

The London School of Economics and Political Science

A Liberalism Without Liberals

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Declaration

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Abstract

Over the course of (roughly) the past three decades, much of contemporary liberal political theory has followed John Rawls and taken a ‘political’ turn. Liberalism, it is now generally supposed, is a ‘political’ doctrine, not a philosophy of life. The most influential account of such a liberalism is public reason liberalism. According to public reason liberals, political rules and decisions have to be justified by appeal to ideas or arguments that those subject to them (at some level of idealisation) endorse or accept. Public reason is the standard by which moral or political rules can be assessed. In this thesis I do two things. First, I offer a critique of public reason liberalism. I argue that it fails to live up to the ideal of liberal reason, that it fails to take diversity seriously, and that it is based on a problematic account of political institutions. Second, I articulate a genuinely ‘political’ alternative, which I call *a liberalism without liberals*. I develop this alternative on the basis of a re-interpretation of David Hume’s critique of the social contract and of his account of pluralism, the moral order and social criticism. I argue that Hume understands political society as the product of shared interests and not (as social contract theorists suppose) as an embodiment of a common will. I also argue that Hume offers a compelling, non-sectarian account of the standards for moral and political evaluation and that he is capable of accommodating foundational pluralism. In sum, a Hume-inspired liberalism without liberals is a combination of (a) a specific idea concerning the nature of political society, (b) an attempt to take pluralism more seriously than has so far been countenanced by liberals, (c) a specific view concerning the distribution of authority in moral deliberation and the nature of social criticism, and (d) scepticism about political institutions.

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Introduction

The internal diversity of liberalism is nothing short of bewildering. Yet when Judith Shklar writes, in her much-celebrated essay “The Liberalism of Fear,” that “liberalism refers to a *political doctrine*, not a philosophy of life” what she is identifying is an interpretation of the liberal project that is now widely shared and taken for granted by most contemporary theorists of liberalism. It is certainly shared by the most influential among them.¹

The theoretical enquiries of thinkers as diverse as John Rawls, Judith Shklar, Jeremy Waldron, Charles Larmore, Gerald Gaus, and Stephen Macedo all occur against a common backdrop: a consensus on the necessity of emancipating liberalism from the fetters of any specific ethical, metaphysical or philosophical doctrine. Liberalism’s distinctiveness, from this perspective, rests precisely in its normative focus on the terms of peaceful and mutually beneficial coexistence between individuals and groups that disagree over ethical, metaphysical and philosophical questions. It is the “political” and not the ethical or the metaphysical that liberalism should be concerned with.

John Rawls’s later work is usually credited with having reminded liberals that “liberalism” (in its most plausible version) has always in reality been but shorthand for “political liberalism.”² In *A Theory of Justice* (henceforth TJ) Rawls starts from a broadly Kantian belief that only an autonomous life can be a good life.³ This supposition allows him to argue, in Part III of that work, that justice as fairness would be a stable

¹ Judith Shklar, ‘The Liberalism of Fear’, in *Political Thought and Political Thinkers* (Chicago, IL, Chicago University Press, 1998), pp. 3–21.

² In *Political Liberalism* Rawls notes that other authors, such as Charles Larmore and Bruce Ackerman, reached that conclusion independently of his work.

³ John Rawls, *A Theory of Justice* (Cambridge, MA, Harvard University Press, 1971).

conception of justice in a well-ordered society. By characterising it as stable what Rawls means is that the conception would be one citizens would be motivated to endorse. The solution to the problem of the stability of a regulative conception of justice is one Rawls answers by means of the “congruence” argument. If it were possible to show, Rawls argues, that principles of right ‘fit’ comfortably in citizens’ conceptions of the good then the problem of stability would be solved. Part III of *TJ* is dedicated to the task of showing that citizens would in fact find the ‘right’ and the ‘good’ congruent and therefore would experience their compliance with the principles of justice as fairness as something that their conception of the good demands. His ability to solve the congruence argument, however, relies on the assumption that all citizens share what in *Political Liberalism* (henceforth PL) he calls a “comprehensive doctrine.”⁴ Comprehensive doctrines are views of the world that speak about matters of ultimate value for individuals. The comprehensive doctrine he assumes to be shared by all citizens of the well-ordered society of *TJ* is a broadly Kantian one that privileges the autonomous life.

In PL he purposely abstains from grounding liberalism in any specific comprehensive doctrine. Doing so would run against what he there calls the “fact of reasonable pluralism.”⁵ Modern societies are defined by the presence of a plurality of different reasonable comprehensive doctrines. It is very important for Rawls’s argument that this is a plurality of *reasonable* comprehensive doctrines. There will always be philosophies of life that reject basic liberal norms of freedom, equality, fairness and toleration. But political liberalism takes its first steps from an appreciation of the fact that there are different and incompatible comprehensive doctrines that are all willing to accept the basic idea of society as a fair system of social cooperation. Citizens subscribing to such doctrines are all willing to give one another their due. The fact that

⁴ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996, paperback edn).

⁵ *Ibid.*, p. xvii.

they are ‘reasonable’ means, in other words, that this is not something that is to be regretted but rather something that has to be acknowledged and incorporated into any account of a liberal political order. The discovery of the fact and meaning of reasonable pluralism is what pushes Rawls to revise the account of TJ and offer a different understanding of the stability of a pluralistic and well-ordered society.

What is particularly interesting about Rawls’s revised account is that it is not merely particular religious or metaphysical doctrines from which he distances his liberal project. He also distances his project from foundational doctrines traditionally associated with liberalism, such as the Kantian theory of autonomy and J. S. Mill’s theory of self-development and perfectibility. Political liberalism interprets Kantian or Millian liberalism as comprehensive liberalisms. They are therefore on a par with religious or metaphysical ideals of the good upon which all liberals would be averse to ground a political order. Liberalism would negate itself, would betray its mission, if it were to amount to nothing more than one of the many sectarian doctrines that populate pluralistic modern societies. What Rawls thinks liberal theory should do, rather, is “apply the principle of toleration to philosophy itself.”⁶ This is an ambiguous phrase. Taken literally, it seems to call for the relativisation of liberal political philosophy. But I take Rawls’s claim here to be more limited. What I think Rawls is issuing is a warning against the frequent tendency on the part of liberals to ignore the extent to which their preferred interpretations of liberalism are based on theories of the good life. Rawls is calling for a self-conscious attempt on the part of liberal political philosophers to purge themselves of this tendency to transform liberalism into a sectarian doctrine. Constitutional orders, rights and liberties justified on the basis of Kantian or Millian theories of personhood would fail to fully accommodate all those ways of life that do not conceive of the good in

⁶ Ibid., p. 154.

those terms. Liberalism has to stand above the fray of sectarian conflict and as such refer exclusively to terms of political association rather than ethical life.

The attempt to disentangle liberalism from sectarianism is not casual. Political liberalism, Rawls thinks, draws its historical sustenance from a specific interpretation of modernity. “The historical origin of political liberalism (and of liberalism more generally),” he writes, “is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries.”⁷ From a situation in which one single source of religious authority, the Catholic Church, was the sole arbiter of good and evil, following the spread of Luther’s and Calvin’s ideas Western Europe found itself populated by a plurality of rival religions competing vigorously for adherents. It was the inability on the part of these competitors to accept the fact that the good comes in many, often incompatible, guises that ensured that only violence could follow from the dissolution of the Christian unity of the Middle Ages. It is political and philosophical reflection on the political implications of seemingly irreconcilable latent conflict between competing religious worldviews that Rawls thinks the Reformation induced.⁸ Political liberalism, a political philosophy primarily concerned with the toleration of difference and the protection of freedom of conscience, draws profoundly on such a transformative historical experience, Rawls thinks. In doing so, Rawls is far from being alone; reference to the formative experience of the religious wars is another shared feature of political liberal writings.⁹

This shared historical experience is one that we may incorporate in what Rawls calls the “background culture” of Western liberal democracies. There is a plurality of

⁷ Ibid., p. xxiv.

⁸ Ibid., p. xxvi.

⁹ And also, it should be noted, of liberal writings that are not ‘political’. See, e.g., Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge, MA, Harvard University Press, 2001) and Ronald Dworkin, *Religion without God* (Cambridge, MA, Harvard University Press, 2013).

conceptions of the good. Overcoming this condition, reverting back to the ethical uniformity that preceded the Reformation, is something we can achieve only by coercive means. A plurality of reasonable conceptions of the good is here to stay. Rawls does not only offer us a story that we can assume we all share about the historical origins of our condition. He also endogenises the emergence of reasonable pluralism in well-ordered societies with free institutions. The freedom of conscience and speech constitutionally guaranteed by liberal societies, he argues, is *itself* the source of the pluralisation of reasonable conceptions of the good. The fact of pluralism is the natural result, in his words, of “the exercise of reason under free institutions.”¹⁰ This reinforces the point that a plurality of comprehensive viewpoints is something that is here to stay. Even if they do not all necessarily endorse the endogenous explanation of the sources of pluralism, what all political liberals share is the belief that this fragmentation of the good is not a fact that should be regretted, or a condition that hopefully will be transcended one day. Liberalism must accommodate the fact of reasonable pluralism. It should always take it as a basic axiom, and reason normatively about the terms of political coexistence between individuals and groups thus divided.

But how would political liberalism go about limiting itself to the sphere of the political, thus avoiding taking a stand on comprehensive issues? The answer, most liberals now generally think, is to be found in the principle of public justification and the idea of public reason.

I. Public Reason Liberalism

Public reason liberalism now tends to be considered the most convincing articulation of Rawls's political liberalism. At its core, there are two ‘facts’, both originating in Rawls's

¹⁰ John Rawls, *The Law of Peoples* (Cambridge, MA, Harvard University Press, 2002), p. 82.

writings. First, there is the fact of reasonable pluralism I described above. The second fact has to do with the way political power is exercised in a democratic society, or the nature of political power in a democratic polity. In liberal democracies, citizens exercise political power as a collective body. They are both the sources and the subjects of that power. Their predicament is one Rousseau describes better than anybody else: how can they restrain themselves in a way that affirms their freedom and equality? How, more generally, can we make coercion compatible with the freedom and equality that defines the status of the democratic citizen? The answer, public reason liberals think, is to be found in the principle of “public justification.” Freedom and equality can be rendered compatible with the exercise of political power only if the latter can be publicly justified. Political power is publicly justified when all members of the public freely accept it. Naturally, figuring out what form this acceptance or endorsement ought to take is a task on which public reason liberals expend a good deal of energy. But the basic Rousseauian idea they all share is that public justification can help us make sense of the paradoxical nature of the democratic citizen, who is both the author and the object of democratic laws.

Rawls would say that the principle of public justification is genuinely “political.” There are many ways in which a theory or a principle could be said to be political. A ‘political’ theory of liberalism could be one that took the fact of politics – such as deep conflicts of interests, manipulation, propaganda – at face value and sought to theorise a liberalism on that basis. This is the kind of political reality that a “modus vivendi” approach would take for granted. A modus vivendi approach takes interests as they are and interprets political order as the result of political bargaining. For Rawls a theory of modus vivendi is political ‘in the wrong way’. It reduces politics to the raw exercise of power and domination. Rawls’s wager is that it is in fact possible to theorise a political liberalism that is not political in the wrong way. His strategy is to refocus attention on the

key fact of (democratic) politics: the collective exercise of power. He is not concerned, in other words, about the ends of life or matters of ultimate meaning. All he is interested in is the way in which democratic citizens exercise power on each other. Even the values underlying the 'proper' exercise of democratic power – freedom and equality – are drawn by Rawls not from a comprehensive theory of the good but rather from what he calls the "background political culture" of Western democracies. These are certain fundamental ideals that Rawls thinks we can assume all citizens in such democracies share. The 'political' nature of the principle of public justification comes across most transparently in what Rawls takes to be the most important principle coming out of PL. This is not a principle of justice but rather a principle of *legitimacy*: "Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason."¹¹

Let's return to Rawls's modus vivendi. Imagine a political society populated by two groups, A and B. A and B, let's imagine, are in a condition of balance of powers.¹² Since no group has the power to dominate the other, the two groups live in a political condition of mutual toleration. But if asked why they comply with such norms of toleration, the answer won't refer to moral ideals but rather solely to the fact that this is all that each group can achieve in light of the relatively equal balance of powers. As soon as the balance of power shifts, the norms will change. If, say, A becomes dominant, it

¹¹ Rawls, *Political Liberalism*, p. 137.

¹² Although much is made by political liberals such as Rawls and Larmore of the idea of modus vivendi, the notion in fact remains vague in their writings. A modus vivendi is defined by a kind of equality between two parties. But what kind of equality exactly? I think that the best way to describe what Rawls has in mind is as an *equality of ability of each to threaten the other*. It is the idea of threat that is at the core of the idea of modus vivendi and 'balance of power'. See Gerald Gaus, *Contemporary Theories of Liberalism* (London, Sage, 2003), p. 59. For a treatment of this issue in the IR literature, see, for example, Kenneth Waltz, 'Realist Thought and Neorealist Theory', *Journal of International Affairs*, vol. 44, no. 1 (1990), pp. 21-38. Thucydides' *History of the Peloponnesian War* is often cited as the intellectual forbearer of this approach.

will shift the terms of the political settlement in its favour and substitute toleration of B for domination of B. Let's imagine B 'accepts' the settlement, on the basis, again, of the argument that there is nothing else it can achieve under such circumstances. Both A and B, then, accept such an arrangement, in which B is treated as inferior and oppressed simply as a result of a power imbalance. Even though all parties accept the modus vivendi settlement, there is something in the nature of the arrangement that would preclude us from concluding that the order is a 'publicly justified' one. Though it is justified in the sense that both A and B see some kind of justification for it, it is not publicly justified in Rawls's sense. The problem with the modus vivendi case is that citizens are relating to one another in the wrong way. They see each other simply as obstacles to the full pursuit of their interests. Something different is required for genuine public justification.

To be related in the right way, according to Rawls and public reason liberals, is to participate in "public reason." Public reason may be Rawls's most influential concept.¹³ So, what is public reason? The first thing to note is how rare actual definitions of the concept are in the literature.¹⁴ Rawls provides one of the few clear definitions. Here is how he puts it:

A political society, and indeed every reasonable and rational agent, whether it be an individual, or a family or an association, or even a confederation of political societies, has a way of formulating its plans, of putting its ends in an order of priority and of making decisions accordingly. The way a political society does this is its reason.¹⁵

¹³ This may at first seem too strong a claim. Isn't Rawls after all the political philosopher who has given us reflective equilibrium, or the difference principle? Nonetheless, it is only with the idea of public reason that Rawls has articulated what he (and those influenced by him) takes to be the normative core of the liberal project. It is on the basis of the idea of public reason that he has reinterpreted the history of political thought, especially the social contract tradition. Public reason articulates what he takes to be the moral nature of the political community of the social contract.

¹⁴ Consider for instance Jonathan Quong's formulation: "Public reason requires..." rather than "Public reason is..." Jonathan Quong, 'Public Reason', *The Stanford Encyclopedia of Philosophy* (Summer 2013 Edition), Edward N. Zalta, ed.

¹⁵ Rawls, *Political Liberalism*, p. 212.

As Rawls understands it, then, reason is about the definition of ends and the specification of the means to achieve those ends. Note that Rawls is not speaking about just any kind of agent, but rather only ‘reasonable and rational’ ones. As Rawls understands it, a rational agent is one whose powers of judgment and deliberation allow it to seek and pursue ends and interests of its own. Rationality is also an attribute of the choice of means, as when, for example, the most effective means to an end is chosen. Rational agents are not necessarily self-interested, in the sense that the interests they decide to pursue can also be genuinely other-regarding ones. Yet rational agents lack a “particular form of moral sensibility that underlies the desire to engage in fair cooperation as such, and to do so on terms that others as equals might reasonably be expected to endorse.” It is this latter idea that defines the ‘reasonable’: “Persons are reasonable [...] when [...] they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so.”¹⁶ If we go back to the modus vivendi case, what we see is a set of agents that are not reasonable in Rawls's sense, since those agents neither propose fair principles of cooperation to others nor would be willing to abide by them. A modus vivendi, then, is a political order that lacks a ‘reason’ in the Rawlsian sense of the term. If not on the basis of reason, then, on what basis does a modus vivendi select ends and plan means? The answer would seem to be force. It is merely the balance of relative forces that determines the kind of decisions that are taken in a modus vivendi. If not by reason then it is by force that political relations are guided.

As far as the attribute “public” is concerned, we can again turn to Rawls in search of a useful account:

¹⁶ Ibid., pp. 49ff.

Not all reasons are public reasons, as there are the nonpublic reasons of churches and universities and of many other associations in civil society. In aristocratic and autocratic regimes, when the good of society is considered, this is done not by the public, if it exists at all, but by the rulers, whoever they may be. Public reason is characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship. The subject of their reason is the good of the public: what the political conception of justice requires of society's basic structure of institutions, and of the purposes and ends they are to serve. Public reason, then, is public in three ways: as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public, being given by the ideals and principles expressed by society's conception of political justice, and conducted open to view on that basis.¹⁷

We see here that for Rawls the idea of public reason only makes sense in the context of a democratic political order. What defines democracy is the fact that all its members share a certain status, i.e. that of the democratic citizen. As we saw above, this is an important component of Rawls's *political* liberalism. Democratic citizens exercise power in a unique and peculiar way, that is, as both authors and objects of that collectively exercised power. This is the crucial feature of a “public” as Rawls conceives it. In this sense, a *modus vivendi* (like an aristocratic or autocratic regime) lacks a public. It is not as participants in a common political venture that its members conceive of themselves and others but rather (we may suppose) as members of groups that are out there to get as much as they can for their own groups. This is not how democratic citizens ‘reason’. Their ultimate concern, instead, is that of sharing a political space regulated by norms of fairness and justice, regardless of the costs of such a system for their own ‘private’ interests. They eschew appeals to force and they deliberate as a single collective body in pursuit of its own collective good.

The third feature of public reason is the one that associates it – in the mind of many public reason liberals – to the idea of deliberative democracy. The elective affinity

¹⁷ Ibid., p. 213.

between public reason and deliberative democracy is one Rawls himself comments upon. The deliberative process renders public reason something that is always open to view. Addressing one's fellow citizens in an open, impartial and respectful way when fundamental constitutional matters are at stake is a way of affirming publicly one's commitment to public reason. Democratic deliberation makes it possible for public reason to be something always available to be 'seen' by all citizens. As some commentators have noted, this feature of public reason connects the latter to another of Rawls's fundamental concerns: that of "publicity."¹⁸ As is well known, publicity is central to TJ. A well-ordered society, Rawls writes, is "a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles."¹⁹ An obvious way to make sure that a conception of justice is entrenched and known by all citizens to be entrenched and respected is to have such citizens *talk* about it as much as possible. A democratic order in which decisions are taken as deliberatively as possible therefore provides the most obvious instantiation of the principle of public reason. Democratic deliberation makes the nature and content of public reason as public as it can possibly be. For these reasons a number of influential theorists have argued that the idea of public reason offers the most convincing philosophical rationale for the theory of deliberative democracy.²⁰

I have purposely used the expression 'elective affinity' to describe the relationship between public reason and deliberative democracy. Some theorists have in fact rejected the idea that there is any relationship between the two. Public reason *could*

¹⁸ Charles Larmore, 'Public Reason' in Samuel Freeman, ed. *The Cambridge Companion to Rawls*. (Cambridge, Cambridge University Press, 2002).

¹⁹ Rawls, *Theory*, p. 5.

