kantian notion that jeopardises the freestanding nature of political morality. Some consensus political liberals' worries, for sure, are justified if certain influential defences of the principle of equal respect for persons in political liberalism are analysed. Rejecting them, however, is not the same as showing

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160 For an illuminating discussion concerning this point, see, e.g., Anna E. Galeotti, "Toleration as Recognition: The case for same-sex marriage" in Ingrid Creppell and Russell Hardin and Stephen Macedo (eds) *Toleration on Trial* (Lexington Books 2008) 111,134; Anna E. Galeotti, *Toleration as Recognition* (Cambridge University Press 2002) Ch. 6.

161 See, for instance, Tamara Metz, "The Liberal Case for Disestablishing Marriage" [2007] 6 *Contemporary Political Theory* 196,217; Peter Balint, *Respecting Toleration. Traditional Liberalism and Cotemporary Diversity* (Oxford University Press 2017) 65ff.

that respect can play no consistent and useful role in consensus political liberalism. Thus, I have argued that various normative commitments that sit at the core of the political liberal project support respectful relations toward citizens as free and equal. More precisely, there is a constitutive relation between being treated in appropriate, respectful ways, and the status of free and equal citizen. By disaggregating such a status into three main components, based on the analysis of multiple (consensus) political liberal sources, I have shown that the practices supporting relations of respect for citizens are in fact multiple, exceeding the duty to offer public justifications of state action on which current political liberals overwhelmingly focus.

The multi-dimensional account of respect in consensus political liberalism is critical to the aims of this thesis. To anticipate, it will be pivotal in defending the core argument that the state has a duty to address residues of justice precisely in order to sustain fully respectful relations (Ch. 5) – after having shown the existence of such residues – i.e., that decisions can be legitimate (hence reasonably just) and still politically-morally fail reasonable citizens (Ch. 4). Before moving to these arguments, I need to make sense of what reasonable claims of justice are, and analysis the normativity of the political goods they concern.

Chapter 3

Primary Social Goods and Reasonable Claims of Justice

1. Introduction

Before moving to the second part of this thesis, I must explain what *reasonable* claims *of justice* are. This is a point of critical importance since it is these claims that compete with each other in circumstances of inconclusiveness of public reason.[162] Hence, I have to characterise such claims precisely, before assessing their normative validity and force in the next chapter. In the first half of this chapter, I focus on what makes (reasonable) claims "about justice." In the second half, I investigate what makes them "reasonable."

Briefly, claims are relevant in terms of justice when they are claims to access Primary Social Goods (hereafter, PSGs). However, how can political liberals identify PSGs based on a highly abstract account of the political person? If further content is added, how can an account of PSGs be presented as properly "political"? While no list of PSGs can be proposed without relying (more or less implicitly) on judgements of "ethical salience" concerning certain citizens' interests and general ends, these judgements can be particularly problematic in political liberal proposals. Namely, the identifying process of PSGs risks being carried out arbitrarily, failing to provide sound criteria to distinguish "primary" from "non-primary" goods. Even more problematically from a consensus political liberal perspective, identifying certain goods as primary compared to others (and treating them accordingly) may further assume perfectionist judgements concerning the inherent value of people's interests and ends as contained in conceptions of the good. I call these, respectively, the "arbitrariness" and the "perfectionist" charges to identifying PSGs in consensus political liberalism.[163] Thus, the challenge is to offer some ground for the identification of PSGs (against arbitrariness), but without relying on perfectionist judgements.

Offering a complete answer to these charges falls well beyond the scope of this chapter. Still, explaining what justifies the politically-moral salience of PSGs is very important for the purposes

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162 Precision requires a terminological clarification. I have until now referred to arguments in political debate as "interpretations of requirements of justice" or "public arguments." The introduction of the "claims" terminology aims to grasp the fact that citizens are not only "makers" of the laws of their state – co-legislators – but also subjected to them; in that capacity, in Joel Feinberg's terms, they *address claims to* the state – see my discussion in Ch. 2, §4.b. These claims of course, may or may not be accommodated, with or without moral losses – more on this in Ch. 4.

163 Note that a choice can be arbitrary without being perfectionist; as in a process to identify PSGs that does not provide reasons for the selection in the first place (e.g., random choice). A "perfectionist" judgement is necessarily morally arbitrary from a politically liberal perspective in that the ground offered does not derive its normativity from elements embedded in the public political culture.

of the thesis. Their importance constitutes *one* component of the explanation of the normative force that *reasonable* claims about their distribution have irrespective of their actual accommodation (as I explain further in Ch. 4).

It is worth noting that, in addition to being of utmost importance for this thesis, taking the complexities involved in identifying PSGs seriously in consensus political liberalism is in itself an important and independent contribution to the literature. Mainstream consensus political liberalism, in fact, simply assumes their relevance, holding them as an essential component of the shared substantive content that reasonable citizens must share if they are reasonable. While I concur with the latter point, my worry is that political liberalism runs the risk of becoming excessively dogmatic if its core argumentative move – whenever an important normative component of the framework is to be justified – is to postulate, rather than demonstrate, its relevance. Additionally, holding that accepting the relevance of Rawls's PSGs is a component of citizens' reasonableness does not in itself eliminate the legitimacy of questioning whether the account is premised on hidden perfectionist judgements. Developing a reply to these doubts should concern any consensus political liberal.

In the second half of the chapter, I turn to investigate what it means for claims of justice to be "reasonable." While in Chs. 1 and 2, I focused on the issue of the "public" nature of political arguments and claims, consensus political liberals also focus on the extent to which reasons take into consideration all the relevant political values at stake and how they rank and balance such values. This means that there are further conditions under which claims, while being grounded on common substantive and epistemic standard, can still fail to count as reasonable.

The chapter unfolds as follows. In §2, I clarify the function that PSGs play as grounds for claims, *qua claims of justice*. Forming part of Rawls's political conception of the good, PSGs are retained, more or less implicitly, by all consensus political liberals as an especially important subset of political values. In §3, after introducing the two charges, I defend a "negative account" – as I call it – of the politically moral salience of PSGs. This account starts from "primary bad," so to speak, to make sense of citizens' *needs*, rather than from some positive ideal that accessing the relevant goods would promote. This account, I contend, is particularly promising in dealing with the "perfectionist" charge, and it can answer the "arbitrariness charge" in turn. Then, I present a few examples to describe the negative account and its appeal in making sense of a properly "political" account of PSGs. In §4, I focus on how consensus political liberals should (and *should not*) make sense of "reasonableness" as a property of claims of justice. Hence, I complete the characterisation, started in Ch. 1, of those arguments, whose adjudication reaches an impasse in

conditions of inconclusiveness of public reason. This is the last essential move to make before turning to the second part of the thesis.

2. Functions of PSGs: citizens' needs and grounding prima facie valid claims of justice

The little attention that consensus political liberals have paid to PSGs in the last decades is surprising considering the rather crucial roles that they, more or less implicitly, play within political liberals' theoretical frameworks. In a nutshell, PSGs are resources and opportunities that citizens are taken to need to protect their (highest-order) interests. Relatedly they function as the ground of claims addressed to the state that can, at least, *prima facie* be conceived as "claims of justice."

Rawls explicitly attributes these two functions to PSGs:

1) The list of PSGs constitutes an account of citizens' – qua citizens' – *needs*;[164]

The first function leads naturally to the second:

2) PSGs identify *grounds* for at least *prima facie* valid claims of justice. While constituting the very "objects" that principles of justice aim to regulate, they are part of the substantive evaluative standards upon which public reasons can legitimately be grounded.[165]

I shall first unpack (1), on which (2) largely depends. Let us, first of all, recall one of the latest definitions that Rawls offers of PSGs, already introduced in Ch. 2. In his latest writings, Rawls presents PSGs as:

> "the various social conditions and all-purpose means which are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good. […] These goods are things citizens *need* as free and equal persons."[166]

The reference to "needs," while never unpacked, is not accidental.[167] Rawls aims to draw a contrast between PSGs and mere preferences, likings, or desires that citizens might have. The necessity of

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164 See, e.g., John Rawls, "Social Unity and Primary goods" in Samuel Freeman (ed) *John Rawls. Collected Papers* (Harvard University Press 1999) 373ff.; Rawls, *Political Liberalism* 207ff.

165 Rawls, "Social Unity and Primary Goods" 374; Rawls, *Political Liberalism* 201.

166 Rawls, *Justice as Fairness* 57,58 – emphasis mine.

167 In Rawls's words, "the idea of needs used in the text views needs as relative to a political conception of the person, and to their role and status. The requirements, or needs, of citizens as free and equal persons are different from the needs of patients or of students, say. And needs are different from desires, wishes, and likings. Citizens' needs are objective in a way that desires are not: that is, they express requirements of persons with higher-order interests who have a certain role and status. *If these requirements are not met they cannot maintain their roles and status or achieve their essential aims*" – Rawls, *Political Liberalism*, 189, n. 20 – emphasis mine. For a broader discussion of the relevance of the concept of "need" in this context, see, Norman Daniels, *Just Health: Meeting Health Needs Fairly* (Cambridge University Press 2008) 31ff.

identifying certain goods as "primary" and "necessary" (some, in fact, more necessary than others) is a vital dimension of Rawls's proposal and any internally consistent (political) liberalism.[168] I shall deal in the next section with the complexity of drawing the distinction between PSGs and "non-primary goods" in political liberalism.

For now, it will be recalled from Ch. 1, that consensus political liberals follow Rawls in identifying the attribution of some kind of priority to basic liberties as one of the defining features of reasonable conceptions of political justice. Furthermore, consensus political liberals and certainly Rawls – I argued in Ch. 2, § 4.b – see citizens as (reasonable) holders of rights that protect their highest-order interests in developing and exercising their moral powers. PSGs are the necessary social conditions that make it possible for citizens to develop and exercise their moral powers.

Turning to (2), we can see that PSGs are (part of) the basic resources, powers, and opportunities concerning whose distribution and protection public reason, as a deliberative decision-making method, is required. At the same time, they work as bases of public reasons themselves. Put differently, to the extent that they constitute part of the basic structure (or are distributed by its institutions) they are the object of deliberation following the rules of public reason. Qua central political values, they work as *grounds* of public reasons themselves. They offer a *positive* basis to ground public reasons – i.e., they are part of the substantive evaluative content of a liberal democracy's public reason.[169] It is because of this function that they are particularly relevant to this thesis.

PSGs as a subset of political values: two clarifications

Two clarifications are important at this point to make sense of how the perspective from which PSGs are relevant to my thesis limits my analysis of them. Firstly, the chapter does not aim to question or argue that Rawls located something like *the* "correct" list of PSGs. While part of the argument below will be that this exercise of identification – albeit central to any theory of justice – has an inevitable degree of contingency, I take the list as developed by Rawls and broadened by others at face value. My interest in the next section will be in explaining how relying on it does not collapse consensus political liberalism into a form of liberal perfectionism. To establish this, I do not aim to take any stance concerning the elements that it should (not) contain.

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168 Laborde has recently developed an analogue of Rawls's distinction by differentiating "basic liberties" from "ordinary freedoms," see, Laborde, *Liberalism's Religion* 147.

169 Quong, *Liberalism without Perfection* 279.

Secondly, I refer to PSGs, as introduced by Rawls, in that they are (more or less explicitly) retained by most of consensus political liberals.[170] However, some influential theorists deny that PSGs constitute the best characterisation of citizens' good, defending the superiority of competing theoretical accounts. The most influential competitor to PSGs is the capability approach defended, among others, by Martha Nussbaum who is a self-identified consensus political liberal. In very general terms, according to capability theorists, focusing on PSGs – qua resources – as the object of distributive justice is limited because it is insensitive to the differences that diverse citizens will face in converting those goods into effective functioning; and functioning is what matters to people.[171]

As anticipated, for this thesis I am interested in discussing the most accepted list of PSGs conceived as a particularly weighty subset of the values of public reason. Since they are relevant to this work in this capacity, the debate concerning "what" is it that principles of justice should distribute – i.e., what account of the "currency" of political justice is the most appropriate – falls mostly beyond the scope of my analysis.[172] That is, irrespective of whether consensus political liberals identify a list of PSGs or one of capabilities, they need to explain why it is not arbitrarily composed and how the judgements on which it is premised do not collapse political liberalism into a form of liberal perfectionism.

To be sure, there is debate concerning whether relying on a list of capabilities – rather than PSGs – makes theories inherently more vulnerable to charges of perfectionism. While capability theorists tend to deny that this is the case,[173] more and more theorists point out that the gap between the two accounts may be overstated.[174] I sympathise with the latter position. The point is

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170 See, e.g., Elizabeth Brake, "Minimal Marriage: What Political Liberalism Implies for Marriage Law" [2010] 120 *Ethics* 302,37; Elizabeth Brake, *Minimizing Marriage. Marriage, Morality, and the Law* (Oxford University Press 2012) 173ff.; Quong, *Liberalism without Perfection*; Lister, *Public Reason and Political Community* 22ff.

171 For the most influential accounts, see, Martha C. Nussbaum, *Frontiers of Justice. Disability, Nationality, and Species Membership* (Harvard University Press 2006) and *Women and Human Development. The Capabilities Approach* (Cambridge University Press 2000); Amartya Sen, *Inequality Re-examined* (Oxford University Press 1995) and *The Idea of Justice* (Harvard University Press 2009) Part III. For a discussion concerning the coordinates of the debate, see Ingrid Robeyns and Harry Brighouse, "Introduction: Social primary goods and capabilities as metrics of justice" in Ingrid Robeyns and Harry Brighouse (eds) *Measuring Justice: Primary Goods and Capabilities* (Cambridge University Press 2010) 1,14.

172 For a broader perspective on the terms of the "equality of what?" debate, see, G. A. Cohen, "On the Currency of Egalitarian Justice" in Michael Otsuka (ed) *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy* (Princeton University Press 2011) 3,43.

173 See, e.g., Nussbaum, *Frontiers of Justice* 79ff.

174 See, e.g., Eric Nelson, "From primary goods to capabilities: distributive justice and the problem of neutrality" [2008] 36 *Political theory* 93,122 who argues that the capability approach is inconsistent with a liberal commitment to neutrality and that its similarities with Rawls's PSGs account means that the latter faces similar difficulties – more on this in the next section. See, also, Erin Kelly, "Equal opportunity, unequal capability" in Ingrid Robeyns and Harry Brighouse (eds) *Measuring Justice: Primary Goods and Capabilities* (Cambridge University Press 2010) 61,80.

that to the extent that supporters of the two opposing accounts modify them to meet one another's critiques they ultimately end up showing that the gap dividing them is narrower than may appear at first sight.[175]

3. "Primary bad." A negative account of the political salience of PSGs

In §2, I clarified the roles that PSGs occupy in consensus political liberalism. As they are conceived as citizens' *needs* – i.e., resources and opportunities protecting their interests – they form an essential subset of political values. Hence, they are grounds for claims of justice within the broader set of public arguments. I shall now turn to discuss what complications can arise in trying to identify a "list of PSGs" in consensus political liberalism.

Risks: arbitrariness and perfectionism

Citizens assess the respective merits of competing conceptions of political justice by assessing what principles best ensure access to a fair share of PSGs for all, as Rawls's discussion of the choice of the parties in his original position shows. This suggests, therefore, that in carrying out the evaluation of the best conception of political justice citizens *assume* an account of the kinds of goods whose distribution the principles will have to regulate.[176] More generally, since they constitute grounds for public reasons, their identification must be logically prior to the deliberative process of public reason itself. So, how are PSGs identified?

In delineating a "political" account of citizens' needs, political liberalism (and liberal egalitarianism more generally) must deal with problems of "ethical salience."[177] The issue is that conceiving of certain goods as of special importance – crucially, worthy of *special protection* that is not given to other *non-primary* ones – seems of necessity to rest on "an ethical evaluation of the salience of different conceptions, beliefs and commitments."[178] To identify PSGs we have first to identify some interests as worthy of special protection. But how are these evaluative judgements not at odds with political liberal commitments to neutrality towards conceptions of the good, and avoidance of unwarranted ethical evaluations?

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175 This point is explicitly made by Norman Daniels who does not embrace the capability framework, while correcting Rawls's misguided approach to citizens' health needs so that it can meet capability theorists' critiques. By arguing how the "social determinants of health" – as PSGs – fall under Rawls's principle of fair equality of opportunity, Daniels argues against assuming a significant gap between PSGs-based approaches and capability ones. See, e.g., Norman Daniels, "Democratic Equality: Rawls's Complex Egalitarianism" in Samuel Freeman (ed) *The Cambridge Companion to Rawls* (Cambridge University Press 2003) 241,276; "Capabilities, opportunity, and health" in Ingrid Robeyns and Harry Brighouse (eds) *Measuring Justice: Primary Goods and Capabilities* (Cambridge University Press 2010) 131,149; *Just Health* 47ff.

176 Paul Weithman, *Why Political Liberalism?* 79.

177 Laborde, *Liberalism's Religion* 5.

178 *Ibid.*

I shall unpack the ethical salience problem, as it concerns the identification of PSGs, in two linked but analytically distinguished charges to be avoided: arbitrariness and perfectionism. The *arbitrariness charge* is that the identification of PSGs does not rest on robust criteria in distinguishing primary from "non-primary" social goods. Why is this important? As seen above, excluding some goods from the list of PSGs implies that they are not relevant to justice – they do not ground weighty claims – and the principles applying to issues of justice do not regulate them. In this sense, e.g., thinking of golf clubs as appropriate *distribuenda* for principles of justice is a non-starter, and so is asking for a legal exemption from job duties to go to watch one's favourite football team. But, why so? Some reason needs to be offered for such distinctions.

The arbitrariness charge features in the debate on the special place that the right to freedom of religion is given in the legal theory and practice of Western liberal democracies. Some question why, for instance, exemptions to legitimate laws are often more easily justifiable when they are grounded on religious commitments, but face much more resistance if based – let us imagine – on some idiosyncratic family tradition.[179] Religious interests, one may argue, are arbitrarily given preferential legal treatment, access to which is not equally granted to conduct based on secular ethical commitments. Such distinctions need justification. The location of the bases of claims of justice should not rest on arbitrary value judgements.

Below, I present the core of Laborde's account of the ethical salience of "integrity protecting commitments" (both religious and secular) that solves the theoretical and legal puzzle just mentioned.[180] I will claim, that Laborde's (and similar) arguments are capable of providing grounds for the relevant distinctions, whilst explaining how they are not grounded on problematically perfectionist judgements.

The *perfectionism charge* may run even deeper than the arbitrariness one in terms of risked inconsistency with political liberalism. In very broad terms, the core of political perfectionism is the claim that it is part of the duties of the state to support citizens in leading worthy lives, defined in light of some objective account of what constitutes a good life. As seen in Ch. 1, a "perfectionist" stance is thus one proposing ideals of perfection, excellence, or self-realisation that a "good" human life should strive to achieve. Certain understandings of autonomy central to the liberal tradition, such as John Stuart Mill's, are cases in point. From this perspective, singling out certain spheres of personal action as due special protection (in the form, e.g., of exemptions or weighed priority in public deliberation), compared to others, has to do with protecting components of citizens' lives that are judged valuable as part of an inherently good life.

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179 For discussion, see Leiter, *Why Tolerate Religion* 1ff.

180 Laborde, *Liberalism's Religion*.

To illustrate, considering the right to freedom of religion as a paradigmatic PSG would depend on counting, say, the "search for the ultimate meaning of life" as a constitutive element of any good life.[181] Being a loyal football fan, on the contrary, would not be. Lives are good, the argument would go, if time is devoted to the search for meaning. The means to protect this interest are, therefore, to be guaranteed. If it is not possible to locate PSGs without relying on these kinds of judgements, then this is a serious problem for consensus political liberalism. While some critics think that any form of liberalism cannot but appeal to such perfectionist values,[182] it is essential for the tenability of consensus political liberalism that it resists the ethical salience problem in the form of the arbitrariness and the charge of perfectionism. The next two subsections argue how consensus political liberalism can do so.

Eschewing the arbitrariness and perfectionism charges: a negative approach

I start by presenting Rawls's account of PSGs. I then broaden it by proposing a *negative characterisation* of citizens' salient needs that can resist the arbitrariness and perfectionist charges. This approach is not idiosyncratic. I will show below that this strategy lies at the basis of multiple authors' attempts to justify the salience of the basic rights and opportunities with which they are concerned. That said, it is never systematically articulated among consensus political liberals as *the* answer to the problem of how to identify PSGs.

It is worth emphasising, first of all, that Rawls argues that a list of PSGs should not be read as definitive at any given moment, but should be considered as open and flexible.[183] Even if he neither sufficiently unpacks this point nor spells out his methodology, his account of PSGs is limited by some contingent aspects – e.g., limits of knowledge – of the political life of Western liberal democratic societies at a given point in time. Notably, since Rawls first introduced his list of PSGs, other theorists have proposed additions to it. For instance, Will Kymlicka has influentially argued that access to one's "societal culture" should count as a PSG.[184] More recently, Elizabeth Brake has defended the importance of "the social bases of caring relations"[185] in terms of PSG. By this category, she refers to the normative nucleus of what has traditionally been the ground of the

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181 Nussbaum, *Women and Human Development* 79. As already clarified, Nussbaum denies that her account of caabilities is parfectionist in the sense I am presenting here.

182 For a proposal in which "liberal goods" are seen as part and parcel of the promotion of a specific liberal conception of the good life, see, William A. Galston, *Liberal Purposes. Goods, Virtues, and Diversity in the Liberal State* (Cambridge University Press 1991) Ch. 8. See also, on the inevitability of perfectionism, Joseph Chan, "Legitimacy, unanimity, and perfectionism" [2000] 29 *Philosophy & Public Affairs* 5,42.

183 Rawls, *Political Liberalism* 292,293.

184 Will Kymlicka, *Liberalism, Community and Culture* (Oxford University Press 1989) 162ff.

185 Elizabeth Brake, "Minimal Marriage: What Political Liberalism Implies for Marriage Law" 326ff. and *Minimizing Marriage* 173ff.

exclusionary legislation on marriage (and civil partnership). The evolution, so to speak, of the list of PSGs should not be surprising and in fact goes hand in hand with the transformation of the public reason of liberal democratic societies that Rawls thought of as important.[186] Let us now turn to Rawls's strategy to identify the PSGs.

Clearly, the identification of the list of PSGs cannot depend on the final ends given by any sectarian conception of the good. Rather, it has to be conceived – once again – as a "political" account of citizens' good. In the first Rawlsian formulation, the idea is that of constructing a "*thin* theory of the good."[187] From this perspective, the list of PSGs would contain resources and opportunities all instrumentally beneficial – some necessary – to pursuing a wide range of (reasonable) life-plans and living by several (reasonable) conceptions of the good. In Rawls's original words, PSGs are "things it is rational to want whatever else they want."[188] Rawls ultimately abandoned this account of PSGs, as described below.[189]

Throughout his writings Rawls is unclear when it comes to a second method, one that would resort partially to the observation of what kinds of ends people generally have, or what kind of resources – e.g., basic rights – have been particularly important in liberal democracies. He argues several times that PSGs should not be identified by looking at something like a "comprehensive empirical or historical survey" of what ends figure the most in existing conceptions of the good and comprehensive doctrines in given social contexts. At the same time, the definition itself of PSGs makes explicit that they are powers, resources, and opportunities which are *normally* necessary to people to develop their moral powers, thus suggesting that the method does rest on an empirical component.[190] Moreover, Rawls's aforementioned claim that the list of PSGs needs

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186 In Rawls's words, "Political liberalism, then, does not try to fix public reason once and for all in the form of one favored political conception of justice. […] variations may be proposed from time to time and older ones may cease to be represented. It is important that this be so; otherwise the claims of groups or interests arising from social change might be repressed and fail to gain their appropriate political voice," Rawls, "The idea of Public Reason Revisited" 774,775. The issue of how public reason may change over time has been recently debated by Chad Flanders, "The Mutability of Public Reason" [2012] 25 *Ratio Juris* 180,205.

187 Rawls, *A Theory of Justice* 347ff.

188 *Ibid.* xiii, xiv for Rawls's explanation of the rejection of this formulation after the first edition of *Theory*.

189 For an early critique of the "thin" theory's alleged neutrality, see Adina Schwartz, "Moral Neutrality and Primary Goods" [1973] 83 *Ethics* 294,307.

190 In Rawls's own words, "what are to count as primary goods is not decided by asking what general means are essential for achieving the final ends which a comprehensive empirical or historical survey might show that people usually or normally have in common. There may be few if any such ends; and those there are may not serve the purposes of a conception of justice. The characterisation of primary goods does not rest on such historical or social facts. While the determination of primary goods invokes a knowledge of the general circumstances and requirements of social life, it does so only in the light of a conceptions of the person given in advance." Rawls, "Social Unity and Primary Goods" 367 – emphasis mine. And further, "a list of basic liberties can be drawn up in two ways. One way is historical: we survey the constitutions of democratic states and put

"updating," so to speak, and should not be counted as fixed in time, arguably suggests a possible need precisely to "re-survey" social contexts over time to see how "things generally needed" change.

The core point is that there is an equilibrium, in Rawls's method, between the empirical and philosophical elements. The philosophical element is the reliance on the political conception of the person. That is, PSGs are goods necessary for citizens conceived under a certain construction, as we know. Namely, as having interests in exercising and developing a capacity for a sense of justice and a capacity to conceive the good, and a further interest in living by their own (reasonable) conceptions of the good life.

To recall from Ch. 2, the capacity for a sense of justice is a willingness to propose, abide by, and be moved by fair terms of cooperation.[191] The capacity for a conception of the good is "the capacity to form, to revise, and rationally to pursue a conception of one's rational advantage or good."[192] A conception of the good, ultimately, is a "family of final ends and aims which specifies a person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life."[8] One of Rawls's latest characterisations of conceptions of the good is worth citing in full to appreciate the formal account of what a conception of the good is:

> "Such a conception must not be understood narrowly but rather as including a conception of what is valuable in human life. Thus, a conception of the good normally consists of a more or less determinate scheme of final ends, that is, ends we want to realise for their own sake, as well as attachments to other persons and loyalties to various groups and associations."[193]

The generality characterising political personhood seems hardly sufficient to support, by itself, the kind of judgements necessary to identify PSGs. The political conception of the person, indeed, offers only half of the solution. The other half is given by some knowledge – and the contentious matter is *how much* and *of what kind* (more on this below) – of both (i) features of human development and (ii) an account of the interests and ends that are especially important in certain socio-political contexts, whatever the level of generality of the proposed account of them. That is, in Western-style liberal democracies, being in the position to develop and exercise one's moral

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together a list of liberties normally protected, and we examine the role of these liberties in those constitutions which have worked well. […] A second way is to consider which liberties are essential social conditions for the adequate development and full exercise of the two moral powers of moral personality over a complete life. Doing this connects the basic liberties with the conception of the person used in justice as fairness […]" Rawls, *Political Liberalism* 292.

191 *Ibid.* 87.

192 *Ibid.* 57.

193 *Ibid.*

powers requires having protected certain kinds of interests linked to a set of ends presented in general terms – e.g., expressing dissent to political decisions, associating with like-minded people, without fear of unjustifiable state intervention.[194]

Under this interpretation of a Rawlsian-inspired methodology, the task is to rely on a representation of people's general ends and interests. To give only a simple example, the kind of implied information includes that, as humans, we tend to be particularly vulnerable and dependent upon others in certain phases of our life (e.g., in childhood or as we age or when we fall victim to impairing incidents or traumas affecting our physical or mental health). An end that, *ceteris paribus,* it is reasonable to assume that people have, is to stay alive and in good health. By knowing this of humans, it is plausible to include some minimal access[195] to (basic) health care provisions as a particularly important means to the exercise of the moral powers, and to following any life-plan.

The identification of PSGs can avoid the charges of arbitrariness and perfectionism relatively easily when the interests at stake are at such a basic level of human "natural" functioning (e.g., health needs such as shelter, nutrition, bodily integrity). Indeed, while surely not without complications, Rawls's initial definition of citizens' needs as a "thin" account – i.e., as things people want whatever else they want – seems to work to reject the "arbitrariness" charge as regards similar goods. If it is true that*, ceteris paribus*, citizens prefer not to be ill, whatever else they want, then a sound basis would be available to consider health care as a PSG without needing to rely on perfectionist value judgements.

However, avoiding the charges gets more complicated when other interests, and related PSGs, are to be identified. As already suggested, the emblematic case is the prominence religious freedom is given within the legal practice of many Western liberal democracies. It is far from clear that including as PSGs the rights protecting conscience and religious practices can be done without holding, say, that a life searching for meaning is more worthwhile, more "(appraisal) respectable," than one that does not include such an end. The idea is that, as regards several goods and opportunities that are usually defended as particularly important within the political liberal tradition, it seems simply false to resort to the "thin" conception of the good, as goods "wanted by all whatever else they want." To propose just a simple example, it may well not be true that all

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194 Rawls, *Justice as Fairness* 58, "What count as primary goods depends, of course, on various general facts about human needs and abilities, their normal phases and requirements of nurture, relations of social interdependence, and much else. We need at least a rough idea of rational plans of life showing why these plans usually have a certain structure and depend on certain primary goods for their formation, revision, and successful execution."

195 I here refer only to health care, though the "social determinants of health" are usually thought to cover a much broader range of social factors, depending on a far broader set of recourses and opportunities. Focusing uniquely on health care facilities presupposed a very narrow account of "health needs." For a discussion, see Daniels, *Just Health* 4. The issue, with which I cannot possibly deal here, is that a "thin" account of "health needs" is not easy to articulate, see Bonotti and Barnhill, "Are Healthy Eating Policies Consistent with Public Reason?" 11.

citizens of liberal democracies want political rights, whatever their conception of the good. It is far from empirically implausible that some citizens have little or no interest in having and exercising their political rights. If this kind of empirical generalisation is not available in relation to goods central to their proposals, consensus political liberals may seem left with two similarly unpalatable alternatives: defending an extraordinarily minimal account of PSGs, or formulating value judgements concerning the higher intrinsic importance of some interests and ends compared to others.

The strategy I propose focuses on the negative effects – the "bad" – so to speak, involved in failing to have access to certain goods, rather than on the purported values that having such access would promote. More precisely, an appropriate political liberal conception of citizens' needs is an account of citizens' largely socially-dependent vulnerability to some particularly troubling harms,[196] not a list of the social conditions for their flourishing and moral perfectibility.[197]

To illustrate, Kymlicka's defence of the importance of having access to one's culture is a case in point of a perfectionist approach to identifying PSGs. In rough terms, according to Kymlicka the reason why it is important that people access their societal culture is that it provides them with the necessary contexts for making autonomous, and hence meaningful, choices. Since making meaningful choices is thought to be of positive value, then having access to one's culture is to count as a PSG. The approach does not focus on the harm suffered by failing to have access, but on the chances of flourishing that having such access would facilitate.[198]

Similarly, Brakes makes a plausible point in characterising the social conditions for protecting one's caring relationships as PSGs. In my terms, they should be so conceived not because having a life full of interpersonal meaningful relations is a constitutive component of any life worth living. Rather, being unable, e.g., to take care of a family member who is dying is something that we can plausibly expect persons who have caring relations are to find deeply hurtful. Notice that the claim

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196 Notably, this should not be read as a moralised concept of "harm" – for an example, see, the definition of "harm" as a *wrongful* setback of interests in Andrew J. Cohen, *Toleration* (Polity Books 2014) Ch. 3. The focus here is only on a more descriptive notion.

197 As I anticipated, this strategy is far from idiosyncratic. It shares a strong family resemblance with those theories that rely on, what we may call, "cruelty- and injustice-*first*" approaches to ethical evaluations, such as Judith Shklar's "Liberalism of Fear" and Andrea Sangiovanni's recent 'negative' account of the foundation of human's moral equality. See, Shklar, "The Liberalism of Fear" and Andrea Sangiovanni, *Humanity without Dignity. Moral Equality, Respect, and Human Rights* (Harvard University Press 2017). For a defence of a structurally similar account of the value of social equality, see Robert Jubb, "The Real Value of Equality" [2015] 77 *The Journal of Politics* 679,691.