²⁰ Larmore, 'Public Reason'; Cohen, Joshua. 1996. Procedure and Substance in Deliberative Democracy. In *Democracy and Difference*, ed. Seila Benhabib, 95-119. Princeton: Princeton University Press, Sen, Amartya. *The Idea of Justice* (London, Penguin, 2010).

be interpreted as a basis for deliberative democracy, these critics argue, but it need not be so. I have in mind here critics such as Gerald Gaus and Kevin Vallier. What Gaus and Vallier have argued is that there is no necessary connection between public reason and democratic deliberation.²¹ They think something closer to what F. A. Hayek called a “spontaneous order” rather than Rousseauian ideal of participatory democracy captures the essence of public reason. Their main argument is that if we want to take the fact of reasonable pluralism seriously we need to find a better way of accounting for the diversity of perspectives. The democratic citizenry’s ability to be informed of the true depth of this diversity is best guaranteed by a more decentralised political order rather than a highly centralised and deliberative one. Public reason, we might say, is something that for theorists like Gaus and Vallier does not require deliberative democratic reasoning. The crucial thing, from the perspective of public reason, is that reasonable and rational citizens occupy a shared moral space in which political power is exercised in a certain manner. Deliberative democracy is not a necessary feature of this theoretical construct, nor a necessary institutional implication of it.

In this thesis I will abstain from considering too closely the matter of democratic deliberation. What I will focus on is the idea of public reason and the conception of liberalism that has emerged from it. Rawls’s influential definition makes it clear why “public reason liberalism” is the best way to denominate this new conception of liberalism. Public reason is *the* crucial concept; it is about the ends of political association, it defines the means by which such ends can be pursued, and it specifies the nature of the relationship between democratic citizens. There is very little about political life that is left out by so capacious a concept. Even the important idea of ‘public justification’, we can

²¹ Gerald F. Gaus and Kevin Vallier, ‘The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions’, *Philosophy and Social Criticism*, vol. 35, nos.1-2 (2009), pp. 51-76.

see, is derivative. Public justification is a way (i.e. a means) by which we can achieve a political order of public reason. Judging from recent liberal discourse, it seems clear that most liberals now think that the best articulation of Rawls's political liberalism is what now goes by the name of public reason liberalism. Rawls's idea of public reason (adequately revised), it is now generally believed, helps us define the best liberal response to a world deeply divided along ethical, religious and philosophical lines. Nonetheless, the centrality of Rawls's reasoning and his account of political liberalism is something that cannot be overstressed. Public reason liberalism remains committed to political liberalism's basic architecture: a certain conception of the political or the public, a focus on the legitimacy of power, and the fact of (reasonable) pluralism. Public reason liberalism is better thought of as a specification of political liberalism rather than a rejection of it.

II. Towards a Liberalism Without Liberals

Although I will engage in this thesis primarily with the notions of public justification and public reason, it is important to bear in mind that it is as an intervention in the debate over the nature of political liberalism that this thesis is conceived. In his later, 'political' writings, on the basis of the idea of applying the principle of toleration to philosophy itself, Rawls recognises with an unprecedented degree of seriousness and honesty the extraordinary diversity of perspectives that liberalism has to be able to accommodate. The liberal way of life, he recognises, can no longer be assumed to be the only legitimate one. His response to this predicament takes the form of a shift to the level of the 'political', or the 'public'. Mine is a critical enquiry into this *political* understanding of liberalism.

I will assume throughout this thesis that political or public reason liberalism represents a significant step forward for liberal thought. I will not defend it against, say, perfectionist or other comprehensive liberalisms. I take pluralism as a basic, insurmountable fact of the world and liberalism as a doctrine that focuses on articulating the terms of political coexistence between individuals and groups divided radically over what the good consists in. What I will engage with critically is what can only seem a somewhat paradoxical turn liberalism has taken following the ‘political turn’ I have so far described. I may call this paradox *the paradox of a liberalism without liberals*. Though it is certainly a hypothetical *extensio* of the logic of public reason liberalism, I don’t think it is one that is *ad absurdum*. A liberalism that abstains from taking a stand on comprehensive matters, a liberalism that tries to de-sectarianise itself, is a liberalism that has fully assimilated the irreducibility and inescapability of disagreement in modern societies. Though it is not usually expressed in this way, I interpret this broad project of applying the principle of toleration to philosophy itself as an attempt to rethink the extent to which liberalism intrinsically depends on ‘liberal’ subjects. Rawls’s political liberalism questions the extent to which the usual notion of citizenship – secular, ‘rational’, ‘enlightened’ – can legitimately remain an unquestioned presupposition of liberal theorising. If it becomes ‘sectarian’ to define liberalism on the basis of Kantian or Millian conceptions of personhood, and if it is solely political relations that matter for the purpose of theorising liberalism, it is towards the severance of liberal-*ism* from liberal-*s* that the political turn is oriented. Or at least this is the view I will take in this thesis.

A more prosaic way of putting it is to say that the standard that is to guide political life can no longer be one extracted from a liberal ‘philosophy of life’. This perspective opens up the logical possibility that one may have a liberal political order without *any* liberal groups within it. Now, it is obviously not the eradication of liberal ways of life that I am after. My point is rather a conceptual one, relating to the nature of

liberalism as a political theory. The paradox of a liberalism without liberals has become a very tangible proposition. Of course, as we saw above, as public reason liberalism currently stands a lot of the work of sorting out acceptable from unacceptable or liberal from illiberal citizens is done by the notion of ‘reasonableness’. Rawls also assumes that the background political culture is a broadly liberal one. Strictly speaking, then, there is no paradox as things stand now. Nonetheless I think the paradox is a real one, and one that needs to be taken seriously. It is the implicit conclusion, in my view, to which a certain way of thinking about liberalism over the past two-three decades has tended. Liberalism is the political philosophy of those that are sceptical of the exercise of political power and who marvel at the extent to which humanity seems “infinite in diversity,” to quote Montaigne. These two facets of the liberal disposition are of course connected, since it is in the name of (religious, ethical) uniformity that political coercion has usually been applied to recalcitrant minorities. Rawls’s political liberalism and contemporary public reason liberalism are animated by the concern that all too often a liberal philosophy of life has lurked behind the seemingly neutral undertaking of liberal politics. Liberalism has too often been a cultural project, we might say, and only subordinately a political one. This concern opens up a new perspective on liberal possibilities in times of increasing pluralism.²² It is this new perspective that the paradox of a liberalism without liberals seeks to account for.

The first part of this thesis addresses the following question: how successful is public reason liberalism as an account of liberalism under conditions of deep diversity? Public reason liberalism has been confronted with a number of objections, which

²² The phenomena I have in mind here are particularly immigration and new social movements, such as those pertaining to sexual orientation or race. Religious commitment and diversity too seem unwilling to fade out. Even as some ways of life disappear, these sources of diversification are bound to stimulate further the kind of concerns a liberalism without liberals seeks to address.

Jonathan Quong has recently summarised well.²³ For example, perfectionists have found public reason liberalism's attempt to avoid truth-claims to be problematic, whilst others have argued that public reason is not substantive enough to give determinate answers to specific political problems. In the thesis I take a different approach. My enquiry in the first part of the thesis starts from a critical reflection on two basic intuitions that stand at the core of the public reason liberal position: one about the nature of reason and the other about the nature of political power. As far as the former is concerned, it is useful, I showed above, to think about Rawlsian reason by relating it to his discussion of *modus vivendi*. We enter the realm of reason, Rawls intimates, when we refrain from using force. I argue that if one takes this logic seriously one has to reject public reason liberalism's attempt to ground a *political* order in reason. Setting up 'public reason' as the new standard on the basis of which decisions are taken does not resolve the problem of force in political life but rather gives force a different guise. Public reason liberalism does not overcome the logic of exclusion-compulsion but rather defines the boundaries of who is included and who is excluded. Unlike previous objections to public reason liberalism that focus on the matter of exclusion, in this thesis I march up directly to public reason liberalism's capital or centre: the idea of reason itself.

My account of reason and authority is complemented by a parallel focus on the nature of political power. As I noted above, something that all public reason liberals agree on is that political power is something to be handled with great care. Although one rarely finds in their writings an account of politics that incorporates theoretically such worries, one does get the sense that what they take to be a defining feature of the political is the potential for abuse of a very dangerous institution, the state. The importance of specifying what it means to exercise political power legitimately originates

²³ Quong, 'Public Reason'.

in the all too frequent abuse of power on the part of the powerful. I think public reason liberals are right about this. I noted above that such scepticism towards the exercise of power defines the liberal orientation to politics. But, again, I argue that public reason liberals fail to take their explicit preoccupations seriously enough. They think they can reconcile two antithetical propositions: (i) the state is a dangerous institution and (ii) the political order is in principle capable of reflecting the desiderata of public reason and instituting justice. But taking (i) seriously, I argue, means rejecting (ii). If we look at what the social sciences (history, economics, sociology) tell us about the state we should shed any reason to believe that (ii) is even a remote conceptual possibility. The state is an institution that is more likely to reflect the balance of power of a society's competing elites than the demands of justice. This is another important reason for thinking that instituting public reason is a problem from the perspective of what it means to honour reason.

III. David Hume's Contribution

The aim of the first part of thesis, then, is to show that some basic flaws plague public reason liberalism, which thus fails to deliver a liberalism without liberals. In the second part of the thesis I argue that there is another way forward and show what this alternative way looks like. The alternative proposal I elaborate builds on a new interpretation of the moral and political thought of David Hume. Hume is a figure that has largely remained marginal to current debates on political liberalism. Political liberalism remains an overwhelmingly Kantian and Rousseauian enterprise.²⁴ There are no doubt certain

²⁴ Since I will often be referring throughout this thesis to Kant and Kantianism, it should be noted at the outset that not all Kantians are alike and that much of modern day Kantianism in political theory is greatly shaped by Rawls and his form of contractarianism. For critiques of the Rawlsian appropriation of Kant, see, for example, Katrin Flikschuh, *Kant and Modern Philosophy*

junctures in which Hume is brought into the conversation, such as in Rawls's account of the circumstances of justice in TJ or in Gaus's recent evolutionary account of social morality. Though Hume is there taken very seriously, it seems as though Hume's presence largely comes in the form of an afterthought, or at least as something that has not much more than an ancillary value. Hume can help us think more accurately about certain facts of the social world (such as the importance of the fact of moderate scarcity for justice, or the true origins of morality), but is not really of much help when basic normative matters are at stake. It is easy to see why this is the case. Public reason liberalism participates in the contractarian enterprise that Rawls's TJ was so influential in resuscitating in the twentieth century. Its perspective on political society is shaped by the logic of the social contract. Hume is a theorist whose legacy in the history of political thought is usually taken to be a critique of the social contract, particularly in his essay "Of the Original Contract." And too few regard Hume's critique as a compelling one.²⁵

Central to my claim that Hume shows us an alternative and plausible way forward is precisely a reinterpretation of his critique of the social contract. What Hume rejects when criticising the social contract logic, I argue, is a certain idea of the nature of political society. Social contract theorists understand political society as a union of wills, as the embodiment of a common will. Different theorists then fill in the contents of this common will differently. But the overall idea remains that of a political society united in the willing of certain ideals. Public reason is but the latest articulation of this logic of the common will. According to its exponents, it is by engaging in a certain form of reasoning in common in 'public' that such a unity is reached. Public justification enables the

(Cambridge, Cambridge University Press, 2000) and Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA, Harvard University Press, 2009).

²⁵ E.g. John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, MA, Harvard University Press, 2007).

instantiation of such a principle in that political society's constitution and legal norms. It is the will of the public that declares whether a norm or a law is justified or not.

I argue that it is precisely such an account of political society as the embodiment of a common will that Hume rejects in his writings against the social contract. No such common will is in reality available. Political society is never anything more than the web of complex and conventional interrelations spun by different groups and individuals. It is therefore futile to try to distinguish, as social contract theorists do, between 'morality' and 'interest', confining the former to the 'public' and the latter to the 'private'. The 'public' is not the site of a common will that has been expunged of all interest or self-interest. In spite of all their efforts to breathe a pluralistic spirit into their contractarian theorising, public reason liberals, as I show especially in my chapter on religion and public reason, never sever political society from the ideal of a common will. This doesn't of course mean that force is the only determinant of political life. Hume's conventionalist account of the emergence of justice shows that there is a third way, beyond common will and *modus vivendi*.

Pluralism, then, is a critical component of this argument. Hume, according to my interpretation, is in fact primarily concerned with the same problem contemporary political liberals are concerned with: the problem of coping morally and politically with a radical plurality of evaluative standpoints. This comes across most clearly in his reflections on how hard it actually seems to be to find a universal standard of judgment. Any belief, custom or practice will appear differently depending on where you look at it from. Our attempt to settle the argument of what the 'right' standard really is runs against the fact that many will find that standard parochial or oppressive. Hume takes the *fact of disagreement* – rather than an idealised version of it – very seriously. Idealising, again, runs into the problem that the standards on the basis of which idealisation is undertaken may not suit all ways of life. One can remain agnostic on the question of

whether a universal standard actually exists; the point for Hume is that pluralism is a very palpable and politically relevant phenomenon. Public reason may be a standard of evaluation that is more capacious than ones liberals are used to appealing to; but this doesn't solve the political problem posed by those who won't accept it as a standard. Filtering out this disagreement by appealing to another norm – e.g. reasonableness – does not solve the problem but merely takes it to another level: who decides what counts or doesn't count as reasonable?

So how is one to deal with this problem? In the second and third parts of the thesis I argue that not only does Hume give us an accurate depiction of the scale of the problem but also that he offers a compelling solution to it. But before I lay out the argument, a brief methodological remark is in order. This thesis is a work of political theory, not intellectual history. Its interpretative objective is not that of recovering what Hume *really* meant in his political works but rather that of constructing a plausible and coherent theory out of those works. This exercise does not involve distorting Hume's message and words, though it certainly does involve taking Hume's logic and words in what might appear to be new, unfamiliar directions. The liberalism without liberals I defend in this thesis is Humean, not Hume's. It is inspired by a theory and a spirit that, as my constant references to his texts show, *can* be extracted from Hume's writings. My overall purpose is however that which animates Rawls's appropriation of the moral and political thought of the great social contract thinkers in his theoretical works: establishing the bases for a constructive conversation between these thinkers and our own current concerns. Like any constructive conversation, the one I set up here between Hume and contemporary liberalism tries to be both respectful as well as open to the unfamiliar.

A liberalism without liberals starts with the Humean distinction between political society as the product of shared interests and political society as the embodiment of a common will as its starting point. Political society is not a site of agreement on

fundamentals but rather a social space in which a plurality of agents ‘meet’ in pursuit of their disparate ends. There is no deep moral agreement about the nature and ends of the person, or the *telos* of political society. Political society is not moved forward by a collective will. It is a much ‘thinner’, less permanent achievement. On Hume’s account political society is no doubt there to serve a public interest, but this public interest is in fact nothing more than a shared...*interest*. It does not serve any deeper moral purpose.

By abandoning the idea of a common will the Humean account opens the door to a kind of pluralism that political liberals have so far been unable to countenance: pluralism about foundational commitments. This is where the idea of a liberalism *without liberals* acquires its specificity. The liberalism of the common will is the liberalism of foundational harmony. The liberalism of shared interests, on the other hand, can welcome within its fold individuals and peoples with different foundational commitments. All these different individuals and peoples meet in political society to pursue their ends. By meeting, they develop and learn to nurture shared interests. The important point is that this process needn’t affect their foundational commitments. Though it requires convergence over a set of shared interests, a liberalism without liberals doesn’t require convergence over foundations.

For Hume, rejecting the idea of a common will doesn’t mean that a political society is one in which particularistic attachments are given free rein. The pursuit of interests in society requires a certain degree of self-restraint, it requires very often putting self-interest aside. Justice arises, on his account, in the act of abstaining from the property of others. The key lesson of Hume’s story, however, which a liberalism without liberals makes its own, is that one needn’t rely on collective participation in a common will to obtain such results. Shared interests are all that his account requires. The reasons for abstaining from the property of others need not all originate from the ‘shared point

of view' that it is the aim of the social contract procedure to identify. They originate in the shared need to get along.

Does the notion of interest and the end of simply getting along end up evacuating the moral and political domains of any meaningful kind of inter-subjectively deliberative dimension? I argue that this does not necessarily follow. Notice in fact that nothing in the idea of interest precludes meaningful moral deliberation or moral learning. As Hume accepts, other-regarding considerations may be weightier than self-interested ones in an agent's own internal deliberations. The pertinent question, then, is not *whether* moral engagement is possible among Humean agents but rather *on what basis* such deliberation takes place. The social contract logic finds the answer to the latter question in the common will (and its associated principles of right, or principle of reason).

For a liberalism without liberals, on the other hand, moral deliberation is not about the affirmation of foundational principles but rather must be about the constant, mutually acceptable negotiation of differing values and interests. For Hume at the core of moral life is ultimately a question of authority: who has the authority to make a final moral judgement? To take pluralism seriously is about dissolving this authority. The implication is that only by means of persuasion can I bring someone to my side. A liberalism without liberals is not morally lifeless. To the contrary, it is saturated with intersubjectivity. After all, it will only be by entering the moral universe of others, only by engaging with their own internal reasons that free life in common will blossom.

This is a demanding account of moral life. And it is partly due to this demandingness that a liberalism without liberals is sceptical about political institutions. The liberalism of the common will assumes that the state is the kind of agent that can bring about a well-ordered society. According to Hume's sociology, the state is nothing more than a domain of elite competition. What Hume calls "factions" (and we might call interest groups) compete for control of the state in pursuit of their interests. The state is

incapable of sustaining the expectations social contract theory asks it to shoulder. The kind of philosophical closure or resolution that the social contract perspective expects of the state is simply not available. Hume's analysis seems to suggest that the state is simply not that kind of creature. It is to a considerable extent a sphere of elite competition and the most that can be expected of it is to guarantee some peace and stability. It is neither capable of furthering the cause of justice or perfecting the moral order.

The more general point a liberalism without liberals wishes to make here is one about the 'distance', as we might say, between society and the state. The social contract doctrine elides this distance and sees the state as a reflection of an idealised version of society. The gulf between the state and society is not one that can be filled. Society is too heterogeneous, too anarchic a phenomenon to be plausibly brought under the purview of the state. This is a tension that this form of liberalism believes cannot be resolved. We could say that it takes it as a defining feature of the political condition.

IV. Thesis Outline

This thesis is divided in three parts. In the first part I present a new critique of the public reason project. In Part II, I offer a new interpretation of Hume's moral and political thought, focusing in particular on his critique of the social contract tradition. In Part III, I draw together the conclusions and implications of Parts I and II and elaborate the idea of a Humean liberalism without liberals.

I start in Chapter 1 with a focus on the idea of reason. I critically scrutinise the way public reason liberals understand the idea of reason and question the extent to which reason can be reconciled with the realities of any political order. In Chapter 2, I engage with an old debate that has been profoundly reinvigorated in recent times by the emergence of public reason liberalism: the role of religious convictions in liberal politics.

I lay out the various arguments that have been presented by both public reason liberals and their critics and find all of these wanting in one way or another. All sides of the debate minimise the degree and significance of religious pluralism. A big reason for this is that liberals have generally failed to ask the question ‘what is religion?’ In Chapter 3, I move on to institutions. Within the overall architecture of public reason liberalism a prominent role is given to the state. The state, it is usually assumed, is an agent of justice. I draw on the evidence provided by other disciplines such as history and sociology to show that political theorists have attributed to the state a task that we have no reason to think it can credibly undertake.

In Chapter 4, focusing especially on his *Treatise of Human Nature*, I offer a reinterpretation of Hume’s moral and political thought and in particular of his critique of the social contract tradition. What Hume critiques is the idea of political society as the embodiment of a common will. It should be understood, rather, as a product of shared interests. There is no deeper unity than this, Hume intimates. In Chapter 5, I elaborate further on Hume’s interest-centered conception of political society by re-examining his inquiry into the notion of revolution, or resistance. I argue that the best way to make sense of his doctrine on revolution is to approach it from the perspective of his rejection of the common will idea. Disentangling revolution from the common will leads to a very different and (I argue) radical perspective on the former. In Chapter 6, I look closely at Hume’s approach to pluralism and the matter of fixing standards for judgment. His approach to what we might very broadly call cross-cultural engagement, I argue, is both innovative and compelling. By putting forward what I call an interpretative account of standards, Hume successfully reconciles sensitivity to diversity with the need for a critical distance from existing practices.

In Chapters 7 and 8, I elaborate an account of a liberalism without liberals by means of a critical engagement with two recent attempts to de-sectarianise liberalism:

Gerald Gaus's public reason liberalism (Chapter 7) and varieties of *modus vivendi* liberalism (Chapter 8). I lay out the reasons for thinking that a Humean liberalism without liberals offers both a distinctive and compelling account of a non-sectarian liberalism.

Part I: Against Public Reason

Chapter One

(Public) Reason, Diversity and Authority

I would like to start my critical enquiry into the public reason project by focusing on a notion that has not received enough attention, either by theorists of public reason, or by its critics. This is the idea of *reason* implicit in the public reason project. At its core, as Gerald Gaus has observed, the idea of public reason offers a thesis about the nature of liberal reason. Liberalism has since its inception, arguably, contained a specific view of the nature of human reason. It has generally supposed reason to be something antithetical to power, or coercion. By putting the idea of public reason at the heart of their theoretical endeavours, public reason liberals have forced us to take a closer look at the idea of liberal reason.

Public reason liberalism ultimately seeks to offer an account of what a political order governed by reason would look like. In this chapter I challenge the view of reason advanced by public reason liberals. Public reason, in their view, “gives answers” to questions concerning how and when authority is justified. I argue instead that reason is not the kind of thing that can provide the kind of finality and authority that public reason liberals require as part of their attempt to justify political authority.

This chapter develops in the following manner. In Section I, I provide an overview of the public reason project, focusing in particular on John Rawls’s political liberalism. In Section II, I focus on the accounts of reason put forward in the writings of Rawls and Gaus. In Section III, I look closely at the relationship between (public) reason and authority by critically scrutinizing Anthony Laden’s recent attempt to ‘pluralise’ public reason.

I. Rawls, Political Liberalism and Public Reason

It is due to the influence of the later works of John Rawls that the idea of public reason has become central to the contemporary liberal project. What animates Rawls's later work is the quest for an answer to the following question: "How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical and moral doctrines?"²⁶ This might at first look like a strange question for any contemporary political philosopher to ask himself. After all, hasn't the liberal project since its inception in the seventeenth century been one primarily driven by the concern to accommodate the fact that disagreement reigns in the religious, ethical and philosophical domains? Don't the liberalisms of John Locke, Montesquieu, Adam Smith, Kant and J.S. Mill constitute answers to precisely the kind of question Rawls's later work sets for itself? Why is it only in Rawls's later works that the above concern becomes of central relevance? And, finally, why does Rawls's attempt to answer that question lead to the formulation of a new theory of liberalism, a "political liberalism"? Rawls's own way of thinking about these matters has been very influential, and has set the conceptual and normative contours within which the debate has taken place. To understand the state of contemporary liberalism theorising – more specifically, its overwhelming focus on the ideas of "political liberalism" and "public reason" – it is therefore indispensable to turn to Rawls's own account.

In *TJ*, Rawls devises a hypothetical ideal procedure for thinking about a society's regulative moral principles. From a hypothetical "original position" behind a "veil of ignorance" that removes morally arbitrary elements from sight, a rational individual comes up with principles of justice that apply to a society she is a member of. The procedure is hypothetical, in the sense that it doesn't represent something each individual

²⁶ Rawls, *Political Liberalism*, p. xxv.

actually does. It is rather a “device of representation,” which models a shared appreciation among individuals of the importance of setting up in a fair way. This exercise yields two well-defined principles of justice, the first concerning the sphere of individual liberty (the “equal liberties principle”) and the second concerning the kind of inequalities that would be justified in a just society (the “difference principle”). Rational and reasonable citizens will see the two principles of ‘justice as fairness’ as morally superior to the principles other moral theories, such as utilitarianism, defend. Thus, when arguing with one another here and now about matters of justice, rational and reasonable citizens will recognise in justice as fairness the “mutually recognized point of view” from which they will be able to adjudicate their different claims.

According to Rawls’s own account in the ‘Introduction’ of PL, TJ is plagued by a fundamental problem. PL, he says there, addresses “a serious problem internal to justice as fairness.” This internal problem relates to the way in which TJ goes about arguing that the “well-ordered society” of justice as fairness would not only be just but also stable. A well-ordered society is stable if citizens are motivated to act in accordance with its regulative principles. And citizens can be expected to act in this way, Rawls suggests, if they find it rational to do so. What Rawls tries to do in Part III of TJ is in fact precisely to show that it is rational for citizens to commit themselves to the demands of justice as fairness. What citizens rationally do is pursue their conception of the good. This is the background to what has come to be known as the “congruence” argument: if it can be shown that the “right” is congruent with the “good,” then any rational individual who pursues the good will also thereby be motivated to act in accordance with the right. Rawls thinks that TJ does achieve such congruence. It is part of the “thin theory of the good” it is based on that a person has “a fundamental preference [...] to frame a mode of life that expresses his nature as a free and equal rational being as fully as circumstances

permit.”²⁷ Since an ideal of free and equal moral agency is precisely what justice as fairness is based on, persons will be motivated to act with the latter’s demands. By adopting a Kant-inspired theory of the good, Rawls is able to show that justice as fairness is stable.

TJ’s account of stability, then, relies on citizens sharing a Kantian conception of the good life. The problem is that if anything can be said to characterise a pluralistic society, it is precisely the lack of consensus over what counts as a good life. Although some worldviews will embrace the value of individual autonomy, many others will not. A conception of justice that relies on a controversial conception of the good is not one that can be expected to attract the free reflective endorsement of all citizens. The exercise of power on the basis of that conception will be oppressive of all those that do experience a Kantian kind of congruence between the right and the good. It is not just religious justifications of the exercise of political power that are disqualified by this reasoning, then, but also traditional ‘secular’ justifications like’s Kant’s autonomy-based case or Mill’s perfectibility-based case. A stable, non-oppressive well-ordered society is one in which the exercise of political power is justified from the point of view of each and every citizen, independently of specific conceptions of the good. Oppression may conceivably yield stability in the short-run, but is not sustainable in the long-run. The kind of Kantian conception defended in TJ could only support itself by oppressive means, and therefore could not be the basis of stable, just society. The internal problem, then, has nothing to do with the content of the principles themselves. Philosophically, the logic leading to them may be accurate. *Philosophical* justification, however, is not the same as *public* justification.²⁸ If the Kantian logic behind the regulative conception were to be made

²⁷ Rawls, *Theory*, p. 491.

²⁸ Samuel Freeman, *Justice and the Social Contract* (Oxford, Oxford University Press, 2006), p. 325.

public, many citizens would recoil from supporting it. A new, shared, public basis for the two principles of justice has to be found.

The ‘discovery’ of the “fact of reasonable pluralism” is what explains the transition from TJ to PL. In the latter he revises TJ’s account of human diversity by introducing two new key ideas. First, he introduces a new conception of pluralism, which he now sees in terms of “profound and irreconcilable differences in citizens’ reasonable comprehensive religious and philosophical conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life.”²⁹ Differences are not merely more profound than he supposed in TJ, but also often irreconcilable, which means that consensus over the good is not even conceptually within sight. But this is not a situation that should be experienced with regret. Rather, it is even among “reasonable” persons that disagreement of this kind is to be expected. For Rawls, a reasonable person is one who is ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, as long as others are prepared to do so as well.³⁰ Even among such subjects, he submits, irreconcilable differences are natural. Rawls here relies on an account of the exercise of human reason under free institutions. A plurality of reasonable yet incompatible comprehensive doctrines, he argues, is the “normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime.”³¹ If we are committed to free institutions, we have to let go of the hope of reasoning our way towards a consensus over the good. Unlike value-pluralists like Isaiah Berlin and John Gray, Rawls does not rely on a theory of value but points rather towards the intrinsic limitations of human judgment. He refers to these

²⁹ John Rawls, *Justice as Fairness: a Restatement* (Cambridge, MA, Harvard University Press, 2001), p. 3.

³⁰ Rawls, *Political Liberalism*, pp. 48ff.

³¹ *Ibid.*, p. xvi.

as the “burdens of judgment”³² When judging political and moral matters, reasonable persons will be faced with complex and contradictory evidence, with indeterminacy, with the task of weighing different values; all these ‘burdens’ are inimical to the task of reaching a consensus, even among citizens of goodwill. One of the things free institutions do is, in a sense, ‘instruct’ citizens about these insurmountable burdens. The internalisation of the idea of the burdens of judgments is part of Rawls’s definition of a reasonable person.

PL is about rescuing the idea of a well-ordered society from the centrifugal pull of reasonable pluralism. Rawls does so by, first, distinguishing between the “political” and the “comprehensive” domains. The former is the site of agreement, whilst the latter is the site of reasonable disagreement. As we’ve already seen, when Rawls speaks about “comprehensive doctrines” what he has in mind are the different religious, philosophical, ethical views that give life value and meaning.³³ In a pluralistic, liberal-democratic society, there is no reason to expect consensus over any one comprehensive doctrine. Consensus is possible, on the other hand, in the sphere of the “political.” When Rawls defines the political sphere, he identifies two ways in which the “political relationship” is different from other kinds of relations citizens may be involved in.³⁴ First, it is a relationship specifically within the “basic structure of society.” This is a structure that, unlike that of voluntary associations, is “closed,” in the sense that we enter it at birth and exit it only by death. We neither come into political society nor leave it voluntarily. The second feature of the political relationship is that it involves the exercise of political power. In a constitutional regime, political power is ultimately the power of the public, that is, the power of free and equal citizens as a collective body. This kind of political relationship is

³² Ibid., pp. 54ff.

³³ Ibid., pp. 59ff.

³⁴ Ibid., pp. 135ff.

one in which any exercise of coercive power has to be backed up by reasons each and every citizens subject to that power regards as justified. In other words, Rawls's key idea, in specifying the political, is the following. Political life, since it is not voluntary and involves coercion, is inimical to the idea of free and equal persons. If power can be justified to each and every citizen, however, it can make sense to think of it as an affirmation of the values of freedom and equality.

In PL, justice pertains specifically to the political sphere thus specified, and it is the task of specifying the nature and content of the regulative “political conception of justice” that occupies Rawls there. Rawls retains TJ’s ideal conception of free and equal moral persons, but divorces it from the comprehensive Kantian claim that this is what our “nature” as moral agents is all about. The conception of free and equal citizen is now depicted simply as a *political* ideal of *democratic citizens*. Rather than drawing on a comprehensive doctrine when specifying this ideal, Rawls appeals to democratic societies’ “public culture,” that is, its shared fund of implicitly recognised basic ideals and principles.³⁵ It is a fact that in democratic societies citizens tend to see each other as free and equal. No deeper, comprehensive ground is necessitated by the logic of political liberalism. By reconstructing solely on the “fundamental intuitive ideas” of the political tradition of democratic societies, Rawls is able to present justice as fairness as a “freestanding” political conception. No controversial philosophical or moral perspective, to which citizens may reasonably object, is required to sustain it. The political conception of justice is best thought of as a “module” that “fits into” and can be supported by society’s various reasonable comprehensive doctrines.³⁶

³⁵ Ibid., p. 8.

³⁶ Ibid., p. 12.

Rawls calls the agreement over a shared political conception of justice an “overlapping consensus.”³⁷ Rather than on the basis of a shared comprehensive doctrine, in an overlapping consensus citizens endorse a shared political conception of justice on the basis of their own different comprehensive doctrines. The freestanding political conception of justice comes to be embedded in the various comprehensive worldviews present in society. Citizens will thus act in conformity with the demands of the political conception for the many different reasons originating in their different comprehensive doctrines. While pursuing their different understandings of the good, citizens will also be pursuing a shared conception of justice. The notion of overlapping consensus over a political conception of justice allows Rawls to solve the stability problem of TJ. What it gives shape to is an understanding of social unity that is compatible with the fact of reasonable pluralism.

Rawls’s explication of the ways in which an overlapping consensus differs from a “mere *modus vivendi*” discloses most precisely what he takes the former to mean. By modus vivendi he refers to the kind of equilibrium that two states signing up to a treaty establish.³⁸ The treaty will reflect the balance of powers and will be adhered to as long as it is in the national interest of the two parties to do so. There is no overarching, shared moral framework within which the two parties operate. Negotiations and settlements are undertaken purely on the basis of calculations of self-interest. Although a modus vivendi may achieve a certain degree of stability over time, the only form of social unity it envisages is that brought about by a fortunate convergence of interests. Rawls seems to suggest that this can only be a precarious kind of stability.³⁹ Furthermore, parties do not comply with the settlement because they see it as the right thing to do, but rather simply

³⁷ Ibid., pp. 133ff.

³⁸ Ibid., pp. 147ff.

³⁹ He is more direct in “The Idea of an Overlapping Consensus,” where he says that a modus vivendi “cannot be stable.” John Rawls, ‘The Idea of an Overlapping Consensus’, *The Oxford Journal of Legal Studies*, vol. 7, no. 1 (1987), pp. 1-25.

because for the time being they can't get away with demanding anything else. Though it certainly succeeds in taking the 'political' reality of disagreement seriously, a *modus vivendi* is a "political in the wrong way." Rather than abstracting from the morally arbitrary phenomenon of power, it reduces political life to balance of relative powers.

An overlapping consensus, on the other hand, designates a very different kind of 'political' settlement. What it seeks to fill is the conceptual middle ground between a mere *modus vivendi* and an association united by a shared comprehensive doctrine. Three features distinguish an overlapping consensus from a *modus vivendi*.⁴⁰ First, the object of consensus (i.e. the political conception of justice) is itself a "moral conception." Its content is given by certain ideals, principles and standards, and that these norms articulate certain values.⁴¹ Second, it is affirmed on "moral grounds," and as such it includes conceptions of society as a fair system of cooperation and of citizens as persons, as well as principles of justice and political virtues. Third, unlike a *modus vivendi*, an overlapping consensus is stable even if the balance of powers shifts. This is because "each view supports the political conception for its own sake, or on its own merits." Citizens or groups who gain power will therefore not withdraw their support for the political conception. Different citizens drawing on their different comprehensive doctrines will have different reasons and justifications for seeing the political conception of justice as intrinsically valuable. An overlapping consensus achieves a well-ordered society grounded in principles that are both 'moral' and 'political', i.e. "political in the right way."

Unlike a *modus vivendi*, the well-ordered society of PL is one in which the exercise of political power is morally justified to all. Rawls places this principle of "public justification" as the center of what he calls the "liberal principle of legitimacy": "our

⁴⁰ Rawls, *Political Liberalism*, pp. 147-9.

⁴¹ Rawls, 'The Idea of an Overlapping Consensus', p. 3, fn. 2.

exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.”⁴² In a democratic society, political power is exercised by the body of citizens collectively. Meeting the liberal principle of legitimacy requires the intervention of a very specific kind of ‘reason’. The principle “I will support x because x is what my comprehensive doctrine y tells me to do” will not be morally compelling for all those with a different comprehensive doctrine. And neither is the justification “I will support x because I am more powerful and I can impose it on you” likely to sound like a compelling reason for all citizens. A reason that abstains from appealing to controversial comprehensive perspectives and that by doing so affirms the free and equal moral status of each citizen is required. It is this shared reason that Rawls calls “public reason.”

“In a democratic society,” Rawls writes, “public reason is the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.”⁴³ In a democratic society citizens find themselves in a very specific moral-political relation. They (i) find themselves in a specific political relation with one another due to the fact that they exercise political power as a collective body and (ii) find themselves embedded in a specific political culture that grants them all, individually, a specific moral status (i.e. free and equal). A publicly justified political order, we have seen, is the end of this specific moral-political condition. What public reason allows citizens to do is achieve this end. “Public reasoning aims for public justification”⁴⁴ The latter is not simply about valid reasoning, but rather fundamentally an “argument addressed to others: it proceeds

⁴² Rawls, *Political Liberalism*, p. 137.

⁴³ Ibid., p. 214.

⁴⁴ Ibid., p. 465.

correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept.” Public justification is grounded in the criterion of reciprocity, and this is precisely what public reason expresses. Public reason gives shape and voice to this reciprocity-based political relation. As such, public reason can best be thought of as an ideal of democratic citizenship.⁴⁵ It specifies how democratic citizens should go about settling the terms of their collective political life.

It should be noted that different accounts of public reason appear in different writings by Rawls. Over time, his understanding of public reason evolved. In the early 1987 paper “The Idea of an Overlapping Consensus,” Rawls sees public reason strictly in terms of the “guidelines of enquiry and publicly recognized rules of assessing evidence to govern [the] application” of the political conception of justice.⁴⁶ According to this early view, “public” reasons are those that rely on non-controversial appeals to common and the evidence and conclusions of science. By 1993, when *PL* is published, Rawls has a much broader and more sophisticated understanding of the concept. It is in *PL* that one finds Rawls interpret public reason as an ideal of democratic citizenship. In Rawls’s final statement on the matter, the 1997 essay “The Idea of Public Reason Revisited,” we see him apply further modifications. By this time he no longer thinks that an overlapping consensus on a single political conception of justice is realistic. Reasonable citizens will have reasonable disagreements over what the most reasonable political conceptions of justice are. He decides to expand the content of public reason, and now include within its breadth a family of reasonable conceptions rather than a single one. What is important is that they share three features: (1) they espouse a list of basic rights, liberties and opportunities; (2) they assign special priority to these liberties and rights over general good and perfectionist values; and, (3) they ensure that citizens have adequate all-

⁴⁵ Ibid., pp. 216ff.

⁴⁶ Rawls, ‘The Idea of an Overlapping Consensus’, p. 8.

purpose means to make effective use of their freedoms.⁴⁷ Justice as fairness is here reduced to being but one of the many possible reasonable articulations of these three desiderata. As long as it recognises the value of reciprocity and the moral status of citizens as free and equal, any conception is welcome to the family. Looking at this evolution one is drawn to the conclusion that the more Rawls takes the fact of reasonable pluralism seriously, the more central the idea of public reason becomes to his philosophical project. The practice of public reason becomes the true amalgamating moral element that holds his well-ordered society together.

Some of the most influential contemporary liberal theorists have focused their efforts on picking up Rawls's later project from where he left it. What thinkers like Charles Larmore, Stephen Macedo, Gerald Gaus and Jonathan Quong have in common is both a view concerning the centrality of public reason within Rawls's overall political philosophy as well as an understanding of liberalism that hinges first and foremost on the idea of public reason. In Gaus's view, what connects Rawls to the social contract tradition of Hobbes, Locke, Rousseau and Kant is his focus on the importance of attaining a basis for shared public judgments amidst deep disagreements. Quong thinks the idea of public reason is implicit more generally in Rawls's contractualism, which like public reason is an expression of the basic moral insight that laws and institutions must be publicly justified.⁴⁸ Larmore traces the conceptual ancestry of the kind of view of public reason developed in *PL* all the way back to Rawls's early work on publicity.⁴⁹ Macedo too takes Rawls's main contribution to have been that of bringing back to the fore of liberal political philosophy the preeminence of public justification and public

⁴⁷ Rawls, *Political Liberalism*, p. 450.

⁴⁸ Jonathan Quong, 'On the Idea of Public Reason', in *A Companion to Rawls*, Jon Mandle and David Reidy, eds. (Oxford, Wiley-Blackwell, 2011).

⁴⁹ Larmore, 'Public Reason'.

reason.⁵⁰ Rawls's most influential contemporary interpreters tend to see him as, first and foremost, a theorist of public reason, and only derivatively a theorist of a political liberalism.

According to these interpreters, what is most valuable in a theory of public reason is the promise it bears for solving the problem of reconciling the ideal of a well-ordered society with a substantial degree of (reasonable) pluralism. The problem is that identifying a shared moral perspective on the basis of which citizens, who disagree on what is of ultimate value in life, can nonetheless reach political decisions acceptable to them all. Public reason exorcises the ever-present spectre of *modus vivendi* by identifying the source of that moral agreement. This agreement is neither simply a matter of accepting certain authorities, nor is it a matter of sharing a view of what is of ultimate value in life. It pertains, rather, to the way citizens who are both the subjects and objects of democratic political power relate to one another. This is a matter on which these interpreters think it is legitimate to expect citizens in a democratic society to agree upon. They can agree that certain ways of exercising power are legitimate, and others aren't. Hence, for Larmore public reason points to the “*common point of view* for settling the terms of our political life.”⁵¹ For Quong, public reason is the “*standard* by which we measure laws and political institutions.⁵² For Gaus, publicly justified political institutions are the “*voice of public reason*,” which does not “tell us what to believe, but what to do.”⁵³ Macedo refers to public reason as a “shared currency of ideas” that assists “joint deliberation and fair decision.”⁵⁴ A pluralistic social world is one that asks very tough

⁵⁰ Stephen Macedo, ‘Why Public Reason? Citizens’ Reasons and the Constitution of the Public Sphere’: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664085 (accessed 25 January 2015).