198 See, Will Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights* (Oxford University Press 1995) Ch. 5. To be sure, this does not mean that the salience of access to important elements of one's societal culture cannot be justified in a non-perfectionist way, but only that the aforementioned core argument from Kymlicka is perfectionist.

is not that it is necessarily the case that being impeded in caring for one's loved ones causes great suffering. A far weaker sense of *empirical, rather than conceptual, connection* is sufficient. The point is that, "in the world as we know it" – so to speak – "it is highly likely" that people deprived of the possibility of assisting their loved ones tend to suffer deeply. Still, it is perfectly possible that some will not.[199]

To be sure, it might well be that some citizens embrace an ideal of virtuous existence that imposes an ethical obligation to take care of one's loved ones in moments of need, abiding by which leads to moral improvement. On this account, being deprived of such an opportunity would be a "bad" in a different, thicker way; an opportunity for ethical self-development would be denied to people. It is not the aim of a political theory of the good to deny that caring for people in need is a virtue that any good life will cultivate and cherish. The point I am making is that there is a thinner "bad" – significant but inherently non-perfectionist – that allows us to make sense of the relevance of the "social bases of caring relationships." Seeing this "bad", and its relevance, does not require any thick understanding of how having access to certain goods enriches people's existence. As I discuss in the next subsection, some theorists arguing for the protection of religious and conscientious commitments ultimately follow a strategy of this sort. That is, they focus on the kind of "moral harm" that people of faith, and holders of conscientious obligations, can plausibly be expected to face if they are required to compromise on their moral integrity.[200]

At one point, Rawls also offers a negative characterisation of the importance of PSGs. They are "things the possession of which in just measure secures us against other kinds of injustices."[201] To identify PSGs we should not only look at the *harms inherent* in not having access to them. In addition, we can and should look at vulnerability to *harms consequent* to failed access to such goods. A clear example of this second kind of negative evaluation is Rawls's defence of personal property, and more narrowly, access to some source of income.[202] Income is not only necessary in that people will need material resources to live the kind of (reasonable) life they want to live, but because not having access to some kind of income will make them vulnerable, e.g., to forms of exploitation by others.

As anticipated, the strategy I am proposing – while avoiding the perfectionist charge – is well-placed to resist the charge of arbitrariness in turn. If one claimed that golf clubs should be a PSG,

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199 For a discussion of this logical relation, see Andrea Sangiovanni, *Humanity without Dignity* 237,238. A similar point is made by Kymlicka rejecting some critiques of the value of cultural membership, see Kymlicka, *Multicultural Citizenship* 85ff.

200 Jocelyn Maclure and Charles Taylor, *Secularism and freedom of conscience* (Harvard University Press 2011); Laborde, *Liberalism's Religion*.

201 John Rawls, "Fairness to Goodness" in S. Freeman (ed) *Collected Papers*, (Harvard University Press 2001) 546.

202 Rawls, *Political Liberalism* 310.

one would have to show how failing to have access to golf clubs is analogous to failing to have access to one's hours of prayer for a person of faith in terms of the "harm" involved. The crucial point, of course, is not that the negative account can better make sense of the experience of failing to have access to PSGs, as opposed to not having access to non-primary goods. The point is that we address the arbitrariness charge – distinguishing between the two based on sound criteria – by making sense of a non-perfectionist account of the metric of assessment. We are thus capable of explaining that certain interests are plausibly interpreted as needs and that failing to meet them is very likely to cause particularly significant harms – e.g., shame, guilt, and vulnerability to exploitation.

The negative approach to the ethical salience problem: some examples

In this last sub-section, I briefly present some examples to substantiate the previous discussion. I mostly focus on the defence of the ethical salience of religious freedom and conscience by highlighting how the most recent and compelling discussions rely precisely on the negative approach I am defending.[203] Before closing the section, I shall nonetheless sketch a few further examples; a full development of the negative approach to the identification of PSGs is a task to be pursued elsewhere.

Cécile Laborde has recently argued that what does the normative work in justifying the prominence given to religion is not a generic appeal to the category of "religion" – when discussing it in relation, e.g., to issues of protection of certain practices – but rather the specific function that (some) religious practices perform in allowing people to preserve their integrity.[204] These are "integrity-protecting commitments" (hereafter, following Laborde, IPCs).[205] What matters from a legal point of view is whether practices are linked with the protection of one's integrity irrespective of whether they are religious or secular in nature.

What is integrity and how can it be thought not to incorporate a perfectionist evaluation? It will be recalled that it would be a problem if all we could say is that "living with integrity" is part and parcel of any (reasonable) conceptions of the good. Integrity has been defined as "an ideal of congruence between one's ethical commitments and one's actions."[206] In a similar vein, Jocelyne Maclure and Charles Taylor argue that one's "moral integrity […] depends on the degree of correspondence between, on the one hand, what the person perceives to be his duties and

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203 This specific analysis is also relevant in that it anticipates the detailed discussion of reasonable disagreement about a case of religious exemption that I will analyse in Ch. 6.

204 Laborde, *Liberalism's Religion* 31.

205 For a broader discussion on the idea of integrity, see Cheshire Calhoun, "Standing for something" [1995] 92 *The Journal of philosophy* 235,260.

206 Laborde, *Liberalism's Religion* 203.

preponderant axiological commitments and, on the other, his actions."[207] For many, IPCs are intimately connected to "conscience." For instance, Chandran Kukathas claims that "the worst fate that a person might have to endure is that he be unable to avoid acting against conscience – that he be unable to do what he thinks is right."[208] However, we do not need to narrow IPCs to duties of conscience; tradition and communities' habits supporting one's *identity* in a broader sense can be "meaning-giving" too and therefore integrity-protecting as well.[209]

The main idea is that there is a connection between acting in ways requested by one's significant commitments and people's capacity to look at themselves as worthy moral agents. Giving up significant commitments can be expected to originate feelings of betrayal of oneself (and one's cultural roots). In Maclure and Taylor's words, "the nonfulfillment of a desire may upset me, but it generally does not impinge on the bedrock values and beliefs that define me in the most fundamental way; it does not inflict moral harm."[210] Acting with integrity, in this sense, is tightly connected with the possibility of self-respect, of preserving a sense of a coherent self and of one's (moral) identity.[211] As Laborde puts it, IPCs "cannot be sacrificed without feelings of remorse, shame, or guilt, by contrast to preferences, which can."[212] The concern underpinning similar arguments, clearly, is not with the conditions of flourishing that may be supported by the provision of legal tools to follow, say, one's religious commitments. The normative concern is manifestly negative, in my terms, lying in the kind of "harm" incurred by people who have their integrity curtailed.

As I anticipated, I shall close this section by sketching a few further examples, even though space does not allow me to expound on them. Think of the example of freedom of speech and expression. As has been pointed out, there are multiple ways to defend its relevance, and not all have to be premised on Millian-inspired perfectionist evaluations drawing on the ethical relevance of creative, free expression as instrumental to self-development.[213] In fact, we can easily imagine cases in which integrity is, again, what is at stake in the protection of freedom of expression. The

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207 Maclure and Taylor, *Secularism and freedom of conscience* 76.

208 Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford University Press 2003 55.

209 Laborde, *Liberalism's Religion* 216.

210 Maclure and Taylor, *Secularism and freedom of conscience* 77.

211 See, also, Patrick Lenta, "Freedom of conscience and the value of personal integrity." [2016] 29 *Ratio Juris* 246,263. In more general terms, these philosophical categories seem to translate, at least partly, what empirical researchers call "moral distress," particularly researched among health care workers. See, for instance, Morley Georgina, et al, "What is 'moral distress'? A narrative synthesis of the literature" [2019] 26 *Nursing ethics* 646,662; Patrick Clipsham "Reasons and refusals: The relevance of moral distress" [2012] 26 *International Journal of Applied Philosophy* 105,118.

212 Laborde, *Liberalism's Religion* 204.

213 For a critique of this influential justification, see, Christian F. Rostbøll, "Autonomy, respect, and arrogance in the Danish cartoon controversy" [2009] 37 *Political Theory* 623,648.

point, in the case of freedom of speech, may be that political opponents silenced by an oppressive regime would likely incur dilemmas of conscience similar to those discussed above. In this case, the relevant PSG would be a different basic right, but the rationale would be the same. Moreover, Rawls's focus on vulnerability to further harms may easily justify the significant relevance of freedom of speech. In this second sense, the rights that protect free speech protect citizens from, say, gross abuses of government. Once again, there seems no need to rely on any thick evaluation of conceptions of the good to make sense of this crucial PSG. Alternatively, think of Andrew Altman's ingenious defence of "sexual autonomy" as a basic liberty, to which I will return in greater detail in Ch. 6.[214] Briefly for now, according to Altman, interference in one's sexual decisions is a distinctive marker of social inferiority. He cites the bodies of (women) slaves as the paradigmatic example of the region of the master's domination. According to Altman, people – whether they want to have active and lively sexual lives, or none at all – have interests in not being subjected to others' control over their sexual lives, and thus interests in the laws that protect their choices.

To sum up this section: I introduced the problem of ethical salience of PSGs, protecting certain citizens' interests. That is, how do we identify certain goods as particularly important by relying on plausible criteria without collapsing into a form of liberal perfectionism? I defended a negative strategy to address this problem: the way to justify the *political* salience of PSGs lies in focusing on the significance of the harm connected with failed access, rather than on some positive good that access would promote.

Making sense of the relevance of PSGs and the needs they protect is essential to clarify why PSGs legitimately ground claims that can be recognised as *prima facie* claims of justice that citizens address to the state. I now turn to the last task of this chapter; to making sense of what determines the *reasonableness* of claims of justice.

4. PSGs and reasonable claims of justice

As seen in §1, citizens can address claims to PSGs to the state, and the validity of such claims – qua claims of justice – is partly a function of being so grounded. To be sure, from this it does not follow that citizens can permissibly address claims, say, to exercise their basic liberties however they see fit by, for example, infringing on the rights of others. That is, the validity of claims (of justice) is a function also of their *reasonableness*. There is a Rawlsian passage clarifying the point:

214 Andrew Altman, "The Right to Get Turned On: Pornography, Autonomy, Equality" in Andrew I. Cohen and Christopher Heath Wellman (eds) *Contemporary Debates in Applied Ethics* (Blackwell 2005) 223,235; Andrew Altman and Lori Watson, *Debating Pornography* (Oxford University Press 2018) 42.

> "In "justice as fairness" the priority of the right means that the principles of political justice impose limits on permissible ways of life; [...] *claims that citizens make to pursue ends that transgress those limits have no weight.*"[215]

The quote suggests that claims that citizens make to pursue ends that *do not* transgress the limits set by principles of justice *have weight*. We also know that in conditions of reasonable disagreement about justice there will be disagreement about which principles of justice are the most reasonable, and there will be a multiplicity of conflicting claims grounded on PSGs. These claims are reasonable, but can conflict with one another. The next chapter makes sense of the kind of validity that claims have when they are reasonable and about basic justice, while nonetheless legitimately rejectable. For now, before closing this chapter, I describe how the reasonableness of claims of justice is characterised in the mainstream political liberal literature.

In a nutshell, the "reasonableness" of claims of justice rests not only on whether they are grounded on political values –among them PSGs – but also on whether such claims take all the relevant political values at stake into consideration and how they propose to balance them. Once again, this discussion is not only of crucial importance for this thesis but also relevant to systematise a point that consensus political liberals tend to make in passing, but that plays a crucial role in their arguments. The point is that the reasonableness of claims and arguments is a necessary condition for their legitimacy-conferring capacity. Put differently, relying on shared evaluative standards is necessary, but not sufficient, to define the weak shareability, and hence the justificatory capacity, of public reasons. Their reasonableness is a necessary condition, too. Crucially, "reasonableness" will have to identify a *set* of claims and arguments. Once again, the BoJ will affect reasonable decision-makers' deliberations on what balances of values are *the* most reasonable; more on this below.

Reasonable claims of justice

There is little as a systematic characterisation of *reasonableness* as a property of political claims in consensus political liberal literature.[216] A promising starting point is to look at reasonableness as a property of disagreement about justice. As we already know, this is disagreement between reasonable decision-makers (public officials or citizens in their public capacities) who offer one another weakly shareable reasons. They have the disposition to offer reasons in support of their

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215 Rawls, Political Liberalism, 174.

216 For a few exceptions, see James Boettcher, "What is Reasonableness" [2004] 30 *Philosophy & Social Criticism* 597,621; Alessandro Ferrara, "Public Reason and the Normativity of the Reasonable" [2004] 30 *Philosophy & Social Criticism* 579,596. In Boettcher's words, "Rawls fails to elucidate what would seem to be one of political liberalism's most important applications of the reasonable, namely, the concept of a reasonable claim or argument," Boettcher, "What is Reasonableness" 599.

preferred solution that they sincerely expect others to see as at least minimally valid, to hear the reasons of others, and not to push "hard and unfair bargains on others."[217] That is, they deliberate in good faith, aiming to locate fair terms to solve disputes about fundamental political questions. According to Quong, for a disagreement to be reasonable, certain features must obtain:

1) "All the parties must be sincere;
2) The conflicting positions must be grounded in free-standing political values (i.e., they can be presented without relying on the truth of any sectarian conception of the good life);
3) The conflicting arguments must represent a *plausible* balance of political values."[218]

These points offer some indications as to how to define more precisely what makes claims of justice reasonable. First of all, as a general point, for a claim to be reasonable, it has to be made in good faith. That is, according to various political liberals, "sincerity" is an essential virtue of public deliberation. Claimants have to believe sincerely that the arguments they are offering are supported by the political values on which they ground them. They also have sincerely to believe that the reasons they are offering, as seen in Ch. 1, are acceptable to their fellow citizens as at least "minimally valid" – i.e., as weakly shareable. The core point here is that manipulation and opportunism impinge upon the reasonableness of claims and the quality of political deliberation.[219] This focus on sincerity should not be surprising. The good faith of citizens, of which sincerity is but a reflection, is embodied into the very idea of reasonable disagreement in very general terms – i.e., the disagreement that results even assuming deliberators' good faith and rational capacities at their best.[220]

Secondly, the reasonableness of a claim – as already seen at length – is partly a function of the *source* supporting the validity of the claim itself. In this sense, a claim is reasonable if it is possible to defend it in terms of shared evaluative standards. While the source of the normativity of claims is a necessary condition for the reasonableness of the claim, should we also think it *sufficient*? Following Quong and others, this does not seem to be the case. Why so? An example can help to show – for now at a merely intuitive level – that the public nature of the ground of arguments does not seem sufficient to identify their reasonableness.

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217 *Ibid.* 602, 603.

218 Quong, *Liberalism without Perfection* 207. Quong also refers to balance as "reasonable" rather than "plausible." In the rest of the thesis, I will stick to the former, technical term.

219 See, for instance, Schwartzman, "The Sincerity of Public Reason;" Quong, *Liberalism without Perfection* 265 ff.; Rawls, *Political Liberalism* 241.

220 For a rejection of the centrality of sincerity, in favour of "honesty" see Brian Carey, "Public Reason – Honesty, not Sincerity" [2018] 26 *The Journal of Political Philosophy* 47,64.

Let us imagine a scenario in which there is an ethnic minority group that is routinely subjected to symbolic vilification by some fellow citizens who are members of the ethnic majority. For instance, some far-right groups own an editorial group, publishing hate-speech content. From time to time, some members of the minority are even victims of harassment.[221] Activist groups defending minorities' rights and interests ask regular permission to hold a demonstration in the main commercial streets of some city a few days before Christmas. Their intention is to put pressure on public authorities, say, to condemn publicly the views of the journal. Some argue that the protest should not be granted permission because it might be harmful to commerce given the risks of public disorder.

It may be tempting to claim that those opposing the permissibility of the protest are advancing an unreasonable argument. Why so? Crucially, the argument based on economic loss by commercial activities is public. However, the argument would go, economic considerations should rank lower than the competing values: the right to protest is a basic political right, in general, and the rationale at the basis of the protest would be compelling in the eyes of any reasonable citizen. What the example suggests is that the public nature of the competing reasons is not sufficient *to assess* whether the arguments advanced are reasonable or not. Other considerations, e.g., how values are ranked and balanced, affect the assessment.

Based on the example and Quong's quote above, I propose to look at three conditions under which claims can still count as unreasonable despite being grounded on political values:

i. a claim might fail to *include* – i.e., take into account – all the political values at stake;
ii. a claim might unreasonably *rank* political values at stake;
iii. a claim might fail in reasonably *balancing* the multiple political values at stake.

Let me start by looking at (i). One first minimal condition that claims need to meet in order to count as reasonable is that they take into consideration the presence of competing values. It seems a necessary component of a reasonable claim, put differently, that it at least acknowledges that there are other values at stake, that one's preferred course of action sacrifices. That is, any claims, to be reasonable, have to explain why some value is to be prioritised – i.e., ranked higher or most favoured in a balance – to the detriment others. Note, that this first condition is implied in (ii) and (iii). It is, thus, more fundamental. I will return to this point after discussing the other two conditions.

221 For the sake of precision, note that, even if my work operates on the background assumption of an idealised social context this does not remove the presence of unreasonable citizens. What the idealisation must assume is that unreasonable citizens will be a minority in society or not directly threatening to a significant extent the stability of the institutional order.

As regards (ii), based on the discussion in §2, the "reasonable ranking" condition can certainly be illuminating in light of the importance of PSGs compared to goods that are non-primary. For instance, it would help in clarifying that a claim to divert public funds from health care facilities to the construction of a public tennis camp in a neighbourhood lacking any health facilities would figure as unreasonable as it would rank a non-primary good over a primary one. However, in cases of conflicts among basic liberties, or between basic liberties and concerns for equality, the issue gets more complicated once it is accepted that different citizens will endorse different reasonable conceptions of political justice.

To illustrate, Rawls makes multiple references to the idea that it is possible to locate (un)reasonable rankings of values.[222] This criterion presumes that reasonable citizens share a ranking of political values. If it were possible to have a reasonable overlapping consensus on Rawls's "Justice as Fairness," (JaF) the "ranking" criterion might do significant normative work in guiding the assessment of the reasonableness of claims (apart from their reliance on political values). According to an orthodox reading of JaF, basic liberties enjoy a particular kind of priority – i.e., "lexical" priority – meaning that they can only be restricted for the sake of other basic liberties.

While I have granted, following mainstream consensus political liberalism, that "basic liberties" are to be given some kind of priority in a reasonable political conception of political justice, once the perspective of JaF is rejected as *the* reasonable conception of political justice – and its strict priority rule along with it – a criterion of ranking *per se* ends up being of limited help in assessing the reasonableness of claims. Typical examples concern the extent to which private associations are allowed to discriminate between classes of citizens for ethical reasons. Or think of hospital employees' conscientious objection to abortion where concerns for their integrity conflict with women's equality (of opportunity) and the conditions of control over their bodies. Uncertainty as to how to rank all those different political values is part and parcel of the object of reasonable disagreement itself.

Consensus political liberals have mainly focussed on (iii). Reasonable arguments, Quong tells us, balance competing values in reasonable ways. However, *what is a reasonable balance of political values*? To my knowledge, no consensus political liberal has offered clear criteria to answer this question. I now turn to analyse a few hints from the literature pointing to paths that, I argue, should not be followed. By doing this, I clarify my position on the limits of the set of reasonable

222 See, e.g., Rawls, *Political Liberalism*, 240 ff.

claims of justice that conflict in conditions of inconclusiveness-based reasonable disagreement about justice.

Reasonable balances of political values

Answering the question of what constitutes a reasonable balance of political values has to be done by maintaining a complicated equilibrium. On the one hand, consensus political liberalism needs an answer to the question. If the reasonableness of claims hinges on the reasonableness of the balance, and the reasonableness of reasons is necessary to their legitimacy-conferring capacity, then without such a criterion the link between public reason and legitimacy is threatened. On the other hand, once again, consensus political liberals must be careful not to unduly narrow what should count as reasonable disagreement. I have clarified above that there should be little hope that the burdens of judgement (BoJ) will not affect the deliberation over rankings of political values. In the same way – and partly for this very reason – we should expect that different reasonable decision-makers will reach diverse conclusions concerning what arguments *most* reasonably balance competing values.[223] Reasonableness as a property of balances of political values will have, once again, to identify a *set*. Reasonable citizens will disagree on which one is the *most* reasonable balance; all the balances must be seen as minimally reasonable by all.

I will conclude that consensus political liberals must be *strict* on the public nature of the evaluative standards to be relied upon in constructing reasonable claims, and on the condition of "inclusion," (i), presented above. However, a *loose* interpretation of reasonableness as a property of balances of competing values is needed. That is, the set of reasonable balances – and therefore reasonable claims – should be fairly broad. Doing otherwise can only generate frequent accusations of bad faith on the part of decision-makers with whom one disagrees. That is, specifying too strictly the reasonableness of balances of values – e.g., aiming excessively to protect substantive commitments – threatens to dissolve the idea of reasonable disagreement altogether. However, this position comes with a significant and unappealing price based on some premises of consensus political liberalism. Namely, there will be legitimate decisions, vis-à-vis reasonable disagreement, under which some citizens will significantly lose out even when it comes to PSGs.

Let me start from a meaning of the reasonable that can offer initial insight into a "reasonable balance of values". This meaning of reasonableness is what Christopher McMahon calls "reasonableness in the concession sense."[224] Reasonableness, in this sense, amounts to the search for a *compromise position*. That is, one tries to reach a compromise between positions that would,

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223 Recall the example from Ch. 1, in which multiple reasonable balances of values are available when discussing the permissibility of a religious-based exemptions for Sikh to wear the *kirpan* in schools. More on this in Ch. 6.

224 Christopher McMahon, "Rawls, Reciprocity and the Barely Reasonable" [2013] 1 *Utilitas* 3.

each on their own, maximise the protection of values that come contingently into conflict. Rawls's famous footnote in *Political Liberalism* concerning the regulation of abortion rights – i.e., that any reasonable balance will support a right to abortion at least in the first trimester of pregnancy – seems grounded on this understanding. I shall return to this example in the next chapters. For now, consider that the idea implied by Rawls is that no reasonable arguments will excessively sacrifice one political value to the advantage of another, i.e., balance and compromise are to be reached.

Following Bonotti and Barnhill we may see the issue in the following terms: "one might argue that a conception that ranks individual liberty so high that equality of opportunity is *seriously undermined*, or vice versa, will not provide a reasonable balance of political values."[225] The critical point is the idea of "seriously undermining." How can we interpret it?

Some help may come from resorting to Rawls's notion of the "central range of application" (of liberties).[226] While he never explains exactly what he means by this, he offers freedom of speech as an example that he discusses in general terms. The point is that while regulations aiming at, say, setting rules establishing times and turns to speak in a debate do not impinge upon the central range of application of the liberty, censuring speech does. We may expand by analogy: setting regulations on where and when a protest can permissibly take place does not impinge upon political liberties – *ceteris paribus* – whereas prohibiting the protest to silence opposition to the government does.[227] Abstracting from these examples, it seems that the idea of "central range of application" grasps the rationale underpinning the importance of the liberty itself; what is valuable in a political value, so to speak. As seen in §2, for instance, religious freedom matters because (and insofar as) protection from suffering moral distress and loss of sense of integrity is something we can reasonably expect citizens to care about greatly.

Reading "not seriously undermining" a competing political value as attempting not to impinge upon something like "its normative core," or its "central range of application" (in the case of basic liberties), may be tempting. For instance, we have already seen (Ch. 2, §4.b), it is a desideratum of liberal theory in general, and consensus political liberalism in particular, that conceptions of political justice not pose too heavy burdens on reasonable citizens following their conceptions of

225 Bonotti and Barnhill, "Are Healthy Eating Policies Consistent with Public Reason?" 11. Emphasis mine.

226 Rawls, *Political Liberalism* 308ff.

227 This is an oversimplified claim, for the sake of argument. For sure, there can be cases in which the location in which to hold a march or a protest are somehow symbolically relevant, and hence partially constitutive of the message the march or protest aims to send. In similar cases, for sure, seemingly innocuous regulations may be seen as (at least) bordering on the central range of application of freedoms of protest and political expression.

the good and reasonable ends in life.[228] In particular, as we have seen above, citizens' life-prospects can be radically undermined if they lose out concerning certain fundamental interests of theirs.

However, by adopting this criterion, we would end up eroding the very conditions of possibility of the reasonableness of the disagreement. Think of many cases in which the disagreement revolves around the specification of the actual conditions of enjoyment of some basic liberty. We should expect that a substantive characterisation of "not seriously undermining" – one that read it as "not encroaching on the central range of application" of the liberty – would simply push us back to the understanding of absolute priority already ruled out above. No position that supports restricting the exercise of some practice of religious worship, for instance, could be even *prima facie* reasonable – unless the practice ihenrently undermined third-parties basic rights. In light of the considerations developed in §2, indeed, few aspects of religious experiences would fall more plausibly within the "central range of application" of religious liberty than, say, practices of worship. Hence, if a political argument is only reasonable insofar as the relevant political values at stake are balanced so as not to encroach on the central range of application of basic liberties, no claim to limit religious practices could be reasonable. In this first sense, attempting to rely on a strict substantive criterion would simply end up, as above, narrowing excessively the set of reasonble claims in a way compatible with the unique endorsement of some specific conception of political justice that it is reasonable of citizens not to affirm as their own.

Additionally, note a further important point: the extent to which arguments and policy proposals can balance values so as to protect the normative core of each, so to speak, is at least partially contingent on a number of empirical factors. There may be cases in which there is no available course of action capable of balancing in a similar way values that happen to conflict (even assuming away the likely disagreement over what is a position that sufficiently protects the "normative core" of a value).

I shall close by developing an insight raised in one of the very few explicit discussions of what determines the reasonableness of balances of political values: "the notions of 'balancing' and 'weighing' are […] loose metaphors for 'thinking carefully, reflectively and self-critically"[229] about tradeoffs in circumstances in which multiple values are at stake.

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228 In Rawls's words, "surely just institutions and the political virtues expected of citizens would not be institutions and virtues of a just society unless those institutions and virtues not only permitted but also sustained ways of life fully worthy of citizens' devoted allegiance. A political conception of justice must contain sufficient space, as it were for such ways of life." Rawls, *Political Liberalism* 195.

229 Patrick Neal, "Rawls, Abortion, and Public Reason" [2014] 56 *Journal of Church and State* 339. For the sake of precision, Neal is very critical of the idea of reasonable balances of political values.

While such a loose idea offers a weak indication, it points to the rationale underpinning the search for reasonable balances of political values (and reasonable claims based on them). In line with the principle of reciprocity, reasonable balances are those that deliberators can sincerely expect others to see as at least minimally reasonable.[230] This is unlikely to happen unless decision-makers show that they are including in their considerations all relevant competing values. In any case in which some alternative solution of compromise is available one must: (a) attempt to show – always within the limits of public reason – how their preferred balance is better than competing ones (that differently prioritise and balance values); and (b) how those non-prioritised values, are nonetheless still somehow counted in one's preferred solution. The standard of evaluation is the plausibility of claiming sincerity with respect to others' being able to accept one's judgements. If one does not argue why and how one's position is better than that of others, and how the political values the latter prioritise are still nonetheless minimally accounted for, one can hardly claim to expect others sincerely to find one's argument even minimally valid.

The standard I am making sense of is a threshold one, in the sense that it will rule out only fairly uncompromising positions (having already set aside, of course, positions that propose balances the validity of which depends on some non-shareable evaluative standard). That is, such standard can hardly provide a criterion to allow the ranking of, e.g., competing balances based on their relative level of reasonableness. However, crucially, this is not something that the theoretical framework should aim to do. The framework needs a loose criterion to define the "limits" of *the set* of reasonable balances. The task of locating balances that can in turn support legislation is for the decision-making process. Consensus political liberals should not seek criteria to ensure that certain interests are not "excessively sacrificed" in a stronger sense than what minimal reasonable acceptability in the process itself allows. This criterion works to exclude with certainty only uncompromising positions at opposing ends of a spectrum of otherwise similarly reasonable claims, from the perspective of the justificatory constituency as a whole.

5. Conclusion

The question this chapter has answered is: how can we make sense of what *reasonable* claims (or arguments) *of justice* are in consensus political liberalism? These claims, I have argued, are claims citizens address to the state to access PSGs, resting on reasonable balances of the relevant values at stake (in cases of conflicts between political values). In the first half of the chapter, I showed

230 See, e.g., Boettcher, "What is Reasonableness" 611,614; Giorgio Bongiovanni and Chiara Valentini, "Reciprocity, Balancing and Proportionality: Rawls and Habermas on Moral and Political Reasonableness" in Giorgio Bongiovanni, Giovanni Sartor and Chiara Valentini (eds) *Reasonableness and Law* (Springer 2009) 94.

how consensus political liberals can retain PSGs as important values of political justice. Crucially, I claimed that consensus political liberals can do so without relying on perfectionist judgements and advancing ideals of the good life. The core strategy relies on a negative account of the ethical salience of PGS and the interests and general aims that they protect.

The second half of the chapter made sense of the (seldom explained) relevance that consensus political liberals attribute to reasonable balances of political values. I read this as a critical element identifying the "reasonableness" of arguments and claims (of justice). By addressing this point, I completed my analysis (started in Ch. 1) of the current representation of the kind of arguments that conflict in conditions of reasonable disagreement about justice. After proposing a plausible substantive criterion to identify what any balance of political values should meet to count as reasonable, I concluded that this strategy should not be followed as it excessively narrows the range of reasonable disagreement.

Put differently, Quong is right that "the political liberal approach differs sharply from more purely procedural theories." As is hopefully clear by now, "some proposals must be seen as unjust by all reasonable citizens since they are not grounded in any political values, or they do not represent a plausible balance of political values. These policies are unjust and illegitimate."[231] However, consensus political liberals must ensure that they do not excessively restrict the set. The relevant criterion is whether one can reasonably expect others to see one's proposed balance as at least minimally reasonable; this expectation cannot, in turn, depend on some substantive criterion. A similar criterion cannot *a priori* guarantee that balances which are judged as falling within the set will not support political decisions placing heavy burdens – in terms described in §2 – on citizens' claims to PSGs.

"Reasonableness" as a property of claims of justice thus identifies a *set* of claims that – as I shall soon argue – are *pro tanto* valid candidates for accommodation. In the next chapter, I shall make sense of what it means for a claim to be *pro tanto* valid and explain how the failed accommodation of claims enjoying such validity, while legitimate, leaves behind "residues of justice".

231 Quong, *Liberalism without Perfection* 134.

PART II

Chapter 4

Dilemmas of reasonable justice and political-moral failure. The Logical and Normative Domain of Residues of Justice

1. Introduction

At the end of Ch. 1, I suggested that consensus political liberals have focused on the wrong source of perplexity with respect to the (alleged) normative challenges resulting from the inconclusiveness of public reason. I argued that reasoning from shared substantive premises and plausibly following common epistemic standards of reasoning results in different, incompatible, and similarly reasonable positions is not a problem concerning public reason's legitimacy-conferring capacity. I suggested that the trouble lies elsewhere.

This chapter takes stock of the core points developed in Part I and builds on them to substantiate that suggestion. By building on the analysis of the structure of public reason in Chs. 1 and 3, I argue that consensus political liberalism cannot rule out genuine moral losses resulting from legitimate decisions when public reason proves inconclusive in solving disagreements about fundamental political matters of justice (e.g., the definition of the limits of enjoyment of basic liberties, the social conditions of equal civic worth). The very deliberative constraints of consensus public reason – requiring that political debate is grounded on shared substantive and epistemic evaluative standards – makes possible and implicitly requires that competing proposals for state action are all recognisable by all reasonable citizens as minimally valid demands of reasonable justice. Consensus public reason makes sense of more than reasonable disagreement about justice. It makes sense of genuine conflicts of political morality; more precisely, of dilemmas of reasonable justice. Failing to meet claims that are both based on political values of basic justice and reasonable, in similar circumstances, involves genuine moral loss – constituting what I call political-moral failure.

Therefore, the main contribution of this chapter – and one of the most significant contributions of the thesis as a whole – lies in making sense of the logical space for the notions of *residues of justice* and *political-moral failure* in consensus political liberalism. The notion of political-moral failure is introduced – adding to "justice" and "legitimacy" – as a novel category to assess the normative quality of fundamental political decisions. A decision can be legitimate – hence, necessarily reasonably just from a consensus political liberal perspective – and still morally fail reasonable citizens. This notion, I argue, constitutes a fruitful category of normative evaluation: it grasps a relevant institutional shortcoming – that is, institutional conduct *inadequate* to meet

reasonable claims of basic justice – that is ill-described as an instance of mere *a*moral misfortune. At the same time, the failure is not one of "injustice" or "illegitimacy."

Note an important point: the arguments of this chapter are not prescriptive. Rather, the focus is on metaethical issues. This move is crucial because the thesis needs a work of construction, first of all, of categories. The normative work of clarifying why addressing residues, acknowledging the presence of political-moral failure, matters will be addressed in Ch. 5.

The chapter answers three main questions. In §2, I ask whether the inconclusiveness of public reason can be seen as an instance of political-moral conflict. After answering in the positive, in §3, I ask: what metaethical description of conditions of moral conflict best coheres with the idea that state action can be legitimate in circumstances where public reason is inconclusive? And then, in §4, is there a logically consistent space for residues of justice whose normativity can be vindicated as a derivation from uniquely shared elements of political morality?

2. Metaethical insights: the inconclusiveness of public reason and dilemmas of reasonable justice

This section analyses the notion of "moral conflict." As I will show, circumstances of inconclusiveness of public reason *are* instances of political-moral conflict. More precisely, they instantiate dilemmas of reasonable justice. After clarifying these points, I present three characterisations of the metaethical structure of circumstances of (perceived) moral conflict, the notion of "moral residue," and the conditions of (non)existence of moral residues within each of the three characterisations. Presenting such metaethical accounts is a necessary precursor to §3. There, I will show which one provides the most coherent metaethical account of circumstances of inconclusiveness of public reason. First of all, however, a few terminological clarifications are needed.