⁵¹ Larmore, ‘Public Reason’, p. 368; emphasis added.

⁵² Quong, ‘Public Reason’; emphasis added.

⁵³ Gaus, *Contemporary Theories of Liberalism*, p. 219; emphasis added.

⁵⁴ Macedo, ‘Why Public Reason?’, p. 19.

questions concerning the possibility of liberal political authority; building on Rawls's lead, these thinkers think that public reason is capable of offering convincing answers.

II. Reason and Diversity

There is much the above thinkers disagree on.⁵⁵ As Fred D'Agostino has shown most comprehensively, public reason is a contested concept.⁵⁶ The greatest source of disagreement is on whether public justification derives from citizens sharing the same reason or on whether it can be the product of a convergence of different reasons. The first, known as the “consensus” view, is advocated by Stephen Macedo and Jonathan Quong, whilst the second, the “convergence” view, is defended most notably by Gerald Gaus.⁵⁷ Beyond this basic distinction, there are a number of other sources of disagreement. One of these is the matter of what the subject of public reason should be taken to be. Some, like Rawls, advocate restricting the domain of public reason to matters of basic justice and constitutional essentials, whilst others, like Quong, favour a more comprehensive view, expanding the reach of public reasoning to all political questions citizens face in a democratic society. There is further disagreement on the moral basis of public reason. Some (e.g. the early Rawls) think it is grounded in the value of autonomy, others in the value of respect (e.g. Larmore), and others still in justice (e.g. Quong).

Notwithstanding this internal diversity, a number of criticisms of the public reason project more generally have been put forward. Mark Evans, for example, questions the idea that public justification via public reason should be seen as the “moral

⁵⁵ For a useful summary of these disagreements, see Quong, ‘Public Reason’.

⁵⁶ Fred D'Agostino, *Free Public Reason: Making It Up As We Go* (New York, NY, Oxford University Press, 1996).

⁵⁷ Macedo, ‘Why Public Reason?’; Jonathan Quong, *Liberalism Without Perfection* (Oxford, Oxford University Press, 2010); Gerald Gaus, *The Order of Public Reason* (Cambridge, Cambridge University Press, 2012).

lodestar of liberalism,” as Macedo puts it.⁵⁸ As examples that contradict this orthodoxy, he points to the liberalisms of John Locke, L.T. Hobhouse, Joseph Raz and John Gray. The most that can be said, Evans thinks, is that public justification is simply one of the many moral goals liberals should pursue.⁵⁹ John Horton, on the other hand, argues that public reason does not actually get us very far when it comes to resolving controversies sparked by reasonable disagreement.⁶⁰ He examines the case of the Rushdie Affair and the controversies over abortion in the USA. Since non-comprehensive arguments can be made on both sides of the barricades, in neither case, he argues, does public reason give specific answers as to how such (constitutional-level) controversies can be resolved. Rawls’s followers, Horton thinks, underestimate the depth and pervasiveness of political disagreement and therefore the difficulties involved in justification via public reason.

I propose to take another approach. What I want to do here is focus on a matter that seems to me to be of central importance. This is the matter of ‘reason’. What is ‘reason’ taken to mean in the public reason literature? And, more importantly, can the notion there employed withstand critical scrutiny? Interestingly, this matter has so far been treated very frugally in the literature. Among public reason liberals explicit statements on what they take reason to signify are either implicit or neglected altogether in their writings. Critics of the project too, however, have largely ignored this point.

So, what do political/justificatory/public-reason liberals take “reason” to mean? To answer this question I think it is particularly fruitful to turn to what Gaus has written on the matter. Gaus speaks of public reason as a “post-Enlightenment project.”⁶¹ He takes the Enlightenment view to be ultimately a thesis about the relationship between

⁵⁸ Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Oxford, Oxford University Press, 1990), p. 78.

⁵⁹ Mark Evans, ‘Is Public Justification Central to Liberalism?’, *Journal of Political Ideologies*, vol. 4, no. 1 (1999), pp. 117-136.

⁶⁰ John Horton, ‘Rawls, Public Reason and the Limits of Liberal Justification’, *Contemporary Political Theory*, vol. 2 (2003), pp. 5-23.

⁶¹ Gaus, *Contemporary Theory of Liberalism*.

reason and truth. According to this view, reason, under certain conditions, is able to reach a set of truths that can be universally appreciated as such. Freedom is the necessary condition here. Thus, for thinkers like Milton and Mill, the justification for freedom of speech and freedom of conscience is that free enquiry and reasoning is what allows all human beings to reach a consensus over basic truths. The Enlightenment applies the logic of the natural sciences to moral enquiry; if its freedom is preserved, enquiry into moral truths is just as successful in reaching universal truths as enquiry into natural phenomena is. Once the natural sciences are taken as the model, moral and political disagreement can only be interpreted as symptom of a failure of rationality. The most famous example here is Kant, who attempts to derive universal morality from reason. Enlightenment for Kant is precisely a matter of refining our powers of reasoning so that a consensus on some universally valid truths can come within reach.

The task of identifying what these universally rational truths are is of critical importance. Truths have authority, and universal truths have universal authority. In the natural sciences, reason-validated truths are taken to be universally authoritative. If universally valid moral and political truths can be identified, the question of how moral and political authority is possible in a social world that no longer relies on the authority of one God can be answered. The justification of moral and political power can be derived from universal reason. The liberal project, according to Gaus, partakes in this broader Enlightenment project. Although it is conscious of the fact that the free exercise of human reason can often lead to disagreement, it also insists that this disagreement is manageable, since our shared reason leads us to eventually converge on liberal political principles and government. Whenever disagreement arises we can find in reason the resources to ultimately adjudicate in one way or the other, authoritatively and without remainders.

According to Gaus's reading, the public reason project rejects this Enlightenment view of human reason. The critical juncture is Rawls's idea of "reasonable pluralism." What Rawls recognises when he employs this concept is that perfectly reasonable and rational agents can reach conflicting conclusions on a wide range of complex matters of science, morality and politics. There is nothing paradoxical or irrational in two individuals espousing two moral claims or principles that directly contradict one another. Unlike value pluralists, Rawls's claim is not about the nature of value, but rather, more modestly and less controversially, about the nature of human judgment. Complex matters can be read very differently by different individuals. Under liberalism this condition is particularly inescapable. As we've already seen, Rawls thinks that reasonable pluralism is the natural outcome of the activities of human reason under the free institutions of a constitutional democratic regime. This does not, of course, mean that public reason liberalism rejects the ideal of individual freedom that the Enlightenment view prioritises. It is not in that sense that it is '*post*-Enlightenment.' What it rejects, rather, is the Enlightenment's idea that these principles can be normatively justified by means of an argument that presupposes the existence of a universal rational consensus over these values or their universal moral truth. In the project of justifying a political order centred on the value of individual freedom reason continues to have a place; but this is not the Enlightenment's reason, but rather a 'public reason'. Public reason is the only site of the moral consensus available in a diverse and liberal polity.

Now, Gaus observes that the underlying idea of reason that sustains the Enlightenment worldview is based on three premises: (1) the truth is the same for everyone, (2) reason is a shared capacity of all human beings, and (3) the norms of good reasoning are universal.⁶² These three premises together build up a universalistic account

⁶² Ibid., p. 3.

of reason that is capable of making sense of the idea that consensus over the truth is at least in principle attainable. However, I think Gaus's is a defective account of the Enlightenment view of reason. It seems to me that there are two other basic features that are alluded to in his discussion but that he doesn't make explicit. First, reason's ultimate purpose is to achieve *finality*. The end of the natural sciences, for example, is to achieve results that no rational person could deny. Of course, human fallibility will always stand in the way of achieving such finality, and every result is provisional, permanently open to re-interpretation and re-examination. This points to limitations of the human mind rather than an intrinsic feature of the scientific method. It thus doesn't contradict the overall point that the scientific method is generally interpreted as a *procedure* meant to produce results that aim at finality. Though there is nothing paradoxical in imagining a scientist who engages in lab experiments purely as an end in itself, she can scarcely be said to be a paradigmatic example of what a scientist is generally taken to be. The same idea applies to the Enlightenment's take on moral and political life. Moral reasoning and political deliberation are interpreted as procedures meant to achieve a specific moral or ethical end. Reason issues the moral and political imperatives that allow a society to overcome its internal disagreements. Again, these imperatives may remain opaque to the human mind, and have to accommodate its natural psychological limitations. But it is to have moral and political questions answered that we turn to reason.

The second feature I have already discussed briefly above and is closely connected to the idea of finality. According to the Enlightenment view, reason does not just give any kind of answer; rather, it gives *supremely authoritative* ones. In the hierarchy of authorities, reason occupies the highest rung. This because it is by means of reason and reason alone that we can gain access to the realm of objective, universally valid truths. The authority of the natural sciences derives from the fact that they are best able to uncover precise truths about the physical world. Moral and political enquiry models itself

on the natural sciences in order to uncover the moral and political truths of the social world. It is in its ability to uncover those truths that its authority rests. We have to turn to reason when confronted with the task of overcoming deep disagreement precisely because reason's verdict is the only genuinely authoritative one. Reason is therefore a very specific sort of procedure for attaining finality on moral and political matters. It is the procedure whose outcomes necessarily command final sovereignty over human affairs. Although the Enlightenment's reason adjudicates consistently in favour of democracy, it is not by means of a democratic procedure that it reaches such verdict.

It is not merely to complete the picture of the Enlightenment's view of reason that I have outlined these two additional features. I have done so, rather, because it seems to me that these two features carry over into the public reason liberal view of reason. And this, I want to argue, is very problematic.

I want to focus on the two authors that offer the most instructive appraisal of the public reason liberal approach to reason: Rawls and Gaus. Both spend considerable efforts in relating political/public reason liberalism to the Enlightenment tradition and thus specifying what they take 'reason' to mean. As is often the case, Rawls exposition is particularly succinct and direct. In *PL* he starts his discussion of public reason by defining what he takes reason to be:

A political society, and indeed every reasonable and rational agent, whether it be an individual, or a family or an association, or even a confederation of political societies, has a way of formulating its *plans*, of putting its *ends* in an order of priority and of making *decisions* accordingly. The way a political society does this is its reason; its ability to do these things is also its reason, though in a different sense: it is an intellectual and moral power, rooted in the capacities of its human members.⁶³

⁶³ Rawls, *Political Liberalism*, pp. 212-3; emphases added.

Rawls continues by specifying (as we already saw above) that “in a democratic society public reason is the reason of equal citizens who, as a collective body, exercise *final* political and coercive power over one another in enacting laws and in amending their constitution” (emphasis added). There are a number of very important points Rawls makes here. When thinking about what reason is, he intimates, one needn’t distinguish between individual and collective agents. The reason of political society and that of any individual agent are the same. And they are the same because, according to Rawls, reason is fundamentally a procedure for achieving certain “ends,” “plans” or “decisions.” In fact, Rawls here goes beyond a procedural reading of reason, suggesting that even the ability, or power, to bring the ‘rational’ outcome about is part of reason. My discussion of finality and authority above suggests one possible answer to the question of why Rawls expands the reach of reason in this way. If reason’s verdict is both final and supremely authoritative, it makes sense to see the instantiation of that verdict in social and political institutions as part of reason’s sphere. Since its determinations are “final,” public reason frames and guides the exercise of political power and the enactment of coercive laws.

In Gaus we find a very similar understanding of public reason. I noted above that his post-Enlightenment liberalism relies on the idea that although rational disagreement is pervasive, our reason does not always lead us to disagree. Rational disagreement, he then claims, “is bounded by a public reason justifying a political order based on freedom.”⁶⁴ Again, we see both the principle of finality and supreme authority at play. As is the case for Rawls, for Gaus too public reason has a specific end: justification. Public reason gives clear answers to the question of what is justified and what is not. And what it is called upon to justify is a final system of authority: a political order. Public reason is

⁶⁴ Gaus, *Contemporary Theory of Liberalism*, p. 19.

what we turn to when we are looking for definitive answers on, say, basic constitutional matters. We turn to public reason because what it defines are the boundaries of the consensus among rational-reasonable persons on matters of political right. Whatever public reason is capable of justifying should be taken as authoritative. In political life, justification via public reason determines whether the exercise of coercive political power is legitimate or not. Reason finds in the exercise of political power if not its accomplishment then at least a faithful ally. This is because consensus on matters of political right is available and because reason allows us access to it.

In Chapter 3 I will examine whether any realistic account of the state or political institutions can sustain such a view. Limiting myself for now to a critical appraisal of the public reason approach to reason, what I want to argue is that there is a basic tension in public reason's account of reason. We have seen that on the one hand it rejects the universalistic presuppositions of the Enlightenment view (features 1-3 above) and yet on the other conserves what I have called its finality and authority principles. There is, in other words, a basic tension internal to the public reason view of reason. I want to argue that such a proposal fails.

The burdens of judgment thesis, we have seen, is one about the fragmentation of truth. Here is how Gaus summarises its six components:

1. Evidence is often conflicting and difficult to evaluate;
2. Even when we agree on the relevant considerations, we often weigh them differently;
3. Because our concepts are vague, we must rely on interpretations that are often controversial;
4. The manner in which we evaluate evidence and rank considerations seems to some extent the function of our total life experiences, which of course differ;

5. Because different sides of an issue rely on different types of normative considerations, it is often hard to assess their relative merits;
6. In conflicts between values, there often seems to be no uniquely correct answer.⁶⁵

All six seem to correctly describe the human experience of moral and ethical diversity. But if Gaus's depiction of this experience is correct, it is not clear why we should expect disagreement to somehow evaporate once public reason engages in judgment. If anything can be said to be a complex and uncertain matter, it is the matter of what is the right way of organising a large, complex and diverse society, in which individuals and groups see moral, ethical, religious, philosophical and political matters in very different and often antithetical ways. The relevant moral and political 'facts' are often difficult to even identify; lots of different values are involved in any political or constitutional decision; individuals and groups originating in different cultural traditions engage with one another on the basis of a plurality of normative considerations. In fact, it would seem as though it is *especially* on matters of political right that disagreement would be particularly entrenched. The stakes are never as high as when the 'basic structure' of political society that determines the basic rule of the game is under scrutiny. Overall, then, it is not clear why the justificatory task of settling matters of political right should be seen as exempt from the centrifugal dynamics the reasonable pluralism thesis itself has so effectively pointed out. One might certainly cherish the *hope* that public reason is capable of yielding an overarching normative consensus. But we have not been given reasons for why this should be taken as anything more than a hope. In fact, public reason liberalism has given us the conceptual resources for thinking that it cannot be anything more. Unless coercive

⁶⁵ Ibid., p. 14.

measures are introduced, we should expect contestation and disagreement to be the norm in a diverse society.

There are at least two possible objections to this point. First, public reason liberalism focuses not on pluralism *tout court*, but rather on *reasonable* pluralism only.⁶⁶ What defines reasonable persons is precisely their willingness to reach a normative consensus on the kind of values a fair society should be run by. Although disagreement is pervasive, by recognising the foundational value of reasoning together and publicly reasonable citizens are able to overcome their differences while deliberating on issues of basic justice. Second, public reason liberals, following Rawls's lead, usually stress the crucial role political institutions have in the socialisation of citizens. By living under free institutions, they argue, citizens internalise pro-justice norms that reinforce their reasonableness. There is therefore an important institutional component in the public reason argument for the ability of reaching a normative consensus via public reason.

I will only briefly comment on this second point, which I will treat more fully in Chapter 3. For now, it should suffice to say that, again, the conclusion is incompatible with the premises. If the free exercise of human reason under free institutions leads to the entrenchment and spread of pluralism, it is not clear why the sphere of political right should remain insulated from it. It is not clear why the ideas of society as a fair system of cooperation or of citizens as free and equal, reasonable and rational, should remain immune from the influence of pluralism. Facts, concepts and values – such as fairness, freedom and equality – will inevitably be imprecisely identified, codified and interpreted. If anything, we should expect disagreement to increase over time.

As the one that is more likely to be raised, the first objection is more important, and requires a more elaborate response. Here the main thing I would like to point out is

⁶⁶ Rawls, *Political Liberalism*, pp. 36-7; Gaus, *Contemporary Theory of Liberalism*, pp. 13-4.

that public reason is first and foremost a philosophy of “limits.” As Rawls frequently observes, an enquiry into public reason is an enquiry into the kind of arguments that *cannot* be appealed to when public justification gets going.⁶⁷ Public reason is a philosophy of duties and self-discipline, as the centrality of the “duty of civility” in the overall argument manifests.⁶⁸ Although its stated purpose is that of justifying the widest possible sphere of individual freedom, its gets there by means of what I would call a strategy of exclusion: excluded from the justificatory deliberation on the basic principle of political right are all the “unreasonable” viewpoints and doctrines. Now, political liberalism seeks to apply the principle of toleration to philosophy itself; this strategy, in other words, would make sense were it possible to identify a non-sectarian, neutral account of reasonableness. But if anything could be said to be ‘unreasonable’ it would seem to be precisely the idea that a non-sectarian account of reasonableness is anywhere within sight or reach. The standard of ‘reasonableness’ varies across cultural traditions. The determination of the meaning of reasonableness is thus subject to the kind of controversy that according to Rawls affects comprehensive doctrines. Appealing to the value of reasonableness does not resolve the problem of identifying the sources of normative consensus; it just shifts the problem to a higher level.

Another way of putting the point would be in terms of idealisation. The exercise of political power, according to the standard view, has to be justified to reasonable citizens only. It is usually accepted that this does not mean that unreasonable citizens should be deprived of rights⁶⁹. But the thought is usually that they are to be conceived as a kind of ‘second-class’ citizenry, in the sense that they do not participate fully in public reason and the justificatory exercise. As any hypothetical social contract doctrine, public

⁶⁷ E.g. Rawls, *Political Liberalism*, p. 216.

⁶⁸ Ibid., p. 444.

⁶⁹ Quong, *Liberalism Without Perfection*.

reason liberalism focuses not on the kind of principles that actual citizens *do* accept but rather what idealised citizens (i.e. ‘reasonable’) *could* accept. But such an exercise – bearing in mind the ‘applying the principle of toleration to philosophy itself’ principle – can only make sense if a neutral, non-controversial way of specifying the appropriate terms of idealisation is available. But, again, in a diverse society it seems farfetched to suppose such a thing is available.

There are two possible objections to the view I have just presented. First, a non-sectarian approach to idealisation and reasonableness consists in appealing to the values of a public culture of a democracy. The Archimedean point from which we can settle the meaning of reasonableness is provided by the fund of moral commitments democratic citizens share. Second, reasonableness is ultimately about the legitimate exercise of power; eschewing any appeal to reasonableness means opening the door to coercive applications of political power. The problem with these two views is that in liberal democratic societies there are many thoughtful and fair-minded individuals who reject the idea that there should be a state, or political society, at all. These individuals go by the name of political anarchists.⁷⁰ These individuals engage in rational and informed debate with those whom they disagree with. They are, in other words, what ‘our’ culture would define as ‘reasonable’. And they reject the idea that there should be a coercive apparatus in the first place and they reject the value of citizenship. So even if we were tempted by the idea of labeling them as simply unreasonable (as I imagine many would), it is clear that unreasonableness need not amount to the imposition of arbitrary political coercion. Now, of course, political anarchists correspond to a very small minority, a minority perhaps too small to refute the overall public reason thesis. But though they certainly do

⁷⁰ I am following (and slightly modifying) Michael Huemer here. Michael Huemer, *The Problem of Political Authority* (Basingstoke, Palgrave MacMillan, 2013), pp. 42-3. He mentions the examples of Murray Rothbard, David Friedman, Randy Barnett, R.P. Wolff, Noam Chomsky and others.

constitute a minority, I think my overall point stands. Not even ‘our’ common sense on what counts as reasonable can help us make sense of legitimacy. Diversity is a constitutive feature of the human exercise of reason, and appealing to the value of reasonableness doesn’t get us any closer to the sources of a normative consensus. As I said above, the idea of a reasonable consensus over matters of political right is nothing more than an expression of wishful thinking.

III. Reason and Authority

The fact of diversity, I have argued, places serious obstacles in the way of the finality and authority principles. But it is time to ask: are these obstacles insurmountable? What I want to argue is that they are. I want to do so by critically examining a proposal recently elaborated by Anthony Laden.⁷¹ Laden’s elaboration of what he calls a “social picture” of reasoning seeks to meet precisely the kind of challenges the Enlightenment view of reason is confronted by when diversity is taken seriously. His aim is to take the logic of public reason in a radically new direction, to point out the radical implications implicit in the view of reason the theory of public reason is embedded in. What is particularly important for our purposes is that he tackles head on the question of reason’s nature and authority. Although I think his proposal ultimately fails, I think it is important to see why it fails. What Laden tries to do is ‘pluralise’ public reason as much as (he thinks) the concept itself allows for. The limits of Laden’s proposal are to a large extent the limits of public reason.

Laden claims that much of contemporary moral and political philosophy is based on an equivocation of what reason is. According to what he calls the “standard picture,”

⁷¹ Anthony Laden, *Reasoning: A Social Picture* (Oxford, Oxford University Press, 2012). Unless otherwise stated, it is this work I will examine here. In parentheses are the page numbers of this work.

reason is essentially a faculty or set of transcendental principles. This standard view understands ‘reasons’ as the deliverances of reason and ‘reasoning’ as the activity of exchanging and offering reasons. Although it takes place, like any human endeavour, in a social context, reasoning according to this view is something each individual does on her own. An individual is reasoning, for example, when she works out the implications of a moral commitment, or tries to figure out whether the evidence available to her is sufficient to justify her belief in the truth of a proposition, or figures out how to best accomplish her aims given the set of constraints she is operating in (9).

His proposal is to replace the standard picture with a “social picture” of reasoning, according to which reasoning is “the responsive engagement with others as we attune ourselves to one another and the world around us” (8). The social picture of reasoning he proposes has five distinctive features. First, the emphasis is not on ‘reason’, i.e. a faculty or set of propositions, but rather on ‘reasoning’, i.e. an *activity*. Reasoning precedes reasons; reasons are those things that get offered and exchanged in the activity of reasoning. Second, reasoning is intrinsically *social*. “Reasoning is fundamentally something we do together,” Laden says (16). Laden’s point, therefore, is much stronger than the simple one that people can reason with one another; his point, rather, is that all reasons are what he calls “we-reasons,” or social reason. Third, reasoning is not episodic, it does not occur within finite temporal horizons, but rather is always intrinsically *ongoing*. Reasoning never reaches final, unimpeachable, once-and-for-all conclusions. Reason is about the ever-present possibility of criticism, and as such is intrinsically open-ended. Any settlement is necessarily a temporary one; there is always the possibility of subjecting it to further criticism. Fourth, the social picture sees reasoning as a matter of issuing *invitations* rather than commands. Commands close off a conversation and specify an end that is beyond reappraisal. Reasoning, on the other hand, is simply about having “a right to be heard” and to “call for a response” (32). Finally, following from the idea of

invitation is the idea that reasoning is about speaking *for* others. What we are doing when we engage in the activity of reasoning is invite others to take what we say as speaking for them as well. Laden puts it this way: “Here I speak for you by speaking for an us of which we are both members, by saying what I take we would say” (41). So, when he refers to the idea of ‘speaking for others’, Laden has in mind relations neither of command nor of representation. What he has in mind, rather, is a moral community whose members let themselves be governed by norms of reciprocity and respect.

This social picture of reasoning is not so much one that Laden thinks he has invented or discovered, but rather one that he thinks is implicit in a certain philosophical tradition. It is implicit, he thinks, in the writings of Wittgenstein, Rawls, Stanley Cavell, Onora O’Neill and James Tully (11, fn. 2). His project is primarily about recovering and unifying an account of reasoning that is more or less implicitly recognised in the writings of these authors. However, it is especially to Kant to whom he thinks the original idea should be traced back. In *The Critique of Pure Reason*, Kant describes reason in the following way:

Reason must in all its undertakings subject itself to criticism; should it limit freedom of criticism by any prohibitions, it must harm itself, drawing upon itself a damaging suspicion. Nothing is so important through its usefulness, nothing so sacred, that is may be exempted from this searching examination, which knows no respect for persons. Reason depends on this freedom for its very existence. For reason has no dictatorial authority; its verdict is always simply the agreement of free citizens, of whom each one must be permitted to express, without let or hindrance, his objection and his veto.⁷²

According to Laden, all the aforementioned features of his social picture are expressed in this passage (14-6). We see that for Kant reasoning is necessarily a social, ongoing activity. Reason is an expression of the agreement of free citizens and it must always

⁷² Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith (New York, NY, St. Martin’s Press, 1933), p. 593 (A738/B766). See also Chandran Kukathas, *The Liberal Archipelago: a Theory of Diversity and Freedom* (Oxford, Oxford University Press, 2003), ch. 4.

subjects itself to criticism. None of reason's conclusions are final, unimpeachable; they are always open to re-interpretation, and each citizen has to be able to freely express her veto. Reason has no dictatorial authority, it does not issue commands, but rather only invitations, which citizens are free to accept or reject. The underlying shared understanding that among free citizens reason does not have dictatorial authority implies that citizens share what Laden calls a "space of reasons," and as such can speak for one another.⁷³

What is particularly important for our purposes is the thesis about the kind of authority wielded by reason that Laden evinces from the social picture of reasoning. Laden first observes that philosophers have tended to assume that reasoning is an activity aimed at reaching specific conclusion. And these are not just any conclusions: reason's conclusions are normative, they have final authority. Hence, discussions of reason's realm tend to be embedded in the language of obligation, necessitation, rule and law. The normativity of reasons, that is, comes in the form of the authority of laws and commands (50-1). Now, the problem is that commanding and reasoning seem to be antithetical; one who has the right to command is thereby freed from the need to offer reasons. According to Laden, most philosophers (including Kant) have solved this problem by modeling the authority of reason on the authority of democratic law. Although democratic law is command-like, it is also bottom-up: it expresses the free agreement of all citizens to submit themselves to an authority they accept. This is how Kant's idea of reason not having dictatorial authority has been conserved; it is not the case that reason has no authority, but rather that its authority is democratic.

Philosophers who see an analogy between reason's authority and democratic legislation interpret reason as having what Laden proposes to call the "authority of

⁷³ See also, Onora O'Neill, 'The Public Use of Reason', *Political Theory*, vol. 14 (1986), pp. 523-51.

command.” However, Laden thinks that there is a much more radical way of interpreting Kant. Instead of the authority of command, what Kant could be read as having suggested is that the kind of authority that reason wields is an “authority of connection.” According to Laden, it is only the latter that is compatible with the social picture of reasoning. There are five key differences between the two conceptions of authority (64ff).

1. Normative Capacity. Whereas the authority of command is about having the capacity to determine unilaterally aspects of the normative environment of those I command, the authority of connection is about the capacity to mutually try to shape a normative environment we share and inhabit together.
2. Relationship. Whereas the authority of command understands relations between person to be hierarchical (i.e. someone commands, someone else obeys), the authority of connection sees relations between persons as being reciprocal.
3. Credentials. Whereas the authority of command has a “backward-looking” understanding of the credentials needed to exercise authority, the authority of connection has a “forward-looking” one. In other words, to exercise the authority of command it is necessary that authority relations be fixed before authority is exercised. The authority of connection, on the other hand, is in a sense something that is constituted as the activity of reasoning takes place; someone’s authority may come to be constituted after reasoning has taken place, only once, that is, her argument proves successful in molding a specific normative environment.
4. Loci of Authority. Whereas the authority of command is lodged in the hands of the commander, the authority of connection rests in the hands of all those partaking in reasoning.

5. What Authority Does. Whereas the authority of command serves to end a conversation, the authority of connection leaves room for the conversation to keep on going.

It should also be noted that Laden thinks that a specific understanding of normativity is implied by the social picture of connection. What the social picture of reason he describes is based on is an ideal of the kind of connection ‘citizens’ reasoning with one another establish. The normativity of this ideal does not rest in the fact that it is obligatory, but rather its attractiveness, its ability, that is, to present an end to which we might aspire (44).

Laden interprets the authority of Rawls’s public reason as an authority of connection rather than an authority of command (71). In his view, the constraints against supporting a proposal on the basis of non-public reasons affirm all five of the features of the authority of connection I just reported above. A citizen that accepts the duty to offer only public reason when supporting a political proposal is a citizen that locates herself within a space of reasons she shares with all her co-citizens. If I accept that I cannot rely on controversial religious reasons in the public sphere I am accepting that (1) the normative environment is one that is shaped multilaterally rather than unilaterally, that (2) relationships between citizens are reciprocal and not hierarchical, that (3) my authority over the normative environment is forward-looking rather than backward-looking, that (4) that authority is in the hand of each and every one of my co-citizens, and (5) that I don’t have the authority to end the conversation. What I accept, in other words, is that I inhabit a space of reasons that I share with all my co-citizens. What defines this space is that within it reasoning occurs on the basis of certain norms, which affirm the existence of a moral community of reasoners. Laden points to three norms in particular (147-68). First, there is a norm of *intelligibility*, according to which what we say

has to be intelligible to those we are speaking to and for. Second, there is a norm of *reciprocity*, according to which reasoning is about speaking with someone rather than to someone. Third, there is a norm of *good faith*, according to which one has to be responsive to the possible rejection of one's proposal and always open to the possibility that it may be criticised. What specifying these norms is about, Laden observes, is fleshing out Rawls's idea of reasonableness. What reasonable citizens who propose mutually acceptable and fair principles to one another and are responsive to the reasons of one another do is create a shared space of reasons within which an authority of connection is established.

This new picture of reasoning allows Laden to restate the distinction between *modus vivendi* and public reason in terms of different conceptions of reason and authority. A *modus vivendi* is governed by what he proposes to call the “logic of negotiation” (186-90). A negotiated settlement is one in which parties with different pre-existing interests reach a compromise. There is no genuine kind of reasoning together going on, since the parties see each other not as equal partners but rather as obstacles to each other's ends. Negotiators do not enter negotiations with the purpose of reaching common moral grounds and transforming their interests along the way; they are not interested, in other words, in engaging in a shared moral project. Rather, what they want is to get the most for themselves out of the arrangement. They enter negotiations only in order to reach a concrete end. Such logic of negotiation fits the standard picture of reason and takes reason's authority to be an authority of command. Laden thinks there are three problems with negotiation. First, since it is not about the construction of a shared moral project and an authority of connection, it is always in danger of breaking down. As soon as the balance of power changes, the settlement will change with it. Second, it creates an incentive for parties to exaggerate their claims, which leads them to

move further apart from each other. Third, if for whatever reason negotiation fails, it can leave conflict more intense than before.

Rawls's well-ordered society of public reason is one regulated, on the other hand, by what Laden calls the “logic of deliberation” (190-7). “Deliberation,” Laden writes, “involves an exchange of reasons among people who regard themselves as partners working out a shared solution to a shared problem” (190). Deliberators work out a shared solution to a shared problem by working out a set of shared reasons, on the basis of which they issue invitations and either accept or reject the ones directed at them. Deliberation is about reaching a new understanding of the relationship we bear to one another and the kind of reasons that relationship authorises. Since the agreement thus reached is based on a shared understanding of the *merit* of the various reasons that support it, it is very different from a negotiated agreement, which is all about what comes to be regarded as the best the parties can do under current circumstances. Deliberators engage with one another with the aim of reaching a kind of agreement that goes well beyond the simple agreement negotiators aim at; what they agree on is which of the claims they offered to each other have sufficient authority and which have insufficient authority. Their engagement is not governed by self-interest, but rather by norms of reasonableness. To be reasonable is to be willing to be genuinely “moved” by the reasons of others. Unlike negotiation, deliberation is a seriously transformative enterprise, since it allows other people to speak for yourself. And before being able to speak for others it is necessary to speak *with* them. So whereas negotiation is about mutual advantage, deliberation is about mutual intelligibility. According to Laden, a regime of mutual intelligibility and reasonableness is also a stable one, since citizens can there trust one another and rely on each other's commitments. “Deliberation, when it is reasonable,” he concludes, “can foster a set of deep ties among people that do not rely on agreements in their positions or their sharing full-blown, comprehensive outlooks, whether religious or

cultural or philosophical.” Evoking Rawls’s idea of “stability for the right reasons,” he goes on to say that deliberation “can thus be a force for creating a kind of just stability in a diverse and dynamic society” (197).

There are a number of problems with Laden’s proposal. First, consider an obvious difference between his account and Rawls’s. We have seen that for Rawls public reason is not just any form of engagement; it is an engagement, rather, that yields specific political answers. We turn to public reason, that is, when we want more or less definitive *conclusions* about a political matter. It is about matters of *basic* justice and constitutional *essentials* that Rawls interrogates public reason. Although it certainly leaves open a vast range of issues to democratic interventions, the point of public reason is to set the boundaries within which that deliberation is to occur and thus justify a certain political order. It is difficult to imagine any political order where definitive decisions are not taken. In political life, deliberation and discussions must eventually be brought to an end and decisions that affect all be taken. Laden’s idea that the authority of connection is about keeping the conversation going seems incompatible with any plausible understanding of what a political order is about. We have a political order precisely *because* we cannot let the conversation go on indefinitely. Means of structuring collective action have to be identified and enforced, and this requires the ability on the part of a designated agent or office to take “decisive” decisions. For such decisions to be conceivable, what we have to allow for are the features that according to Laden characterise the authority of command: a relatively unilateral normative capacity, hierarchical relationships, backward-looking credentials, concentrated authority, and the ability of an authority to bring conversations to an authoritative end.

Laden could respond by saying that the authority of connection does specify a form of *authority*, and as such does not reject the idea that conversations often have to be brought to an end and decisions taken. However, what ultimately matters, he might say,

is *how* we *interpret* such decision. According to the authority of connection, a conversation is never ended so much as “put [...] on hold” (75). Every suggestion and invitation remains perpetually open to criticism and permanently revisable. It is fine to close the conversation by, say, voting. What backs up this vote, however, is the prior agreement on which reasons are relevant to the matter at hand. This means that we can accept specific decisions that not everyone necessarily agrees with precisely because we all have a prior agreement on the kind of moral considerations that matter (184, n., 13).

But this proposal seems to underestimate the potential for disagreement in a diverse society. It is not clear how moving agreement up a step – from agreement on a specific decision to agreement on the reasons that matter for any decision – resolves the political problem. Consider, for example, the case of abortion. What shared space of reasons could pro-life and pro-choice activists be said to inhabit? They are divided not merely on whether abortion should be legal or not but also, perhaps more importantly, on the kind of considerations and values that should be engaged with and weighed.

Notice, also, that the ideal of mutual intelligibility – the cornerstone of Laden’s logic of deliberation – does not offer any solution to the impasse in this case. I would imagine that pro-life and pro-choice activists have no problem seeing each other’s positions as mutually intelligible. But mutual intelligibility gets us no closer to a solution. In fact, in cases where positions are radically antagonistic, it may even push us further away from one. By making it possible to see just how abhorrent the views of those whom we disagree with are, the pursuit of mutual intelligibility through “conversation and the general work of living together” may, politically speaking, not be such a good idea. With the example of abortion in mind, one cannot help but treat with scepticism Laden’s suggestion that “in order to solve our collective problem deliberatively, we may need to do the hard work of learning to see each other as intelligible, and to learn to

escape the various pictures embedded in our ways of thinking that can block those processes" (193-4).

I think that when considering the case of deeply pluralistic society the case of abortion can be generalized. The kind of picture of society Laden portrays in setting out the idea of the logic of negotiation is thus much more realistic than that expressed by his idea of a logic of deliberation. In a deeply diverse society it is I think inevitable that people will see the need to deal with others they don't have much in common with as an "unfortunate fact." They will interpret the need to negotiate a mutually acceptable arrangement with them as "a kind of concession to the unfortunate plurality of our social world" (187). Agreements will be sought, and trustfulness and compliance with the terms of such agreements generally valued. But agreements and the commitment to them will inevitably rest on much thinner foundations than those Laden thinks are established by the "plural subject we take ourselves to form together" when engaging in the logic of deliberation (191). As I argued above, appealing to the value of reasonableness when thinking about how to construct such a plural subject doesn't get us very far. Even if we were to overcome the seemingly insurmountable challenge of identifying a conception of reasonableness that all could recognise, it is not clear why reasonableness should systematically trump other values and considerations. The fact of diversity renders the focus on reasonableness suspect at best. Beneath the seemingly democratic and open-ended idea of deliberation there is the self-discipline implied by the notion of "norms of reasonableness." You are not engaged in reasoning, Laden implies, if the duties and self-discipline involved in reasonableness are not subscribed to. If reasoning is about the ever-present possibility of open criticism, then I see no reason why the pursuit of reasoning should preclude submitting the norm of reasonableness as well to criticism.

Pace Laden, it seems to me as though there is an important sense in which the logic of negotiation seems to be closer to the ideal of reasoning than the logic of

deliberation. The logic of negotiation treats reasonableness like any other value. Having a seat at the negotiating table is not conditional on prior proof about one's reasonableness credentials. As far as trustworthiness and compliance are concerned, it is of course important to have a good track record. Yet this is very different from seeing oneself as part of a "plural subject" with "deep ties" based on reasonableness. As Laden himself acknowledges, the kind of mutual recognition that goes on in negotiation is very far from trivial, since it includes a rejection of domination as a means to satisfy one's claims (196, n. 27). It is certainly "minimal" compared to the form of mutual recognition involved in deliberation. However, first, it is not clear, as I said above, whether a diverse society realistically allows for anything beyond a minimal form of mutual recognition. Second, it seems to me that if we are to 'respect' reason in the way Laden suggests we should be wary of appealing to anything more ambitious than such minimum. Recognition is, again, a contested concept, and closing down the conversation about what recognition means by appealing to a final standard (e.g. reasonableness) does not seem compatible with Laden's social picture of reasoning. Negotiation certainly is, in Laden's words, an "end-driven activity." Negotiation is called upon when a collective action problem has to be solved, when, that is, individuals and groups need to get things done. But what negotiation is after, then, are merely *political* ends. On non-political matters, it leaves the conversation widely and perpetually open.

Finally, the question of whether deliberation does actually yield a more stable, solid kind of settlement than negotiation seems to me to be a much more open one than Laden seems to suggest. Laden's thesis is that without a strong normative consensus, social cooperation breaks down. I think there are two problems with this thesis. First, it simply doesn't withstand empirical scrutiny. As the economist Peter Leeson has shown in a number of case-studies, long-term social cooperation is possible among agents and groups that are profoundly heterogeneous. In fact, as his analysis of the belligerent

Anglo-Scottish borderlands of the sixteenth century shows, social cooperation is possible even among *enemies*.⁷⁴ The two necessary conditions for such cooperation to happen, he shows, are (i) a preference for order over war and (ii) institutions that successfully constrain unlawful behaviour. No “deep ties” are necessary.

In fact – and this is the second problem – the attempt to translate the basic principles that define such deep ties into constitutional or institutional structures may itself be a source of *disorder*. Since a negotiated settlement does not appeal to values and principles that go to the core of an individual’s moral and ethical self-understanding, it embodies a (golden) rule that tends to be neglected by contemporary political philosophers and yet seems to me to be of central importance, politically speaking: if you want a stable society, keep the stakes as low as possible. Individuals are more willing to accommodate each other’s difference if they feel that basic self-understandings are not at stake. As John Horton remarks, “precisely *not* making an issue one of fundamental principle may lower the political temperature.”⁷⁵ If a political decision or settlement is taken by all to represent something all can live with rather than the expression of basic moral principles, it is more likely in a diverse society to be reached and supported by all. Horton gives the example of the abortion controversy in this context. In the US where the issue of abortion has been treated as a constitutional one it has been more politically explosive than in Britain, where it has been treated in a more pragmatic and less principled manner.⁷⁶ It is therefore far from obvious that deliberation is superior to negotiation in this case; in fact, it seems much more plausible to think that the opposite is the case.