Terminological clarifications: moral conflict, dilemmas and tragic choices

Moral conflict is the most basic category, encompassing the others presented. It refers to a situation in which an (individual or collective) agent's action is pulled in different and incompatible directions based on contrasting moral requirements. That is, the agent is (somehow) morally required to do *x* and to do *y*. While they can do *x* and *y* separately, they cannot do *x* and *y* jointly.[232]

[232] For a general discussion see, among others, Carla Bagnoli, *Dilemmi Morali* (De Ferrari Editore 2006); Carla Bagnoli, "Moral Dilemmas" in Hugh LaFollette (ed) *International Encyclopedia of Ethics* (Wiley 2011); Terrance McConnell, "Moral Residue and Dilemmas" in H. E. Mason (ed) *Moral Dilemmas and Moral Theory* (Oxford University Press 1996) 36,47; Philippa Foot, "Moral Realism and Moral Dilemma" [1983] 80 *The Journal of Philosophy* 379,98; Bernard Williams, "Ethical Consistency" [1965] 39 *Proceedings of the Aristotelian Society* 103,38; Bernard Williams, "Conflicts of Values" in *Moral Luck* (Cambridge University Press 1982) 71,82; Michael Stocker, *Plural and Conflicting Values* (Oxford University Press 1992).

Depending on different further specifications, moral conflicts can be read as *moral dilemmas* and described as giving rise to *tragic choices*.

In circumstances of *moral dilemmas*, the agent cannot solve the conflict through deliberation.[233] A moral conflict need not have this feature. Agents regularly face conflicting moral judgements while being capable of deliberating conclusively on the best course of action. Hence, dilemmas only constitute a subset of circumstances of moral conflict. Their distinctive feature is rational undecidability due to the *ontological absence* (ontological dilemmas) or *epistemic inaccessibility* (epistemic dilemma) of non-arbitrary criteria for choice.[234]

Dilemmas are usually thought of as particularly problematic as they seem to threaten the logical consistency and the action-guiding capacity of ethical theories. As regards the former, theories allowing for dilemmas would require agents to do the impossible, running against a core axiom of deontic logic – i.e., that "ought implies can."[235] On a more practical side, dilemmas threaten the action-guiding capacity of theories. If a primary desideratum of, say, a theory of right is that it provides us with guidance on how to act justly, then dilemmas – involving a lack of criteria to single out a single right course of action – will leave the theory importantly deficient. In Terrance McConnell's words: "theories that allow for dilemmas fail to be uniquely action-guiding […] in either of two ways: by recommending incompatible actions in a situation [i.e., inconclusiveness] or by not recommending any action at all [i.e., indeterminacy]."[236] The inability to be action-guiding identifies an analogy between public reason and theories that allow for dilemmas. I will argue below that public reason does allow for dilemmas of reasonable justice. For now, I introduce the last technical notion, i.e., "tragic choice."

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233 See, e.g., Bagnoli, *Dilemmi Morali* 13.

234 See, Simon Blackburn, "Dilemmas: Dithering, Plumping, and Grief" in H. E. Mason (ed) *Moral Dilemmas and Moral Theory* (Oxford University Press 1996) 127,130; Bagnoli, "Moral Dilemmas."

235 More precisely, the point of logical inconsistency concerns how accepting the existence of dilemmas leads to two principles of deontic logical contradicting one another – i.e., the principle that "ought implies can" and the so-called "principle of agglomeration." According to the latter, if "*A* ought to do *x*" and "*A* ought to do *y*" are true, then "*A* ought to do (x & y)" should also be true. However, *"A* cannot do (*x* & *y*)." The two principles are in contradiction; one of the two needs dropping. For a discussion, see, e.g., Bagnoli "Moral Dilemmas;" Terrance McConnell, "Moral Dilemmas" in N. Zalta (ed) *Stanford Encyclopedia of Philosophy* (2018) at https://plato.stanford.edu/archives/fall2018/entries/moral-dilemmas; Daniel Statman, "Hard Cases and Moral Dilemmas" [1996] 15 *Law and Philosophy* 117,148.

236 McConnell, "Moral Dilemmas." More precisely, circumstances of indeterminacy of public reason, if any exists, would not be dilemmatic, strictly speaking, but cases in which the theory has "gaps." On gaps in ethical theories, see Thomas Hill Jr, "Moral Dilemmas, Gaps, and Residues: A Kantian Perspective" in H. E. Mason (ed) *Moral Dilemmas and Moral Theory* (Oxford University Press 1996) 167,198.

In cases of dilemmas, agents seem to *act wrongly whatever they do* since they have alternative requirements they ought to meet, but they cannot meet them jointly.[237] Similar circumstances are defined as *tragic choices*: wrongdoing is inevitable, according to this notion. The agent would be unable to keep their "hands clean," so to speak.[238] This (quite technical) meaning has deontic import and is radically different from the common-sense usage of the term "tragic." The latter simply grasps the particular severity of the consequences of choices, lacking any deontic connotation. In this second sense, a choice is tragic qua (profoundly) regrettable – e.g., leading to severe suffering.[239]

The inconclusiveness of public reason, political-moral conflicts, dilemmas of reasonable justice

One claim this chapter defends is that circumstances of inconclusiveness of public reason are instances of collective dilemmas of reasonable justice. That is, claims whose adjudication reaches an impasse have validity – qua claims of reasonable justice – independently of the (legitimate) decision about their accommodation. Hence, they leave residues of justice – a residual normative force – behind if legitimately unaccommodated. Clarifying what this means precisely, and what logical implications it has, and does not have, will require the rest of the chapter.

I start by clarifying how the consensus political liberal model of public reasoning entails that reasonable disagreement about justice instantiates a political-moral conflict. Competing courses of state action based on weakly shareable arguments are in themselves moral demands exchanged among reasonable citizens who disagree on which one is *the best* course of action. By striving for weak shareability consensus political liberalism's public reason entails the construction of mutually recognisable valid claims of reasonable justice. In cases of inconclusiveness of public reason, such

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237 For arguably the most influential defender of this position, see, Marcus B. R, "Moral Dilemmas and Consistency" [1980] 77 *Journal of Philosophy* 121,136. See also, Lisa Tessman, *Moral Failure. On the Impossible Demands of Morality* (Oxford University Press 2015). Note that what Tessman calls "moral failure" is actually what others – whom I follow – call "tragic choice." For a more general discussion see, Martha C. Nussbaum, *The Fragility of Goodness. Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge University Press 2001) 25,30.

238 Moral dilemmas have structural analogies with "dirty hands" scenarios. The latter investigates the intuition that people in positions of power – e.g., politicians – may have role-related moral obligations to commit (even serious) wrongs to promote some good. For discussion see, C.A.J Coady, *Messy Morality. The Challenge of Politics* (Oxford University Press 2008); Evans M, "Doing Evil Justly? The Morality of Justifiable Abomination" in Bruce Haddock (ed) *Evil in Contemporary Political Theory* (Edinburgh University Press 2011) 124,142; Susan Mendus, *Politics and Morality* (Polity Press 2009); Michael Walzer, "Political Action: The Problem of Dirty Hands" [1973] 2 *Philosophy & Public Affairs* 160,180; Bernard Williams, "Politics and Moral Character" in Stuart Hampshire (ed) *Public and Private Morality* (Cambridge University Press 1978) 55,73. Despite the logical similarities to the present analysis, the dirty hands debate works within a realist background which highly limits the possibilities to analogise the debate to that concerning the specificity of reasonable disagreement about justice in ideal theory. I shall, therefore, leave the debate on the side.

239 For an example of a similar approach to look at "tragic legal choices," see Iris van Domselaar, "On Tragic Legal Choices" [2017] 11 *Law and Humanities* 184,204.

claims are all valid in some sense yet not *per se* conclusive, and this is what gives rise to dilemmas of reasonable justice.

As clarified in Chs. 1 and 3, when deciding, e.g., on the specific conditions of citizens' access to basic social primary goods or matters of equal civic worth, decision-makers argue from shared substantive and epistemic standards, taking all the relevant political values into account, and ranking and balancing them reasonably. Due to the action of the burdens of judgement (BoJ), citizens fully endorse different decisions by affirming as their own different reasonable public-reason based arguments (hereafter, "reasonable arguments"). In circumstances of inconclusiveness, no reasonable argument will elicit full affirmation by each reasonable citizen, qua *the one* that best articulates fair terms for the resolution.

Strong shareability, as seen in Ch. 1, is an untenable account of justificatory reasons. However, all reasonable arguments are weakly shareable hence their justifying and legitimacy-conferring force. There are competing reasons for collective action; that is, reasons that count in favour of action, on multiple sides of disputes. As I show, this means that consensus public reason necessarily turns disagreement about justice into conflicts of political morality – i.e., political-moral conflicts.

One could straightforwardly deny the above suggestion if one saw the relevant circumstances of disagreement as, say, mere stand-offs between competing parties pressing for self-interest-based preferences. If legitimate inputs of political deliberation were mere (competing) statements of interests, thinking of the decision-making body as facing *moral* conflicts would be impossible. Political decisions would be mere negotiations between different factions' competing interests. Clearly, a similar picture is utterly alien to political liberalism.

A second way of denying that inconclusiveness instantiates a political-moral conflict is more plausibly in line with political liberalism and, thus, more instructive to reject. Perhaps, circumstances of inconclusiveness see impasses between *beliefs* concerning what justice requires. That is, disagreeing parties are proposing what they sincerely take to be the "truth" about justice.[240] Competing reasons count for action because they are plausible articulations of what true justice requires. While the BoJ make any agreement on what justice truly requires unlikely, procedures for adjudication fairly settle the disagreement. What procedures have to adjudicate between are not competing "requirements of justice" (of some sort) but *competing theoretical interpretations* about requirements of justice. Along this line, we read political decision-making as a (collective) exercise in *theoretical reason*. Different decision-makers *believe* that their claims are somehow morally valid –

[240] Note that even the task of finding "reasonable" solutions can be read as a theoretical problem if we think of the parties disagreeing about what is the true reasonable balance of reasons.

and that others will reasonably agree – but they may well not be. Some may think that the decision-making body faces a moral conflict concerning some decision, acknowledging actual moral demands on both sides of a dispute. Others may simply think that their disagreeing fellow citizens are wrong about what justice requires and deny the validity of their claims.

However, political deliberation in political liberalism is an exercise in *practical reason*. Public reasons are reasons for action, whose standard of normative validity is weak shareability, not truth. Valid reasons for state action have *normative*, not theoretical, force as they are constructed based on political values that all reasonable citizens can share following shared epistemic standards. *Qua* weakly shareable, they are all valid political-moral demands that the state act in some way or another.[241] When reasons are reasonably acceptable – based on shared evaluative standards, accounting for, and reasonably balancing, the competing values at stake – what gives them normative force is not that they have a good chance to be the truly just solution to some dispute. Different reasonable citizens must be able to see that there is something valuable in acting in ways they do not fully endorse, based on reasons whose minimal normative validity they can accept. Of course, this says relatively little in and of itself concerning their ultimate capacity to lead to implemented decisions in conditions of disagreement. They need to *justify morally* – rather than, say, explain – state action. They have normative, not (merely) theoretical force; they support reasonable requirements of political morality precisely because they are weakly shareable reasons.

To illustrate, recall (from Ch. 1) the example of Gina and Jack debating the permissibility of young Sikhs wearing *kirpans* in schools. Gina's reasonable argument is (R_1): *kirpans* should be allowed in schools provided that they are tightly sealed, hidden and difficult to reach. This tries to guarantee (a sense of) safety in educational buildings, while still ranking religious liberty higher than safety. Jack, by contrast, ranks safety concerns higher. Jack argues (R_2): *kirpans* should not be allowed, while trying to meet the need to protect Sikhs' integrity by arguing that they should be encouraged to wear replicas of the *kirpan*. Gina and Jack reason from shared political values – religious freedom, the protection of moral integrity, and the sense of safety in educational buildings – while plausibly following standard epistemic rules of reasoning. Gina and Jack are showing one another that they share reasons why the state should allow the *kirpans* (sealed and hidden) or forbid the wearing of *kirpans* but encourage replicas, respectively. Put differently, they are showing to one another that it is reasonably just for the state to act on both courses of action. They disagree about

241 While holding a different account of what it means for a reason to be justified "from the standpoint of others," Gaus makes the point very clearly: "to make genuine moral demands on others, and not browbeat them or simply insist that they do or believe what you want, you must show that, somehow, their system yields reasons to embrace your demand." See, Gaus, *Justificatory Liberalism* 129.

how reasonable their competing proposals are, not about the fact that their proposals are reasonable.

To make full sense of the point just made, it is worth quoting in full a passage from Quong's analysis of public justification between reasonable citizens:

> "The constituency of reasonable persons is […] an idealised constituency defined by its acceptance of certain beliefs about political society. This has a very important implication for the structure of public reason. If the aim is to justify political principles or decisions to reasonable people, and reasonable people are an idealised constituency defined by a few core features, then if we have justified something to one reasonable person, we have justified it to all reasonable people."[242]

Quong goes on to argue that holding such a position, of course, does not imply that public reason is "singular," as some critics have contended, in the sense that reasonable citizens reason all in the same way. Gina and Jack do not agree on (the best reasons for) state action. However, I contend, since they reason from shared substantive premises and based on shared epistemic standards, it is appropriate to think of the perspective of reasonableness in the singular. However – and this is the crucial point – we must think of it as *a conflicted singular* and, indeed, as a singular that allows dilemmas. In fact, thinking of reasonable disagreement in consensus political liberalism in these terms makes consistent the "sharedness" of values and guidelines of inquiries – giving us reasonableness as a normative criterion – and the nonetheless plural perspectives *within* the reasonable point of view – thus making sense of pluralism.

It should be evident now in what sense cases of inconclusiveness of public reason instantiate political-moral conflicts and how they count as dilemmas. Public reason does not suffice to lead to a unique decision as *the best* one. Its standards allow the construction of multiple, sometimes competing, arguments valid for state action and differently articulating what justice reasonably requires. By requiring that deliberators rely on, and reasonably balance, shared political values, consensus public reason ensures not merely shareability of reasons but of what, in rough terms it is reasonably worth doing. That is, the state is reasonably required – based on R_1 – to do x, and – based on R_2 – to do y, where x and y cannot both be done.

However, there is a crucial point to clarify. So long as the deliberative constraints of public reason are followed, and the procedures for adjudication are fair and obeyed, there is always a *legitimate* decision. That is, there are no "dilemmas of legitimacy" in consensus political liberalism. Dilemmas of public reason are, rather, dilemmas of reasonable justice.

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242 Quong, *Liberalism without Perfection*, 261.

Making sense of moral conflict and residues: Some insights from the ethical literature

In the previous subsection, I argued that cases of inconclusiveness of public reason are instances of political-moral conflict and, in fact, dilemmas of reasonable justice. To make sense of the logical and normative implications of those claims, I now move to present three alternative characterisations of circumstances of moral conflict developed in the metaethical literature. By doing so, I introduce the theoretical tools necessary to specify the "kind" of validity enjoyed by (competing) reasonable claims to which I have loosely referred until now. After doing this, I clarify the logical (im)possibility of moral residues in each account.

An example will help. Anne has agreed to pick up Bette at the airport. Bette's flight lands at night, and she has an important job interview the following afternoon. As Bette cannot afford a taxi to go home, Anne agreed to collect her. On a quite isolated shortcut to the airport, Anne encounters Carl who has had a car accident. While Carl does not seem wounded, it would be wise for him to go to the hospital for a check as he hit his head in the crash. Assume that if Anne does not drive him, Carl has no way to get to the hospital until another person chances to drive by. However, if Anne drives Carl to the hospital, Anne will not make it to the airport until the next morning. Bette will either have to wait all night at the airport or call a cab she cannot afford.

The example shows a situation of moral conflict as broadly described above. Anne experiences conflicting moral demands. Let us assume that it is not straightforwardly clear what Anne, all things considered, ought to do. If, as is plausible, the two requirements Anne faces have similar weight, she faces a dilemma as she lacks a rational criterion to decide what to do: Bette will spend a very uncomfortable night and possibly fail in her interview the following day, but what of the possibility that Carl has some health complication they cannot exclude with certainty? How can we describe the choice situation, from a metaethical perspective?

1) Anne faces a conflict of absolutely valid claims – let us call this, *absolutism*;
2) Anne faces only an apparent conflict of valid claims; one of the two has no genuine validity of any kind in the given circumstances – let us call this *specificationism;*
3) Anne faces a conflict of claims that are *pro tanto* valid in the given circumstance, while only one is ultimately *all things considered* operative – let us call this *protantoism*.

Under (1),[243] on the one hand, Anne has an absolutely valid obligation to pick Bette up at the airport (and Bette has a valid claim that Anne picks her up). On the other hand, Anne has an

[243] Those who think that there can be absolutely valid claims usually focus on some specific rights claiming that *some* rights do have absolute validity, while the vast majority do not. See, for instance, Alan Gewirth, "Are There Any Absolute Rights?" [1981] 31 *The Philosophical Quarterly* 1,16. The claims in the example would probably *not*

absolutely valid obligation to help people in need of medical help, and to drive Carl to the hospital (and Carl has a valid claim that Anne drives him to the hospital).

The claims cannot practically both be met, but they have absolute validity nonetheless. Thus, this account sees morality as an inconsistent system of rules and accommodates the deontic notion of the tragic introduced above. To adopt (1), we have to drop the principle of deontic logic that "ought implies can." Indeed, Anne ought to do the impossible if she has an absolute obligation to help both Bette and Carl, given that practically she cannot do both. Relatedly, Anne would break an absolutely valid obligation whatever she does. Hence, she cannot but act wrongly whatever she does.

Specificationism (2) differs radically from this. Like absolutists, specificationists hold that only absolutely valid claims and correlative obligations exist. That is, claims are never *pro tanto* valid and overridable[244] (more on this below). Claims (and correlative duties) have a *prima facie,* abstract, kind of validity.[245] But in concrete cases only one is genuinely valid, while the general validity of the other is voided. In the particular circumstance of choice, certain conditions obtain that constitute an *exception* to the (thus voided) *prima facie* validity.

Under (2), let us assume, Anne does not have a duty toward Bette to keep her word, as Bette has no valid claim that Anne does so in the given circumstance. Anne has – let us imagine – a "duty to keep her word unless: (a) offering medical help to someone in need practically conflicts with keeping her word; (b) avoiding a major financial crisis conflicts practically with keeping her word" and so on. From this perspective, there is no moral conflict because Anne's duty to keep her word – while having a kind of *prima facie*, general, validity – has no validity in the given context of choice. The empirical circumstances fall within the set of exceptions to the actual validity of Anne's (putative) duty toward Bette (and the correlative claim of Bette). Anne has no duty toward Bette to pick her up because, in those circumstances, condition (a) applies, voiding the *prima facie* validity of Anne's duty to keep her word.

Contra (1), the specificationist position does not conflict with the "ought implies can" logical principle. Anne is not required to do the impossible, as only one claim is actually valid in the circumstances. If, as assumed, the duty that is all things considered valid is that of helping Carl,

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count in this set. The example merely serves to illustrate the logical structure of one possible way of reading the conflict.

244 See, Danny Frederick, "Pro-Tanto vs. Absolute Rights" [2014] 45 *The Philosophical Forum* 378.

245 The specificationist position is Alan Donagan's reading of Willam D. Ross's account of "prima facie" reasons, see Alan Donagan, "Moral Dilemmas, Genuine and Spurious: A Comparative Anatomy" in H.E. Mason (ed) *Moral Dilemmas and Moral Theory* (Oxford University Press 1996) 20-21. See also, Richard Hare, *Moral Thinking: Its Levels, Method and Point* (Oxford University Press 1981) and William D. Ross, *The Right and The Good* (Oxford University Press 2002).

then Anne does not wrong Bette by not picking her up. This account thus excludes the possibility of tragic choices. Anne does not act wrongly whatever she does. Nor does it allow for dilemmas. Sure, Anne may make a moral mistake and not see what she ought to do. But there is one thing that she ought to do, all things considered, and no genuine moral conflict obtains.

Under (3), Anne faces two conflicting claims that both have *pro tanto* validity in the given case. One can be overridden, and thus it is permissible for Anne – all things considered – not to discharge the correlated (*pro tanto*) duty. That is, Bette has a *pro tanto* valid claim that Anne keeps her word. At the same time, Carl has a *pro tanto* valid claim that Anne drives him to the hospital. Let us assume that driving Carl to the hospital is weightier than picking up Bette (or that Anne tosses a coin to reach a fair decision). Then, all things considered, what Anne ought to do is to drive Carl to the hospital. Anne's *pro tanto* duty toward Bette is overridden by Anne's *pro tanto* duty toward Carl.

Protantoism (3) shares with specificationism (2) the capacity to allow for permissible conduct for Anne thus ruling tragic choices out. Under both (2) and (3), indeed, avoiding wrongdoing is a logical possibility for Anne. Unlike under absolutism, the protantoist reading accommodates "ought implies can." However, the protantoist position shares something with absolutism too. That is, even though it is permissible for Anne not to meet Bette's claim, under (3), this does not mean that Bette's claim had no validity at all in the given circumstances as would be the case in (2). That is, the conditions making it all things considered right to drive Carl to the hospital do not act as factors voiding Bette's claim, but only as claim-overriding factors.

Moral residues

I now introduce the notion of moral residues. As I will discuss these points at length in the rest of the chapter, and in the next one, this brief introduction only works to fix the terminology and to start clarifying how different metaethical accounts accommodate (or not) the logical possibility of moral residues.

The notion of moral residue signals that a decision – however permissible – nonetheless involves some kind of genuine *moral* loss. According to Bernard Williams, the possibility of moral residues is an important factor distinguishing practical from theoretical reasoning.[246] When we try to understand if something is true or false, and we encounter counter-evidence which falsifies our provisional position, we abandon the previously held, but false, position without regret. When

246 Williams, "Ethical Consistency." More precisely, Williams' analysis is spelled out in terms of "moral remainders" in the form of negative moral feelings resulting from conflicted choices (more on this in the next chapter). The experience of such feelings, for Williams, would constitute a heuristic to infer the presence of what I call "residues" – i.e., genuine moral loss.

faced with moral conflict, the situation is different. As seen above, when we are involved in practical reasoning, we do not seek truth, we want "to act for the best."[247] Competing reasons may point to different understandings of what "acting for the best" means. In cases of genuine moral conflict, opting for some course of action may involve a loss of some kind, irrespective of its permissibility. How, if at all, can we make sense of this intuitive loss as in some sense "moral"?[248] Absolutism, specificationism, and protantoism accommodate the (im)possibility of *moral* residues differently.

To illustrate, we can think that it is merely unfortunate, say, if Bette will have to sleep at the airport. However, if driving Carl to the hospital is what Anne, all things considered, ought to do, then – however unfortunate – there is no moral loss in failing to collect Bette. Misfortune is not a moral notion, but a fact of human, imperfect, existence. That is the only reply that specificationism allows. From the specificationist position, there is no logical space for moral residues. Only one of the competing demands is actually what Anne ought to do. In the given circumstance, the other simply has no validity. For sure, Bette has a *prima facie* valid claim that Anne ought to pick her up at the airport. However, certain conditions obtain in the given circumstance that void the *prima facie* validity of Bette's claim.

The protantoist reading is more permissive. Bette's claim is not voided but merely overridden. It does have normative force, even if it is not decisive and is ultimately overridden. This normative force is not erased, even if Bette's claim is not met. In David Brink's words, *pro tanto* obligations "should be given a metaphysical reading that recognises [them] as moral forces that are not cancelled by the existence of other moral forces even if the latter override or defeat the former."[249] There is logical space for moral residues in this metaethical account of the validity of Bette's and Carl's claims. I will shortly argue that this is the metaethical account that best makes sense of conditions of political-moral conflict.

The absolutist reading is even more permissive in making room for the possibility of moral residues in cases of moral conflict. By conceiving the validity of claims as absolute the account, as

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247 Williams, "Ethical Consistency" 122.

248 Williams's argument starts from the phenomenology of agents' moral emotions in conditions of conflicted choices to infer the existence of genuine moral loss. In Ch. 5, when investigating the moral emotional phenomenology of reasonable citizens in conditions of inconclusiveness of public reason, I will I will come back to William's specific argument.

249 David Brink, "Moral Conflict and Its Structure" in H. E. Mason (ed.) *Moral Dilemmas and Moral Theory* (Oxford University Press) 104. For the sake of precision, Brink is attributing this position to William D. Ross and therefore uses the "prima facie" terminology; however, what he is referring to is what I – and many others – call "pro tanto." See, also, Frederick, "Pro-Tanto vs. Absolute Rights;" Gaus, *Justificatory Liberalism* 70ff.; Andrew E. Reisner, "Prima Facie and Pro Tanto Oughts" *International Encyclopedia of Ethics* (2013) https://doi.org/10.1002/9781444367072.wbiee406; Jeremy Waldron, "Kagan on Requirements: Mill on Sanctions" [1994] 104 *Ethics* 311ff.

seen, turns moral conflicts into tragic choices. If all courses of action entail wronging someone, it follows that any course of action will generate authentic moral loss.

I shall now move to make sense of which one, among the competing accounts, best coheres with elements of political liberalism and the possibility of legitimate state action in conditions of inconclusiveness.

3. The validity of reasonable claims of justice: absolute, prima facie, or pro tanto?

In §2, I showed that conditions of inconclusiveness of public reason instantiate political-moral conflicts and I presented three metaethical interpretations of moral conflict. Which one is the most appropriate to make sense of the validity of reasonable claims of justice in circumstances of inconclusiveness of public reason? Crucially: is asking questions of this sort not problematic in itself, given political liberalism's fundamental commitment to avoiding stances on divisive metaethical and metaphysical questions?

To be sure, some political liberals do address metaethical issues as far as political morality is concerned. Rawls, for instance, explicitly embraces (political) constructivism as the metaethical account supporting the objectivity of political values and the normativity of political morality.[250] Moreover, political liberals cannot but bite the bullet. To the extent that consensus political liberals defend political decision-making as a deliberative practice aimed at the articulation of *justifications* for state action – i.e., neither a mere bargaining arena in which enemies face each other, nor a sort of political conference room in which reasoners articulate truth claims about political justice – the question of what kind of validity claims have can be ignored, but this does not mean that an answer is not assumed anyway.[251]

What I ask is which one – among the competing accounts presented above – *best coheres* with what we already know about conditions of inconclusiveness of public reason and the several components of political liberalism that I have either defended or assumed in line with mainstream literature: common substantive and epistemic standards; the acceptance of the BoJ; the possibility of legitimate state action *vis-à-vis* reasonable disagreement about justice.

The protantoist position, I contend, is that which coheres most harmoniously with all the components. The decisive reasons to opt for it are that, on the one hand, it is more consistent with the legitimacy of state action in conditions of reasonable disagreement, the acceptance of the BoJ,

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250 See, Rawls, *Political Liberalism* 89-130; Martha C. Nussbaum, "Political Objectivity" [2001] 32 *New Literary History* 883,906.

251 For discussions on similar points, see Giulia Bistagnino, "A Dangerous Method. John Rawls e la metafisica" [2013] *XLVIII Biblioteca della libertà* 179,192; Giulia Bistagnino, *Compromessi di principio. Il disaccordo nella filosofia politica contemporanea* (Carocci 2018). See also Forst, "Political Liberalism: A Kantian View."

and deontic logic than absolutism. Contra specificationism, on the other hand, it is authentically capable of making sense of the existence of a political-moral conflict.

Let me recall the reasonable disagreement about the *kirpan* in schools. The values involved are political, and both claims reasonably balance them, while plausibly following common rules of inference. R_1 ranks freedom of religion higher but balances safety by hindering the reachability of the *kirpan*. R_2 ranks safety higher but balances freedom of religion by encouraging surrogate symbols. R_1 and R_2 are weakly shareable arguments, both support legitimate state action. Do the public – apart from the procedures that will settle the disagreement – face: (i) a conflict of absolutely valid claims; (ii) a conflict of *prima facie* valid claims only one of which is all things considered valid, as the other is voided of its validity under the relevant circumstances; or (iii) a conflict of *pro tanto* valid claims both of which can legitimately be overridden?

According to (i), both R_1 and R_2 should be read as absolutely valid claims of reasonable justice that the state acts in certain ways. Holding that claims have absolute validity means that they cannot be permissibly unmet. Recall from above that an account of moral conflict that reads it as showing conflicting absolutely valid claims reads it also as a tragic choice. The agent acts wrongly whatever they do. However, this conclusion generates an immediate contradiction with the legitimacy of any decision taken in the relevant circumstances. By definition, legitimate decisions – that is, permissibly enforceable decisions – do not wrong. Moreover, in consensus political liberalism, we have seen, each legitimate decision is reasonably just. This, of course, is compatible with the fact that – from the perspective of some citizens' conception of political justice – the legitimate decision may not be judged as the best instantiation of what political justice requires. However, if some citizens were wronged, from any reasonable position, state action would not be legitimate.

Furthermore, holding that (both) R_1 and R_2 have absolute validity, and hence ought to be met, is in tension both with the acceptance of the BoJ and the core axiom of deontic logic, that "ought implies can." On the latter point, if anything falls within the set of common epistemic standards for political deliberation in consensus political liberalism, it is the principle that 'ought implies can.' An account of the validity of reasonable claims of justice that conflicted with such a widely accepted principle of logic is unappealing, as it would hardly be acceptable to reasonable citizens. As regards the conflict with the BoJ, while all reasonable citizens see each reasonable argument as minimally valid, they all disagree on their respective weight. That is, Gina and Jack genuinely disagree about how the state ought to act all things considered, even though they can accept that it acts legitimately whichever way it acts.

The "specificationist" position does not face the problems that undermine the plausibility of "absolutism." According to specificationism, only one of the claims based on R_1 and R_2 is

genuinely valid. Let us assume that it is Jack's claim. In that scenario, the specificationist account would see the validity of the claim based on R_1 as voided of its *prima facie* validity – e.g., the persisting safety concerns would void its validity – rather than overriding it. The state would not wrong Sikhs in not granting them an exemption from regulations banning weapons in schools because their claim, under careful analysis, has proven to be voided of its *prima facie* validity. Presumably, residual "safety concerns" are a "right-voiding feature" of religious freedom.

A specificationist reading of the disagreement is consistent with the possibility of legitimate decisions in circumstances of inconclusiveness. However, this depends on *denying* the very existence of an authentic (political-)moral conflict in the first place, in similar circumstances. Such a conclusion is a disadvantage compared to absolutism which at least made sense – albeit in a logically inconsistent and metaphysically too exigent way – of the genuine circumstance of political-moral conflict. Indeed, in §2, I have shown that conditions of inconclusiveness are instances of political-moral conflict. Specificationism is a metaethical account of the validity of claims whose main aim is to explain that all moral conflicts are only apparent (the *prima facie* validity of some claim is voided in given circumstances). Therefore, specificationism is a non-starter when it comes to making sense of the validity of reasonable claims in conditions of inconclusiveness.

However, the specificationist position is not without merits. According to political liberals, there are claims that have no "weight" in the first place – i.e., *un*reasonable claims. These are not the claims that can conflict due to inconclusive public reason. However, it is crucial to consider that specificationism is an illuminating perspective to make sense of the *putative validity* of arguments that are based on political values but are nonetheless unreasonable and, therefore, voided of any validity.[252] Part of political deliberation has to do with ruling out unreasonable claims. The duty to abide by the requirements of public reasons, recall, is a *moral* not a legal one. Part of what political deliberation does is to filter the non-justificatory unreasonable requests that may be voiced by unreasonable citizens who breach their duty of civility.

In Ch. 3, I showed that there are conditions under which claims that would otherwise be reasonable – e.g., if they conflicted with no other – fail to be reasonable all things considered. These are arguments, for instance, that refuse to take into account other political values at stake in a given debate, or that do not attempt to balance political values in any way. There are also arguments, for sure, that are inherently unreasonable as holding them is incompatible with seeing others as free and equal. E.g., think of someone who petitioned for a law allowing the state to

252 On the specificationist perspective and claims with no merit, Jeremy Waldron "Rights in Conflict" in *Liberal Rights. Collected Papers 1981-1991* (Cambridge University Press 1993) 223,225; Quong, "The Rights of Unreasonable Citizens" 332,333; Frederick, "Pro-Tanto vs. Absolute Rights" 381,383.

forcefully harvest body organs from non-consenting random persons to save critical patients on the brink of death. The point is that every right has some inherent clauses that define some minimal infringement of basic moral requirements as exceptions to its validity. *Ceteris paribus*, it is plausible to hold "unless it violates the body integrity of random others" as a right-voiding factor for every right.

According to the reading in (iii), instead R_1 and R_2 are genuinely valid claims addressed to the state demanding that it acts in certain ways, but their validity is only *pro tanto* action-guiding. That is, they have genuine validity in the given circumstances, but can be overridden by other claims, and legitimately unaccommodated. Such claims that the state acts in certain ways are not absolutely valid. They are in principle overridable, and their validity counting in favour of state action goes as far as a weightier claim – or, e.g., vote procedures in cases of impasse – command otherwise. So, for example, the duty of the state, all things considered, is to act according to the decision taken in the appropriate procedure. This locates the legitimate outcome but leaves one of the two claims unmet although it remains genuinely valid. The protantoist account does not allow for any wrongdoing following from this, as absolutism does. That is, *pro tanto* valid claims can legitimately be unaccommodated. However, this does not mean that they are 'voided' of their validity – i.e., showed not to have weight in the first place – as under specificationism.