⁷⁴ Peter Leeson, *Anarchy Unbound* (Cambridge, Cambridge University Press, 2014).

⁷⁵ Horton, ‘Rawls, Public Reason’, p. 20.

⁷⁶ *Ibid.*

So, to sum up. Laden's idea of reasoning as a social, ongoing activity captures a crucial feature of reason, or, more modestly, of how contemporary liberal theorists increasingly tend to understand reason. The politically relevant form of reason is 'public reason', which is the reason of citizens who understand each other as free and equal. All reasons have equal weight in public reasoning, and it is only those that can attract the free acceptance of all that ultimately count. As a reason that is unlikely to be consented to by all in a diverse society, a non-public reason seeks to wield what Laden calls the authority of command. A non-public reasoner understands the reason-giving field as a hierarchical order, in which credentials are backward-looking; the affirmation of the truth of, say, her specific religious doctrine is as far as she will allow the conversation to go. Laden's critique of the authority of connection point to a defining feature of reason: rather than as an end-oriented *procedure*, reason should be thought of as an open-ended *process* instead. Since different worldviews will promote different ends, it is only by taking up the standpoint of a specific worldview that specific ends can be fixed; yet it is precisely the idea that any specific perspective can claim monopolistic control over the ends of reasoning that reason itself negates. From such a point of view, not even the ends of autonomy (Kant) or self-perfection (Mill) can be taken to be publicly valid or definitive. This, we saw above, is public reason's main contribution to liberal theory.

But Laden's proposal in the form of an authority of connection, I have argued, fails to live up to this ideal of reason. This is because it tries to reconcile two irreconcilable ideas: the idea of reason as a process rather than a procedure and the centrality of procedures in any political order. In diverse societies the kind of "connection" Laden aims at is simply not available. Many may wish to not take part at all in that conversation, exempting themselves from the kind of shared project Laden prizes. To appeal to reasonableness in making sense of the basis on which such an exemption would have to be made or, more generally, to make sense of the reason-giving

community is to appeal to a single perspective. However, it is precisely the idea that a single perspective can wield final authority that the ideal of reason doesn't allow.

The same is true of public reason liberalism more generally. Taking pluralism seriously, from a public reason perspective, is about accepting that justification of a political order can only rest on the free acceptance of all reasonable citizens. Public reason too, therefore, is appealing to external norms of reasonableness in order to settle on an acceptable procedure for taking political decisions. The public reason project takes for granted that there is a unitary political order that *has* to be justified. It accepts from the start, in other words, that a great number of conversations will be closed, and some permanently so. Appealing to the value of 'reasonable citizen' or to justice is a way of glossing over the fact that in diverse societies identifying a strong normative consensus is a futile undertaking. Indeed, it is not simply futile; it also contradicts the ideal of reason itself (as I've presented it).

Conclusion

The public reason project seems to have a contradictory view of reason. On the one hand, it takes as axiomatic that the idea that the free exercise of reason does not lead to a consensus. Reasonable disagreement is the natural outcome of reasoning under free institutions. We have seen Gaus refer to the public reason project as a 'post-Enlightenment' project for precisely this reason. Yet it is still to reason, in the singular, that public reason liberalism turns to in its search for liberalism's foundations. How can one turn to reason when reason itself yields widely different and often incommensurable conclusions?

To answer this question one must turn to what appear to me to be the two ways in which reason is here understood: reason is both (i) an instrument for making sense of

the world as well as (ii) an activity that always reflects upon itself. It is as a way of both accepting and negating the influence of power in human affairs that reason constantly engages in self-examination and self-reflection.⁷⁷ In the formula ‘public reason liberalism’, what ‘reason’ stands for, then, is precisely this attempt to envisage an alternative to a political order regulated purely by power relations. Reason rules to the extent that power is silenced. This captures an insight that, arguably, has been at the heart of the liberal tradition since its origins.

Against such a backdrop, I have sought to defend two basic claims in this chapter. First, I have argued that public reason liberalism fails to take into full account the extent to which people disagree in diverse societies. Reason and reasonableness are contested concepts, and the way public reason liberals utilise these notions to distinguish between acceptable and unacceptable interventions in public engagements is problematic. Although their aim is to transcend sectarian thinking, they end up reproducing a form of sectarian liberalism in new guises.

This first point about the relationship between reason and diversity leads to my second point, which is about the relationship between reason and authority. There is a basic tension, I have argued, between reason and authority. Since it constantly subjects itself to self-examination and self-criticism, reason appears intrinsically incompatible with authority. Reason’s conversation is always open. Yet this cannot be the case for any political order. Political life, even in its most democratic and publicly justificatory articulations, is about authoritative decisions, about finality. Even a political order of public justification is one that will have to take decisions. Justification cannot go on forever. So we are confronted with two options: either justification is kept open indefinitely and no decision ever taken, or decisions will be taken that many will find

⁷⁷ See Michel Foucault, ‘*What is Enlightenment?*’ in Paul Rabinow, ed. *The Foucault Reader* (New York, NY, Pantheon Books, 1984), pp. 32-50.

unjustified. Since the former is incompatible with any form of political order, it is the second that will be the norm. Public reason liberalism's attempt to ground a political order in 'reason' has to fail. In a diverse society, political decisions will appear justified to some and unjustified to others (if not for the simple fact that any principle of justification will always be partial). The main question each citizen will be asking herself will not be "does this decision express, e.g., the ideal of citizenship?" but rather "can I live with this decision?"

This doesn't mean, of course, that reason is entirely irrelevant to political theorising. In Chapter 6 I will return to this matter and show what light David Hume can shed on it.

Chapter Two

Religion and Public Reason

The scholarly debate over which the theory of public reason has exerted its greatest influence is that concerning the role of religion in public life. Public reason liberals have reshaped the terms of this old and vexed scholarly question. The key issue has become that of how religious reasons fit into the framework of public reason. Different theorists have proposed different answers. According to Rawls's earlier formulation, citizens engaging in public reasoning have a moral duty to avoid appeals to controversial comprehensive doctrines. A failure to do so would amount to an endorsement of the idea that private reasons suffice when justifying the exercise of political power. However, this idea that a citizen should set aside her personal religious convictions when deliberating about matters as important as those concerning the fundamentals of political coexistence has been found wanting by a number of legal and political theorists. A form of democratic deliberation that excludes religious reasons is not a neutral one, these critics have retorted, but rather a sectarian, secular one. Rawls himself, in his later formulations, acknowledges the validity of this criticism and offers a more inclusive account of public reason. According to Andrew March's recent survey, the "inclusivist" position has come to prevail.⁷⁸ Public reason, according to most liberal theorists, is not incompatible with the exchange of religious reasons.

In this Chapter I want to critically evaluate public reason liberalism's approach to the place of religion in the political life of a liberal society. After having outlined the public reason perspective in Section 1, I, first, defend it, in Section 2, against those

⁷⁸ Andrew March, 'Rethinking Religious Reasons in Public Justification', *American Political Science Review*, vol. 107, no. 3 (2013), pp. 523-539.

religion-friendly democratic theorists (whom I call democratic inclusivists) who have argued that no limits should be set on the expression of religious convictions in the public sphere. I show that democratic inclusivism is either untenable or collapses into something very similar to public reason liberalism. Second, I draw in Section 3 on recent work on the concept of religion undertaken by religious studies scholars, anthropologists and sociologists to question a central claim – one about the distribution of authority in political society – that undergirds the public reason approach to religion.

I. Public Reason and Religion

“Religious reasons” occupy a central place in the current discourse on public reason. As Christopher Eberle has noted, a religious reason is usually treated by public reason liberals as paradigmatic example of what a ‘private’ reason is all about.⁷⁹ This way of thinking about religion and religion’s political spaces goes back to Rawls’s PL. Rawls there turns frequently to the problem posed by religious pluralism to the nature and stability of a liberal polity. In its broadest formulation, political liberalism offers an answer to the following basic question: “How is it possible for there to exist over time a just and stable society of free and equal citizens who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?”⁸⁰ However, on that same page Rawls offers a more restrictive interpretation of that basic question: “How is it possible for those affirming a religious doctrine that is based on religious authority, for example the Church or the Bible, also to hold a reasonable political conception that supports a just democratic regime?” A religious doctrine is but an example of a comprehensive

⁷⁹ Christopher Eberle, *Religious Conviction in Liberal Politics* (Cambridge, Cambridge University Press, 2002).

⁸⁰ Rawls, *Political Liberalism*, p. xxxvii.

doctrine; yet it is the kind of doctrine on which Rawls and most public reason liberals focus on when spelling out the implications of the public reason liberal perspective.

As Rawls sees it in PL, the centrality of the religious question has to do with liberalism's historical self-understanding. The historical origin of liberalism (of which political liberalism is the most plausible interpretation) is the Reformation and its aftermath.⁸¹ The religious wars of the sixteenth and seventeenth centuries made manifest what placing the exercise of coercive political power at the service of controversial religious worldview implies. Disagreements over values have, of course, been a ubiquitous in human history. But religious clashes of the kind by which the sixteenth and seventeenth centuries were engulfed were something new. Religion introduced “into people’s conceptions of their good a transcendent element not admitting of compromise.”⁸² There were only two options available, in those circumstances: mortal conflict or equal liberty and freedom of thought. Liberalism arose when all conflicting parties realized (i) the “absolute depth” of religious disagreement and (ii) the importance of adhering to the values of freedom and equality on the basis a common and “publicly recognized” moral framework. The latter point is something Rawls is eager to stress. Forms of toleration originating in a balance of power were common in the immediate aftermath of the Reformation. Liberal toleration, however, is not to be confused with *modus vivendi*. Neither justice nor stability can be the result of a balance of powers. It is only once an arrangement is supported by all “for the right reasons” that justice is affirmed and stability guaranteed.

This is the basic Rawlsian framework public reason on the basis of which liberals continue to operate. Responding to the challenge posed by religious pluralism is felt to be important because of the kind of conception of the good religion is supposed to

⁸¹ Ibid., p. xxv.

⁸² Ibid., p. xxvi.

embody. Offering a plausible solution to the problem posed by religious pluralism, in other words, goes a long way towards addressing the challenges posed by other, less intractable forms of ‘comprehensive’ disagreements. Rawls’s solution involves a specific redescription of religion. Religion is reinterpreted as a source of a specific kind of ‘reasons’. Since a defining feature of contemporary liberal democracies is religious pluralism, religious reasons can only be thought of as “private” reasons, over which citizens can reasonably disagree. The exercise of political power among free and equal citizens, then, cannot be justified on the basis of religious reasons. When engaging in public reason citizens can only exchange public reasons with each other. Doing otherwise would signal to fellow citizens that one thinks it is legitimate to exercise political power on the basis of reasons not all citizens can accept. Introducing private reasons in the process of public reasoning contravenes the commitment to respecting the freedom and equality of one’s fellow citizens. When engaging in public reasoning we thus have to appeal solely to non-sectarian reasons all citizens – whether they are Catholics, Protestant, Jews, Muslims, atheists, utilitarian, or Kantians – can accept. This needn’t be understood as a legal duty, but rather solely as a moral duty vis-à-vis one’s fellow citizens. The logic of public reason, then, is believed to lead to some kind of duty to refrain from introducing religious reasons into public deliberation.

Stephen Macedo and Jonathan Quong have been the two most important defenders of this (as it is now known) “exclusivist” interpretation of public reason. Their exclusivist interpretation derives from a specific understanding of the nature of a liberal political community. As Macedo puts, “the aim [of public justification] is to assure ourselves and our fellow citizens that what we support is a public moral order: a constitution informed by moral principles and a rationale or set of reasons that all

reasonable people should be able to accept and affirm publicly before one another.”⁸³ In a diverse society it is impossible for all citizens to accept and affirm publicly before one another a set of religious reasons. The public justification of a political order, then, must necessarily eschew any kind of appeal to religious reasons. It is a necessary condition of public justification that the process occurs on the basis of reasons all citizens share. “For public power,” Macedo notes, “belongs to all of us as a common thing, and we should exercise it together based on reasons and arguments we can share in spite of our differences.”⁸⁴ It is by offering reasons that our fellow citizens can potentially share with us that we honor the duty of civility. Equality, freedom, respect, civility: we can affirm these fundamental democratic values only by abstaining from religious or other kind of non-public reasons. To those religious citizens that feel silenced or marginalised by this doctrine, Macedo has only one thing left to say: “grow up!”⁸⁵

The ‘exclusivist’ position is a minority one among liberal political theorists. We see Rawls himself abjure such a strict interpretation of public reason in his later writings on the subject. According to the revised version presented in “The Idea of Public Reason Revisited,” religious (and non-religious) comprehensive doctrines may be introduced at any time in public political deliberation. All that citizens have to meet is what Rawls calls a “proviso”: “in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support”.⁸⁶ Rawls doesn’t see the need to fix any limitations on the expression of religious doctrines; they need not, for example, be expressed in a logically correct manner, open to rational appraisal, or evidentially

⁸³ Stephen Macedo, ‘In Defence of Liberal Public Reason: Are Slavery and Abortion Hard Cases?’, *American Journal of Jurisprudence*, vol. 42, no. 1 (1997), p. 6.

⁸⁴ Ibid., p. 13.

⁸⁵ Ibid., p. 21.

⁸⁶ Rawls, *Political Liberalism*, p. 462.

supportable.⁸⁷ All that matters for public justification is that the proviso is met. What a commitment to the proviso signals is a willingness to enter into a certain sort of moral relationship – a justificatory relationship – with others. Public justification, Rawls says, “proceeds from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept.” The commitment to the proviso signals an affirmation of these ideals and allows the duty of civility to be met.⁸⁸

There is a growing agreement, as Andrew March notes, that the ‘inclusivist’ route is the one public reason theorists should defend and pursue. Theorists as diverse as Jeremy Waldron, Christopher Eberle, Jeffrey Stout, Nicholas Wolterstorff, Michael McConnell, Michael Perry, Gerald Gaus and Kevin Vallier have come to the conclusion that “a citizen is morally permitted to support (or oppose) a coercive law even if she enjoys [only] a religious rationale for that law”.⁸⁹ Of course, the reasons they each have respectively advanced in backing up such a conclusion differ. These are three of the most important arguments that have been advanced against exclusivism:

- Sectarianism. The requirement that public deliberation be undertaken solely on the basis of public reason is not neutral vis-à-vis competing conceptions of the good but rather discriminates against the reasons of religious citizens. Public reason offers a sectarian, secularist interpretation of liberalism.⁹⁰

⁸⁷ Ibid., p. 463.

⁸⁸ Ibid., p. 465.

⁸⁹ Eberle, *Religious Conviction*, p. 10.

⁹⁰ Michael McConnell, ‘Five Reasons to Reject the Claim That Religious Arguments Should Be Excluded from Democratic Deliberation’, *Utah L. Rev.*, vol. 639 (1999), pp. 639-658.

- Respect. Exclusivist public reason liberals have a mistaken conception of respect. To really respect one's fellow citizens is about reasoning with them whilst taking their particularities (e.g. religious convictions) into account.⁹¹
- Integrity. Exclusivist public reason liberals fail to appreciate the threat posed by the exclusion of religious arguments to the personal integrity of religious citizens. Religious convictions and the bases of social and political existence are not things that can be easily separated.⁹²

Different theorists follow these insights towards different normative conclusions. What scholars like Jeremy Waldron, Nicholas Wolterstorff, Jeffrey Stout, Michael McConnell and Michael Perry defend are a more pluralistic account of the democratic ideal and a more vibrant account of democratic deliberation. What Rawls (in his later writings), Gaus and Vallier are after, on the other hand, is an interpretation of public reason that better fulfills the doctrine's own original promise.⁹³ Secularism does not constitute the default shared moral language of democratic discourse, but is rather but one of the many participants in the democratic enterprise. By ignoring the fact that secularism is a 'sect', exclusivist interpretations of public reason abandon the core concern of the public reason project, which consists in finding a non-sectarian moral basis for public political life. The inclusivist account of public reason can reconcile religious citizens and political philosophers who have felt alienated by the exclusivist interpretation to the project of

⁹¹ Nicholas Wolterstorff, 'The Role of Religion in Decision and Discussion of Political Issues', in Nicholas Wolterstorff and Robert Audi, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (London, Rowman and Littlefield, 1997), pp. 67-120; Eberle, *Religious Conviction*; Michael Perry, *Under God? Religious Faith and Liberal Democracy* (Cambridge, Cambridge University Press, 2003); Jeffrey Stout, *Democracy and Tradition* (Princeton, NJ, Princeton University Press, 2004).

⁹² Wolterstorff, 'The Role of Religion'; Stout, *Democracy and Tradition*.

⁹³ Gerald Gaus and Kevin Vallier, 'The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions', *Philosophy and Social Criticism*, vol. 35 (2009), pp. 51-76.

public reason liberalism, a project whose original task was precisely that of reconciling religious commitment to liberal political life.

II. Assessing the Inclusivist Challenge

A growing number of liberal political theorists seem to have accepted the idea that the reasons traditionally given for keeping religious arguments out of democratic deliberation are not convincing. This does not mean that unanimity on this matter has been reached. The fact that important Rawlsian scholars like Stephen Macedo and Jonathan Quong continue to defend the exclusivist position ensures the liveliness and resilience of the debate.⁹⁴ Here I won't try to resolve the controversy between these two positions. What I will do, rather, is focus on the cogency of the inclusivist challenge. I will evaluate both forms of inclusivism I identified above. I will call the first democratic inclusivism and the second public reason inclusivism. As will be clear later, the kind of critique I will move towards the latter will also be applicable towards the exclusivism of Macedo and Quong.

(a) Democratic Inclusivism: A Storm in a Teacup?

Democratic inclusivism is a critique of Rawlsian public reason advanced by scholars who are not (strictly speaking) political philosophers or theorists. Some of its advocates are legal scholars (e.g. McConnell, Perry), others are religious studies scholars (e.g. Stout), and other still are philosophers engaged with philosophical theology (Wolterstorff). What unites these disparate critiques is a shared belief that exclusivism betrays the (American) democratic ideal. Neither the American constitution nor the public morality of a democratic regime, in their view, require that religious arguments be completely expunged from public political deliberations. The morality of democracy poses no

⁹⁴ Macedo, 'Why Public Reason?'; Quong, 'Public Reason'.

obstacles in the way of religious citizens who feel they have specific (and only) religious reasons to offer in support or against a certain political decision or law. Pace Macedo, exclusivist public reason does not represent the philosophical culmination of the democratic ideal but rather a secularist corruption of that ideal.

Democratic inclusivists bring a number of different arguments and perspectives to bear on the question of religion's public role. Some conceptual violence is necessarily involved in the task of unifying and systematising their arguments. Nonetheless, I think there is enough these critics share to make the fulfillment of such a task worthwhile. I want to focus on two shared elements in particular. A first thing they share is a rejection of the public reason project. These theorists see their philosophical interventions in the debate as radical rather than constructive critiques of public reason liberalism. This is largely due to the fact that their targets are solely exclusivist interpretations of public reason. As I said above, they share a belief that the ideal of public reason distorts rather than perfects our democratic imagination. They present defenses of different interpretations of democracy. Stout, for example, defends a pragmatist account of democracy, whilst Wolterstorff defends what he calls a "consocial" account⁹⁵. Both these proposals represent alternatives rather than contributions to the public reason enterprise.

A second shared feature can be evinced from the way in which they articulate and defend their respective alternative interpretations of democracy. Democratic inclusivists can all be said to share a rejection of what we might call a consensus-based view of democracy. They see the exclusivist logic lead to the conclusion that democratic citizens must occupy the same reason-giving space in a democracy and that this space must be secular in nature. This conclusion – i.e. that democratic citizens must take their public decisions on the basis of shared secular reasons – is the one they

⁹⁵ Stout, *Democracy and Tradition*; Wolterstorff, "The Role of Religion".

uncompromisingly reject. We in fact need no such consensus at the reason-giving level.⁹⁶ Citizens should bring to the deliberative table all the reasons – private and public – that they find are relevant to the case under consideration. This is the conclusion we reach once we take the principles of democratic equality and freedom seriously.⁹⁷ This deliberative pluralism may sound cacophonic to ears seeking the purity of justificatory consensus and look messy to eyes seeking normatively harmonious vistas. However, as Wolterstorff puts it, “that is the nature of political decision and discussion in constitutional democracies that are relatively liberal in character and whose citizens embody a diversity of comprehensive perspectives: ad hoc, full of compromise, tolerant of losing the vote, focused on the specific, and on the here and now and the near future.”⁹⁸

According to democratic inclusivists, then, religious citizens should feel free to speak their minds on any subject under public scrutiny and do so in whatever way their conscience dictates. “We should welcome,” Perry states, “the presentation of religiously grounded moral belief in *all* areas of our public culture, *including* public arguments specifically about contested political choices.”⁹⁹ One might expect this proposal to carry radical political implications along with it. Yet I think there is here something remarkable to consider. The examples of religious public arguments that these theorists report are usually ones that public reason liberals would have no major troubles appreciating. Religious arguments evoked in such discussions are, for example, those against slavery, in support of endangered species, or against cuts to social services.¹⁰⁰ Harder cases, such as abortion and same-sex marriage, are of course considered; yet they are treated as epiphenomenal, in the sense that they appear at a later stage in the argument, not when

⁹⁶ Ibid.

⁹⁷ McConnell, ‘Five Reasons’.

⁹⁸ Wolterstorff, ‘The Role of Religion’, p. 114.

⁹⁹ Perry, *Under God?*, p. 43; emphases in original.

¹⁰⁰ Wolterstorff, ‘The Role of Religion’; Stout, *Democracy and Tradition*.

the case for a different understanding of democracy is being constructed.¹⁰¹ Perhaps no figure captures the essence of the democratic inclusivist challenge better than Martin Luther King, Jr. In making his case for the freedom and equality of all human beings Reverend King never restrained himself in the way exclusivists think religious citizens should.¹⁰² King's contribution to political and racial equality would have been suffocated had moral or legal constraints on his ability to put forward religious arguments been in place.

We might say that the examples democratic inclusivists bring forward, in other words, are 'domesticated' ones. There is no sense in which religious arguments are conceived as constituting potentially radical challenges to the democratic status quo. They don't challenge the status quo, but simply affirm it from a different perspective. Now, I wouldn't want to suggest that the critical role of religious perspectives consists entirely in their ability to radically challenge or offend prevailing liberal democratic sensibilities. My point, rather, is that there is something odd about so radical a challenge leading to so bland a conclusion.¹⁰³ Let's remind ourselves: these theorists argue that there should be *no* limits to religious argumentation in public political debates, even those (indeed, *especially* those) on the basis of which fundamental political decisions are taken. Instead of opening up a whole new set of political possibilities, this seemingly radical perspective ends up on the side of the status quo. How is that possible?

I think the answer to this question is the following: because the differences between democratic inclusivists and the public reason perspective they argue against are more apparent than real. Though they place no limits on the kinds of reasons that can be appealed to during public political deliberation, they place axiomatic limits on the

¹⁰¹ E.g. Perry, *Under God?*

¹⁰² Stout, *Democracy and Tradition*, p. 85; Perry, *Under God?*, p. 41.

¹⁰³ Andrew March too notes the arguments often end up in the same place; yet he doesn't find anything odd about this. March, 'Rethinking Religious Reasons', p. 524.

fundamental principles of democratic political association. If we look at the writings of McConnell, Perry, Wolterstorff and Stout, we see them premise their argument in favour of religious argumentation with a specification of the basic democratic principles *all citizens accept*. Perry, for example, states at the beginning of his discussion that the “morality of liberal democracy” is based on two commitments: the “true and full humanity of *every* person” and “certain basic human freedoms.”¹⁰⁴ Wolterstorff, similarly, starts by defining the core ideas of liberal democracy: “*equal protection* under the law for all people, *equal freedom* in law for all citizens, and *neutrality* on the part of the state with respect to the diversity of religions and comprehensive doctrines.¹⁰⁵ But a Rawlsian, upon reading these pronouncements, may legitimately ask: are these theorists not implicitly assuming that there is consensus on such values in a liberal democracy? What distinguishes a democracy from a *modus vivendi* is the presence of a shared moral perspective – a consensus on certain values – among citizens. What is otherwise to stop a group that becomes dominant from imposing its will? If Catholics became the majority in the USA, what would stop them from imposing their comprehensive viewpoints on non-Catholics? (Part of the problem with the domesticated version of pluralism democratic inclusivists employ is that indeed it doesn’t push them to offer answers to such questions). If the answer is that Catholics wouldn’t do so because they have internalised the ‘morality of liberal democracy’ then we are not too far from the Rawlsian position. When it comes to their thinking about norms regulating the exercise of political power, citizens share a certain understanding of what a legitimate and an illegitimate exercise of power looks like.

¹⁰⁴ Perry, *Under God?*, p. 36; emphasis in original.

¹⁰⁵ Wolterstorff, ‘The Role of Religion’, p. 70; emphases in original. See also Stout, *Democracy and Tradition*, p. 85, and McConnell, ‘Five Reasons’, pp. 655-6.

There is a second question a Rawlsian would raise: where do the axiomatic values mentioned by Perry and Woltestorff come from? If, as democratic inclusivists seem to recognise, these norms cannot be derived from comprehensive doctrines, where else could they come from? Though they do not use the Rawlsian language of “background culture,” it is from a very similar fount that these theorists seem to draw. McConnell and Perry refer back explicitly to a specific American democratic cultural and constitutional tradition. Stout does the same, though in his case the appeal is to an American tradition to which Emerson, Whitman and Thoreau belong.¹⁰⁶ This procedure doesn’t seem to me to be substantially different from Rawls’s. The idea, in both cases, is that of distilling a set of basic values from a certain cultural and political tradition. This, it seems to me, is the best way of making sense of what the democratic inclusivists are up to. In fact, their point is that exclusivism fails to appreciate the extent to which religious arguments are indispensable parts of that democratic tradition. Religious perspectives can infuse the democratic status quo with a vitality that secularism on its own would be incapable of sustaining. If religion has been one of the historical foundations of the liberal democratic commitment to the inviolability of every individual human life then excluding religious arguments can only lead to an impoverishment of that tradition.¹⁰⁷ This argument is not incompatible with a Rawlsian perspective, since it entails an appreciation of the fact that (i) there is a shared cultural and political tradition and (ii) that this tradition gravitates around a set of basic moral commitments. It is not surprising, then, that the examples brought to bear by democratic inclusivists on the debate of religion’s political role seem so relatively tame.

The foregoing analysis runs into an obvious difficulty. It might be granted that the commitment to democratic ideals and the appeal to a certain democratic tradition is

¹⁰⁶ Stout, *Democracy and Tradition*, p. 84.

¹⁰⁷ Perry, *Under God?*, p. 51.

something both perspectives share. However, what is indisputably central to the democratic inclusivist challenge is the rejection of the idea that the reasons different citizens have for supporting or rejecting a political proposal are the same. What is being rejected, in other words, is the claim that the morality of a liberal democracy requires that all citizens *share the same reasons* when thinking collectively and publicly about political matters. It is this requirement that necessarily transforms the public sphere into a secular one. Wolterstorff and Stout stress the implausibility of this shared-reasons requirement. Public reason's secularist sectarianism derives from its pursuit of what Wolterstorff calls "an independent source of principles of justice" and Stout calls a "common justificatory basis."¹⁰⁸ It doesn't matter if citizens share the same reasons for or against a proposal; all that matters, according to Wolterstorff, is that they share the conclusions.¹⁰⁹ The consocial model he prefers describes a "politics of multiple communities" that lacks a "shared political basis."¹¹⁰ Stout too rejects the contractualist idea of citizens having to "reason in common." He wants to replace it with a "dialogical" enterprise grounded in "candid expression and immanent criticism." Citizens put forward whatever reasons they deem appropriate to the specific "discursive practices" they happen to be engaging in.¹¹¹

But I think these proposals again raise the question of what exactly these thinkers are supposing holds the political community together. For they both acknowledge the necessity of shared principles and values. Wolterstorff's consocial position rejects the modus vivendi version of democracy and thinks the ultimate goal of political association is political justice.¹¹² This allows us to make sense of the otherwise puzzling claim that conclusions are the only thing that citizens need to share, a view that raises the specter of modus vivendi. He also thinks that three restraints apply to the reasoning and interaction

¹⁰⁸ Wolterstorff, 'The Role of Religion', pp. 96ff; Stout, *Democracy and Tradition*, p. 69.

¹⁰⁹ Wolterstorff 'The Role of Religion', p. 106.

¹¹⁰ *Ibid.*, p. 109.

¹¹¹ Stout, *Democracy and Tradition*, pp. 73-4.

¹¹² Wolterstorff, 'The Role of Religion', p. 115.

of democratic citizens: (1) discussions ought to be conducted with civility, (2) debates have to take place in accord with the laws of the land and the provisions of the Constitution, and (3) the overall goal has to be the pursuit of political justice. Stout too gears democratic deliberation to the pursuit of justice. He agrees with Macedo that democratic citizenship is about pursuing certain virtues, such as civility, respectfulness, and fair-mindedness. His advice is to “cultivate the virtues of democratic speech, love, justice and say what you please.”¹¹³

I think that the best way to make sense of the democratic inclusivist challenge is to interpret it as an attempt to replace consensus with convergence. In light of the evidence I have just provided, it seems to me difficult to dispute the claim that democratic inclusivists appreciate the value and importance of a public morality. As democratic theorists, this is not particularly surprising; they want to have resources to respond to the *modus vivendi* possibility. What they refuse to accept, however, is that citizens need to affirm such a public morality from a single moral perspective. Religious citizens may have purely religious reasons to support ideals of democratic freedom and equality. A shared commitment need not be based on shared reasons. The public morality of a democracy is a product, then, of the *convergence* of different comprehensive perspectives. The important thing about citizens being committed to respect, justice and love is the commitment itself, not the reasons behind that commitment. We can make sense, on the basis of this convergence interpretation of democratic inclusivism, of Wolterstorff's belief that conclusions are the only thing that matter. But if an idea of convergence is what democratic inclusivists are after, we again return to Rawls. For it is precisely such a convergence account of public reason that he gestures towards in his later writings.

¹¹³ Stout, *Democracy and Tradition*, p. 85.

(b) Public Reason Inclusivism

I noted above the paradoxical result that the inclusivist interpretations of public reason gives rise to: a doctrine that traces its history back to a time in which religious sects were imposing their comprehensive views on each other is deemed oppressive or discriminatory by religious citizens above all. Yet, as we saw, there is no other possibility left open by the idea that comprehensive doctrines should never be voiced in public reasoning. If citizens are made to inhabit a shared reason-giving space and there ‘reason in common’ they cannot do so on the basis of religious comprehensive doctrines. Religious citizens would only be able to put forward the public reasons supported by their religious comprehensive doctrines but not the supporting doctrines themselves. No such restraint or forcible ‘translation’ of the comprehensive into the political is demanded of secular citizens. Public reason is secular reason, religious citizens are bound to conclude, and is categorically antagonistic to religion.

In the paperback edition of PL and in “The Idea of Public Reason Revisited” Rawls recognises the unpalatable implications of this initial understanding of public reason and seeks to correct them. A first thing Rawls does to assuage the concerns of religious citizens is making clear that public reasons should not be confused with secular reasons. Secular reason, he now specifies, is reasoning in terms of comprehensive nonreligious doctrines and is therefore just as inappropriate a ground for public justification as a religious reason is.¹¹⁴ This quest for a greater symmetry between different kinds of reasons is an important element in Rawls’s rejection of what he himself calls the “exclusive view” of public reason in favour of, first, what he calls the “inclusive

¹¹⁴ Rawls, *Political Liberalism*, pp. 452, 457-8.

view" and then of the "wide view."¹¹⁵ According to the inclusive view, citizens are allowed "in certain situations, to present what they regard as the basis of political values rooted in their comprehensive doctrine, provided they do this in ways that strengthen the ideal of public reason itself." The kind of situation Rawls here has in mind is one in which the society is not "well-ordered" and there are profound divisions about constitutional essentials. He brings up the example of the abolitionists' and King's employment of religious reasons in the service of political justice. These religious reasons strengthened rather than weakened the ideal of public reason and for this reason Rawls thinks they were publicly permissible. According to the wide view, however, even the inclusive view is too restrictive. As we saw Rawls argue above, the only condition to be placed on religious argumentation in the public sphere is that the proviso is eventually met. Citizens can introduce the religious supporting doctrines into the public argument whenever and however they wish.

The progressive widening of Rawls's conception of public reason seems to signal a shift in his understanding of the kind of reasoning that goes on when citizens reason in common about constitutional essentials and matters of basic justice. If the ideal of public reason is fulfilled also in those cases when comprehensive doctrines are introduced it means that public reasoning is not something that necessarily occurs on the basis of shared reasons. We can reason publicly, you and I, even if all I am bringing to the table are my comprehensive religious views and all you are bringing to the table are your comprehensive atheistic views. If we achieve public justification then we cannot be doing so on the basis of reasons both of us happen to share. It must be the case, rather, that different reasons are involved, reasons that it is possible that each one of us may actually reject. If what we have in the case of the shared-reason perspective is a *consensus* view of

¹¹⁵ Ibid., pp. 247ff, 462ff.

public reason, what Rawls seems to gesture towards in his later writings is a *convergence* view of public reason. The distinction between consensus and convergence interpretations of public reason is one we owe to Fred D'Agostino. This is how he puts it:

If both A and B share a reason R that makes a regime reasonable for them, then the justification of that regime is grounded in their consensus with respect to R. If A has reason R_A that makes the regime reasonable for him, and B has reason R_B that makes the regime reasonable for her, then the justification of that regime is based on convergence on it from separate views.¹¹⁶

This is a helpful way of making sense of what I have called democratic inclusivism and public reason inclusivism. In a diverse society the consensus conception can only end up favouring secular reasons, over which agreement is more attainable. This problem is resolved however once we replace consensus with convergence. A militant atheist and Martin Luther King, Jr. can converge on the basis of widely different reasons in support of a liberal democratic order. Drawing on the reasons of your secular interlocutor may be a useful rhetorical-pragmatic strategy but it need not be seen as something that civility or respect demand.

The consensus-convergence distinction has been the subject of considerable debate among public reason liberals in recent years. Some defend it (e.g. Gaus, Vallier) whilst others reject it (e.g. Macedo, Quong). However, I don't think there is ultimately much substantive difference between these two conceptions of public reason. Theorists of convergence public reason liberalism do not after all suppose that the reasons of citizens could potentially converge on *any* political equilibrium. It is only convergence on a very specific kind of liberal political order that they consider. This political order is

¹¹⁶ D'Agostino, *Free Public Reason*, p. 30; emphasis in original.

(roughly) the one Rawls defends in PL: a publicly justified political order that expresses an affirmation of a certain ideal of democratic citizenship.¹¹⁷ What such an order is after is the pursuit of “fair terms of cooperation between citizens regarded as free and equal.”¹¹⁸ Convergence public reason liberals concur with their consensus-oriented colleagues, then, on the fundamental idea that, as Gaus says quoting Madison, “justice is the end of government.”¹¹⁹ The different comprehensive perspectives that make up a pluralistic society converge on a set of *just* political norms. Consensus and convergence conceptions share this basic end.

I think this is clear in the case of Rawls. By introducing the idea of the wide view of public reason Rawls is certainly trying to allow a greater diversity of perspectives and reasons into the justificatory exercise. Rawls moves away from the idea that reasons have to be the same for public justification to occur. The proviso, he notes, is something that may very rarely be demanded of citizens, who may therefore overwhelmingly interact and deliberate with one another publicly solely on the basis of their different comprehensive reasons. The idea of the proviso is, however, very important at this stage. Citizens’ acceptance of the notion that public reasons may eventually have to be provided signals a shared affirmation of a certain ideal of democratic citizenship. Now, the reasons for accepting and affirming this ideal may be different. This doesn’t mean, however, that a shared moral orientation that cuts across all comprehensive perspectives isn’t there. What I am suggesting, in other words, is that *rejecting the shared-reasons ideal doesn’t mean one is rejecting the ideal of consensus*. What we means by consensus is of course very pertinent in this regard. If we think that consensus over X means that all share the same reasons for X then the distinction I am here making wouldn’t make sense. However if, on the other

¹¹⁷ Rawls, *Political Liberalism*, p. 30.

¹¹⁸ Ibid., p. 4.

¹¹⁹ Gaus, *Contemporary Theories of Liberalism*, p. 222; see Quong, ‘Public Reason’.

hand, we call consensus also the mere fact of sharing a moral orientation or the affirmation of certain moral ideals with others, then the distinction I am proposing does make sense.¹²⁰ Indeed, what I think Rawls gestures towards in his later writings on public reason is precisely the possibility that consensus and shared reasons may be conceptually separable. This doesn't take away from the fact his idea of convergent comprehensive reasons is anchored in an idea of consensus over a set of basic (political) norms of justice.¹²¹

The discussion so far might seem to suggest that I am disputing the idea that there are some very important differences between the consensus and convergence perspectives. This is not my intention. There is in fact a significant disagreement between them concerning the way the fact of reasonable pluralism should be fitted into the public reason project. Both consensus and convergence public reason liberals take the fact of reasonable pluralism seriously. The need for public justification arises because of the impossibility of unanimity over the truth of any one comprehensive doctrine. Against this shared background concern with taking reasonable pluralism seriously, what convergence public reason liberals argue is that their consensus colleagues do not in fact take the fact of reasonable pluralism seriously enough. The consensus conception of public justification is, as Gaus and Vallier put it, “hostile to any genuinely pluralistic reasoning in public justification.”¹²² This hostility comes across whenever it is assumed that public reason requires shared reasons. I wouldn't want to dispute that there is a significant difference between a conception of public reason grounded in a shared-reasons idea and one that isn't. The commitment to taking reasonable pluralism into

¹²⁰ In Chapter 4 I use the idea of “common will” to make sense of this. In the language of that chapter, what I am here suggesting is that a common will need not necessarily depend on the shared-reasons idea.

¹²¹ This is what the idea of “overlapping *consensus*” after all is getting at. See also D'Agostino, *Free Public Reason*, p. 39.

¹²² Gaus and Vallier, ‘The Roles of Religious Conviction’, p. 58.

account is clearly more fully satisfied in the latter than the former. My point, however, is that this difference is one of degree rather than substance. A commitment to the just society is the normative anchor in both versions of public reason. For as Gaus and Vallier write when defending a criterion of intelligibility (instead of one of shareability), “as long as intelligibility obtains, all members of the public acknowledge that everyone engages in genuine reasoning such that each person’s conclusions provide her or him with reasons to accept the law.”¹²³ In this way, they continue, “everyone can see everyone else as a self-legislator and freely subject to the law.”¹²⁴ If we interpret consensus in the second way I suggested above, it is difficult to see how Gaus and Vallier are not appealing to an idea of consensus here. The fact that they reach it and affirm it on the basis of different comprehensive reasons seems to me to be of secondary importance relative to the fact that what they bring to politics is a specific form of mutual accounting. “Appealing to a law justified in this manner respects each person as free and equal.”¹²⁵

How promising is this kind of reliance on an idea of consensus? I want to respond to this question by introducing another element into this discussion of the role of religious convictions in political life. This further element, neglected by all sides of the controversy I have here been examining, is the fact that “religion” is a very problematic concept.

III. What is “Religion” Anyway?

I have so far evaluated the lively debate on the role of religion in public life on its own terms. I have followed both sides of the controversy and treated the concept of ‘religion’

¹²³ Ibid.