Summing up, the protantoist position is superior as a reading of the validity of reasonable claims, in terms of its capacity to cohere with conditions of the inconclusiveness of public reason. Contra the absolutist perspective, protantoism does not undermine the possibility of legitimate state action. Contra specificationism, it can do so without denying that a political-moral conflict is, in fact, taking place. Weakly shareable reasons for state action, properly grounded on shared substantive standards and constructed plausibly following common epistemic standards, are *pro tanto* valid claims for accommodation, based on reasonable arguments of justice.

Having clarified this, I now turn to address the issue of the existence of residues of justice in circumstances of reasonable disagreement about justice, i.e., in which *pro tanto* valid claims conflict and the reason of the public is left at an impasse.

4. Legitimacy, and political-moral failure: the normative domain of residues of justice

In the rest of this chapter, I argue that "residues of justice" obtains, qua genuine moral losses, when public reason is inconclusive concerning matters of fundamental political importance – e.g., emblematically, the specification of the condition of enjoyment of basic liberties. I will also defend the consistency of their normativity within consensus political liberalism. To do this, I borrow a moral category from ethical literature that occupies a middle space between injustice and mere

misfortune - i.e., *moral failure*. In a nutshell, I will argue that the failed accommodation of reasonable claims of justice instantiates political-moral failure, and leaves behind residues of justice.[253]

I start by presenting a case *against* the existence of "residues" in consensus political liberalism. To my knowledge, no political liberal has anywhere articulated this argument. The position aims to model the strongest argument against the relevance of the notion of moral residues to consensus political liberalism. That is, it is an argument against the *existence* of anything like "residues of justice" as having any *moral* import. I will suggest a second counterargument in the next chapter – i.e., one that differently focuses on the "inevitability" of residues and hence their prescriptive irrelevance.

Against residues, part I: consensus political liberalism as a "residue-free" political morality

Political liberalism, from Rawls's later work onwards, is uniquely concerned with the legitimacy of decisions when it comes to assessing their moral quality. This holds because, as we have already seen, legitimate state action lies of necessity within the limits of what we may call "reasonable justice." Rawls makes this very clear. It is worth quoting Rawls's complex passage in full:

> "Neither the procedures nor the laws need be just by a strict standard of justice, even if, what is also true, *they cannot be too gravely unjust*. At some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy, and so will the injustice of the political constitution itself. But before this point is reached, the outcomes of a legitimate procedure are legitimate whatever they are. This gives us *purely procedural democratic legitimacy*."[254]

So long as decisions and the political constitution more broadly are not "too gravely unjust," the results of fair decision-making processes are permissibly enforceable whatever they are. We know already that decisions cannot be too gravely unjust. Minimally, all decisions within consensus political liberalism, so long as they are legitimate, avoid arbitrary and unjustifiable restrictions of rights and coercion. Furthermore, the demanding standards to ensure weak shareability – *vis-à-vis* debates concerning constitutional essentials and matters of basic justice – require that all arguments count as reasonable claims of political justice. They all must take into consideration all the political values at stake and attempt to balance them in reasonably acceptable ways. These requirements on reasons inevitably push for compromising positions, or at least for displays of considerable concern toward each reasonable citizen and their competing interests. To say that

253 Note an important terminological point to avoid confusion. In "residues of justice," "justice" refers to the content of the reasonable political disagreement from which moral losses originate, not their normative domain. That is, one of the main points that this chapter establishes is that the relevant moral losses in the cases under analysis does not arise due to some kind of "injustice."

254 Rawls, *Political Liberalism* 175, 176, emphases mine.

some "residual normative force" survives such a highly demanding process of respectful deliberation seems decidedly odd.

Furthermore, what normative category could consensus political liberals rely upon to assess the normative quality of legitimate outcomes of fair procedures for adjudication, once we accept the reasonableness of disagreement about justice itself? Namely, of what fault could the Sikh community accuse the state if the decision-body deliberating on the case for exemption opts for the less permissive course of action, in full conscience and on reasonable terms whose validity the claimants themselves can minimally accept? Arguing that they are the victims of some kind of "legitimate not-too-grave injustice" seems to rely on judgements of justice that, in fact, are the object of the disagreement.[255] As I argued in Ch. 3, for instance, pressing for the protection of the central range of application of basic liberties, in Rawls's terms, would deny the reasonableness of the disagreement.

The argument is that the sense of loss results from something that we may call our "sense of the unfortunate" (which can be related to the common-sense usage of the tragic introduced in §2). Reasonable citizens would be able to recognise the deep burden imposed on some fellow citizens since they can recognise the importance of protecting moral integrity. However, it is nothing more than regrettable. It does not have any normative import. Any argument asserting that legitimate state action out of inconclusive public reason entails genuine *moral* loss by aiming to vindicate its normativity in terms of "injustice" or "wrongdoing" is, on this account, a non-starter. Crucially, the state's duty is to offer a reasonable justification for its action, ensuring legitimate decisions. In cases of inconclusiveness, fair procedures for the adjudication will settle the impasse and one among the reasonably justifiable claims will be chosen and enacted. As the decision is legitimate, by definition, the state does not wrong the citizens whose interests – however reasonably defensible and basic – are set back in dilemmatic decisions.

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255 There is, in fact, an alternative path that may be adopted to argue in favour of the existence and normative relevance of "residues of justice" resulting from legitimate decisions. Zofia Stemplowska and Adam Swift have recently developed one of the few proposals that challenge the mainstream position that, within the realm of "not too grave injustice," democratic legitimacy is all that counts. While I cannot but sketch the rationale of their proposal, it is worth clarifying why it is unavailable from within a consensus political liberal perspective. They argue that it is not so clear, as often maintained, that democratic legitimacy should take of necessity priority over the just outcome, even in cases in which legitimate outcomes are not gravely unjust. On a case by case basis, we should weight the "just" outcome with the "legitimate" one; in some cases, it may be possible to "dethrone" democratic legitimacy on balance. Apart from running risks of double-counting, Stemplowska and Swift's proposal requires to claim unique authority to give preferential place to *the* just outcome, abandoning the BoJ and – ultimately – reasonableness. See, Zofia Stemplowska and Adam Swift, "Dethroning Democratic Legitimacy" in David Sobel and Peter Vallentyne and Steven (eds) *Oxford Studies in Political Philosophy. Vol 4* (Oxford University Press 2018) 3,27.

This argument has considerable merit. It is correct that the category of wrongdoing is not adequate to make sense of the logical domain occupied by residues in the realm of political morality within consensus political liberalism. A much more fine-grained moral category than wrongdoing (or injustice) is needed to make sense of residues of justice. I will argue below that this category does exist and can consistently be accommodated in consensus political liberalism.

The circumstances of residues of justice. Pro tanto valid claims, reasonable claims of justice and residues

Contrasting circumstances in which residues obtain with those in which they do not can help to start clarifying the intuition that residues – some genuine moral loss – exist.

Let us imagine a first scenario in which there is disagreement concerning the allocation of public funds. Group *A* ask for subsidies to construct a theatre. The administration rejects the demand and increases the budget of the local hospital to promote campaigns to discourage smoking among the underage population. Looking for residues of justice (for group *A*) in this case is a non-starter because of the *ground* of their claim. Accessing entertainment and (arguably non-basic) educational activities is not a matter of justice within consensus political liberalism. If the "what" of claims, so to speak, is not linked to political values of justice, as discussed in Ch. 3, claimants cannot see the state as accountable – even *prima facie* – to accommodate their requests qua claims of justice. The first point concerning the existence of residues of justice, then, is linked to the *ground* of the claim.

A second point concerns the consideration of all relevant values at stake, and how reasonably they are balanced. As an example think of the radical so-called "fetal heartbeat bills" that nine U.S. states tried to enact in the last few years.[256] The bills locate the limit for legal interruption of pregnancy as early as six weeks, establish jail sentences for women interrupting their pregnancy later on as well as for medical practitioners involved in the procedures. Some of these proposals do not allow for exemptions in cases of rape or incest, and others would require that practitioners, in order to save embryos, resort to medical procedures that risk the lives of the women.[257] The claims supporting similar proposals are flatly unreasonable. This holds not because those claims do not draw on political values – i.e., the right to life – but because they blatantly fail credibly to show consideration for women, most of whom are not given a plausible time to become even aware of their pregnancy or whose lives are knowingly placed at risk. As seen in Ch. 3, claims

256 See, Timothy Williams, "New Abortion Bills Are So Tough That Some Conservatives Have Qualms" *The New York Times*, 4 December 2019. The laws have been judged unconstitutional and struck down, see – e.g., Caroline Kelly, "Judges block six-week abortion bans in Georgia and Tennessee" *Cnn*, 13 July 2020.

257 See, Jessica Glenza, "Ohio bill orders doctors to 'reimplant ectopic pregnancy' or face 'abortion murder' charges" *The Guardian*, 29 November 2019.

which entirely disregard the political values-based interests of others are not considered reasonable in consensus political liberalism. This conclusion holds, even if they do have *prima facie* validity qua claims of justice – i.e., they are grounded on some political value of justice. From a specificationist perspective, failing the balancing requirement of reasonable argumentation is a claim-voiding factor in consensus political liberalism.

Notably, there seems to be significant differences between (a) the theatre case, (b) the "fetal heartbeat bills", and (c) the Sikhs' claim presented above. Sikh claimants are advancing a claim concerning their access to an especially weighty primary social good, unlike claim (a). At the same time, unlike claim (b), claim (c) meets the requirements of reasonable balancing, plausibly attempting to take into due account competing political values at stake. *Ex hypothesi*, the state's failing to accede to the demands in all three is legitimate. Still failing to meet (c) seems decidedly different than failing to meet the other two. The Sikh claim is a reasonable claim of basic justice – i.e., a *pro tanto* valid claim for accommodation – whereas the other two are not. While (b) is merely *prima facie* valid as a claim of justice, (a) is not even a claim about justice. Rejecting (a) and (b) is not only legitimate, but straightforwardly so, from any perspective abiding by public reason. It is what any reasonable account of political justice requires. Failing to meet (c) can be legitimated, despite the presence of competing similarly reasonable arguments in favour of meeting it. The prior validity – qua claim of reasonable justice – of the Sikhs' claim, I contend, matters in its own right, apart from the issue of its actual accommodation.

Crucially, if all political liberals care about – short of "not too grave injustice" – is legitimacy in conditions of reasonable disagreement, they miss any difference in terms of the respective normative forces of (a), (b), and (c). However, clearly, the difference is not reducible to their legitimate accommodation or rejection. From the perspective I will now develop, the way to vindicate the normative difference between a merely *prima facie* and a *pro tanto* valid claim has distinctively to do with why the latter has the force it has – i.e., that it is a valid claim of reasonable justice. In my approach, the bar of appropriate treatment for *pro tanto* valid claims need to be raised.

Moral failure: the normativity of residues between wrongdoing and misfortune

Ultimately, the point to address is what exactly is problematic in failing to accommodate claims of reasonable justice in circumstances of inconclusiveness. How do we make sense of this point if we cannot, as I granted above, rely on notions of wrongdoing and injustice? What's wrong, if nothing is wrong, so to speak? I propose that the logical space to situate the relevant moral losses under analysis is best illustrated by the notion, borrowed from the ethical literature, of *moral failure*. To make sense of this notion I will combine the core components of two recent ethical accounts that

aim to make sense of cases of ambiguous attributions of moral responsibility, e.g., cases of conflicted choices and instances of bad moral luck.[258]

One element is Julie Tannenbaum's account of "moral responsibility without wrongdoing or blame."[259] This account can be usefully complemented, I contend, by drawing on David Enoch's idea of (individual or collective) agents' "penumbral agency."[260] Notably, Tannenbaum's and Enoch's accounts, despite differences that I cannot unpack, share a feature that is important for my discussion in Chs. 5 and 6. Namely, they both focus on how appropriately describing the moral notions and examples they discuss bears important prescriptive implications concerning the aftermath of conducts or events.

Tannenbaum categorises instances of (mere) moral failure as cases in which the agent does not *stricto sensu* violate their moral obligations and, yet, they do not satisfy them either: their conduct is instead *morally inadequate.*[261] Tannenbaum invites us to think of a trained soldier who one day, totally unexpectedly, freezes when her convoy is ambushed in a war zone resulting in increased danger to her comrades. Tannenbaum argues that the category of wrongdoing would be a mischaracterisation of the soldier's conduct and the attribution of blame misplaced. Rather, the soldier's actions are morally inadequate and constitute an instance of moral failure. The example of Anne's moral conflict that I introduced in §2 – i.e., either keeping her word or aiding the possibly injured stranger – works similarly. In that scenario, the competing claims that Anne is facing seem similarly weighty so that, we may say, it is plausible to disagree about what she should do all things considered. Since, as it happens, they cannot both be met despite their merit, she has to make a choice, and she will fail one of the two people she should aid.

Both the soldier and Anne *fail* people and that means that those they fail can justifiably hold them to account. That is, while the soldier and Anne do not act wrongly – nor can they straightforwardly be considered blameworthy for their conduct – this does not mean that they lack any kind of moral responsibility for their actions. They are morally responsible, respectively, for endangering their comrades' lives and for leaving Bette at the airport; their conduct is *inadequate to*

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258 There is a feature that allows analogising conditions of moral conflicts and bad moral luck – as Williams himself notices – see, Williams, "Moral Luck" 31. In both cases, certain external factors intervene and complicate agents' conditions of control over their moral agency. Consequently, the attribution of moral responsibility – in terms of wrongdoing and blameworthiness – to the agents for how they act or for the consequences of their actions acquires ambiguity.

259 See, Julie Tannenbaum, "Moral Responsibility without Wrongdoing or Blame" in Mark C. Timmons (ed) *Oxford Studies in Normative Ethics. Volume 8* (Oxford University Press 2018) 124,148.

260 David Enoch, "Being Responsible, Taking Responsibility, and Penumbral Agency" in Ulrike Heuer and Gerald Lang (eds.) *Luck, Value, and Commitment: Themes From the Ethics of Bernard Williams* (Oxford University Press 2012) 95,132.

261 Tannenbaum, "Moral Responsibility without Wrongdoing or Blame" 132.

meet other's well-grounded claims. In the terminology I introduced above, the intervening factors do not qualify as conditions that void the validity of the comrades' or Bette's claims that ought to be met. However, such conditions – i.e., the sudden panic and the contingent conflict of similarly weighty claims – affect the extent of control that the agents have over their own *moral* agency.

The last remark leads to the contribution to Tannenbaum's notion of moral failure that I will add taking a cue from David Enoch's account of people's "penumbral agency." According to Enoch, what falls within one's penumbral agency, "is not within your core [moral] agency. But it is not too far from it either."[262] It can cover unintended consequences of one's permissible conduct, as well as the conduct of others to whom one is related in morally relevant ways. This category aims to make sense of how people's moral agency can sometimes be implicated in (bad) states of affairs for which they are not, Enoch contends, morally responsible.

Enoch's core point about penumbral moral agency is that we may be *blamed for failing to take responsibility* for actions falling within it, and *we may have duties* to take responsibility for them. However, Enoch holds, no kind of moral responsibility obtains in the first place for such actions. From this perspective, for instance, the soldier would not be morally responsible, but she would be blameworthy for failing to take responsibility for her conduct. If we accept that the sudden unforeseeable panic attack has made the consequences of her actions something that falls merely in her penumbral moral agency, then Enoch would say that we cannot consistently hold her morally responsible. However, if all she did, when called to respond of her conduct, were to note that this conduct is not properly *hers*, and that she has no moral responsibility for it, something would be morally troubling. To Enoch, it is in and of itself her "*saying* so [that] is somehow problematic."[263] It is a failure to take responsibility for something that lies in her penumbral agency; something for which she is not responsible, but for which she has a duty to take responsibility.[264]

Crucially for my purposes, the category of moral failure provides a distinctive explanation of how the soldier's and Anne's conduct is not wrongdoing, but is not mere misfortune either. Tannenbaum's account of moral failure, offers the theoretical tool that – united with Enoch's

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262 Enoch, "Being Responsible, Taking Responsibility, and Penumbral Agency" 100.

263 *Ibid.* 98.

264 There is some tension in Enoch's account, which I cannot unpack further. For Enoch, it is by the very action of taking responsibility that the relevant agents in the examples make themselves responsible – in an accountability sense – for the relevant conducts of others (or consequences of their own conducts). Until they take responsibility, they are not responsible. E.g., parents are not morally responsible for their (adult) children's wrongful conduct. They have a duty to take responsibility for such conducts since these fall within their penumbral agency, but – for the very same reason – they are not responsible for them unless they do take responsibility. But then it is not clear why they have a duty to take responsibility. I shall leave any detailed discussion aside since I want to argue – along Tannenbaum's lines – that there is indeed some kind of moral responsibility in cases of moral failure in which, e.g., consequences of one's action falls within one's penumbral agency.

account of penumbral agency – make sense of the deontic notions involved in dilemmatic choice contexts. The idea of moral failure grasps that some kind of moral responsibility to meet both claims does obtain, even though this is impossible, practically speaking. The idea of "penumbral agency" – rather than "core moral agency" over which we have full control – explains why the relevant kind of moral responsibility does not entail "wrongdoing or blame," while the consequences of conduct can still be attributed to the agent not merely causally.

In cases of dilemmas – when genuine moral requirements speak on incompatible sides of a choice and one has to resort to an all things considered decision – the consequences of one's actions do not fall within one's "core" moral agency, but in the "penumbral" one. Bette permissibly expects that Anne will pick her up at the airport. However, let us assume, Anne resorts to a fair procedure to settle her dilemma (e.g., she tosses a coin). If, as a consequence, Anne drives Carl to the hospital, this does not show that Anne was not morally responsible for picking Bette up all things considered. Based on the points raised above, Anne does not wrong Bette, nor is she blameworthy for failing to collect Bette. Anne put considerable reasoning in working out what to do, at the best of her rational capacities, and in good faith. She cannot conclusively decide, and she tosses a coin as a fair procedure.

Still, Anne morally fails Bette. However permissible in the conditions of conflicted choice, Anne's action is morally inadequate to meet a well-grounded claim of Bette's. Bette's interests are considerably set back, even though the claim to their protection is far from groundless. There is a justifiable expectation that grounds moral accountability that survives intact even in conditions that make the attribution of blame misplaced and wrongdoing a mischaracterisation. It is Anne that had to pick Bette up; it is from her that Bette can justifiably expect compliance given her promise. Most crucially, the fact that there is – contingently – a conflict of *pro tanto* valid claims that Anne faces, does not mean that it is for Bette to change her expectations. Bette is a reasonable (in a common-sense connotation) person, and she may be expected to understand that Anne acted fairly. However, Anne's conduct is inadequate with respect to Bette's claim and generates genuine moral loss that, if Enoch is correct, calls for some kind of reparation. I shall return to this last remark in the next chapters.

Political-moral failure and the inconclusiveness of public reason

Let us go back to the political cases of inconclusiveness of public reason that are the focus of my analysis. Based on the points developed in the previous subsection, I argue that the state, in cases such as the *kirpan* example, does not wrong and yet *fails*, the Sikh claimants. Such a failure, I will argue in the next chapter should be acknowledged. Let me illustrate.

When looked at from the perspective of those whose life-prospects are most negatively affected in cases of inconclusiveness, legitimate decisions will be seen as imposing (even heavy) burdens that under alternative, *similarly reasonably justifiable*, decisions they would not have to bear (or would have to bear in far less burdensome ways). In virtue of both the special weight of a value of political justice – i.e., religious freedom – and the reasonableness of their claim, the Sikhs in the kirpan example can legitimately hold the state accountable to accommodate their claim. Nevertheless, a choice is made following a fair procedure in conditions of a collective dilemma. As a result, some citizens have to bear heavy burdens against whose imposition they can advance reasonable arguments. While the legitimacy of the decision that sets back their valid claim is reasonably justifiable to them, they will still have burdens imposed on them to which they can reasonably object. Their claim is legitimately unaccommodated, while genuinely valid.

The primary descriptive virtue of the protantoist reading of the validity of the relevant claims in similar examples lies precisely in its making sense of their actual validity independent of what ends up being legitimately decided. At the same time, in terms of overridability, it grasps the authority of (democratic) deliberation in specifying the ultimate exact conditions to honour political values over which reasonable citizens will likely disagree. Claimants whose reasonable claims of basic justice are legitimately turned down, despite their reasonableness, may not permissibly see the state as wronging them. Yet, they can see it as failing them, as its structure proves ultimately inadequate to meet their claims, despite their validity qua claims of reasonable justice.

To appreciate the presence of genuine moral loss in the relevant circumstances we need to focus *jointly* on the reasonableness of the claims and on the special importance of the interests at stake in the claims. Recall a few points from Chs. 2 and 3. From the perspective of reasonableness, is not possible to reject the special weight of the liberty at stake, e.g., in the *kirpan* case. As argued in Ch. 2, consensus political liberalism holds a presumption in favour of protecting specific basic interests of citizens given their special connection with the development and full exercise of their moral powers. In Rawls's and Waldron's terms, the adequacy of the institutional scheme to protect such interests is an important desideratum of political liberal theories. The basic structure of their state proves, to political-morally failed citizens, inadequate to protect their *reasonable* enjoyment of *even fundamental* opportunities or basic liberties. That is, they have to bear precisely the kind of burdens that, as seen in Ch. 3, ground the very special relevance of certain fundamental interests as citizens' needs. At the same time, they can address valid claims to the state that it does not place such burdens on them.

The category of political-moral failure gives a consistent name to what happens in similar circumstances. This category allows us to grasp the intuition that something is problematic without questioning the legitimacy of decisions and/or resorting inconsistently to claims to superior authority about "true Justice" that would betray the acceptance of the BoJ. Put differently, the abstract-level agreement on the fundamental importance of (at least some) social primary goods provides the normative tools to make a solid case for the presence of genuine moral losses that arise from nonetheless legitimate decisions. Based on this premise, the extent to which legitimate decisions in conditions of reasonable disagreement fail to protect the interests of the party whose valid claim of reasonable justice is unaccommodated matters as well as the justifiability, and hence legitimacy, of decisions burdening citizens.

To reiterate, a political-moral failure is not a form of grave injustice. This would obtain, say, if the religious activities of the group were prohibited with no justification, perhaps out of open discrimination. Notably, this would be unjust *and* illegitimate. However, when reasonable claims of justice are legitimately unaccommodated, but citizens fail to have access to the protection of their basic interests despite the reasonableness of their requests, what we witness is not mere regrettable *brute harm*, devoid of any moral import. Legitimately placing on someone a burden which they can reasonably ask that the state does not place on them has to do with distributing *sacrifices* rather than the mere inevitable prices, so to speak, of social cooperation. That is, the loss involved is moral; as similarly valid claims conflict and cannot all be accommodated, decisions can be legitimately taken, but genuine moral loss obtains nonetheless.

Put in terms introduced when articulating the notion of moral failure, the institutional system is not merely *causally* responsible, as it might be in the case of an openly unreasonable claim where we might see the burden as straightforwardly rightly placed on the claimant. The notion of political-moral failure falls precisely in-between "injustice" and (a-moral) "misfortune." The political liberal state's action is inadequate in protecting citizens' interests that – from the point of view of the theory itself – are seen as worthy of special protection.

The category of political-moral failure that allows us to make sense of the possibility of residues provides exactly the notion necessary to reply to the anti-residues argument with which I started this section. Attention has to be paid, on a case by case basis, to the quality of legitimate decisions in conditions of dilemmas of public reason. We cannot resort to the notion of (in)justice as drawn from any reasonably contentious political conception of justice. Nevertheless, in the shareable elements of political liberal morality, there are resources to put forward the notion of political-moral failure. Political-moral failure can be accommodated as a distinctive form of institutional shortcoming from within shareable elements of consensus political liberal morality. It

is entirely consistent, and in fact of great usefulness, in consensus political liberalism. Residues fall in a logical space of political morality which is illuminating for reconciling political liberalism's twofold commitment to the special importance of several basic opportunities, on the one hand, and reasonable disagreement about the exact specification of the conditions of their enjoyment, on the other.

5. Conclusion

In this chapter, I argued for the existence of "residues of justice" in consensus political liberalism. This is in contrast to the implicit assumption in mainstream political liberalism that a normatively satisfying response to reasonable disagreement about justice lies in ensuring the legitimacy of state action.

The concern for genuine moral losses resulting from legitimate decisions is not triggered by something like a sense of the unfortunate, or out of a-moral considerations. From within consensus political liberalism the theoretical and normative tools can be located to carve out the logical space for residues of justice as bearing deontic import. They result from decisions that, while legitimate, morally fail reasonable claimants. The theory cannot guarantee *a priori* that political deliberation adequately protects reasonable claims of justice. This applies not only to social primary goods which, in Rawlsian orthodoxy, would fall under the second principle of justice, but also to those falling under the first. This is the biggest price to pay, I take it, for accepting that disagreement *about justice* can be *reasonable*. Such a possibility, I have tried to show, forfeits the certainty of excluding genuine *morally* relevant losses. Understanding how to minimise paying such a price seems important for political liberals.

Consensus political liberals should welcome the categories of residues of justice and political-moral failure. They allow the theory to grasp, rather than theorize away, intuitions of sub-optimality out of decisions that, by definition, have dramatic consequences on reasonable citizens' life-prospects. This can be done without betraying the acceptance of the burdens of judgement on reasonable citizens' deliberations.

Chapter 5

Respect, Alienating Strains of Commitment, and Reasonable Non-righteous Resentment. Why Addressing Residues Matters

1. Introduction

The primary aim of this chapter is to argue that political-moral failure is normatively problematic in consensus political liberalism and that failing (somehow) to act to recognise its impact is inconsistent with supporting respectful relations toward citizens. More precisely, I will argue that the state has a respect-based duty to acknowledge the presence of residues and the occurrence of political-moral failure.[265]

In Ch. 2, I argued that consensus political liberals should recognise an important, while not foundational, role for an ideal of equal recognition respect in political morality. To recall, I argued that insofar as they are concerned with the normative quality of the relations that hold between a liberal democratic state and each citizen, they have reasons to value respect as an important ideal of political morality. In more detail, I defended a pluralist account of "vertical" respectful relations and a multidimensional account of citizens' status as free and equal resting on such respectful relations. Citizens are entitled to give and receive public reason-based justification as co-legislators, partaking in shared political authority on weakly shareable terms that they can be sincerely expected to see as at least minimally valid. They are also agents with basic interests in pursuing their reasonable life-plans (and abiding by their conceptions of the good) and civic equals, having (ascriptive or elective) identities that should not become markers of (symbolic or material) public inferiority. All these dimensions, I argued, are crucial for citizens to be properly able to see themselves as fully respected members of political society; i.e., as fully free and equal citizens.

In Ch.4, I characterised political decisions concerning the specification of constitutional essentials and (certain) matters of basic justice in conditions of inconclusiveness of public reason as dilemmas of reasonable justice. That is, on multiple issues, citizens have the argumentative resources to make valid cases for why the state should (not) act in specific ways. In keeping with the liberal principle of legitimacy, the ultimate authority to determine the all-things-considered appropriate terms to settle such disputes rests in the (democratic) public reason-based decision-making process and its rules of adjudication. Taking the effects and implications of the burdens of judgement (BoJ) seriously entails recognising that citizens' basic interests, necessary for the effective exercise of their moral powers, may legitimately end up being jeopardised. Legitimate

[265] I will expound in Ch. 6 what strategies aimed at this acknowledgment may look like.

state action entails genuine moral loss, of which I made sense through the normative category of political-moral failure. When the interests at the core of citizens' legitimately unaccommodated reasonable claims of basic justice are not sufficiently secured, they are *owed* recognition of the burden placed on them out of respect for them as reasonable right-holders or civic equals (or both). Recognising the existence of residues, *and* addressing them, is the way to express respect to citizens who have been failed (hereafter, "morally-failed citizens") in recognition of the entirety of their political-moral personality. More precisely, I will argue that the existence of residues jointly with the commitment to uphold respectful relations toward citizens, generates a *duty* to acknowledge political-moral failure.

The chapter unfolds as follows. In §2, I start by introducing a possible argument rejecting the idea that the state should do anything about residues of justice while accepting their existence. The main aim of the chapter is to explain why consensus political liberals should not resign to the existence of residues of justice as a sort of "fact of political life" with no prescriptive implications. In §3, after introducing a few points concerning the under-explored moral-emotional dimension of a reasonable sense of justice, I move to analyse the moral-emotional phenomenology of conditions of moral conflict and bad moral luck. This move allows me to present "non-righteous reasonable resentment" as the peculiar reactive attitude available to morally-failed persons. Here I draw on the complementary negative emotion, "agent-regret", that Bernard Williams influentially examined. I then move from this discussion to the analysis of reasonable citizens' moral-emotional experience *vis-à-vis* decisions taken in conditions of inconclusiveness.

After this analysis, I draw on the justifiability of non-righteous reasonable resentment as a heuristic to make sense of a troubling effect of political-moral failure. The effect is reasonable citizens' experience of "alienating strains of commitment." This allows me to describe, in §4, how and why failing to recognise the legitimacy of non-righteous reasonable resentment, and to mitigate the risk of reasonable citizens' alienation, is problematic in that it falls short of respectful treatment for citizens as free and equal.

2. Against residues, Part II: inevitability and the prescriptive irrelevance of residues

In Ch. 4., §4, I argued in support of the *existence* of residues of justice in conditions of inconclusiveness concerning, e.g., decisions about constitutional essentials. I claimed that failing to meet reasonable claims of basic justice involves genuine moral loss. The notion of political-moral failure makes sense of the distinctive kind of institutional shortcoming involved. However, none of this tells, in and of itself, that something should be done about residues and, if so, why that is the case.

As in Ch. 4, I will start by presenting an argument against residues. This argument may be advanced from within consensus political liberalism and, as I shall suggest, seems implied by the discussion of one of the main tenets of Rawls's political liberalism: the acceptance of the BoJ. Unlike the hypothetical anti-residues argument constructed in Ch. 4 that aimed to deny the existence of "moral" residues in consensus political liberalism, this argument allows for their existence, but denies that they have any prescriptive relevance to state action.

Toward the end of Ch. 1, I focused on the last of Rawls's BoJ:

> "f. Finally, any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values that might be realised. This is because any system of institutions has, as it were, a limited social space. In being forced to select among cherished values, or when we hold to several and must restrict each in view of the requirements of the others, we face great difficulties in setting priorities and making adjustments. Many hard decisions may seem to have no clear answer."[266]

In closing Ch. 1, I speculated that this BoJ has less to do with explaining why sincere and well-informed people are likely to disagree, as with encouraging a certain attitude in some circumstances in which they do. That is, reasonable citizens should be resigned to something like (f) as a fact of political life. There are (arguably many) circumstances of hard political decisions in which, "forced to select among cherished values," there are "no clear answers." Rawls's passage plausibly describes precisely what happens, as seen in Ch. 4, in circumstances of inconclusiveness of public reason. There are moral residues and losses of value, but this is merely inevitable, although unfortunate, and something to which we should resign ourselves.[267]

This argument is significantly different from the one presented in Ch. 4. Recall that by vindicating the unique relevance of the legitimacy of state action *vis-à-vis* inconclusiveness, the first counterargument claimed that "moral" residues do not exist. *All* the state should do is to offer public justification and follow fair procedures so long as laws are not gravely unjust. Legitimate laws cannot be gravely unjust (in consensus political liberalism). Hence, (justification-based) legitimacy is all that matters.

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266 Rawls, *Political Liberalism* 90.

267 See also, Rawls, *Political Liberalism* 214. In fact, it might seem that Rawls somehow oscillates between the current position and the one I presented in Ch. 4. Or perhaps he comes to change his mind during his philosophical life. Clearly the approach in *TJ* seems very inhospitable to the idea of residues of justice. There have been attempts to develop arguments for residues also on the background of Justice as Fairness. However, since there is no 'reasonable' disagreement about justice in *TJ*, arguments for the location of 'residues of justice' on the background of *TJ* rest on different grounds – for an attempt, see Iris van Domselaar, *The Fragility of Rightness. Adjudication and the primacy of practice* (Ph.D. Dissertation 2014).

The current argument recognises the possibility of moral loss but denies that such losses have any prescriptive implications. As seen above, "ought implies can," and not all political values can be adequately honoured, nor all valid claims met. From this perspective, moral loss is an inescapable *fact*. In a sense, we may read Rawls's remarks about the "limited social space" of institutional systems as an acceptance that, ultimately, the well-ordered reasonably just society cannot but be somewhat imperfect. So far, so good. Still, it does not follow that resigning to this "fact" should be taken to imply that nothing should be done about residues and genuine moral losses. Once consensus political liberals accept that there is a moral loss when it comes to hard political decisions, just accepting such a loss as a fact of political life without even investigating whether something should be done about it seems untenable. Moreover, as I will show, consensus political liberals should recognise that residues do have normative implications.

To be sure, I have already shown that there is an understandable worry associated with accepting claims that some political-moral residue can obtain.[268] If this necessarily implied that we have to concede genuine wrongdoing, *vis-à-vis* many decisions afflicted by inconclusiveness of public reason, then this would be problematic. However, vindicating the existence of residues of justice, as I clarified in Ch. 4, does not entail reading conditions in which they obtain as (deontic) "tragic political choices" in consensus political liberalism. By introducing the notion of political-moral failure in consensus political liberalism, my analysis allows me to take the presence of genuine political-moral loss in circumstances of inconclusiveness of public reason seriously. The notion, to recall, identifies a category of authentic moral shortcoming – *not* mere misfortune – that would nevertheless be mischaracterised as wrongdoing or injustice. Thus, the notion of political-moral failure precisely captures the intuition behind the last BoJ, while circumventing any worry associated with so doing. There is moral loss that, while not arising from an injustice, calls for a response.

Having recalled why consensus political liberals need not adopt any inevitability-based reply to the normative relevance of residues of justice, the rest of this chapter explains why the state has a duty to address such residues. If it can be convincingly shown that residues impact on ideals that

[268] Another possibility is to embrace methodological invitations to avoid the very enterprise of looking for completeness in political theorising, to avoid to displace as politically irrelevant those claims that the theory cannot accommodate, see Bonnie Honig, "Rawls and the Remainders of Politics" in *Political Theory and the Displacement of Politics* (Cornell University Press 1993) 126,161. My argument about residues of justice aims at far less "radical" implications for the revision of consensus political liberalism. My aim is to show how the theory can be less incomplete – recognising and dealing with its residues – not that incompleteness should be methodologically embraced.

consensus political liberalism aims to realise, then considerations concerning the inevitability of their existence makes it problematic to deny that the state should deal with them.

3. Residues matter: alienating strains of commitment and inconclusive public reason

In this section, I show that residues are accompanied by a specific kind of what Rawls calls "strains of commitment". These I call "*alienating* strains of commitment." The experience of residues can (permissibly) be accompanied by a kind of resentment that I will term "non-righteous reasonable resentment," as contrasted with "righteous (reasonable) resentment."[269]

Firstly, I need to introduce some elements of reasonable citizens' moral psychology that tend to be neglected in the literature. Namely, I will focus on the *negative moral emotions* that citizens' sense of justice can sustain *vis-à-vis* perceptions of injustice (toward oneself or others).[270] This discussion matters because, as I will show, conditions of dilemmatic moral choice also complicate intuitions concerning the appropriateness of what Peter Strawson has termed "reactive attitudes."[271]

Reasonable moral psychology, the sense of justice and inconclusiveness

Citizens, as seen, are all conceived as possessing a capacity for a sense of justice. This complex moral faculty consists of multiple dimensions:[272] a belief content – e.g., a reasonable conception of political justice endorsed as the most reasonable interpretation of fair terms of cooperation – and a motivational component. Reasonable citizens are ready to abide by the requirements of public

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269 The notion borrows insights by an acute and nuanced analysis of variants of resentment by Ulrika Carlsson, "Tragedy and Resentment" [2018] 127 *Mind* 1170,1191. Carlsson defends the consistency of what she terms "tragic resentment." The distinctive feature of this kind of resentment is that it has a peculiar cognitive content, i.e., unlike righteous resentment, tragic resentment cannot convey a claim to change the conduct of those toward whom it is addressed, or claim an apology, or hold the person toward whom it is felt blameworthy. In this respect, my account of "non-righteous reasonable resentment" overlaps with Carlsson's tragic resentment. However, the latter does convey – as at times Carlsson indeed suggests – a lack of moral claim *tout court*. While "non-righteous reasonable resentment" does not claim that legitimate political decisions should be reverted out of accusations of illegitimacy, I will contend that the state has a *duty* to (at least try) to act to mitigate such a resentment. Put differently, while the idea of "non-righteous reasonable resentment" and "tragic resentment" are close, the latter may confuse or divert the attention from what matters here: the resentment of which I am interested in making sense, is justifiable from the point of view of reasonableness, and still – within its cognitive content – it cannot hold the state blameworthy or wrongful, unlike *righteous* (reasonable) resentment.

270 For discussions on (reasonable) citizens' moral psychology, see Thomas Baldwin, "Rawls and moral psychology" in Russ Shafer-Landau (ed) *Oxford Studies in Metaethics vol. III* (Oxford University Press 2008) 247,271; Jon Mandle, "Sense of Justice" in Jon Mandle and David Reidy (eds.) *The Cambridge Rawls Lexicon* (Cambridge University Press 2015) 768,772; Mihaela Mihai, *Negative Emotions and Transitional Justice* (Columbia University Press 2016) Ch. 2; Colin Grey "Stability and the Sense of Justice" [2018] 44 *Philosophy and Social Criticism* 927,949.

271 Peter Strawson, "Freedom and Resentment" in *Freedom and Resentment and Other Essays* (Routledge 2008) 1,28.

272 Grey, "Stability and the Sense of Justice" 930.

reason and to comply with legitimate decisions even when such decisions run contrary to their conception of the good or follow from a reasonable conception of justice different from the one they affirm as their own. The sense of justice also has *a moral-emotional dimension*. Among the moral emotions that it governs are Strawson's reactive attitudes including indignation, which we feel toward others when they wrong third parties, and guilt, which is the reaction we have toward ourselves when we wrong someone.

In the rest of this chapter, I focus in particular on *resentment*. Resentment tracks "experience of injustice toward oneself,"[273] "injury or indifference."[274] Put differently, "the resenter, in resenting, identifies inappropriate treatment according to certain universalisable standards, she protests injury, and she seeks condemnation of the wrong – either from the perpetrator (in the form of apology or reparations) or from others, through acknowledgement."[275] "Resentment," thus, is tied to "our expectations of justice."[276]

Notably, Rawls characterises fair terms of cooperation as those which citizens can accept without "resentment."[277] However, as has been pointed out, once the existence of reasonable disagreement about political justice is accepted, the possibility for reasonable citizens experiencing resentment toward their state (and possibly their fellow citizens) is much higher.[278] That is, how can reasonable citizens – sincerely endorsing a reasonable conception of political justice – not somehow resent the state for failing to implement arrangements that realise that conception, especially if the arrangements that the state does implement penalises them (or, for that matter, how can they avoid feeling indignant when such arrangements penalise others)? Furthermore, as pointed out throughout, consensus political liberalism aims to be a "*realistic* utopia." As such, as seen in opening the Introduction (§4), it needs to maintain a complex methodological equilibrium between pressing for utopian ideal political arrangements, and accommodating realistic constraints: i.e, it needs to push the limits of *practical* possibility.[279] So far, consensus political liberals have failed to be realistic as regards the practical possibility of reasonable citizens' not feeling resentment – as I will show, justifiable out of their very sense of justice – when their reasonable claims of justice are legitimately ruled out in cases of stand-offs of public reason. Put differently, it is overly utopian (and, partly for this reason, normatively problematic) to hold that reasonable

273 Mihai, *Negative Emotions and Transitional Justice* 35.
274 Peter Strawson, "Freedom and Resentment" 15.
275 Alice MacLachlan, "Unreasonable Resentment" [2010] 41 *Journal of Social Philosophy*, 426.
276 *Ibid.* 429.
277 Rawls, *Political Liberalism* 314.
278 Grey, "Stability and the Sense of Justice" 935ff.
279 See, Jensen, "The Limits of Practical Possibility."

citizens' joint commitment to public reason and their commitment to their conception of political justice will not generate any troubling tensions.

I will argue that the possibility of dilemmas of reasonable justice – in conditions of inconclusiveness of public reason – entails a complex functioning of reasonable citizens' sense of justice. Once we focus not only on the substantive (cognitive) components of the latter – but also on its emotional ones – we are better placed to appreciate in full the tensions pervading citizens' sense of justice qua reasonable citizens. Once again, presenting some elements from ethicists' research on people's moral-emotional response to the already (metaethically) analysed circumstances of moral conflicts and (bad) moral luck provides valuable theoretical tools to advance toward the answers to the above question.

Moral failure, agent-regret, and justifiable non-righteous resentment

Let me recall an example of moral failure discussed in Ch. 4. Anne has told Bette that she will pick Bette up at the airport as Bette lands at night. On her way to the airport, Anne meets Carl, who has had a car accident. While Carl seems fine, he needs a lift to the hospital to have his head checked. Consistent with the idea that Anne has conflicting *pro tanto* duties (respectively toward Bette and Carl), it is permissible for Anne not to keep her word (e.g., Anne tosses a coin and opts to drive Carl). Holding that Bette's claim is *pro tanto* valid in action-guiding terms – i.e., in determining Anne's permissible conduct – is not to hold a specificationist position concerning the validity of Bette's claim. That Carl's claim is fairly selected over Bette's does not count as a condition voiding the validity of Bette's claim. It merely overrides it insofar as Anne deliberates about how to settle her moral dilemma.

Should Anne feel guilty towards Bette? Would Bette be morally justified in resenting Anne for not keeping her word? Or does it only make sense to think that Anne should feel a natural emotion of regret – i.e., merely wishing things had been otherwise? Relatedly, should Anne see herself as morally required to act somehow in reparation for her conduct (e.g., by apologising or perhaps recognising her action was less than adequate toward Bette)? Is it permissible of Bette to expect recognition by Anne of any negative emotion she may experience?

We already know that Anne did not wrong Bette, but that Anne's action proved morally inadequate to meet a well-grounded claim of Bette's. As Bette's claim is genuinely valid and protects an important interest of hers, Anne morally fails Bette while not wronging her. An apology, tracking wrongdoing, would seem misplaced and inauthentic. Still, nothing more than a justification – showing to Bette that Anne did what she sincerely thought was best – seems not to suffice. Perhaps, Anne should do whatever she can to reach Bette as soon as possible, helping to prepare for her incoming job interview and somehow try to make up for her failure. But why? One

possibility, simply, is that this would be the "decent" thing to do, so to speak, out of care. Crucially, Bette may not permissibly claim any apology, for she has suffered no wrong.

Looking at Williams's influential analysis of bad moral luck will help.[280] Although my primary interest concerns the moral-emotional experience of those who are negatively affected by the result of dilemmatic decisions or conduct, I will start from the agents' emotional experience, given the attention it receives in the literature.

Let us imagine Bob who is driving his lorry completely sober and carefully, and within the speed limit. All this notwithstanding, Bob accidentally, and unavoidably, drives into a child who suddenly runs across the street and the child dies. It is impossible to hold Bob *morally* responsible for what happened, in the sense that he did something wrong. It may even be cruel to hold him anyhow blameworthy for what happened. However, something would be morally strange about him, should he react with indifference – e.g., pointing out that he did nothing wrong and, hence, there is nothing for which he should be sorry. Many would expect him to feel some kind of negative emotion and to consider at least whether there is anything he can do to mitigate the effects of what happened. In Enoch's words, to recall from Ch. 4, there would be "something morally amiss" in his indifferent response.[281]

Williams's answer as to why this is so consists of a nuanced intuition: Bob's appropriate emotion makes sense as a *moral*, and not merely natural, reaction. The latter would be regret *simpliciter,* whose meaning consists of a wish that things had been different – i.e., notably, the only type of regret appropriate for bystanders. This regret is not a moral emotion. It is, instead, the emotional response to misfortune. It is "tragic," in the non-deontic sense presented in Ch. 4. Feeling regret simpliciter, Bob would see himself as merely causally involved in a chain of disastrous events. Notably, Williams's intuition is different; Bob's regret is *agent-regret*.[282] To wit, Bob's regret is not a natural emotion; he cannot see himself as a mere causal factor in a series of (very) unfortunate events. According to Williams, Bob has a "special relation" to what happened in virtue of *his* role in the chain of events, and it supports the moral nature of the negative emotion that he feels. Enoch's account of "penumbral agency," presented in Ch. 4, aims precisely to make sense of Williams's intuitions concerning similar cases. In Tannenbaum's words, "agent-regret is a feeling of responsibility. What agents regret is *their own agency*. They see the harm they've caused as something that can be laid only at their feet."[283]

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280 Bernard Williams, "Moral Luck" in *Moral Luck* (Cambridge University Press 1982) 20,39.

281 Enoch, "Being Responsible, Taking Responsibility, and Penumbral Agency" 96.

282 Williams, "Moral Luck" 27ff.

283 Tannenbaum, "Moral Responsibility without Wrongdoing or Blame" 142 – emphasis mine.

We need not be too concerned with the specific example of Bob. What matters to the present analysis is Williams's nuanced account of the relevant moral-emotional phenomenology. Ultimately, my interest lies in the following considerations:

(i) the negative moral emotion in which "agent-regret" consists;
(ii) more importantly, the reactive attitude that, I will argue, correlates to it on the victims' part (e.g., Bette or the family of the child Bob killed) – i.e., "non-righteous justifiable resentment;"
(iii) and how this couple of moral emotions constitutes the appropriate moral-emotional experience of conflicted moral choices.

Starting from (iii), the moral emotions of agent-regret and non-righteous justifiable resentment map, from a moral-emotional point of view, the logical space of moral failure that I presented in the previous chapter. To recall, this space lies between "wrong and blameworthy conduct," on the one hand, and "mere misfortune," on the other. To illustrate, think of Anne, Bette, and Carl. Given the circumstances, it is inappropriate to think that Anne wrongs Bette, but it is nonetheless the case that Anne does not adequately meet Bette's well-grounded claim. While not infringing it *stricto sensu,* Anne still morally fails Bette.

Williams's "agent-regret," is Anne's appropriate justifiable *moral* emotion (and that of the soldier who unexpectedly freezes when their convoy is ambushed, cited in Ch. 4) – see (i) above. From Enoch's perspective the consequences Bette will have to bear fall within Anne's "penumbral moral agency," while not in her core moral agency. No observer may place blame on the agents (and the agents are not required to blame themselves). At the same time, while they have not violated any moral obligations, they have failed the persons to whom they owed obligations, as their conduct proved inadequate to meet these well-grounded obligations. Agent-regret tracks the experience of one's moral failure as distinguished, on the one hand, from wrongdoing, and on the other, from mere misfortune. Hence, if agents take the well-grounded claims (and related expectations) they have failed to meet seriously, they cannot react to the events as if they saw themselves as mere factors in a causal chain of events.

As I anticipated above, it is the victims' moral emotion correlating to agent-regret that it is particularly interesting for this thesis – (ii) above. I am using Williams's analysis to illuminate normative points concerning the domain of political interactions: it may well be that in democratic politics locating something identifiable as "the agent" of agent-regret is anything but easy. The state, of course, is a collective *institutional* agent and ascribing emotions to it may raise a series of

problems.[284] However, my primary interest concerns the counterpart of "agent-regret" – i.e., non-righteous reasonable resentment. The latter is appropriately ascribable to citizens who have been morally failed, and – I will show – troubling in consensus political liberalism.

Thus, what can be said of the emotional experience of morally failed people? Their emotional experience seems particularly problematic. Bette is aware, *ex hypothesi*, that she lacks the moral ground to blame Anne. Let us assume that Anne and Bette share a common set of (some) moral rules sufficient to recognise all the claims involved as falling within a set of *pro tanto* valid claims. Thus, Bette can accept that Anne acted fairly – hence, at least, not wrongly – in deliberating, all things considered, and deciding to drive Carl to the hospital. Still, precisely this awareness held jointly with the one that her claim to be picked up was valid risks making her emotional experience particularly troublesome.[285] While an important interest of Bette's is significantly set back – despite the validity of her claim – she may not blame Anne for her conduct. The validity of Bette's claim in the first place makes her emotional experience moral – i.e., she may feel a kind of resentment – correlating to Anne's agent-regret. Hence it is a justifiable kind of resentment. The unavailability of a case to read her predicament as the result of wrongdoing, however, makes Bette's resentment "non-righteous." She cannot consistently hold that Anne should have acted otherwise, but at the same time she holds that her claim was nonetheless valid. I turn now to analyse the moral-emotional phenomenology of cases of reasonable disagreement about justice in circumstances of inconclusiveness of public reason.

Political-moral failure: reasonable non-righteous resentment out of the "bifurcated" sense of justice

This section argues that it is not morally inappropriate, hence not a sign of unreasonableness, in circumstances in which residues of justice obtain, for reasonable citizens to non-righteously but reasonably (hence justifiably) resent the state for placing on them certain burdens as a consequence of legitimate decisions. Once we read residues of justice as cases of political-moral failure – in which institutional action, while legitimate, proves inadequate to meet reasonable claims of justice – this is what we should expect.

This conclusion should be worrying for political liberals. In a nutshell, due to their reasonableness, citizens will remain committed to the legitimacy of decisions (and *a fortiori* to the overall political structure). Still, their enduring commitment, facing the burden placed upon them

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284 While problematic, to recall from Ch. 2, it need not be impossible. The problem of the institutional applicability of attitudinal virtues and emotions is a complex one, but not an impossible one to tackle – see, Collins, "The Government Should Be Ashamed: On the Possibility of Organisations' Emotional Duties." As it will get clearer in Ch. 6, it is possible to describe the state as expressing – e.g., through a multitude of "action" – the relevant attitudes and emotions, e.g., "agent-regret."

285 On this point, see also Carlsson, "Tragedy and Resentment" 1172; 1181,1182.

irrespective of the reasonableness of their claims, makes their condition particularly complex. The resulting non-righteous, but reasonable, resentment prompts reasonable citizens' alienation from political society and their own sense of full membership. Non-righteous reasonable resentment, I will argue, tracks the imposition of "alienating strains of commitment" on reasonable citizens. This position, as anticipated, is also better placed to resist possible charges of excessive idealisations of what requirements a reasonable, but not overly utopian, sense of justice can accommodate without problematic tensions.

Let me start by presenting three examples to fix the starting intuitions concerning the differences between justifiable and unjustifiable resentment and between different kinds of justifiable resentment. I construct all the cases as putting citizens' self-interest at odds with legitimately determined legislation. The intent is to assess how citizens' sense of justice can be seen capable of guiding the (intrapersonal) process of reconciliation between their self-interest and the law they are requested, and expected, to accept.

The examples concern the specification of the limit for the permissible interruption of pregnancy. In Ch. 1, I noted that some theorists consider abortion the paradigmatic example in which consensus public reason proves indeterminate, rather than inconclusive, and pointed out that recent consensus political liberals' research shows that this is not the case. I will again assume that the latter are right and construct competing scenarios based on the discussion about reasonable public-reason based arguments in Ch. 3. As a consequence, I will hold that extreme positions are unlikely to be seen by reasonable decision-makers as supported by weakly shareable arguments (i.e., as taking all the competing values at stake into account and reasonably balancing them).

Scenario 1

Jill is pregnant. As her pregnancy progresses, she starts questioning her previous decision of birthing a child in a world plausibly headed to climate disaster. By the time she is deep into her last trimester, she identifies as an anti-natalist, persuaded in full conscience that putting a new life into this world is immoral. Her state has a permissive policy on reproductive rights as the limit for the voluntary termination of pregnancy is set at the point of viability of the foetus, at the sixth month of gestation. She has passed this point and, therefore, she has no available legal option that can accommodate her claim to terminate the pregnancy.

Scenario 2

Susan discovers she is eight-weeks pregnant. Her pregnancy was not intended, and she wants to terminate it. Susan's state passed a "fetal heartbeat bill" that sets the legal limit for abortion at six

weeks (even in cases of rape or incest). Doctors who perform the medical procedures beyond this point, as well as women requesting it, face jail and fines. Susan has passed the limit and, therefore, she has no available legal options that can accommodate her claim to terminate the pregnancy.

Scenario 3

Claire discovers she is three-months and one week pregnant. The legislation on abortion rights in her state sets the limit for the voluntary termination of pregnancy at the end of the first trimester. In line with the requirements discussed in Ch. 3, the law can be seen as striking a reasonable balance between multiple political values at stake, while not maximising women's control over their body within the set of reasonable solutions. Claire has passed the limit and, therefore, she has no available legal options that can accommodate her claim to terminate the pregnancy.

Here, I am primarily concerned with Claire's moral-emotional experience (scenario 3). My suggestion is that there are essential differences between Claire's (and other women's) moral-emotional experience when compared to those of Jill and Susan (and other women's). Note that the analysis of Claire's emotional experience can be extended to the Sikhs' *kirpan* example sketched in Ch. 4.

Let me look first at scenario 1. Jill lacks any ground to make sense of her negative emotions as moral. If Jill is a reasonable citizen, she will see, out of her sense of justice, that there is no available course of state action supported within the limits of reasonable justification that could have accommodated her claim. A law allowing women to terminate their pregnancy at any time of gestation would simply fall outside of the set of possible reasonable proposals. While it makes sense to think of her emotional experience as one of regret – wishing things had been different – resentment from Jill toward the state would not be justifiable. Indeed, it would be unreasonable. In Jill's circumstance, her conception of the good and her sense of justice are at odds. Assuming she is reasonable, her sense of justice provides her with the resources to reconcile her conflict in favour of what *any* reasonable conception of justice would require (and to prioritise it should it conflict with her conception of the good, as in this case). Being able to object to the law only from outside public reason, she would be unreasonable not to endorse the law as legitimate and just in outlawing her request.

Consider scenario 2. Susan's moral-emotional experience is similarly easily reconcilable, while on the very opposite end of the spectrum. The law arguably does not take into any consideration her interests as a woman entitled to even a minimal degree of control over her reproductive life and body. With a limit on termination at six weeks, indeed, many women who get pregnant may not even become aware of their condition before the deadline for legal termination has passed.

Susan (and other women) may reasonably be expected to feel treated by her state as merely instrumental to the survival of the embryo. By interrogating her sense of justice, Susan can be reasonably be expected to see that those supporting the law cannot rely on any argument that they could expect her reasonably to accept. They cannot claim, in good faith, to have considered women's basic interests, as they flatly fail the balancing requirement (irrespective of the normative sources – political or perfectionist – upon which they ground their arguments). Susan can experience what we may call *righteous resentment*. Her feeling of injustice is stably supported by public reason (within which she is committed to reason). Righteous resentment obtains in the face of (grave) injustice, which is also always an illegitimate use of state power (more on this below).

In scenario 3, Claire's moral-emotional experience is not as easily reconcilable, by interrogating her sense of justice, as Jill's and Susan's. Like Susan, Claire has to bear a burden that her reasonable sense of justice can consistently challenge. Still, it appears that she cannot make sense of her negative emotion, should she feel any,[286] as akin to Susan's righteous resentment. Being reasonable, she recognises that the law is justifiable from within public reason, even if it places a heavy burden on her. However, Claire's situation is not akin to Jill's either. A case for a less restrictive law than the one legitimately enacted in her state can be made based on a (different) reasonable balance of the political values at stake. In fact, out of her sense of justice, Claire sincerely thinks that balances that tend to maximise women's control over their bodies are more reasonable – i.e., instantiate better interpretations of what terms are fair concerning the determination of the limit voluntarily to terminate a pregnancy. The point here is not that Claire's sense of justice and her conception of the good are at odds, and she should prioritise the former. The point is that her sense of justice gives her the resources to hold the state accountable for implementing a different law concerning matters hugely impacting her life-prospects, while also asking her to accept whatever alternative (still reasonable) solution is all things considered decided.

That is, in type-3 scenarios, what we witness is a "bifurcated sense of justice" on the part of reasonable citizens whose fundamental interests may be severely undermined.[287] Citizens are at once committed to their own sincerely held reasonable conception of justice (and interpretations of justice) and, at the same time, they give priority to a "sense of legitimacy."[288] To be sure, this is precisely the expected functioning of Claire's sense of justice, in the face of the acceptance of the

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286 It is worth pointing out, that the argument is not that reasonable citizens in Claire's position *will necessarily* feel some kind of resentment and will feel alienated from their full membership in political society – more on this below. Supererogation is always a possibility; my point, however, is that it is morally permissible for them to feel a form of resentment and alienation and thus that an empirical conjecture that they will is plausible.

287 Grey "Stability and the Sense of Justice" 939.

288 *Ibid.* 940.

moral import of the BoJ. When asking "who should decide how the state should act?" we can answer "all reasonable citizens as equal co-legislators" only by following the appropriate procedure and the restrictions imposed by public reason. Still, importantly, there is a tension in the bifurcated sense of justice that can be judged unproblematic only by taking Claire's political identity *as exhausted by her being a co-legislating citizen*. As seen in Chs. 2 and 3, this is not the case. To hold that it is not permissible for Claire to resent the state *tout court* – hence, characterising her justifiable experience as one of regret *simpliciter* – requires that she should look at herself not only primarily as co-legislator of the use of state power on a par with her fellow citizens, but *only* in light of this dimension of her political identity. I shall return on this point in §4.

Since Claire is committed to the principle of legitimacy to settle political questions, she recognises (and can be reasonably expected to recognise) that she is not wronged by the legitimate law. Categories of blame and wrongdoing, as argued throughout, would mischaracterise the situation. However, the kind of regret that seems available to Jill falls short of the specificity of Claire's situation. Unlike Jill, Claire can contest the burden she has to bear *out of her sense of justice*, not merely out of her conception of the good or mere self-interest. In a sense, she has a double burden; she accepts as legitimate the legislation that she genuinely believes does not best instantiate fair terms. This creates some – overridable – strain in her political conscience as a co-legislating citizen. Additionally, she has to put up with the burden on her life-plan that she perceives as less than just out of that very sense of justice, creating a further tension as a reasonable claimant. In light of the discussion above, we should not expect of her to refrain from perceiving her situation as one in which she is failed by her state; one she can *reasonably* resent.

Crucially, we should not take Claire's resentment as a sign of unreasonableness. The circumstances involve genuine moral loss. That is, claims for less restrictive reproductive policies are reasonable, and the balance underpinning legitimate legislation is not adequate to protect Claire's basic interest. Claire should be reasonably expected to experience what I have called above 'non-righteous reasonable resentment' in the face of political-moral failure toward her (and similarly situated fellow women citizens). This resentment is a particularly troubling moral emotion precisely because, while being a genuine form of resentment, it is not directed at a blameworthy agent.[289] It is out of her very sense of justice that Claire can feel (appropriate) resentment and

[289] See, Carlsson "Tragedy and Resentment, 1181. Of course, through legitimate routes, the law can be changed in the future. The point is not that Claire should not desire or struggle for a change in the law by following the proper channels. The point is that Claire will recognise that decision as legitimate and, thus, she will not think that the state acted impermissibly. Things can still change (in the future) but Claire will not press the state to change their decision to accommodate her reasonable claim of justice based on the illegitimacy of that decision.

appreciate that, this notwithstanding, she cannot blame the state (nor her reasonable fellow citizens).

Political-moral failure and "alienating" strains of commitment

Before closing this section and moving to argue why the state has a duty to address residues, I have one last argument to defend. I will argue that political-moral failure generates what David Lefkowitz has termed "alienating strains of commitment."[290]

Strains of commitment indicate an inverse proportion between the weight of burdens that principles of justice impose on citizens and the extent to which the latter can be expected to endorse those principles and abide by the directions of the institutional system they regulate. The weightier the burdens, the less likely citizens are to be able to affirm principles of justice (or fundamental political decisions) and to comply with them. First of all, it is worth citing a passage in which Rawls distinguishes two kinds of strains of commitment:

> "strains [of commitment] are excessive […] when, viewing ourselves as free and equal citizens, we can no longer affirm the principles of justice […] as the public conception of justice for the basic structure. The meaning of "affirm" here can be given by noting two ways in which we react when the strains of commitment seem to us excessive. In the first way we become sullen and resentful, and we are ready as the occasion arises to take violent action in protest against our condition. In this case the least advantaged are bitter; they reject society's conception of justice and see themselves as oppressed. The second way is milder: we grow distant from political society and retreat into our social world. We feel left out; and, withdrawn and cynical, we cannot affirm the principles of justice in our thought and conduct over a complete life. Though we are not hostile or rebellious, those principles are not ours and fail to engage our moral sensibility."[291]

Strictly speaking, both the types of strains are variations of "excessive strains," based on Rawls' characterisation. To avoid complicating an already difficult matter, I will refer below to the former type as "excessive strains" and the latter as "alienating strains."

Excessive strains would seem to obtain in circumstances of (grave) injustice. Unjust principles cannot be affirmed by reasonable citizens as *the* public political conception of justice. Similar conditions are those arguably obtaining for women citizens, e.g., in Susan's society (scenario 2), where the legislation on reproductive rights is (arguably gravely) unjust and illegitimate. More generally, excessive strains result from oppressive systems, or fundamental decisions, that lack reciprocity. The main target of Rawls's contractualist revival, in this sense, is utilitarianism and the injustice of violating (some) citizen's basic rights, or leaving (some) citizens with little or no access

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290 David Lefkowitz, "Strains of Commitment" in Jon Mandle and David Reidy (eds) *The Cambridge Rawls Lexicon* (Cambridge University Press 2015) 815.

291 Rawls, *Justice as Fairness*, 128ff.

to the all-purpose means and opportunities necessary to make effective use of them, for the maximisation of aggregate utility. Utilitarianism, Rawls contends, places excessive strains of commitment on citizens. Still, as a further example, think of Tommie Shelby's analysis of U.S. "Dark Ghettos." Ghetto inhabitants are *de facto* excluded from the social contract. They are deprived of credibly fair chances at free occupation or quality education, subjected to systematic stereotyping, and facing remarkably few chances at social mobility.[292]

The point is that, among other aspects, (gravely) unjust institutions cannot but create excessive tensions in citizens' capacity to endorse the principles regulating them and in their moral motivation to abide by their requirements. Shelby, for instance, argues precisely that citizens of dark ghettos can permissibly not abide by their civic duties. Rawls even suggests that citizens subjected to excessive strains will be ready to resort to violence to protest their condition. Notably, the resentment that Rawls explicitly associates with excessive strains is what I have called above *righteous resentment*.[293] Citizens who face grave injustice can resort to their reasonable sense of justice to claim that they are oppressed. I will leave excessive strains aside. They cannot be the ones at stake in scenarios of political-moral failure that are not matters of grave injustice.

The relevant strains are those of the second kind. The reason why Lefkowitz calls these strains "alienating" lies in the distinctive concern underpinning Rawls's discussion – that is, a *kind of damaged relation*, indeed an alienation – between reasonable citizens experiencing these strains and the institutions of their state.[294] Indeed, alienation can be characterised as a relation or, perhaps more precisely, a condition affecting relations. According to Simon Thompson, "alienation is a state of affairs in which someone is *disconnected from something*, where that disconnection is judged to be problematic in some way."[295] In more formal terms, "if A is alienated from N, *there is some*

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292 See, e.g., Tommie Shelby, "Justice, deviance, and the dark ghetto" [2007] 35 *Philosophy & Public Affairs* 126,160 and *Dark Ghettos. Injustice, Dissent, and Reform* (Harvard University Press 2014).

293 Arguably similar circumstances may be such that even "anger" can be considered not as a mere natural emotion but endowed with moral import. The principles supporting similar institutions or reasons supporting fundamental decisions, in Rawls's words, cannot be thought of as acceptable by "free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position," see, Rawls, "The idea of Public Reason Revisited" 578. For discussion about the morality of anger, see Myisha Cherry and Owen Flanagan (eds) *The Moral Psychology of Anger* (Rowman & Littlefield 2017). For a denial of the moral justifiability of anger, see Martha C. Nussbaum, *Anger and Forgiveness. Resentment, Generosity, and Justice* (Oxford University Press 2016). In defence of the relevance of anger and resentment to deter injustice, see Jaqueline Taylor, "Resentment, Sympathy, and Indignation" [2019] 35 *Humana.Mente Journal of Philosophical Studies* 1,17.

294 Notably, it should be expected *a fortiori* that in cases of excessive strains citizens are radically alienated. Shelby characterises ghettos' citizens' relation to the state in precisely similar terms. In his words, many are "deeply […] alienated from wider society, its major institutions, or is basic social norms," Shelby, "Justice, deviance, and the dark ghetto" 136.

295 Simon Thompson, "Alienation and Establishment" [2020] 11 in *Religions*, https://doi.org/10.3390/rel11060282.

sort of problem or deficiency in A's relation to N. The claim that A is alienated from N presumes that the normal A to N relationship is one of closeness or connectedness or trust, etc."[296]

Along these lines, Rawls's preoccupation is that citizens may be unable to see themselves as "full members"[297] of their political society, *alienated* from "political society" and the "principles of justice."[298] Experiencing the second kind of strains, citizens "feel left out," "growing distant from political society and cynical." They will see themselves and feel treated as less than full members, *sacrificed* to social cooperation, rather than as fully participating in it.

In cases of political-moral failure, citizens, despite their full cooperation, their allegiance to democratic legitimacy and their related commitment to public reason, will end up having to bear remarkably heavy burdens (think of Claire, in the example above, or the Sikhs in Ch. 4). The price asked of them for their allegiance to democratic legitimacy is considerable, while all things considered justifiable in conditions of reasonable disagreement about political justice itself. We do not take the fundamental interests associated with supporting citizens' moral powers at the deepest level seriously if we deny that citizens who have those interests legitimately encroached, despite the reasonableness of their claims, will not somehow resent the state.

For sure, citizens in this position cannot justifiably see themselves as oppressed. *Ex hypothesi*, they receive a justification they can accept for state action – i.e., their rights are not arbitrarily infringed upon – and, presumably the basic structure of society protects other opportunities of theirs. However, despite the reasonableness of their claims, some of their basic interests are set back. It is morally amiss and unrealistic to ask of reasonable citizens in similar conditions not to feel (partly – more on this below) alienated from the institutional system, or not to experience non-righteous reasonable resentment.

Let me close this section by clarifying a point. No theory can avoid placing any strains of commitment on citizens (nor should it aim to). Strains of commitment are part and parcel of associated life. Precisely because social co-operation generates both benefits and burdens a critical aspect of political morality has to do with making sense of how these can be "distributed" fairly. What I argue in the next section is that consensus political liberals should be concerned by the possibility that alienating strains of commitment affect the reasonable just and legitimate society. Arguments based on the relevance of strains of commitment need to be comparative: a theory is better than another if it can show that it places *fewer strains* or that it is better capable of mitigating

296 Daniel Brudney, "The young Marx and the middle-aged Rawls" *A Companion to Rawls*. Jon Mandle and David A. Reidy (eds) (Wiley Blackwell 2014) 455. Emphasis mine.

297 Rawls, *Justice as Fairness* 130

298 Brudney, "The Young Marx and the Middle-Aged Rawls" 455ff.

their inevitable presence.[299] One part of the appeal of my proposal is that it aims to improve consensus political liberalism in precisely these terms.

These last remarks give me the opportunity to devote a few words to the strains experienced by unreasonable claim-makers. Surely, unreasonable claim-makers are somehow not committed to fair cooperation in the first place. However, nothing in what I have argued shows that there could not be prudential – or perhaps even principled – arguments to vindicate the importance of being concerned with the alienation of unreasonable claimants.[300] Nothing in what I am arguing in this thesis, more generally, says anything about possible residues of political morality originating from unreasonable claims legitimately rejected in light of any reasonable perspective. The point is that what the legitimate reasonably just state has to do if anything, *vis-à-vis* unreasonable claimants' resentment, falls outside the scope of this work. Different theoretical and normative tools than those I develop – if any can be located – must be sought to address the above points.

I shall close this section by sketching a point expounded in the rest of this chapter. If reasonable citizens' alienation from their own full political membership and political society – along with the associated non-righteous reasonable resentment – are relevant in consensus political liberalism, then arguments against the moral appropriateness of state action in response to such residues can be rejected.

4. A relational respect-based duty to address residues: attempting to counter citizens' alienation

In Ch. 4, I anticipated that the notions of moral failure and penumbral agency are not interesting for purely theoretical reasons (to get the metaethical characterisation of extraordinarily complex circumstances right). Getting their analyses right, for both Enoch and Tannenbaum, has also to do with advancing prescriptive judgements concerning the aftermath of choices and conduct. Making sense of the notions of moral failure and penumbral agency has to do with explaining how and why agents morally failing others ought to (attempt to) act in response to their conduct.

I will argue that post-decision-making strategies to recognise the genuine moral loss occurred *is owed* to failed citizens (more on this in Ch. 6); the state has a duty to address residues. I shall thus clarify what is wrong with the argument, with which the chapter started, that residues of justice are inevitable and as such do not require a response. The state's appropriate response, I will show, is essential to attempt to counter reasonable citizens' alienation. What is left to do is show how alienated political relationships are problematic in consensus political liberalism.

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299 See, also, Lefkowitz, "Strains of Commitment" 815.

300 For a similar concern, see Matthew Clayton and David Stevens, "When God Commands Disobedience: Political Liberalism and Unreasonable Religions" [2014] 20 *Res Publica* 65,84.

First of all, I shall recap the complex arguments concerning both the existence and the normative relevance of residues of justice in consensus political liberalism. To do this, I return to the *kirpan* example. I assume that ultimately the decision taken prioritises safety concerns, rejecting the Sikhs' claim to wear their *kirpan* appropriately sealed and hidden (I will return to this example, and multiple legitimate outcomes, at much greater length in the next chapter).

The argument so far

Based on my analysis in Ch. 1, the decision not to allow the wearing of the *kirpan* is publicly justified qua based on weakly shareable reasons. The ideal of joint rule among equal co-legislators is honoured (see Ch. 2), and the decision is legitimate. However, the circumstance is one of inconclusiveness of public reason – i.e., one in which multiple similarly weighty *pro tanto* valid claims conflict. The dilemma of reasonable justice involves genuine moral loss. That is, the Sikhs' claim – while legitimately unaccommodated – is genuinely valid. While the state does not wrong the claimants by imposing a remarkably heavy burden on them (despite the contestability of the imposition based on competing reasonable arguments), it morally fails them. The action is inadequate to protect the reasonable exercise of religious liberty, as argued in Ch. 4. In both Chs. 2 and 3, I argued that at the core of political liberalism lies a concern with protecting certain citizens' basic interests, traditionally prioritised, in that having them set back is considered particularly harmful to citizens' development and exercise of their moral powers. Moral integrity, protected by freedom of conscience and religion, fall within this set.

Lastly, in the previous section, I developed the tools to make sense of what is problematic in political-moral failure. The Sikh claimants can be reasonably expected not to be rebellious – driven by righteous resentment – toward the state since they are not wronged. However, they can experience strains of commitment that alienate them from their full membership in their political society whose basic structure proves inadequate to protect a basic interest of theirs, despite the reasonableness of their claims. The moral-emotional phenomenology of the experience of these strains, I further argued, is one of non-righteous reasonable resentment.

Claiming responsibility for political-moral failure: citizens as more than co-legislators

In this section, I defend a principled argument in support of the claim that morally failed citizens *are owed* recognition of the legitimacy of their non-righteous reasonable resentment and the political-moral failure they endure. Respecting them, I argue, calls for attempting to redress residuals and thus trying to counter the ensuing alienating strains.

First, there can be instrumental stability-based reasons why alienating strains of commitment – and hence political-moral failure – are problematic. This aspect of the investigation falls outside

the scope of my analysis. Still, it is worth clarifying that the political value of the stability of liberal democratic institutions over time may have a plausible role in further explaining why consensus political liberals should not be indifferent to the presence of, and *continued exposure* of citizens to, alienating strains.

Briefly, an institutional system is fully stable when it is capable of eliciting, and sustaining over time, the allegiance of its reasonable citizens. The best one might hope for is the "wholehearted"[301] endorsement of the institutions of the liberal democratic state by all its (reasonable) citizens, so that liberal democratic institutions are capable of enduring over time. As Rawls's passage about strains of commitment shows, "excessive" strains are a paradigmatic destabilising force. Indeed, in that passage, Rawls suggests that citizens experiencing excessive strains are "rebellious" and "ready to […] take violent action in protest against [their] condition." While alienating strains are not similarly destabilising, we may assume that they may progressively impact the stability of the institutional order. As a consequence of repeated instances of political-moral failure, citizens – growing more and more distant from their political society – may be drawn to unreasonableness or, perhaps, get less and less responsive to their natural duty to defend, support (and improve) reasonably just institutions. [302]

The stability-based angle to the importance of addressing residues is interesting and worth pursuing one but is a work for another time. In this last section, in line with previous arguments developed in this thesis, I am concerned with the principled reasons to defend a state duty to address residues, mitigating citizens' alienating strains of commitment. Notably, being a principled argument, my defence of the state duty to address residues is stronger than one premised on the importance of preserving stability. The latter, which is instrumentalist, only defends a state duty so long as alienating strains of commitments do threaten stability. A normative argument based on the importance of sustaining respectful relations – i.e., concerning the conditions constitutive of vertical political relations in liberal democratic politics – is valid even if it was possible to deny that threats to stability over time obtain.

The argument I will defend is that a "that's unfortunate"-type of answer to political-moral failure is inconsistent with recognition respect – i.e., the relational ideal informing state-citizen relations in consensus political liberalism, as argued in Ch. 2. There, I argued that civic-friendship driven theorists are right in explicitly highlighting the importance of the moral quality of political

301 Rawls, *Political Liberalism*, xxxviii.

302 For a concern with *the protracted irresponsiveness* to the political agenda of some groups' claims in conditions of reasonable disagreement, see Lauren King, "The Federal Structure of a Republic of Reason" [2005] 33 *Political Theory* 629,653. On the possibility of the pressure toward 'unreasonableness' in conditions of reasonable disagreement about justice, see, Grey, "Stability and the Sense of Justice."

relations. While they arguably focus primarily (if not uniquely) on horizontal relations between citizens qua political agents, I particularly insisted on the importance of "vertical" state-citizen relations.

A state that does nothing to mitigate citizens' (risk of) alienation *vis-à-vis* political-moral failure is not (and can be hardly seen as) one that expresses respect for citizens. Alienated citizens will be hindered in thinking of the institutions of their state as relating to them respectfully *if* nothing is done to recognise the validity of their non-righteous reasonable resentment. The rationale of my defence of the importance of state action to address residues of justice rests on inferring considerations concerning the moral quality of vertical political relations based on how state officials and institutions *react* to political-moral failure.

Williams's and Enoch's intuition is crucial. As seen, indifference *vis-à-vis* moral failure is in and of itself normatively troubling. As I argued, it would be inappropriate of Anne to merely reply, in response to Bette's reproach, that it is not her fault that Bette's important interest was set back, despite the good grounds for Bette's claim to have it protected. I take that it is plausible to expect Anne to offer Bette an appropriate response; more precisely, *an expression of agent-regret*.

The last remark is crucial. The notion of moral failure identifies the "aftermath conduct" as a matter of duty, rather than, say, humanitarian care or decency. Analogously, the state has a duty to act to recognise the presence of residues, in virtue of the relation of respect that it aims to uphold toward citizens (more on this below). As already established, the state is morally responsible, though not unjust nor blameworthy, for the inadequacy of its action. The "aftermath" institutional conduct is the due moral response to the political-moral failure constituting a way of claiming moral responsibility for the sacrifices political cooperation poses on certain reasonable citizens.

To illustrate, political-moral failure is a deontic category. As such, it can vindicate a duty for the state to redress the inadequacy of its action in protecting citizens' reasonable claims to access basic goods of political justice. This duty is based, I will argue, on considerations of respectful treatment. That is, failing to institutionalise any kind of response to political-moral failure is *not to repair the relation of alienation* that morally-failed citizens find themselves in. Fully to express respect to morally-failed citizens, the liberal democratic state needs to engage in post-decision institutional strategies to deal with residues, thus attempting to mitigate non-righteous reasonable resentment and alienation.

In what sense is there a deficiency of respectful treatment, absent an institutional response to political-moral failure? One may rightly point out that, after all, morally failed citizens receive reasonable justification for state action and, hence, are fully treated – in keeping with honouring the ideal of joint democratic rule – as equal co-legislators of political power. Far from being met

with indifference, morally-failed citizens are met with (weakly) shareable justification. Public justification is directed to show them that they can see as minimally valid the reasons leading to the decisions that burden them. This line of reasoning is correct and points to a vital aspect of how the state is respectful of reasonable citizens.

To recall, relations of recognition respect obtain when *A* (the respecter), recognising *x* (the ground of respect) of *B* of positive value (attitudinal dimension), treats *B* in ways appropriate to *B*'s having *x* (behavioural dimension). Citizens' moral powers are the normative features of political personhood in virtue of which they are to be respected. Citizens' status as free and equal moral persons, the ideal of citizenship at the core of political liberalism, depends on being treated as the possession of the moral powers – and the interests in developing them – command.

Part of my concern in Ch. 2, to recall, consisted precisely in showing that multiple dimensions are constitutive of citizens' status as free and equal. That is, free and equal citizens are not only "reason-givers and receivers". In addition to being co-legislators of political power – entitled to public justification – I argued that citizens are (reasonable) rights holders, with lives of their own to live. In this sense, they see themselves as entitled to the necessary (basic) social conditions for the reasonable exercise and development of their moral powers. Additionally, they are civic equals with valid claims not to have their equal civic worth affected by any ascriptive or elective identities they may embody.

A political liberalism that stops the requirement of state action at the provision of public arguments for the decision constituting political-moral failure, focuses unique normative attention on respecting citizens' as co-legislators of political power. To respect citizens also as reasonable right-holders, the state needs to pay attention, on a case-by-case basis, to how legitimacy in circumstances of inconclusiveness may affect reasonable citizens' basic interests. Only in this way does the state address appropriately their pro tanto valid claims for the protection of their basic interests. Indeed, although the state does not wrong claimants in those conditions, it should claim responsibility – which *is present* although "penumbral" – for the sacrifice imposed on reasonable citizens, despite the reasonable justifiability of alternative courses of state action. This duty to claim responsibility for those consequences of legitimate law arises out of recognition of the affected citizens as reasonable right-holders (or civic equals).

Put differently, citizens are not merely "disagreeing co-legislators." In dilemmatic instances of political decisions, some will lose out on basic opportunities with foreseeably debilitating consequences for the development of their moral powers. It is one thing to prioritise citizens' identity as co-legislators and to advocate for the *priority* of legitimacy over each citizen's sincerely held conception of justice in keeping with the normative relevance of the burdens of judgement.

It is another thing entirely to reduce citizens' political identity to only this. Holding that the justification of state action in cases of political-moral failure is exhaustive of appropriate treatment fails to act in recognition, as respect relations would demand, of the entirety of their political personhood. This is an impoverished reading of political liberalism that mischaracterises how citizens see their political identity – in light of political liberalism's premises – and that, ultimately, does not take sufficiently seriously what the disagreement is about.

Notably, the discussion concerning alienating strains of commitment that I presented above helps stress why consensus political liberals should care about the recognition of residues. The passage from Rawls that I presented aims to make sense of the strains of commitment that his (reasonably contentious) "difference principle," regulating the distribution of income and wealth, is meant to mitigate. While the worst-off are not oppressed – as their basic liberties, and access to fair equality of opportunity, are protected – Rawls points out a persisting sense that the basic institutional system works at their expense rather than to their advantage *unless a compensating mechanism is in place*.

As is well-known, at the core of Rawls's difference principle lies the contentious assumption that (reasonable) citizens would judge equality as the appropriate benchmark of comparison concerning the distribution of income and wealth. It is unlikely that the baseline of equality is a premise that all reasonable citizens can share with respect to income and wealth (e.g., some reasonable citizens will believe in merit, some will believe in the legitimacy of natural endowments affecting material distributions). By contrast, and crucial for my analysis, a baseline of equality in relation to the enjoyment of basic liberties is a definitional component of reasonable conceptions of political justice. Put differently, citizens are not expected to share the same conception of distributive justice (e.g., JaF). They will reasonably disagree on whether equality, merit, sufficiency, are the proper benchmark of comparison when it comes to the distribution of income and wealth. What they do not disagree about, holding any reasonable conception of justice, is that being treated as equal when it comes to their basic interests is of paramount importance.

Accepting the burdens of judgement, and their consequences for legitimate rule, entails that alienating strains of commitment are not ruled out even in a legitimate and reasonably just liberal democracy. They may result from the system failing to protect the reasonable exercise of basic liberties in circumstances of inconclusiveness of public reason. Morally failed citizens can consistently see themselves treated as equal co-legislators, but can nonetheless be reasonably

expected to feel alienated qua reasonable right-holders (or civic equals).[303] That is, failed citizens are partly alienated from political society and, partly, from their own full status as free and equal citizens.[304]

Ignoring citizens' alienation is incompatible with respectful treatment. Respectful treatment for citizens as free and equal can only obtain if (at least) recognition of the burdens that morally failed citizens are made to bear is incorporated in institutional action. Consensus political liberalism aims to show that the presence of pervasive ethical pluralism, different reasonable religious, philosophical traditions, and ultimately of competing political conceptions of justice, need not undermine the possibility of *all* reasonable citizens' "wholehearted" endorsement of the (reasonably) just state. All reasonable citizens should be able to see themselves as full members and see their institutions *as fully theirs*. No reasonable citizen of the well-ordered society should "grow distant from political society," confined (if not for a choice of their own) in their "social world," feeling *left out*. Hence, residues of justice are a problem for a principled reason.

A critical aspect of the institutions of the state is that they must respond in recognition of the normative features constituting political-moral personality – hence, constituting citizens' status as free and equal – through such things as legal texts, public officials' speeches, and formal practices. A respect-based justification of the state duty to address residues is to do with responding to the normative dimensions of citizens' moral personality. Thus, in the *kirpan* example, state action aimed at the recognition of non-righteous reasonable resentment is supported by recognition respect for citizens *as morally failed right holders*; as self-authenticating sources of (*pro tanto*) valid claims (as seen in Ch. 2). Since citizens, qua citizens, are more than co-legislators of political power, they are entitled to be treated accordingly.

5. Conclusion

The core of this chapter has been to argue that supplementing consensus political liberalism with state action aimed to address residues is a state duty; it is owed as a response to political-moral

303 Put in different terms, that still highlights the tension internal to citizens' moral psychology, Grey argues that some citizens will face "a moral–psychological dilemma. Their self-respect is jeopardized by the disparity between how they conceive of their own worth and society's apparent disregard of it. This disparity, and the related disparity in judgments about justice, alienate the victim from society. […] Pulled in two directions, one option would be to fight to re-establish the viability of their plan of life, in the form of redress or reform. This path might require prolonged confrontation: protracted alienation. A second option would be for the citizen to forsake their plan of life, implicitly accepting a different, perhaps lower, valuation of their worth." See, Grey, "Stability and the Sense of Justice" 935.

304 As Brudney points out, indeed, we can be alienated from something along one axis, while not along another. I his words, "A is alienated from N along axis J due to cause X. It follows that A could be alienated from N along axis J but not along axis K." See, Brudney, "The Young Marx and the middle-aged Rawls" 456.

failure and is essential in upholding relations of respect towards reasonable morally-failed citizens. The status of such citizens as free and equal citizens is threatened in conditions of inconclusiveness of public reasons – not qua co-legislators of political power, but qua reasonable right-holders – to the extent that the adequacy of the institutional scheme to protect their highest order interests is undermined.

Morally-failed reasonable citizens can be expected to experience alienating strains of commitment, accompanied by what I called non-righteous reasonable resentment. These strains can stir citizens' alienation from political society, undermining their sense of full membership. To counter this alienating pressure, and sustain the possibility of citizens seeing themselves as fully respected in social cooperation, rather than as sacrificed to it, public justification must be complemented so as to convey recognition of the political-moral failure to which reasonable citizens are subjected.

Chapter 6

Acknowledging political-moral failure. Notes on institutionalisation

1. Introduction

This final chapter has two aims. Firstly, it analyses in depth two real-world debates – the *kirpan* issue (to which I have referred multiple times) and the debate about the regulation of access to pornography (especially as regards young citizens' access). The point is to show how residues of justice obtain in circumstances of inconclusiveness-based reasonable disagreement about justice. As I argued in Ch. 5, the state has a respect-based duty to offer *appropriate acknowledgment* of having morally failed reasonable citizens, hence attempting to counter their alienation. This acknowledgement encompasses an expression of (collective) agent-regret and due recognition of the validity of morally-failed citizens' "non-righteous reasonable resentment." Secondly, it sketches strategies that the state practically *can* (and may) adopt to discharge its duty to acknowledge political-moral failure and express agent-regret in support of properly respectful relations.[305]

An introductory caveat is necessary. The analysis in the last section has admittedly limited ambitions if seen against the background of the many questions raised by showing the existence of political-moral failure in consensus political liberalism. For instance, given that residues of justice exist and that addressing them matters to the moral-quality of state-citizens relations, multiple questions can be asked: (i) "is there always something altogether that the state *can* (practically) do?"; (ii) "is what the state can (practically) do sufficient effectively to counter morally-failed citizens' partial alienation and feeling of non-righteous reasonable resentment?"; (iii) "if multiple "state actions" are practically available, what *ought* the state to do?"; and, of course and perhaps more importantly, (iv) "who decides what state response to political-moral failure is morally appropriate?" Fully addressing all these questions is necessarily a work for another time.

That said, I hope the chapter successfully offers a starting point for future prescriptive work. Firstly, I propose an answer to (i) by showing that the set of state responses to acknowledge the presence of residues is (almost) never empty. *Minimally*, state officials can – and should – recognise the presence of residues through public speeches in their institutional role. As regards (ii), I can merely offer a suggestion. That is, the extent to which any strategy can be thought of as plausibly capable of countering citizens' alienation matters in assessing the moral appropriateness of the state's response. However, this is so up to a point. The state – as I argued in Ch. 5 – should *attempt*

[305] As a terminological note, I will sometimes refer to the idea of "addressing residues" as a shortcut for the more precise idea of "acknowledging political-moral failure and express agent-regret."

to address citizens' alienation. It will not always succeed, and it should be expected that there is a point beyond which the incapacity of state action to actually counter citizens' alienation is a sign of an emerging drive towards unreasonableness on citizens' part. Since I will not offer precise normative criteria to answer (iv), I will not satisfactorily answer (iii) either. Still, I shall advance two suggestions on those points: to address question (iii), I contend, we need to look at whether the state response can plausibly work as an acknowledgement of the political-moral failure and of the validity of morally-failed citizens' non-righteous reasonable resentment. That is, the relevant point is whether state action can send the right kind of message. The last remark is important. It entails that it is not possible to make sense of appropriate strategies to address residues in abstraction from the details of concrete disputes, since the determination of the "what" in which state action comes to be instantiated rests upon the assessment of the kind of message such an action can hope to be able to send. Action to address residues, thus, cannot be anything but highly context-sensitive (while, for sure, remaining within the limits of reasonable state action). If this suggestion is correct, the somewhat speculative tone this chapter at times displays is inevitable.

Finally, answering question (iv) would mean establishing *whose point of view* is relevant to undertake the relevant assessment about what the appropriate state response is and, plausibly, how multiple points of view should be counted. Notably, discussing (iv) has important implications for how permissibly to identify the point beyond which the persistence of citizens' resentment is a sign of emerging unreasonableness and excessive political stubbornness that, I grant, could exist. Again, these issues importantly depend on different aspects of discrete cases. This brief discussion should suffice to show that offering a complete typology of appropriate state responses in circumstances of residues is impossible in the absence of an in-depth analysis of single debates. The second-order normative questions that may be theoretically (at least partially) addressed constitute, on their own, a work for another time. The main aims of this thesis, to recall, are to defend the already ambitious positions that residues of justice can often occur and do normatively matter in consensus political liberalism.

That said, I sketch three types of practical responses for the acknowledgement of the presence of residues. This is mainly to offer an answer to (i) above: there is (almost) always something the state can practically do to express (collective) agent-regret and to claim responsibility for political-moral failure.

Type 1 "action" focuses on state officials' discursive acknowledgement. A point is worth emphasising from the start: this first "action" is a necessary step in each strategy, whatever else is further due. Additional actions to address residuals, as noted, will vary from one context to another. Type 2 focuses on post-decision processes for *continued dialogue* and can take two forms.

The first model focuses on attributing a privileged position to morally-failed citizens' in the deliberation concerning what action is appropriate to address residues or as regards further policies to remove residues in the future. The second model sees the role of the state as limited to setting contexts for stakeholders to continue the discussion with one another concerning (at the moment) legitimately settled disputes; voice is given, in this case, directly to the parties involved. Both these post-decision "discursive" processes aim to be jointly backward-looking – focused on giving failed citizens the opportunity to express their reasonable resentment on their own terms – and forward-looking, focused on enhancing further mutual understanding in the hope of reaching, if possible, residue-free resolutions in the future. Type 3 focuses on the state economic power, with an eye on the opportunity – as well as limitations – of direct "compensation" and structural investments aimed at the long-termed removal of residues.

The chapter unfolds as follows. In §2 and 3, respectively, I present debates on the *kirpan* and the regulation of pornography. In §4, after clarifying the rationale of post-decision state responses, I present three types of strategies to acknowledge political-moral failure.

2. Public reason and the *kirpan*

In this section, I present the debate concerning the permissibility of young Sikhs wearing their *kirpan* in schools, which would require their being exempted from laws prohibiting the introduction of weapons in schools. Public reason, I will show, is inconclusive.

The kirpan and safety concerns

The political value countering Sikhs' claims for exemption is that which underpins the law from which Sikhs request an exemption – i.e., ensuring safety within school buildings. For the sake of the discussion in this section, I take two points for granted: safety is a political value, and a general ban on weapons in necessary (while not sufficient) to meet the law's aim. Firstly, the protection from (threats of) violence and the implementation of safety standards in virtually any social context is an uncontroversial minimal requirement of any decent society and its institutions, meeting far less demanding (moral) standards than political liberals' well-ordered society. Secondly, the U.S. epidemic of gun violence in schools – as well as alarming news from the UK and Canada – shows the necessity of a general ban on the introduction of weapons in schools.[306] Concerning this second point, I thus assume that the general ban is a necessary part of trying to ensure safety. Hence, I assume that the law imposes a burden which is *per se* proportionate to its aim.

306 For just an example, see, "Five children a day caught with knives in schools, police figures reveal", *The Telegraph*, 16 October 2019.

By assuming that safety is a political value, I also assume that it constitutes an appropriate ground for public reasons. However, two arguments may be (and have been) advanced to resist the safety concern-based argument as relevant to the *kirpan* case. Having granted the public nature of the safety-based argument, it is still important to check that the argument is plausibly relevant in the case at hand. I present the two arguments in turn and reject them from a public reason-based perspective.

Firstly, one may try to deny that the *kirpan* is to be conceived as a weapon or, at least, as a dangerous weapon. This argument may be interpreted in two ways, both incompatible with public reason due to their reliance on elements internal to the Sikh doctrine.[307] To illustrate, while clarifying that the *kirpan* is an article of faith that every orthodox Sikh must wear as part of a sacramental uniform, Sikhs have contended that conceptualising the *kirpan* as an offensive weapon would be at odds with its religious meaning. The *kirpan*, it has been argued, is "an emblem of resistance to oppression and the struggle for equality."[308] Because of such a religious meaning, the *kirpan* as an object, the argument goes, should not be classified as a weapon at all. Therefore, it should not be taken to raise safety-concerns because (i) it is not a weapon or (ii) it would never be used as a weapon. The point in (i) is an ontological claim: the *kirpan* is *a Sikh kirpan*, not a knife (or equivalent). Under (ii), the argument draws on the function of the *kirpan* qua article of faith; no Sikh would ever use the *kirpan* to harm others. Under (ii), the *kirpan* may still be conceived as a weapon, but it is not one that raises any safety-concerns.

In both cases, the arguments contain non-shareable premises. As regards (i), from a commonsense point of view it is doubtful that the *kirpan* can count as anything but a knife. The empirical question of what counts as a knife for legal purposes cannot be determined based on Sikh doctrine. As regards (ii), again the point seems to concern an empirical conjecture, i.e., what should be expected of Sikhs. Without drawing on the internal doctrine of Sikhism, and abandoning common lines of inquiries, the reasons do not hold. Hence, arguments focusing on the religious function and nature of the *kirpan* constitute particularly clear examples of non-public reasons that citizens cannot be reasonably expected to (weakly) share.

The second argument for resisting the relevance of safety concerns in the case of the *kirpan* relies on the lack of (worldwide) evidence of any *kirpan*-related violent conduct in schools.[309] The

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307 Note that this line of argument has played an important role in supporting the permissive legislation about the *kirpan* in countries such as the UK and the US. For a discussion, see Valerie Stocker "Zero Tolerance? Sikh Swords, School Safety, and Secularism in Québec" [2007] 75 *Journal of the American Academy of Religion* 815.

308 *Ibid.* 817.

309 *Ibid.* This argument had a weight in the Canadian Supreme Court ruling overthrowing previous judgements and settling the legal issue of the *kirpan* in Canada in 200, see *Multani v. Commission scolaire Marguerite-Bourgeoys,* [2006] 1 S.C.R. 256, 2006 SCC 6 p. 6.

weakness of this argument is that the restriction of the relevant evidence to only *kirpan*-related violent incidents *de facto* assumes the previous argument that the *kirpan* is *not* correctly to be conceived as a knife. The *kirpan* meets objective features fitting the descriptors of what a knife is, based on a common sense understanding of the object. Once bracketed of its religious meaning, one can consistently argue that the relevant evidence to take into account is that concerning general knives-related incidents in schools, and not specifically *kirpan*-related ones. Clearly, it is not the case that there are no reported incidents involving knives in schools.[310]

Thus, the specific doctrine-based characterisation of the *kirpan* cannot play a pivotal role in the determination of whether it is a weapon or should be treated as such. Once it is accepted that there are no public reasons not to conceive of the *kirpan* as a weapon, the object plausibly falls under the banning regulation. If we also hold that the banning of weapons in schools is a provision necessary to the compelling rationale of preserving safety, then the case for upholding the legislation stands on solid ground as a plausible argument from within the limits of public reason.

The kirpan and integrity

In line with the research on the special salience that is accorded to religious freedom in liberal democratic theories, and real-world legal practice, that I introduced in Ch. 3, the core political value at stake in favour of Sikhs' claim for exemption is the protection of their *moral integrity*. I shall briefly recall the core points of the discussion concerning freedom of religion (and conscience) as emblematic cases of social primary goods.

To recall, one's sense of integrity tracks a correspondence between one's conduct and some ideal of conduct; preserving such a correspondence sustains people's sense of their self-worth. The core idea is that failing to comply with commitments that confer meaning on one's existence can constitute a *moral harm* that the liberal tradition typically considers particularly troubling. As already seen, "these commitments cannot be sacrificed without feelings of remorse, shame, or guilt, by contrast to preferences, which can."[311] While no functioning system can avoid restricting citizens' freedom in a number of ways, an intuitive line of thought grasping the prioritisation of freedom of religion and conscience in Rawlsian-inspired political philosophy is that citizens have a higher-order interests not to be subjected to restrictions in this domain. That is the reason why, for instance, Rawls's parties in the original position would not gamble with their religious freedom.[312]

310 For a recent case, precisely, from Canada, see "Teen boy stabbed near Neil McNeil High School in Scarborough," *CBC*, 26 September 2019.

311 Laborde, *Liberalism's religion* 204.

312 To recall, my defence of social primary goods is a *negative,* harm-based defence and as such distinctively non-perfectionist. The point is not that the state should – as far as possible – sustain citizens' capacity to preserve

Based on such an argument, the application of the general ban on weapons in schools seems seriously to undermine the opportunity of Sikh students to preserve their integrity. Sikhs claim that wearing the *kirpan* is a mandatory and central requirement of their religion.[313] Hence the regulation imposes a particularly "severe" burden on Sikh students; where a criterion of "severity" tracks the perceived level of obligatoriness of one's practices.[314] Additionally, the burden is "direct." That is, the costs that the young Sikhs would have to incur to avoid subjection to the rule are particularly high. For instance, depending on students' age, the cost may be leaving education once the age of non-mandatory education is reached.

Furthermore, the status of Sikhs as a religious and cultural minority in those Western liberal democracies where the *kirpan* has raised legal concerns should also be considered. From this perspective, the issue should be additionally understood against the broader debate concerning the fairness of systems whose laws, mapping majorities' cultural and religious (Christian) habits in standardising practices for public utility, negatively impact the opportunity sets of minority members. The main idea is that while rules are framed in ways biased in light of majoritarian societal standards, they may nonetheless be justifiable based on neutral bases – i.e., on political values (following the political liberal terminology I adopt). Neutral rationales notwithstanding, members of minorities may find themselves incapable of following their religious or cultural requirements and *jointly* benefit from opportunities deriving from social cooperation, while majority members face no similar conflicts.[315] Considerations concerning claimants' minority status constitute an additional factor. In the case under analysis, while I have granted that there is a compelling state interest that the ban protects, it is also the case that Sikh students are disadvantaged in relation to their opportunity to be *jointly* students *and* Sikhs in a way that fellow students belonging to the majority are not.

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their integrity because living with integrity is some intrinsic value to be promoted, but because integrity loss is something that citizens as free and equal moral persons recognise one another to want to avoid as much as possible. It is a "social primary bad."

313 Notably, many liberal theorists who accept that on this point courts must defer to individual claimants. Judges have no competence to decide on this kind of issue. See, e.g., *Liberalism's Religion*.

314 "Severity" is one of the criteria that Laborde has recently proposed to assess the proportionality of burdens that generally justifiable laws impose on exemptions' claimants and, hence, to determine the whether the exemption should be conceded or not. See, Laborde, *Liberalism's Religion* 222. The assessment of the proportionality of the burden, following Laborde, is precisely necessary when "some state interest […] makes it impossible for some citizens to fulfil an obligatory requirement of their faith or culture" *Ibid.* 220.

315 See, e.g., Jonathan Quong, "Cultural exemptions, expensive tastes, and equal opportunities" [2006] 23 *Journal of Applied Philosophy* 53,71.

Balancing political values

So far, I have established that there are political values that plausibly pull state action in opposite directions. It remains to be determined what claims plausibly count as reasonable *qua* based on reasonable balances of the relevant political values.

In line with the analysis I developed in Chs. 3 and 4, competing arguments need to show that they are reasonably balancing competing political values (and that they take all such values into consideration) to support *pro tanto* valid claims of justice. I have assumed that the rationale of the law is compelling. At the same time, the application of the law jeopardises Sikh students' exercise of their religious freedom. The application of the balancing requirement of public reason will, thus, elicit balancing solutions and trade-offs.

I argue that both the Supreme Court of Canada's (SCC) resolution of the *kirpan* issue in 2006, as well as a different compromise the school board proposed at a previous step in the case, count as premised on reasonable balances of political values. That is, the SCC's resolution, which was more accommodating of the Sikhs' claim, and that of the school board would count as legitimate if selected in light of the analysis of reasonable claims of (basic) justice in Ch. 3.

Briefly, in 2001, twelve-year old Gurbaj Singh Multani accidentally dropped his *kirpan* in the schoolyard. The school, alerted by some concerned parents, temporarily authorised the boy to continue to wear his *kirpan* sealed and hidden from sight. However, the governing board of the school refused to confirm the decision as (in their view) it infringed the school code of conduct banning any weapon from school. The school board's council of commissioners proposed an alternative compromise. Instead of wearing the real *kirpan* Multani could wear "a symbolic kirpan in the form of a pendant or one in another form made of a material rendering it harmless."[316] Multani's family appealed against the decision. It took two decisions of different courts, and opposed judgements, for the case to reach the SCC. The SCC judgement in *Multani v. Commission scolaire Marguerite-Bourgeoys* ultimately ruled that the decision of the Court of Appeal to restore the restrictive decision of the council of commissioners infringed Multani's freedom of religion and was in breach of the Canadian Charter of Rights and Freedoms.[317]

First, consider the compromise advanced by the school commission proposing the replacement of the kirpan with symbolic replicas made of wood or plastic or kirpan-shaped pendants. As replicas altogether remove safety concerns, while still limiting Sikhs' conditions of exercise of freedom of religion, I take this first solution to rank safety higher than religious

316 *Multani v. Commission scolaire Marguerite-Bourgeoys* 1

317 *Ibid.*

freedom. Still, it does take into account religious freedom: the proposal, while restrictive, attempts to accommodate the Sikh's claim.

Notably, some Sikhs have agreed, in other cases, to the replicas compromise.[318] Multani did not, deeming it too restrictive and undermining his religious freedom.[319] The second solution, in favour of which the SCC ultimately ruled, allows for the (real) *kirpan* to be worn subject to several restrictions. One set of conditions concerns hindering the possibility of reaching the *kirpan*. That is, it has to be "wrapped several times in cloth before being sewn shut inside a wooden sheath,"[320] and "worn under the student's clothing."[321] Additionally school personnel should run routine checks to verify students' compliance with the first set of conditions.[322] This second solution prioritises freedom of religion. Still, it clearly attempts to compromise to meet safety concerns as well.

Does political liberalism possess the theoretical resources to deem one of the two solutions unquestionably more reasonable than the other, thus, locating one *uniquely* reasonable resolution to the dispute? Put differently, is there one among the two solutions whose rejection would be unreasonable? The answer to this question depends on how much we take the effects of the burdens of judgement seriously. As the previous subsections tried to establish, there are solid arguments on both sides of the dispute. Some may hold that safety is a weightier political value than the exercise of freedom of religion, while others will hold the reverse, in light of many factors such as their life experiences or assessment of the evidence concerning knife-related incidents in schools. Put differently, both proposals are based on political values, include all the relevant political values at stake (public safety and freedom of religion) and they offer a plausible reasonable balance of them (although they differ in how they rank the political values). The core point is that political liberalism does not have the resources to locate one among the two competing proposals as the one premised on *the* most reasonable balance of political values. Both the proposals – that the *kirpan* should be substituted with replicas and that the real *kirpan* should be allowed under certain conditions – may reasonably stand.

I return to the *kirpan* case to discuss residues arising from the different outcomes in the last section when presenting possible state strategies to address their presence. For now, I present a second case study: the debate on the regulation of access to "inegalitarian pornographic" materials.

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318 Stocker, "Zero Tolerance?" 821.

319 Rita Kaur Dhamoon, "Exclusion and Regulated Inclusion" [2013] 9 *Sikh Formations* 18; Shaheen Shariff, "Balancing Competing Rights: A Stakeholder Model for Democratic Schools" [2006] 29 *Canadian Journal of Education* 482.

320 Stocker, "Zero Tolerance?" 823'

321 Dhamoon, "Exclusion and Regulated Inclusion" 18.

322 Shariff, "Balancing Competing Rights" 487.

3. Inegalitarian pornography and Public Reason

In April 2019, the "London Porn Film Fest," due to take place in Bloomsbury, central London, moved to a secret location after fierce contestation.[323] This recent example is testimony to the enduring relevance of the debate over the appropriate state stance towards pornography that was particularly heated in the U.S. in the 1980s.

In the next sub-section, I reconstruct two arguments that may be used, respectively, for and against the regulation of access to pornography. Note, that I will largely take these arguments at face value and focus on only those components that are compatible with public reason (although, for sure, much in the pornography debate by far exceeds such limits). One argument suggests that pornography may be liable to regulation, as it plays a crucial role in undermining women's status as equals and, hence, their opportunities in a number of contexts such as working life and testimonial credibility. In short, pornography contributes in a particularly pernicious way to gender inequality. In developing this argument, I pay particular attention to the special case of young citizens' exposure to pornography and, hence, to the conditions of continued support for gender inequality over time (as well as on some documented concerns as regards young citizens' sexual health). The other argument contends that pornography ought not to be regulated since doing so constitutes a violation of consumers' basic rights; in particular, their right to sexual autonomy.

An important *caveat* is necessary before proceeding. I do not deal with arguments concerning the production of pornography such as the (social conditions of) choice of performers or health and working conditions in the industry. These issues raise different policy questions. Here, I restrict the discussion to the question of whether the access to pornographic materials should be somehow regulated based on an analysis of the problems raised by exposure to it.

Pornography and gender inequality

The core of feminist criticisms of pornography is that it is harmful to women, especially to their standing as equals in society and, as a consequence, to their equality of opportunity in several (public) contexts. Pornography plays a pivotal role in the social (re-)construction of the rules of (hetero)sexual interactions centred around women's inferiority.[324]

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323 See, Oliver Basciano, "Alternative London porn festival changes location after protests" *The Guardian*, 26 April 2019.

324 See, for instance, Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press 2012) 74. I will leave aside a particularly influential argument in the philosophical debate about pornography, the so-called "silencing" argument developed by Rea Langton. Based on John Austin's philosophical theory of performative speech, the argument is incompatible with the requirement of public reason: philosophical theories are not public reasons. See, on this point, Badano and Bonotti, "Rescuing Public Reason Liberalism's Accessibility Requirement" 48. Note, indeed, that the argument aims to ground the case against pornography on women's freedom of speech,

The present discussion focuses uniquely on what has been termed *inegalitarian pornography* (hereafter, "pornography"). That is, "sexually explicit representations that as a whole eroticize relations (acts, scenarios, or postures) characterized by gender inequity."[325] Such a narrowed focus restricts the set of relevant material by grasping a core concern of many feminist critiques of pornography. It also excludes arguments based on the idea of "obscenity" or the moral assessment of pornography as sexually explicit material *simpliciter*.[326] Where material does not represent explicit subordination in the form of "gender inequity," pornography in the relevant problematic sense is not at stake.[327]

In a simple version, the core of anti-porn critiques is grounded on an idea that I take as largely uncontentious: the constant representation of people as inferiors, subordinated, and denigrated affects the perception of their standing as equals in society. In turn, from this status subordination, inequality in terms of opportunities tend to follow. According to U.S. federal judge Frank Easterbrook – who judged that Catharine MacKinnon's and Andrea Dworkin's famous ordinance

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by attempting to provide a (simplified) model of how several women's speech acts – e.g., refusing sex – are frustrated by the speech acts that pornography constitutes in turn. See, e.g., Langton R, "Speech Acts and Unspeakable Acts" [1993] 22 *Philosophy & Public Affairs* 293,330 and "Is Pornography like the Law?" in Mari Mikkola (ed) *Beyond Speech. Pornography and Feminist Analytic Political Philosophy* (Oxford University Press 2017) 23,38. For a different (while vague) account of the silencing argument, based on "testimonial injustice" rather than speech act theory, see Miranda Fricker, *Epistemic Injustice. Power & the Ethics of Knowing* (Oxford University Press 2007) 137ff. It has been – I think correctly – pointed out that there is no need to resort to Austin's complex philosophical apparatus to make sense of the fact that pornography negatively affect women's credibility as authoritative speakers, see Lorna Finlayson, "How to Screw Things with Words" [2014] 29 *Hypatia* 774,789. Note, however, that the core of the silencing argument in Finlayson's hands ends up relying on the relation between pornography and gender inequality that I present here – i.e., in which women's reduced power as authoritative speakers in several contexts is a consequence of sustained gender inequality (to which pornography *contributes*, at most, in a significant way).

325 Anne W. Eaton, "A Sensible Antiporn Feminism" [2007] 117 *Ethics* 676.

326 Note that, in fact, the most radical feminist anti-pornography positions deny that any differentiation between "inegalitarian porn" and so-called "erotica" (i.e., non inegalitarian porn) has much meaning under patriarchy. In Andrea Dworkin's words, "in the male system, erotica is a subcategory of pornography." See, Andrea Dworkin, *Pornography. Men Possessing Women* (Penguin Books 1989) Preface. I here follow the most dominant position that consider inegalitarian pornography a meaningful category and distinctively problematic.

327 For discussion, see Andrew Altman and Lori Watson, *Debating Pornography* (Oxford University Press 2018) and Caroline West, "Pornography and Censorship" in Edward N. Zalta (ed) *The Stanford Encyclopedia of Philosophy* (Fall 2018 Edn) at <https://plato.stanford.edu/archives/fall2018/entries/pornography-censorship/>. The extent to which a similar focus can effectively exclude also so-called "feminist porn" – explicitly developed as an alternative to mainstream inegalitarian porn – is impossible to discuss in this context for reasons of space. For a recent discussion that is sympathetic, while carefully nuanced, toward the conceptual possibility of feminist pornography, see Mari Mikkola, *Pornography: A philosophical Introduction* (Oxford University Press), Ch. 7. For a critique of an influential feminist porn director's work as falling short of its "feminist" aspirations, see Rebecca Whisnant, "But What about *Feminist* Porn?": Examining the Work of Tristan Taormino" [2016] *Sexualization, Media & Society,* doi: 10.1177/2374623816631727.

for the city of Minneapolis in the 1980s was unconstitutional – pornography causes subordination and, therefore, negatively affect women's opportunities.[328]

A more sophisticated version of the above position is that pornography has a *special* – though not unique – role in sustaining the complex network of beliefs, attitudes, and behaviours that constitute gender inequality. Rea Langton, for instance, argues that "pornography shapes the social world, creating hierarchy, and legitimating certain modes of treatment."[329] Many hold that a multitude of (explicitly sexual or not) representations of women's roles subordinate and objectify them,[330] but pornography is particularly powerful – if not distinctive – in *sexualising hierarchy*. A passage from Anne W. Eaton explains particularly well how the sexualisation of gender hierarchy and inequality is distinctively problematic:

> "Eroticizing gender inequality—its mechanisms, norms, myths, and trappings—is a particularly effective mechanism for promoting and sustaining it. Its efficacy stems from several factors: (a) Transforming gender inequality into a source of sexual gratification renders this inequality not just tolerable and easier to accept but also desirable and highly enjoyable. (b) This pleasure to which gender subordination is linked is one in which nearly all humans are intensely invested, thereby strengthening gender inequality's significance and broadening its appeal. (c) This eroticization makes gender inequality appealing to men and women alike. […] (d) Finally, sexualizing gender inequality enlists our physical appetites and sexual desires in favor of sexism. Since these are rarely, if ever, amenable to control via rational scrutiny, harnessing our appetites and desires to gender inequality is an effective way of psychologically embedding it. […] by harnessing representations of women's subordination to a ubiquitous and weighty pleasure, pornography is especially effective at getting its audience to internalize its inegalitarian views."[331]

If we accept that inegalitarian porn contributes to gender inequality in the aforementioned ways, then this constitutes a public reason that may permissibly be advanced in favour of the regulation of pornography, grounded on the political values of equality of social status and of equal opportunities. For instance, Lori Watson has pointed out how gender inequality constitutes a serious problem from a political liberal perspective in that it can affect women's equality as citizens

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328 In the judgement's words "There is much to this perspective. Beliefs are also facts. People often act in accordance with images and patterns they find around them. […] Therefore, we accept the premises of this legislation. Depictions of subordination tend to perpetuate subordination. The subordinate status of women in turn leads to affront and lower pay at work, insult and injury at home, battery ad rape on the streets" *American Booksellers, Inc. v. Hudnut*, Seventh Circuit Court of Appeals, 771 F.2d 323 (1985).

329 Langton, "Is Pornography like the Law?" 26.

330 Catriona McKinnon, for instance, points out that art, literature, and religious traditions are likely to have more 'authority' than pornography in shaping sexist forms of interactions and relations. See Catriona McKinnon, "Sex, Speech, and Status: new Developments in the Pornography Debate" in Glen Newey (ed) *Freedom of Expression. Counting the Costs* (Cambridge Scholars Publishing 2007) 30,53 and *Toleration. A Critical Introduction* (Routledge 2006) 137,152.

331 Eaton, "A Sensible Antiporn Feminism" 679,680.

in political deliberative contexts (in addition to their employment and pay opportunities in a public context such as the job market).[332]

One group over which the effects of exposure to pornography are perceived as particularly troubling are teenagers. With teens accessing porn in mass, and for the first time as early as 11,[333] there is concern about the impact that exposure to porn has on both youths' sexual health and – in line with the discussion above – the continued support of gender inequality over time. The research community is not unanimous on the significance of the evidence gathered concerning the relation of porn consumption and negative effects on teens' sexual health.[334] In some studies, subjects report having learned "how to have sex" from porn and replicated it in their sexual lives, with some reporting being pressured into practices "learned" from porn.[335] The problem is that youths' access to pornography may support the continued reification, over time, of women's subordination. The latter constitutes an issue of basic justice in itself, and it has consequences. The social context of meanings so sustained is one where women are more likely to be thought of, and treated, as less authoritative, less credible, and more sexually available. As far as young citizens are concerned, exposure to porn can additionally generate unrealistic expectations and, e.g., confusion about the nature and meaning of consent.

Before presenting an argument in favour of unregulated access to pornography, I need to clarify one last point. The argument that pornography plays a pivotal role in the social construction of inegalitarian gender relations is premised on the assumption that gender is (to a significant extent) a social construct. This seems a suspicious premise from the point of view of public reason. However, it need not be. As Watson claims, arguments that "gender is socially constructed […] need not rely on the comprehensive claim that the only way to understand gender relations is as socially constructed *all the way down*."[336] Put differently, it is not necessary to think that the argument goes as far as denying the truth of conceptions of the good or comprehensive doctrines holding

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332 See Lori Watson, "Pornography and Public Reason" [2007] 33 *Social Theory and Practice* 467,488 and "Pornography" [2010] 5/7 *Philosophy Compass* 535,550.

333 Tarrant reports that a researcher from the University of Montreal had to redesign his research as he could not find subjects who had not seen any porn to form a control group. See, Shira Tarrant, *The Pornography Industry. What Everyone Needs to Know* (Oxford University Press 2016) 146ff.

334 *Ibid.* 149.

335 Emily Rothman et al, "Without Porn … I wouldn't Know Half the Things I know Now": A Qualitative Study of Pornography Use Among a Sample of Urban, Low-Income, Black and Hispanic Youth" [2016] 52 *The Journal of Sex Research* 740,741. See also, Michael Flood, "The Harms of Pornography Exposure Among Children and Young People" [2009] 18 *Child Abuse Review* 384,400. For opposite side conclusions, see Lotta Löfgren-Mårtenson & Sven-Axel Månsson "Lust, Love, and Life: A Qualitative Study of Swedish Adolescents' Perceptions and Experiences with Pornography" [2010] 47 *The Journal of Sex Research* 577).

336 Watson, "Pornography and Public Reason" 477. Emphasis mine. On this point, see also Eaton, "A Sensible Antiporn Feminism" 684.

that women are in some sense "naturally" more submissive or less assertive than men. All the argument has to do to count as public – as I hope I have plausibly shown – is to propose a plausible sense in which pornography powerfully contributes to the reproduction of some citizens' social inferiority and that, of course, it is troubling that women's opportunities are negatively affected due to their gender.

Summing up, there are arguments based on the particular power of pornography to reinforce gender inequality that can be advanced within the limits of public reason. Additional arguments – for instance, grounded on other harmful consequences of the resulting subordination – may well further work in support of regulation, but gender equality is relevant on its own from a public reason perspective.[337]

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337 I will leave aside the dispute about more "material harms," so to speak, – e.g., increase in (physical or verbal) sexual aggression or attitudes condoning such aggressions – allegedly caused by porn as the scientific debate is fraught with disagreement. Still, I do not deny that they may legitimately be introduced in public deliberation without breaking the rules of public reason. From Rawls's perspective contentious scientific findings should not be allowed into public deliberation – see, Rawls, *Political Liberalism* 98. For a discussion in support of this conclusion and its impact on legitimacy in conditions of empirical evidence-based disagreement, see Kappel C, "Fact-Dependent Policy Disagreements and Political Legitimacy" [2017] 20 *Ethical Theory and Moral Practice* 313,31. However, it has recently been pointed out that political liberals need not hold this position if they embrace "accessibility" as the criterion identifying public reasons, see Badano and Bonotti, "Rescuing Public Reason Liberalism's Accessibility Requirement." As seen in Ch. 1, what I called "thick accessibility" – the account Badano and Bonotti defend – and my "weak shareability" contain the same sets of reasons. Hence, I believe that arguments based on scientific evidence articulated following methods of enquiries recognised by the scientific community may be presented as public reasons even if contentious. However, since the argument on gender equality is sufficient to propose a valid public reason, I will focus uniquely on that one. For empirical discussions, see a recent meta-analysis of studies that claims to have identified a positive correlation between porn consumption and actual acts of sexual aggression, Paul J. Wright et al, "A Meta-Analysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies" [2016] 66 *Journal of Communication* 183,205. See also Malamuth et al. (2000) and Neil M. Malamuth "'Adding fuel to the fire'? Does exposure to non-consenting adult or to child pornography increase risk of sexual aggression?" [2018] 41 *Aggression and Violent Behavior* 74,89. As regards the causal link with increased presence of attitudes condoning or minimising sexual aggression, studies supporting the thesis abound. See John D. Foubert et al. "Pornography Viewing among Fraternity Men: Effects on Bystander Intervention, Rape Myth Acceptance and Behavioral Intent to Commit Sexual Assault" [2011] 18 *Sexual Addiction & Compulsivity* 212,231; Gert M. Hald and Neil M. Malamuth, "Pornography and Attitudes Supporting Violence Against Women: Revisiting the Relationship in Nonexperimental Studies" [2010] 36 *Aggressive Behavior* 14,20; Malamuth et al, "Pornography, Individual Differences in Risk and Men's Acceptance of Violence against Women in a Representative Sample" [2012] 66 *Sex Roles* 427,239 holds that there is an increased risk for individuals already at risk of endorsing such attitudes. But, of course, opposing positions do not lack, see Ronal Weitzer, "Interpreting the Data. Assessing Competing Claims in Pornography Research" in Lynn Comella and Shira Tarrant (eds) *New Views on Pornography. Sexuality, Politics, and the Law* (Praeger 2015) 257,276; Andrew D. Ruddock "Pornography and Effects Studies: What does the Research Actually Say?" in Lynn Comella and Shira Tarrant (eds) *New Views on Pornography. Sexuality, Politics, and the Law* (Praeger 2015) 297,318; Taylor Kohut and Jodie L. Baer, "Is Pornography Really about "Making Hate to Women"? Pornography Users Hold More Gender Egalitarian Attitudes Than Nonusers in a Representative American Sample" [2016] 53 *The Journal of Sex Research* 1,11.

Pornography and sexual autonomy

Opponents of state regulation argue that hindering free access to pornographic materials infringes citizens' basic rights. The most influential ground on which pornography has been traditionally defended is the right to freedom of speech and expression of producers.[338] However, more recently, Andrew Altman has defended free access to pornography as an instance of the basic right to *sexual autonomy*. This argument, seems more plausible than the former – and perhaps more in line with common sense understanding of what is at stake in restricting people's access to pornographic materials – and I shall focus on it.[339]

To illustrate, Altman argues that it is implausible to analogise clips found on porn websites with other forms of expression and speech worthy, *qua* speech and expression, of legal protection. Put differently, when we think about what the state protects in protecting free speech it is implausible that it is the same thing that is at stake if we have the intuition that pornography should be freely accessed. To Altman, pornography should be seen as *sex*. The primary function of pornographic material, indeed, is to trigger sexual arousal, and the primary way in which people interact with it is sexual. The state, Altman plausibly contends, should protect it as sexual conduct rather than as speech. In this sense, Altman's position shares something with some influential anti-porn theorists: pornography is not speech – saying things – but more akin to conduct. I will briefly outline an interesting component of Altman's argument that is both powerful and compatible with public reason constraints.

According to Altman, sexual autonomy covers the opportunity of having and exercising control over one's sexual life, and not having it controlled by others, unless particularly compelling reasons command otherwise. It would include the freedom not to be forced to undertake sexual acts to which one does not consent; to forfeit any sexual life *tout court*; and to have consensual sexual intercourse with any similarly consenting adult (or with no one). For Altman, accessing (adult) pornography constitutes one mode of sexual conduct and thus falls within the scope of a right to sexual autonomy.

Altman argues that sexual autonomy is a basic right and that accessing pornography is an instance of the exercise of that right. Hence, the reasons for regulating access to pornography should be particularly compelling, as in the case of all the other conducts covered by basic rights (e.g., freedom of religion, conscience, association). As regards the ground of such right, Altman argues, for instance, that sexual pleasure is a very, perhaps unique, intense and intimate experience

338 Famously, e.g., Dworkin, "Is there a right to pornography?".

339 Andrew Altman, "The Right to Get Turned On: Pornography, Autonomy, Equality" in Andrew I. Cohen and Christopher Heath Wellman (eds) *Contemporary Debates in Applied Ethics* (Blackwell 2005) 223,235; Altman and Watson, *Debating Pornography* (Oxford University Press 2018).

that people have a strong interest in being able to control (both for those who want to experience it and for those who do not).[340] However, the main argument he defends for the *basic* nature of such a right rests on the social significance attached to enjoying and crucially – on a negative side – being denied sexual autonomy. In Altman's words, "just as the denial of sexual autonomy is a badge and incident of slavery or some analogously degraded status, the acknowledgment of a right of sexual autonomy is part of the recognition of an adult as a free and equal member of society."[341] Paradigmatically, the body of (female) slaves is emblematically at the disposal of their masters. Hence, from Altman's point of view, being denied control over one's sexual life is a marker of domination.

The public nature of Altman's argument in defence of free access to pornography depends on how we think of *autonomy* in his proposal. Indeed, references to "autonomy" rest on shaky grounds when it comes to assessing their permissibility within public reason, since autonomy is arguably *the* core value animating comprehensive liberal ethics. However, the component of Altman's argument that I have just presented does not depend on any thick account of autonomy as premised, e.g., on self-development or any perfectionist considerations (such as, say, that freely exploring one's sexuality is an essential dimension of developing a complete sense of self). Rather, Altman's emphasis on the social meaning of not being subjected to others' control over one's own sexuality – and being (known to be) treated accordingly – suggests that his focus is something we may call "sexual non-domination." A similar defence is consistent with the anti-perfectionist approach to the ground of basic rights (and opportunities) that I defended in Ch. 3. As also recalled in the previous section about the *kirpan* issue, a political defence of values to ground public reasons has to do more with harms inflicted by others' impositions upon certain interests, than with what goods could be promoted should we be left free (or given resources) to nurture them.

Balancing political values

As discussed in relation to the *kirpan*, any argument to sustain proposals concerning the regulation of the distribution and access to pornography needs to be premised on reasonable balances of the relevant political values. Therefore, I take it that any argument solely based on women's equality that proposed to ban pornography would not be thought as taking into account, even minimally, the rights to sexual autonomy of consumers. Full censure would impact too heavily on some citizens' basic rights to count as a position that attempts to balance – in fact, even minimally to account for – one of the relevant values at stake. At the same time, any argument that contended

340 Altman and Watson, *Debating Pornography* 36ff.

341 *Ibid.* 44.

that no action should be undertaken to counter the effects of the spreading of pornography, in turn, could hardly be seen as even minimally taking the problem of women's inequality seriously.

With blanket censure and "do nothing" out of the picture, it remains to be seen what other policies might compete for permissible enforceability. I sketch a few proposals that disagreeing citizens may advance based on different balances between competing political values. Which one, among these, would be legitimate – as we know – depends on the deliberation and adjudicating procedures. This, of course, has an impact on what residues arise and for whom.

One first proposal may be specifically directed to tackle the issue of youth exposure to porn. If the main problem of pornography is its sustaining gender inequality, then trying to block its intergenerational spreading would be a high priority. Hence, one position may point to imposing checks on age in the attempt to impede access to online porn by those below a certain age. A similar provision was included in the Digital Economy Act 2017 in the UK.[342] It was received with contestation and worry, as it requires copies of driving licenses and passports to be uploaded as proof of age. The possibility of porn companies having databases of porn consumers has been met with understandable concern for consumers' privacy.[343] However, in itself the proposal to look into ways to implement stricter access to protect children and teens would be reasonable in the terms under discussion. It would not significantly undermine adult consumers' right to sexual autonomy, while giving a high priority to concerns for youth and gender equality. Many, however, may reasonably find the proposal ineffective, e.g., because it can be easily avoided.

Other citizens may support a second proposal aimed to increase the economic costs of accessing inegalitarian pornography. Similarly to the system of taxation on tobacco products, the proposal can be plausibly defended as attempting to accommodate, to some extent, consumers' rights. That is, falling short of censure it cannot be claimed not to include a concern for consumers' sexual autonomy. At the same time, the provision may discourage access – especially young citizens' access – to inegalitarian pornography.

Lastly, a third proposal may point to a more structural response from the state, directed at the promotion of educational campaigns at the population level, and the introduction of modules on "porn literacy" in schools.[344] Arguably, this proposal has nothing to do with the regulation of

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342 See *Digital Economy Act 2017*, in particular *Digital Economy Bill Part 3: Online Pornography* at https://www.gov.uk/government/publications/digital-economy-bill-part-3-online-pornography.

343 Alex Hern, "Online pornography age checks to be mandatory in UK from 15 July," *The Guardian*, 17 April 2019; Arwa Mahdawi, "Ineffective, insecure, overdue: the 'porn block' gets everything wrong", *The Guardian*, 2 April 2019.

344 Porn literacy is "a form of education focused on more accurately understanding media messaging about gender, race, sexual consent, and body image" and that "promotes healthy sexual development and preventive solutions to sexual harm," Tarrant, *The Pornography Industry* 157. The topic is the object of growing research interest, with

access to pornography *stricto sensu*. However, it can easily be presented as a reasonable proposal that takes into consideration all the relevant political values. However, this does not mean that we should expect all reasonable citizens to conceive this solution as *the* most reasonable. To illustrate, on the one hand, the state may fund public service announcements to counter gender inequality – e.g., by spreading messages and images sustaining women's status as equals. While it would be of extreme importance that whatever the content of state-led campaigns does not trespass into any metaphysical issue concerning the relation between the sexes and appropriate gender roles, supporting women's equality does not in itself endanger state neutrality.[345]

An advantage of this second proposal is that it gives weight jointly to the political values of women's equality and consumers' freedom. However, it should be expected that citizens' reactions *vis-à-vis* the proposal, for instance, of introducing modules about porn literacy in schools will be characterised by reasonable disagreement. Many could contest the appropriateness of providing *any* sexual education to teens, and many parents would oppose it for their sons and daughters. Public schools' curricula are a very contentious matter, as the long-standing U.S. debate on teaching evolution in schools demonstrates. Without this component, the proposal would attempt to address the problem of gender inequality at a broad social level, but nothing of serious import would be done to tackle the effects on younger citizens. To be clear, this consideration is not to say that the third proposal would be illegitimate, but only that is not immediately possible to argue that from any reasonable perspective it would be counted as *the most* reasonable solution.

I now move to sketch some possible strategies that the state may adopt to address residues originating in cases such as those just discussed. When suggesting alternative possible models, I will return to the residues that different legitimate decisions may leave.

4. Notes on institutionalisation

In this last section, my paramount interest lies in fleshing out the link between the hypothetical strategies discussed and their aims: acknowledging the political-moral failure to which reasonable claimants are subjected, and recognising the validity of the resentment that claimants may reasonably feel in the hope of countering the pressure towards alienation. I shall link alternative

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some early encouraging findings, see Laura Vandenbosch and Johanna M. F. van Oosten, "The Relationship Between Online Pornography and the Sexual Objectification of Women: The Attenuating Role of Porn Literacy Education" [2017] 67 *Journal of Communication* 1015,36.

345 This might be done in collaboration with NGO's working on the effects of pornography and dealing with women victimised through it, perhaps looking for representation of stakeholders from different philosophical, moral, political traditions. The crucial issue is that the state neutrality toward different conceptions of the good and ethical traditions, as well as refraining from establishing perfectionist sectarian agenda, must always remain a priority of state action. Still, as Corey Brettschneider has emphasised, state expressive power can legitimately be used to support the equal status of citizens. See, Brettschneider, *When the State Speaks, what should it Say?*

strategies with the two case-studies introduced in the previous sections and other real-world examples I presented throughout the thesis. As clarified above, any assessment of the appropriateness of state strategies – however tentative – can only be carried out in light of the specific details of each dispute *and* the legitimately determined terms for its (temporary) settlement. Since the latter cannot be determined prior to deliberation, the following arguments are necessarily conditional. That is, they reflect on which action may be appropriate *if* certain residues arose as a consequence of certain outcomes being selected.

The following discussion, at times, takes inspiration from theoretical resources and models of procedures developed in literature concerned with problems very different from the one I framed in this thesis. That is, it draws on practices of restorative justice and redress, as well as models of conflict management theorised in the criminal law and transitional justice literatures. For reasons of space, I make no attempt to offer any detailed reconstruction of the contexts in which they are developed nor the problems they aim to address (if not directly relevant to the present discussion).

The function and limits of state response: acknowledgment, reasonable (non-righteous) resentment, and alienation

First, recall a few core points presented in Chs. 4 and 5 that concern what political-moral failure is – from which residues of justice originate – and how it is normatively problematic in consensus political liberalism. By the notion of political-moral failure I identified a genuine institutional shortcoming that still is not an instance of injustice or an illegitimate exercise of state power. As I argued, the state morally-fails citizens when its action – albeit legitimate – proves inadequate to protect citizens' basic interests despite the reasonableness of citizens' claims in support of alternative decisions under which their basic interests would instead be protected. The consequences of state action that reasonable citizens have to bear, I contended, fall in the state's "penumbral agency" – the state is morally responsible for them – while this does not mean that any injustice occurs. I argued that political-moral failure, an institutional shortcoming in (possibly) many circumstances of inconclusiveness of public reason, triggers reasonable (though not righteous) resentment on the part of those citizens who have been morally failed and their partial alienation from political society. A state that is authentically committed to treating citizens respectfully has a duty not to react with indifference *vis-à-vis* citizens' reasonable (non-righteous) resentment and potential alienation.

Until now I referred to the notion of "acknowledgement" as the appropriate characterisation of what state response – whatever its concrete form – aims to convey. It is important to devote a few more words to make sense of how this notion is relevant in the present context, and how it relates to the expression of (collective) agent-regret. The state offers an acknowledgment of the burdens imposed on citizens, despite the reasonableness of their claims not to be subjected to

them. In doing this it expresses agent-regret. Crucially, the state response is not meant to convey any form of *apology*.

Let me illustrate this important point. Whilst analysing the relevance of past – more precisely "enduring" past – injustices, Jeff Spinner-Halev discusses the distinction between "apologies" and "acknowledgement." The reasons why Spinner-Halev defends the superiority of the latter compared to the former gains sense against the debate on historical injustice and the multiple complexities distinctive to that specific debate, therefore I will not discuss them. However, the distinction – with some relevant adjustment – is useful for my purposes.

Spinner-Halev holds that acknowledgement is not a type of apology although apologies include components of acknowledgement.[346] The core component of the latter, I take it, is a due recognition of a fact that some harm has been caused to someone and – unlike an apology – it does not require an assumption of moral responsibility (a particularly complex matter in historical injustice debates).[347] Now, clearly, the account of acknowledgement I am defending – contrary to Spinner-Halev's – must contain some form of assumption of responsibility. As I have already argued, my account of acknowledgement needs to include an expression of agent-regret. However, precisely because it cannot be an expression of wrongdoing, the state response cannot be characterised as a form of apology (i.e., tracking an assumption of responsibility for something falling fully in one's *core moral agency*, in line with Enoch's terms discussed in Chs. 4 and 5). Furthermore, there is a second element of Spinner-Halev's distinction between apologies and acknowledgement that is relevant to my analysis. Unlike apologies, situated in discreet moments in time, acknowledgement can be a multi-step process protracted through time.[348] This is an aspect of acknowledgement that better allows it to respond to the complexity of post-decisional strategies to address residues. As I shall suggest below, we should not expect that, for instance, judges' speech will suffice as an appropriate response to the presence of residues of justice in multiple cases. The analysis offered below will clarify further the points covered in this first sub-section. I move to the presentation of possible examples of types of state "actions."

4.a Public officials' discourses: broadening the function and content of "the reason of the public"

The first institutional domain for the acknowledgement of political-moral failure is constituted by the institutional *fora* for the articulation of public reason. Here, by "public reason" I refer not to the restricted deliberative model of justification relevant throughout this thesis, but to the broader idea of the *reason of the public*. In line with the mainstream political liberal literature, the discourses

346 Jeff Spinner-Halev, *Enduring Injustice* (Cambridge University Press, 2012) 106.

347 Spinner-Halev, *Enduring Injustice* 106.

348 *Ibid.* 106-107.

of public officials – e.g., judges or MPs – are the primary loci where public reasons are articulated and offered to citizens to honour the liberal principle of legitimacy.

Still, while public officials are primarily entrusted with the duty to provide justifications for the use of state power, their discourses should also be directed to articulating the acknowledgment of the basic interests-relevant burdens imposed on citizens despite the reasonableness of their claims against the decisions imposing them. Such discourses can articulate the further recognition of the well-grounded nature of the resentment of citizens who are morally failed. Thus, such discourses can advance assumptions of responsibility by the public for the consequences of collective decision-making that, prioritising specific reasonable claims of justice, ends up rejecting others (despite their reasonableness and the basic relevance of the interests they aim to protect). The first state answer, put differently, comes in the form of an explicit acknowledgement in the discourses of state representatives of the presence of residues and the occurrence of political-moral failure. This discursive element is *necessary* in any state response to residues and it may well constitute the only practically available state response at times (more on this below).

Paradigmatically, in cases of legal proceedings, these discourses may take the form of added sections in judgements that motivate decisions in the first place or may be expressed orally in courts.[349] They may also be expressed in parliamentary discussions, or public addresses from members of the government in the aftermath of particularly divisive decisions. Interestingly, since the point of this kind of public discourse is not that of determining the legitimate course of state action, post-decision discourses may include references to relevant non-shareable reasons. Doing this may be useful, e.g., if non-public reasons are introduced – in compliance with Rawls's *proviso* – in the deliberation during the decision-making process by citizens whose reasonable claims are ultimately not accommodated.[350] Incorporating such reasons in post-decision officials' discourses may enhance their capacity adequately to acknowledge to the claimants an understanding of the significance of the loss they legitimately incur.

Consider, for instance, the *kirpan* case. In §2, I showed that both a proposal that requires the substitution of the real *kirpan* with replicas, and one that requires the *kirpan* to be worn with hindered access, are premised on reasonable balances of political values at an impasse. Let us assume for now that the former more restrictive proposal is chosen and that, therefore, the exemption – even with qualifications – is not granted. As far as mainstream political liberalism goes, the judge – who has heard the case in court – will have to spell out the public reasons in

349 Recent legal literature that investigates the idea of "tragic legal choices" and the ethics of judges that have to adjudicate them focuses precisely on the importance of this function of judges' reaction to hard legal cases, see Van Domselaar, "On Tragic Legal Choices" 198.

350 See, Rawls, "The Idea of Public Reason Revisited" 784ff.

support of the decision that the claimants can share as free and equal co-legislators of the use of state power.

The young Sikhs will have to bear a severe and direct burden that jeopardises their capacity to live with integrity; a burden that – under an alternative similarly reasonable proposal – they would not have to carry (or at least to the same degree). Explicitly acknowledging the resentment that may be reasonably supported by the claimants' sense of justice is a necessary addition to spelling out the public justification supporting the decision. It additionally seems a necessary (albeit perhaps not sufficient) component of a state response that *hopes* convincingly to counter claimants' alienating pressures. To this extent, it is an answer that takes the fact that the claimants are not *only* political co-legislators more seriously than the one that merely offers justifications. Citizens are thus properly treated as also citizens with an outweighed, but valid, claim not to be subjected to burdens to their integrity.

This explicitly expressive action through public officials' discourses may be morally sufficient in some cases or, perhaps, the only practically available option in cases where the intuition is that more would be needed. Consider, for instance, the second, more restrictive, proposal of imposing a tax on inegalitarian pornography, similar to that impacting the selling of tobacco and alcohol. *Ex hypothesi*, the position is not flatly unreasonable in that it falls far short of censure. Let us imagine, though, that some low-income citizens' access is significantly hindered as a consequence. In a similar case, explicit acknowledgement of the burden imposed is possibly the only option the state has at its disposal to address residues for consumers.

As anticipated, apart from being at times the only available option, Type 1-kind of action is a necessary component of each strategy. To illustrate, by borrowing an intuition from the transitional justice literature, it makes sense to look at this kind of explicit recognition of responsibility as a necessary first step for any process aimed at authentic acknowledgement.[351] The core idea that I borrow from this literature is that it is implausible that any action of redress (e.g., material compensations or any forward-looking action) can practically and morally work to address past wrongs adequately – as well as political-moral failures – and sustain respectful relations, unless an explicit acknowledgement of responsibility takes place.[352] Without this, other actions may prove

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351 For sure, contexts where processes of reconciliation aim at repairing social relations that have been damaged due to past grave injustice, violence, and atrocity are clearly importantly disanalogous from well-ordered liberal democracies that, divided by reasonable disagreement about justice, more or less continuatively fail (in the sense described in the thesis) some of their citizens. As I clarified above, public officials' discourses – as well as strategies overall – are not expressions of apologies, but instances of acknowledgement, i.e., due recognition of the political-moral failure occurred and the sever burdens imposed on citizens expressing agent-regret.

352 Ho-Won Jeong, *Conflict Management and Resolution. An Introduction* (Routledge 2010) 228; Ervin Staub "Reconciliation between Groups" in Peter Coleman et al (eds) *The Handbook of Conflict Resolution* (Jossey-Bass,

insulting and, therefore, both inefficient and morally inadequate – e.g., by suggesting an implausible commensurability between grave injustice or burdens and mere material compensation. In addition, issues of incommensurability obtain at least in some of the cases I have analysed in the previous sections such as the right to abortion. For instance, offering material resources in a similar case may easily look straightforwardly insulting (at least) if not accompanied by an explicit expression of agent-regret. I shall return on this point below when discussing material compensations.

One point concerning the prescriptive implications of the theoretical apparatus I have developed so far is worth emphasising. As this first kind of state action has arguably no costs and wide applicability, there will be (*almost* – more on this below) no cases in which nothing can be practically done to express agent-regret on the part of the state to recognise the legitimacy of citizens' reasonable (non-righteous) resentment. This point is logically distinguished, of course, from one concerning what exactly the state ought to do to acknowledge political-moral failure and credibly take responsibility for the burdens imposed on citizens who have been morally failed. Put differently, to some, resorting uniquely to Type 1 action may seem far too cheap, so to speak, falling a great deal short of satisfactory acknowledgement. To be sure, the evaluation of the practical and normative value of similar discursive recognition largely depends on how seriously "discourses" are taken – both as a theoretical proposal and as a political practice – by both theorists and affected parties situated in real-world socio-political contexts. It is plausible that, to many, this first type action would not suffice to constitute the due acknowledgement of political moral failure, hence needing to be supplemented through Type 2 and Type 3 actions.

Still, I cannot but assume that political liberals should find this first "discursive action" particularly compelling. The centrality of public reason in their theories is testimony to political liberals' trust in the power of political discourses to affect the moral quality of political relations. As public justification, through public reason, serves the relational ideal of respectful relations toward citizens as co-legislators of political power – where all can see themselves as sharing in political authority in matters of fundamental importance – discursive expressions of agent-regret at the post-decision phase can constitute ways of respecting claimants in relation to the other dimensions of their political identity where they have been failed through legitimate decisions.

Wiley 2014) 1005. Note, however, that, as I explained above, in the debate over transitional and historical injustice, this point is contentious; as seen, Spinner-Halev disagrees and rejects the idea that assumptions of responsibility are necessary for reconciliation processes. This issue, however, is not relevant here.

4.b Post-decision deliberative processes: facilitating further democratic discussion and restorative meetings

Type 2 state responses focus on the continuation of the discussion concerning issues that are temporarily legitimately settled, while leaving residues and persistent reasonable disagreement. A Type 2 response can take at least two forms: (a) procedures for continued discussion may be directed at negotiating what kind of further action may be appropriate to recognise the reasonable (non-righteous) resentment of citizens who have been morally-failed. State representatives as well as relevant parties may be involved. A second model, (b) borrows insights from the restorative justice and conflict management literature. In this case, the state can play a role in setting, and facilitating, regulated processes for the continuation of discussion among relevant stakeholders. While Type 2 responses are still discourse-focused, unlike in Type 1, the focus shifts from the unique public officials' direct discursive action to include that of stakeholders – e.g., claimants failed by the legitimate decisions, where easily identifiable, and relevant stakeholders, more generally.

Type 2 action, would need either, or both, of two components – a backward-looking and a forward-looking one. That is, an action that credibly aims to acknowledge severe imposed burdens is one that gives appropriate recognition to the legitimacy of the resentment (thus the relevance of the backward-looking element), while also aiming – if at all possible – at removing or reducing the very residues that originated from the decision (thus, the relevance of the forward-looking element).

Different (a) or (b) models may be more or less appropriate depending on whether the direct claimants impacted by residues are easily identifiable (and representable) – as in the *kirpan* case – or less so because the impact of legitimate decisions is more spread within society, as in the pornography case.[353] Practices inspired by restorative meetings may be more appropriate in the former case, while supporting continued debate and democratic discussion is more appropriate in the latter.

One first component of these processes should be distinctively backward-looking, focused primarily on granting a voice to those who directly have to bear the burdens of decisions. It is seemingly particularly important (though not uniquely) in Type 2, model (b). This part of the process distinctively borrows insights from the idea of "restorative dialogue," aimed – as *one* of its multiple aims – to give a possibility to victims of criminal offenses to articulate on their own terms

353 This differentiation, in fact, has also partially to do with the problem of representing in public procedures the relevant (groups of) stakeholders. For sure, identifying citizens to participate in the relevant processes in the name of all Sikhs may not be as easy as it seems; for sure, it is going to be much more complicated in cases in which the "group" of citizens who have been morally-failed is far less cohesive or none at all – e.g., "women," or "inegalitarian porn consumers."

the extent, and experience, of their loss.[354] A second component of this processes should be forward-looking; i.e., more specifically focused on the continuation of the discussion. For instance, it may consist of giving greater weight to the perspective of citizens who have been morally failed either in determining the action most appropriate to address residues or in how to proceed to reduce the residues in the future – especially, but uniquely, in models (a). Settings of continued facilitated discussion may aim to enhance understanding and to decrease the extent of disagreement. This further aspect would aim to facilitate future revisions of the decisions legitimately taken so that the residues resulting from them can be reduced, and possibly removed, in the future. More generally, facilitating the discussion in the aftermath of decisions that impose high burdens on reasonable claimants, is seemingly important to manage the destabilising role that the reasonable (non-righteous) resentment triggered by the decision may leave if unacknowledged.

For sure, the forward-looking deliberation would need to avoid being stuck on what alternative decisions should have been taken, especially in model (a) kind of procedures. Still, the reasons that were deprioritised may well provide insight to orient future action aimed at removing residues. Under this second light, the procedures borrow insights from the literature investigating strategies of conflict management, aimed at – and realising inherently – non-confrontational forms of interactions stirred by (real-world) intractable political conflicts based on deep value conflicts.[355] While assuming the reasonableness of all the citizens involved, I argued that in the cases under analysis such reasonableness is compatible with the presence of a genuine kind of resentment. This consideration suggests that resorting to similar conflict management processes may be an important addition to safeguard social relations and, hence, particularly important in strategies aiming to counter the partial alienation experienced by morally-failed citizens.

Processes of continued discussion (Type 2, either, or both, models) may be particularly (though not necessarily uniquely) well-suited to address residues in cases in which valid claims for exemptions by members of cultural or religious minorities are rejected and, more generally, when the residues involved concern also the civic equality of citizens and not (only) claimants' access to basic opportunities and liberties. These, indeed, may be cases in which one of the burdens of judgement concerns the difficulty of accessing reciprocal experiences that belonging to different cultural and religious groups makes opaque.

How could this model work in practice? In the *kirpan* case, a model of post-decision deliberative process may be appropriate (Type 2). If my analysis above is correct, one party to the

354 Barbara E. Raye and Ann Warner Roberts "Restorative processes" in Gerry Johnstone and Daniel W. Van Ness (eds) *Handbook of Restorative Justice* (Willan Publishing 2007) 211.

355 See, Ceva *Interactive Justice*; Jeong, *Conflict Management and Resolution. An Introduction.*

dispute – whatever decision is taken – will have reason to resent it, while still recognising its legitimacy. The backward-looking dimension of the process would be meant to honour resentment by giving access to a regulated process to voice its sustaining ground – along the lines of the core of model (b). The forward-looking discursive interaction among those with a direct stake in the issue may be particularly useful in, e.g., enhancing mutual understanding. For instance, if a reduction of the perception of safety risks were made possible, the issue may become at least less contentious and, perhaps in the long term, a decision not to grant the exemption may be revised, or safety concerns may subside.

One further example, to which I referred at points in previous chapters, in which a similar model (b) – with possibly further component of (a) – may be morally and practically appropriate is the Danish Cartoons controversy. To recall, in 2006 a Danish journal published several cartoons that were deemed insulting by many Muslims. The message on which some of the cartoons played was an association between Islam and terrorism that was taken as representing Muslims as paradigmatically inimical to social order, cooperation, and safety.[356] Many Muslim citizens and leaders in Denmark and abroad asked for the publication to be censured, with the journal withdrawn from circulation. The Danish government firmly defended the publishers' right to freedom of expression and rejected these claims.

In light of my framework, even assuming that the right to freedom of expression is to be prioritised, there is logical space for the nonetheless reasonable request not to be subjected to demeaning symbolic treatment that threatens one's civic equality and hinders the bounds of civic trust. Thus, reasonable (non-righteous) resentment may be appropriate *vis-à-vis* the decision not to censure (or to take any less invasive stance against the journal). Interestingly, Elisabetta Galeotti's analysis of what the Danish government representatives should have done in this case can be read as sharing some similarities with the model I am suggesting.[357] According to Galeotti, while the government was right in refusing to impose any censure on the journal, thus upholding the right to freedom of expression, it should have met the Muslim representatives. In a similar case, setting up processes for the relevant stakeholders to meet and continue the discussion is a promising way to recognise the reasonable resentment of the burdened parties. It constitutes a way for the public to take responsibility for the costs that legitimate decisions nevertheless can impose on reasonable claimants.

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[356] For the sake of argument, I shall assume the truth of what the publishers claimed – i.e., that the intention of the publication was not to insult and offend.

[357] See, Anna E. Galeotti, "Multicultural claims and equal respect" [2010] 36 *Philosophy & Social Criticism* 441,450.

What form the state response to address residues may take in the pornography issue is an extraordinarily complex matter to sketch in a few paragraphs. I shall, however, suggest that some solution in the realm of Type 2-kind of action is the most appropriate way of recognising the presence of residues and resentment, with respect to the persistent problem of porn's function in supporting gender inequality, while taking into account the complexity of the dispute.

In the previous section, I suggested that a plausible strategy to settle the debate on pornography is to focus on the expressive and educative role of the state – e.g., the promotion of population-level campaigns countering the imagery spread by porn of women as subordinate and the adding of modules on porn literacy in schools. While I suggested that such a proposal takes into due consideration all the political values – and related claims – in the debate, I also emphasised that it is unlikely that a similar proposal would not be subjected to reasonable disagreement (for independent reasons). By this I simply mean that it *may* legitimately not be selected. That is, even if the porn literacy proposal was capable of not leaving any residues behind, it is still possible that it would not be legitimately selected. Hence residues can arise if other proposals are legitimately selected. Another possibility, of course, is that the literacy proposal is legitimately selected and leaves residues of justice behind originating from the failed accommodation of claims concerning the protection of further political values.[358]

Another proposal that I suggested – i.e., trying to block access to underage citizens – would seem to many to fall far short of an adequate solution. Acknowledging that there are residues that such a resolution would leave behind may be done not only through explicit public officials' discourses, but also by encouraging more debate and sponsoring and funding events for that debate to take place in facilitated contexts where representatives of different positions can take part. This may be focused on both fostering conversation on the subordinating role of inegalitarian pornography and its possible consequences of women's equality of opportunity.

4.c. Structural investments and direct material compensations

A third type of state response to address residues is through its economic power. I use the example of abortion, to which I made repeated reference throughout the work, to make sense of this last model. I shall focus, in particular, on state investments aiming to remove residues in the future

[358] Consider, for instance, the hypothesis that it is indeed selected; porn literacy is introduced in school curricula. Many citizens reasonably disagree based on concerns about their children exposure to sexual education based on a belief that, say, children sexual education should fall under parents' educational jurisdiction rather than the state's. It is not difficult to imagine that, if analysing the case, we would end up finding further residues of justice arising in turn.

and on programmes of direct compensation to women who have to bear these residues due to previous legitimate decisions.

In previous chapters, I discussed the example of abortion and argued that deliberation through public reason will lead to identifying a timeframe for the location of reasonable limits for the voluntary termination of pregnancy. Political liberals tend to identify this timeframe on a continuum – spanning from the end of the first trimester to the point of foetus viability – rather than at a unique point.[359] If, for instance, the limit is legitimately located at the end of the third trimester, there may be cases in which women will have to bring their unwanted pregnancy to term even though more permissive, still reasonable, solutions would not have imposed such a burden on them. In similar circumstances, I argued, women's resentment *vis-à-vis* the result would be sustainable based entirely on their sense of justice; i.e., it would be reasonable (non-righteous) resentment.

In similar cases, offering direct material compensation could form a part of an appropriate acknowledgement of the high cost the legitimate decision imposes on women given the weight of the burden, and the fact that an alternative reasonable solution would have meant it could have been avoided. The intuition is that pregnancy is an experience and condition that has a pervasive and, possibly, totalising effect on women's lives. In a nutshell, there will be a number of burdens resulting from a pregnancy that call for compensation in case it is unwanted, but do not in case it is wanted (even assuming a reasonable background of provisions in favour of women such as that their rights as workers are adequately protected, health expenses are fully compensated for, levels of care are adequate, and so on).

It is in cases like this that I take resorting to appropriate state officials' discourses, explicitly expressing agent-regret for legitimate decisions that leave residues behind, to be particularly important. As I suggested above, in cases where the interests at stake are particularly weighty and the burdens incurred are particularly severe, resorting to material compensation not accompanied by appropriate discourses may suggest a commensurability between the loss incurred and the material compensation that is implausible and likely insulting. Intuitively, the case of abortion is a case in point. However, there are also cases where the proposal to resort to material compensation would be outright inappropriate – e.g., the *kirpan* case. Where residues are grounded on values such as integrity – where claimants are already feeling that they are 'betraying themselves' in complying with a law that directly burdens their "integrity-protecting commitments" – offering material compensations would arguably do more harm than good. It would be morally inappropriate, and arguably practically ineffective, as an assumption of responsibility for the

359 See, Arell, "Public Reason and Abortion: Was Rawls Right After All?".

burdens imposed, possibly fuelling – rather than acknowledging the validity of – claimants' reasonable resentment.

As one last point, one may think about more structural investment aimed at removing residues altogether in the (even distant) future as a way of recognising their presence and moral relevance, as well as of how severely they impact some citizens' life-prospects.[360] In the case of abortion, this may consist of investments in research on ectogenesis – i.e., technologies to make possible embryos' and foetuses' survival outside the uterus.[361] Similar programmes may have a high potential in conveying the recognition of the burdens that any reasonable regulation of reproductive rights is likely to have on women. Note one thing: at the beginning of this section, I suggested that Type 1 action allows me to show an important point. There is *almost* always at least one action the state can resort to in order to acknowledge that a political-moral failure occurred. Namely, the discursive recognition of the moral failure. Clearly enough, this is patently false from the perspective of embryos or foetuses whose gestation is not brought to term. Though the development of ectogenetic technologies is inevitably a long-term project, investments in this direction are the only way of recognising any possible residues affecting early-stage human life. For sure, any advancement in this kind of technology would pose new moral questions (e.g., concerning how to carry out any research in ethical ways). Over similar questions, disagreement should be expected in liberal democracies divided by reasonable pluralism about the good and justice. However, investments in technologies that may potentially remove residues in one of the thorniest ethical issues of our time – or, recalling the model in (4.b), minimally serious debates about them – may be appropriate to convey the acknowledgement of the residues that will inevitably arise from any reasonable solution.[362]

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360 For discussion, see

361 On the issue, see, for instance Christopher Kaczor, "Could Artificial Wombs End the Abortion Debate?" [2005] 69 *Philosophy Faculty Works*, at http://digitalcommons.lmu.edu/phil_fac/69 and *The Ethics of Abortion. Women's Rights, Human Life, and the Question of Justice* (Routledge 2015) 245ff; Christine Overall, "Rethinking Abortion, Ectogenesis, and Fetal Death" [2015] 46 *Journal of Social Philosophy* 126,140. Note that, while some (feminist) theorists look with sympathy to the prospect of developing the relevant technologies to make ectogenesis a reality, feminists perspectives do not lack, questioning the extent of the empowerment that would follow for women – see, for instance, Sarah Langford, "An end to abortion? A feminist critique of the "ectogenetic solution" to abortion" [2008] 31 *Women's Studies International Forum* 263,269.

362 For a vibrant critique of the utter lack of political interest in "the technical means of liberation" for women as regards their severe natural burden in the process of human reproduction (that, to some extent, any reasonable regulation of voluntary abortion in fact leaves untouched), see Judith Shklar, *The Faces of Injustice*, 66-67. Notably – and differently from my terms – to Shklar it is a pure and simple injustice "if nothing is done to make these instruments of liberation available to women." The more modest conclusion which my framework allows to draw, is characterising the sheer lack of interest on these issues as plausible testimony of failing to acknowledge the considerable political-moral failure toward women arising from many reasonable decisions concerning women's reproductive rights.

5. Conclusion

The main aim of this chapter has been to propose a few examples of post-decisional state response in circumstances of political-moral failure. Crucially, a core aspect I aimed tentatively to show is that, indeed, there are practical options available. I presented strategies against the background of concrete examples discussed throughout the thesis (some, in greater detail, in this chapter). I additionally clarified the appropriate characterisation of the meaning of state response as not 'apologies', but as instances of acknowledgement of burdens imposed on citizens and expressions of (collective) agent-regret.

Conclusion

This thesis has offered an internal critique of mainstream consensus political liberalism, aiming to strengthen it as a compelling theory of political morality for just and legitimate liberal democracies. At a general level, the thesis claimed that consensus political liberals have thus far underestimated the normative challenges that accepting the reasonableness of the disagreement about justice – and the related inconclusiveness of public reason – entail.

To achieve this, I integrated the literature on the inconclusiveness of public reason with the ethical literature on moral dilemmas and remainders. Since mainstream consensus political liberalism currently does not have the categories to frame the normative problem with which this thesis has been concerned, I firstly needed to supplement them. Resorting to the ethical literature provided me with several theoretical tools to conceptualise the institutional shortcomings involved in the rejection of reasonable claims of basic justice – i.e., "political-moral failure" – and its normative domain. I then showed how premises belonging to the theoretical architecture of consensus political liberalism itself allows to argue that political-moral failure is problematic. Let me briefly restate the thesis's central arguments, before moving to touch upon a few lines of investigation that it opens up for the future.

I showed how several assumptions of consensus political liberalism require us to reframe circumstances of inconclusiveness of public reason as instances of dilemmas of reasonable justice. Irrespective of the legitimacy of the decisions taken, genuine moral losses can ensue when the state morally fails reasonable claimants. That is, I argued that political (or legal) decisions about constitutional essentials and matters of basic justice can be reasonably just and legitimate, and yet still morally fail citizens. Thus, I argued that reaching legitimate decisions can be thought to exhaust the appropriate state response in circumstances of inconclusiveness of public reason only by implicitly relying on a narrow characterisation of what it means to respect citizens as free and equal. What I called "residues of justice" are nothing but the normative loss involved when reasonable claims of basic justice are legitimately rejected in conditions of inconclusiveness of public reason. Theorising away the normative import of such losses, or unreflectively side-lining them as prescriptively inert, are both unsatisfactory stances that diminish the consistency and normative appeal of consensus political liberalism.

In a well-ordered liberal democracy, under conditions of inconclusiveness of public reason, the state does not only have a respect-based duty to enact laws and pass decisions only if publicly justifiable based on arguments that all reasonable citizens can weakly share. A commitment to maintaining relations of respect toward citizens also supports a duty to attempt to counter the

"non-righteous reasonable resentment" that citizens will likely experience when their reasonable claims of basic justice are not accommodated (however legitimate that might be). Such a resentment, thus far unnoticed but justifiable, is the result of the complex functioning of reasonable citizens' sense of justice that consensus political liberals presuppose in their account of the legitimate resolution of reasonable disagreement about justice itself. Such a complex functioning relies on the coexistence of (1) the acceptance of decisions undermining one's fundamental interests as legitimate and, at once, (2) the availability of reasonable alternative conceptions of political justice that, if implemented, would not create the relevant burdens.

After establishing the plausibility of non-righteous reasonable resentment by investigating the often neglected moral-emotional dimension of reasonable citizens' sense of justice, I pointed out a further plausible consequence of such resentment. That is, the strains of commitment that decisions generate in circumstances of inconclusiveness of public reason – and that non-righteous reasonable resentment tracks – prompt reasonable citizens' alienation from political society and undermines their perception of their own full membership as free and equal moral persons. From a consensus political liberal perspective, the non-righteous reasonable resentment of citizens calls for a response. It does so out of a commitment to maintaining respectful relations toward citizens. Why so?

To answer this question, I identified and rejected a hidden assumption based on which the failed accommodation of reasonable claims of basic justice would count as fully unproblematic, if legitimate. That is, I located in multiple influential consensus political liberal sources the traces of a *pluralist account* of political liberal respect. Citizens' status as free and equal, being multidimensional, rests on respectful treatment toward them: as co-legislators of political power, reasonable right-holders whose fundamental interests are as far as possible protected, and civic equals whose elective or ascriptive identities are not to be markers of civic inferiority. Legitimate failed accommodation of reasonable claims of basic justice can be thought of as unproblematic only if citizens' status as free and equal is reduced simply to its co-legislative dimension. I granted the priority of legitimacy in conditions of reasonable disagreement about justice and strengthened mainstream consensus political liberalism's position according to which legitimacy rests on reasonable justifiability. However, granting this is not to say that *all that matters* is the (public justification-based) legitimacy of decisions. In conditions of inconclusiveness of public reason, and at least when constitutional essentials and (certain) matters of basic justice are at stake, reaching legitimate decisions is not sufficient (although it is, of course, necessary) to respectful treatment.

Such a conclusion holds because in similar circumstances, while not wronging the citizens whose reasonable claims are legitimately set back, the state nonetheless *morally fails* them. Claims

of justice are overridden – being only *pro tanto* action-guiding – despite their genuine validity (where the latter, as seen, rests on the weak shareability by all reasonable citizens of the arguments in their support). The institutional system proves inadequate to accommodate claims that, in light of consensus political liberalism' own premises, are well-grounded and aimed at the protection of particularly compelling interests.

Since traditional categories such as "injustice" would mischaracterise the relevant normative problem, I introduced the category of "political-moral failure" to make sense of it. Separate from injustice, it is a normative category nonetheless. This is important. While not an instance of injustice or illegitimacy, what is at stake is a normatively significant institutional shortcoming, which has so far implicitly been relegated to the domain of the inevitable amoral costs of social cooperation. On the contrary, in a well-ordered liberal democracy, the state ought to attempt to respond to the non-righteous reasonable resentment of the citizens that it has morally failed, through post-decision institutional processes aimed at acknowledging the validity of such resentment.

The picture of the morally appropriate response of the well-ordered liberal democratic state in dilemmatic conditions that I proposed is undoubtedly, but unashamedly, demanding. The greater demandingness of the proposed framework is based on a more realistic rendering of the moral psychology of reasonable citizens of a well-ordered society. What I have shown is that consensus political liberals have thus far failed fully to take the inconclusiveness of public reason seriously. Besides being a theoretical mistake, it is a lost chance to give the impossible harmonious resolution of fundamental political disputes – even in the well-ordered society – its due. Correcting such shortcomings enhances both the consistency, as well as the normative appeal, of consensus political liberalism as a distinctive attempt at realistically utopian theorising.

Future research

Before closing, I want to suggest a few lines of possible future investigation opened up by this thesis. While I have touched upon some of them throughout the thesis, others are new. Below, I will recall the former and briefly introduce the latter.

As I pointed out throughout this thesis, multiple chapters – while adding to the overall argument of the thesis – constitute in themselves important contributions to consensus political liberalism. Some of them offer starting points for further independent research. Most notably, Ch. 2 suggests a need for further investigation of the relation between (more or less traditional) respect-based justifications and civic friendship-based justifications of public reason. An aspect that I had to leave aside in Ch. 2 is the investigation of how some civic friendship-based recent defences of

public reason may subvert core commitments of consensus political liberalism that more traditional respect-based accounts have sought to honour. More generally, while there are by now multiple critiques of the respect-based justification by civic friendship-driven theorists, a reply is still missing and, I believe, very much needed.

Consider a second potentially interesting point to investigate, one that concerns the core of the thesis. In this work, I uniquely focused on conceptualising political-moral failure instantiated by the failed accommodation of claims linked with constitutional essentials and certain matters of basic justice. That is, I focused – in Rawlsian parlance – on matters that in "Justice as Fairness" are covered, respectively, by the equal liberty principle of justice and the principle of fair equality of opportunity. Still, what about the residues, if any, originating from redistributive claims *stricto sensu*? In a Rawlsian vein, I started from the equal liberty, and fair equality of opportunity principles in keeping with their priority. However, this is not to rule out the possibility of investigating how the category of political-moral failure may (or may not) illuminate reasonable disagreement about the distribution of income and wealth. How such a category may (or may not) be capable of applying in similar debates may, in and of itself, indicate something normatively significant (e.g., a confirmation of the priorities that consensus political liberals attribute to different kinds of PSGs; or the possibility that concerns for the incommensurability of the goods upon which claims are grounded play a role).

One last point toward which I could only briefly gesture above is the investigation of the possibility of residues of political morality arising from legitimately rejected demands that are *unreasonable* but linked to basic primary social goods. What kind of residues, if any, could be involved and how normatively relevant could they be? The grounds to suspect that some kind of normative residues may be present is provided by the analysis of the "negative" value of primary social goods that I developed in Ch. 3. For instance, we have seen that failing to honour one's integrity-related commitments causes the kind of severe moral harm discussed above. If so, there seems to be space to investigate the normativity, if any, involved in similar losses, irrespective of the unreasonableness of the claims. Notably, undertaking an investigation of similar issues could fruitfully contribute to the burgeoning literature concerning the containment of unreasonable citizens and, more generally, their treatment by the liberal democratic state and fellow reasonable citizens. The line of investigation I am suggesting seems particularly important if we bear in mind that "unreasonableness," as much as "reasonableness," is plausibly a scalar property covering a broad spectrum. There may be residues of political morality in certain cases of unreasonableness

but not in others, depending on where the relevant claims are situated in something like a "spectrum of unreasonableness."[363]

A related point, of course, would concern the normative significance of *unreasonable* resentment, in similar cases, and the "alienation" of unreasonable citizens.[364] I suspect that a stability-grounded line may be particularly promising in framing the kind of normative problems that may be involved. Even if a principled argument in support of continued discussion with claimants whose *un*reasonable claims are legitimately rejected was not available in any case, a consequentialist – stability-oriented one – might nonetheless be needed. Notably, these reflections suggest a further point. Undertaking the stability-oriented investigation for the relevance of residues of justice that I decided not to pursue in Ch. 5 – opting in favour of the stronger principled one – may be fruitful. That is, it may lead to a multi-layered analysis of a more varied range of destabilising forces, all obtaining in conditions of unsolvable disagreement – whether reasonable or not – about fundamental political matters.

363 For a recent account making sense of the likely (and useful) differentiation of kinds of unreasonableness, see Gabriele Badano and Alasia Nuti, "Under Pressure: Political Liberalism, the Rise of Unreasonableness, and the Complexity of Containment" [2018] 26 *Journal of Political Philosophy* 148,152; Micah Schwartzmann, "The ethics of reasoning from conjecture" [2012] 9 *The Journal of Moral Philosophy*, 542,544.

364 On the latter point, in particular, see some references in Clayton and Stevens, "When God Commands Disobedience: Political Liberalism and Unreasonable Religions."

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