¹²⁴ Ibid., p. 59

¹²⁵ Ibid.

as an unproblematic one. The debate between inclusivists and exclusivists, as we have seen, is one that focuses on the relationship between religion and democratic politics and not on the concept of religion itself.¹²⁶ But I now want to argue that this uncritical approach to the concept of religion is a very problematic feature of the debate. The task of figuring out what taking religious pluralism seriously entails seems to depend on a more basic question: what is religion? Liberal political theorists have largely ignored this question so far.¹²⁷ But this neglect has come at a cost. As scholars working on religion in other disciplines – such as anthropology, sociology and religious studies – have shown, the concept of religion is a highly contested and contestable one. Liberal political theory has largely ignored such developments. As a result, it has offered answers to the question of how religious pluralism should be accommodated that underestimate the nature of the challenge.

Let's start with a question, then, that is rarely asked by liberal political theorists: what is 'religion'? Rawls's answer, which has proved very influential, especially among the inclusivists and exclusivists considered in this chapter is a useful place to begin. In PL Rawls's reasoning is moved by the fact of reasonable pluralism, that is, the "fact of a plurality of reasonable but incompatible comprehensive doctrines."¹²⁸ Here is the question he is seeking to answer there: "How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible *religious, philosophical, and moral doctrines?*"¹²⁹ We can see here that Rawls subsumes religion under the broader category of comprehensive doctrines.

¹²⁶ E.g. March, 'Rethinking Religious Reasons'. Nowhere in his article does March consider this issue.

¹²⁷ A notable exception is Jeffrey Spinner-Halev, 'Hinduism, Christianity, and Liberal Religious Toleration', *Political Theory*, vol. 33, no. 1 (2005), pp. 28-57. For a useful perspective originating in radical democratic theory, see William E. Connolly, *Why I am not a Secularist* (Minneapolis, MN, University of Minnesota Press, 1999), ch. 1.

¹²⁸ Rawls, *Political Liberalism*, p. xvii.

¹²⁹ *Ibid.*, p. xviii; emphasis added.

Comprehensive doctrines can be of different kinds, and religion is one of these. This perspective allows Rawls to see religious doctrines as being of the same essence as any other philosophical or moral doctrine, such as utilitarianism. Reasonable comprehensive doctrines have three features. First, they are an “exercise of theoretical reason.” They cover, in other words, the “major religious, philosophical and moral aspects of human life in a more or less consistent and coherent manner.” Second, “in singling out which values to count as especially significant and how to balance them when they conflict” they also represent “an exercise in practical reason.” Finally, third, they normally belong or draw upon a tradition of thought and doctrine.¹³⁰

We can further illuminate Rawls’s conception of religion by looking at his account of the nexus between the birth of liberalism and the religious wars of the sixteenth and seventeenth centuries. We have already seen Rawls argue that the historical origin of liberalism is the Reformation and its aftermath. What the Reformation signaled was the end of the Catholic religious unity of the Middle Ages. This Catholic unity, Rawls observes, was a religious unity of a particular kind. Medieval Christianity had five features: it was an authoritarian religion, it was a religion of salvation, it was a doctrinal religion, it was a religion of priests, and it was an expansionist religion. What the Reformation brought about was a partition of this kind of Christianity and the creation of another bloc with those same characteristics. “What is new about this clash,” Rawls writes, “is that it introduces into people’s *conceptions of the good* a transcendent element not admitting of compromise.”¹³¹ A religion, then, is a conception of the good of a particular kind: unlike, say, utilitarianism, it is a conception of the good that incorporates a transcendental dimension. The nastiness of the religious wars that succeeded the

¹³⁰ Ibid., p. 59.

¹³¹ Ibid., p. xxvi; emphases added.

Reformation was in large part a function of the transcendent dimension of the clash between these rival religious conceptions of the good.

Another way of putting the matter is this: Rawls understands religion as a more or less coherent system of *beliefs*. If we want to understand the rivalry and the sources of conflict between Catholics and Protestants in the aftermath of the Reformation we need to look at what the participants *believed* in. By ‘doctrine’ and ‘conception of the good’ what Rawls has in mind is an ordering of beliefs. Religious people, then, are people who believe certain ‘religious’ things, such as a transcendental deity. I think that this understanding of religion brings the concept of religion very close to that of theology. Theology too describes a (‘religious’) system of beliefs. In fact, it seems to me that the overlap between the two is almost complete in the case of Rawls. When he is talking about religion it is exclusively religious *doctrines* that he has in mind. We might just as well say, paraphrasing Rawls’s diagnosis, that what pitted Catholics against Protestants after the Reformation were rival theologies. When public reason liberals like Rawls (or, in fact, liberals more generally) write about religion, then, what we may take them to have in mind is a belief-centered, theology-like conception of religion. Rawls’s critics too adhere to this template. When pointing out the unfairness of Rawls’s restraint principle, for example, Wolterstorff writes that “it belongs to the religious *convictions* of a good many religious people in our society that they *ought to base their decisions* concerning fundamental issues of justice on their religious *convictions*.¹³² Similarly, Eberle speaks of “theism” rather than religion, defining the former as the “*belief* in ‘God’ where ‘God’ denotes an omnipotent, omniscient, morally perfect person.”¹³³

¹³² Wolterstorff, ‘The Role of Religion’, p. 105; emphases added and amended.

¹³³ Eberle, *Religious Conviction*, p. 356, note 49, emphasis added. The elision of religion and theology finds perhaps its best incarnation in Leif Wenar, ‘Political Liberalism: An Internal Critique’, *Ethics*, vol. 106, no. 1. (1995), pp. 32-62. When considering the ability of Rawls’s political liberalism to accommodate religious diversity Wenar looks exclusively at documents from the Vatican Council.

But why does any of this matter? I think the answer to this question is to be found in the work undertaken in recent decades by sociologists, anthropologists, religious studies scholars and theologians on the concept of religion. What this work shows is the religion is a profoundly complex, polymorphous concept and that the understanding of religion employed by liberal political theorists is a mistaken one. Although liberals tend to think of religion purely as a system of beliefs, the idea of religion as belief-system arose in a very specific location and at a very specific time: it originated in Western Europe over the course (roughly) of the seventeenth century.¹³⁴ Neither the ancient nor the medieval Church conceived of religion in this way, let alone non-Western religious traditions, such as Islam or Hinduism. Talal Asad has noted that the elision of the difference between religion and theology I referred to above is indeed characteristic of post-Reformation thinking.¹³⁵

Prior to the Reformation, the notion of religion remained faithful to the Roman notion of *religio*, which was one of a constellation of terms surrounding *social obligations* in ancient Rome and referred specifically to a requirement to *perform some action*.¹³⁶ By tying moral dispositions to the disciplining of the body, medieval monasticism further strengthened this tendency. For medieval Christians (including, it should be noted, the innovators of the Reformation), “religious” was the attribute of a certain kind of community or order; to be “religious,” then, was a matter of belonging to a certain community or order. Over the course of the seventeenth century, as post-Reformation religious differentiation came to be accepted as a fact of life, this *practice-based* conception of religion gradually dissolved. Henceforth religion came to be understood as

¹³⁴ Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore, The Johns Hopkins University Press, 1993); John Bossy, *Christianity in the West 1400-1700* (Oxford, Oxford University Press, 1995); William Cavanaugh, *The Myth of Religious Violence* (Oxford, Oxford University Press, 2009).

¹³⁵ Asad, *Genealogies*.

¹³⁶ Cavanaugh, *The Myth of Religious Violence*.

something categorically distinct from practice. It became possible, for example, for Locke to reduce Christian doctrine to a belief in Jesus as the Messiah and for Kant to state that “there can only be *one religion* which is valid for all men at all times.”¹³⁷

This might seem very foreign to liberal ears. To make matters more tangible, let’s distinguish between two possible basic conceptions of religion. These two ideal-types we might call *belief-first conception* and *practice-first conception* of religion. Here are two definitions:

- *Belief-first conception* (BF): a religion is to be understood, first and foremost, as a set of beliefs concerning the nature of reality in both its material and transcendental aspects.
- *Practice-first conception* (PF): a religion is to be understood, first and foremost, as a specific human practice.

According to BF, religion is fundamentally a mental or psychological phenomenon, pertaining to the internal life of the individual. Religion *amounts to* the set of beliefs held by a religious individual or group. To be Catholic or Jewish or Muslim is, in essence, about accepting a certain set of Catholic or Jewish or Islamic beliefs. At the heart of BF is the assumption that believing in φ is something categorically distinct from actually practicing φ . Though practicing φ may perhaps be a valuable plus for anyone believing in φ , the important point is that not practicing φ does not in any way represent a minus. Because it conceives of religion as, first and foremost, a set of beliefs, BF has nothing of substance to say about the social or political dimension of religion. It takes religion to be in fact fully compatible with a whole range of physical social and political states of the individual.

¹³⁷ Cited in Asad, *Genealogies*; emphasis in original.

PF sees religion in a radically different way. Rather than as a set of beliefs, PF takes religion to be first and foremost a specific kind of practice. It is the concrete physical life of individuals and not their mental states that PF takes as revelatory of religious life. Since it usually takes more than one individual to enact a practice, PF focuses more on the collective than the individual levels. Religion, according to this view, is fundamentally about a series of bodies in space and time sharing a collective practice. This view has a number of important implications. According to PF, the religiosity of an individual may conceivably be purely a matter of participating in religious processions or attending mass, even though the beliefs involved in such celebrations may not be wholly transparent to her. Her religiosity derives from being part of a ‘religious’ community rather than from anything to do with adhering to certain specific beliefs. Not practicing or not being allowed to practice a certain religious life (or parts of it) is of critical importance for PF in a way that isn't so for BF, with its specific concern for the mental states of individuals.

Treating belief and practice as mutually exclusive seems implausible. It is difficult to imagine any human practice that doesn't involve any kind of belief. Ideas and beliefs generally do play a part in the religious life of any religious individual, no matter how conformist she might be. Similarly, it is difficult to imagine an actual form of religious life in which practice has no part at all to play. It is for these reasons that I propose to distinguish between belief- and practice-*first* conceptions of religion. What the distinction grounds is not a relation of mutual exclusivity, but rather two different understandings of the order of *priority* between belief and practice. As the anthropologist Talal Asad has observed, religion has been understood either as a “cognitive framework,” or as a “practical mode of living, [...] as techniques for *teaching* body and *mind* to *cultivate specific virtues* and abilities that have been authorized, passed on and reformulated down the

generations.”¹³⁸ PF models the latter possibility and as such does not exclude reference to beliefs and values, but rather interprets them as subordinated to the exigencies of practice. Asad’s comparative study of ritual fleshes out this distinction very effectively. If according to what I have here defined as the BF conception a ritual is simply the *enactment* of a belief, according to the PF conception ritual is a practice essential for the *acquisition* of the ‘right’ beliefs and virtues.¹³⁹

Liberal political philosophy must rest on a mistake, then, when it takes BF to be the sole or even the most capacious understanding of religion. When they employ BF liberals are universalising what is in reality a distinctively Christian and Western European historical trajectory. This point could easily be dismissed were its pertinence confined to the case of pre-Reformation Christianity. But this is not so. The problems with this Eurocentric framework become obvious once we try to apply it to the case of other major existing world religions. Islam, because of its unwillingness to distinguish the secular/political from the religious, presents the most obvious challenge to the liberal view of religion.¹⁴⁰ Yet the problems Islam poses pale in comparison with those raised by Hinduism, the largest religious tradition after Christianity and Islam. In Hinduism it is social belonging and not belief that defines religious affiliation. A Hindu “may be a theist, pantheist, atheist, communist and believe whatever he likes, but what makes him into a Hindu are the ritual practices he performs and the rules to which he adheres, in short, what he *does*.”¹⁴¹ Unlike Western religions, Hinduism does not have a basic creed or a set of basic texts in which that creed is codified. It is also not characterised by a

¹³⁸ Asad, *Genealogies*, p. 216; emphases added.

¹³⁹ Asad, *Genealogies*, p. 63.

¹⁴⁰ *Ibid.*

¹⁴¹ Frits Staal, *Rules without Meaning: Ritual, Mantras, and the Human Sciences* (New York: Peter Lang, 1989), p. 389; emphasis in original.

formal organizational structure. The maintenance and legitimisation of hierarchical social relationships, and not faith or belief, lies at the core of Hinduism.¹⁴²

What kind of problems does this mistake pose to liberal political theorising? A suggestion that is frequently made by critics is that an accurate understanding of religion undermines the faith in the paradigmatically liberal distinction between ‘public’ and ‘private’.¹⁴³ The possibility of confining religion to the private sphere is premised on the idea of religion as a private affair, a matter of individual conscience. In fact, the argument that has been made that the public-private distinction liberalism prizes was itself the result of a certain privatised conception of religion. “The liberal conception of public and private,” Spinner-Halev says, “has its origins in the (eventual) Protestant conception of privatized religion.”¹⁴⁴ A transformed experience of religion shaped an entire social and political world in Western Europe. For those that didn’t go through that experience, the public-private distinction makes much less sense. The notion of a ‘privatised religion’ is oxymoronic for these other traditions. For them religion is something that pervasively influences all spheres of life, including the political one, where ‘matters of basic justice’ and ‘constitutional essentials’ are deliberated. A practice knows no public-private distinction, in other words, and this renders traditional liberal approaches to religious diversity inadequate.

Now, this critique may certainly apply to exclusivist approaches. For exclusivists, the public sphere must necessarily be a non-religious one. To reason in common is to reason in a non-comprehensive, ‘neutral’ manner. Religion, for exclusivists, is a purely private affair, or has to be so if the requirements of public reason and civility are to be respected. However it seems to me that this critique has in recent years become much

¹⁴² Spinner-Halev, ‘Hinduism’, pp. 35-6. Hinduism therefore seems to offer the interesting spectacle of a practice-*only* religious tradition.

¹⁴³ E.g. Cavanaugh, *The Myth of Religious Violence*; Spinner-Halev, ‘Hinduism’.

¹⁴⁴ Spinner-Halev, ‘Hinduism’, p. 33.

less valid. As we've seen, most public reason liberals accept a form or another of inclusivism. It is widely accepted now that religious reasons have a significant role to play in public reasoning. As we've seen, for some, like Rawls, appealing to comprehensive reasons may in fact even be a way of strengthening the ideal of public reason. By embracing inclusivism most public reason liberals have, in other words, started to question the usual way in which the public-private distinction is usually understood. This distinction can no longer be justified on the basis of any one comprehensive or private doctrine, not even liberal ones. This has transformed the understanding of a liberal 'public', rendering it more pluralistic and religion-friendly.

So if it is not the public-private distinction, what is it about public reason liberalism that a more comprehensive account of religion challenges? I want to make the following proposal: an appreciation of the actual nature of religion paves the way for a different account of the *distribution of authority* in political society. Whilst a belief-first account of religion implies a concentrated view of such authority, a practice-first account implies a fragmented view of it. To see what I mean by this we need to look more closely at what a practice is and how it differs from belief. We can define a practice as a social discipline enacted by a group. A practice is disciplinary in the sense that it is regulated by norms and codes of conduct. Though the latter may of course change over time, for a certain practice to persist over time there must be a core set of disciplinary techniques that remain in place. These techniques may reflect or affirm a wide variety of different values or ends. They may or they may not affirm liberal values such as autonomy, equality and respect. The important point, however, is that there is no way of reimagining a practice as something that affirms different values from the one it actually affirms, since it is the practice itself (as we've seen Asad states above) that generates and entrenches those values. Trying to transform those values can only signify the extinction of the practice that generates and entrenches them.

Imagining religion as a belief-system is something very different. The concept of religion is here centered on the individual and her beliefs. Though believing does usually have a social component, this is not a necessary condition. The individual and her beliefs are abstracted from social circumstances. Religion is a way of thinking rather than being and doing. This renders religion perfectly compatible with political order, which is an order whose main purpose is that of influencing beings and doings. It is in this sense that I speak of the vision of authority undergirding BF as being ‘concentrated’. The disaggregation of authority that comes with PF does not apply to BF. It is not a coincidence, then, that where PF prevails the state has a harder time affirming its sovereignty. Members of religious practices have proven themselves to be more successful in resisting the encroachments of the modern state than religious believers.¹⁴⁵

An example might be useful here. Consider, for instance, the way Rawls deals with the incorporation of Islamic beliefs in public reasoning. He deals with this matter in a long footnote in ‘The Idea of Public Reason Revisited’.¹⁴⁶ His focus there is exclusively on doctrinal issues. The question he asks is whether Shari'a can be interpreted in such a way as to render the alignment of Islamic principles and liberal democratic principles possible. He draws on Islamic scholarship to conclude that yes, there is an interpretation of Shari'a that makes participation in an overlapping consensus over a political conception of justice possible even for those of Islamic faith. We see here that Rawls's entire reasoning on this matter originates in a belief-centered conception of religion. All that the alignment of the Islamic way(s) of life with the regulative conception of justice requires is a reinterpretation of Islamic doctrine. In Rawls's belief-centered account, there is no deep friction then between the liberal democratic order and religious orders; a change in what those of religious faith believe in is all that is required.

¹⁴⁵ Cf. William Cavanaugh, *Torture and Eucharist* (Oxford, Blackwell, 1998).

¹⁴⁶ Rawls, *Political Liberalism*, p. 461, ft. 46.

Things, however, are much more complicated once a practice-first conception of religion is adopted. It is not simply an interpretation of a religious text that is the issue here but rather an entire system of social reproduction. What Rawls fails to appreciate is that the system of beliefs he seeks to modify by means of exegetical reinterpretation is epiphenomenal to a complex practice. Ways of being and doing are at stake, not merely ways of thinking. Ways of being and doing whose norms and values appear to be antithetical to those of a liberal order of public reason pose a problem that no amount of textual reinterpretation can solve. Yet this is exactly what many religions have tended to be about.¹⁴⁷

A religiously pluralistic society, then, is one that is more deeply divided than liberals tend to suppose. We can think of different practices as different poles of authority. A religiously pluralistic society, then, is one in which authority is fragmented. Furthermore, a practice-centered perspective also raises the very interesting question of why we shouldn't also classify liberal citizenship as a specific practice or system of social reproduction.¹⁴⁸ This conclusion challenges a basic premise of much of liberal political theory: that political community should be the expression of an authoritative viewpoint that subsumes all others. This is something that unifies both comprehensive and political or public reason liberalisms.

I will postpone the discussion of how liberalism should respond to this kind of deep pluralism until the second and third parts of this thesis, in which I defend an account of moral deliberation and toleration suitable to radically pluralistic social world.

¹⁴⁷ Just to be clear: these are statements about what it means to take religion-as-practice and religious pluralism seriously. I am not implying that the Islamic author Rawls cites in his discussion of Islam and overlapping consensus is mistaken, or that religious practices are all antithetical to liberal values. The point is that the commitment to the belief-first conception has led liberals to underestimate the extent to which real religious pluralism poses a serious challenge to their attempts to concentrate authority.

¹⁴⁸ From the perspective of religious citizens, they may certainly appear to be so. Connolly also makes this point (Connolly, *Why I am not a Secularist*, p. 26).

It is nonetheless worth responding here to some obvious objections or perplexities. For example, it could be argued that the depiction of a religiously pluralistic society I have formulated by drawing on a practice-first account of religion is unappealing, since it sees religious communities as completely insulated from one another. Rawls's attempt to find areas of overlap between different comprehensive religious doctrines seems more attractive.

But notice that nothing in what I said above precludes or excludes the kind of engagement Rawls describes. The important question is what to make of differences that are not amenable to Rawls's treatment. In this regard I think that the important thing to recognise is that just because dialogue and explicit reason-giving is not occurring, it does not mean that moral engagements and evaluations are not taking place “Example can speak – and reason – as eloquently as words,” as Chandran Kukathas observes.¹⁴⁹ This is particularly so when what is being ‘assessed’ is how one should live. Practices, even the most insulated ones, necessarily ‘communicate’ their ‘reasons’ whenever they take place in a social context. The important thing is that there is space for the practice to occur. “Some need to practice in order to preach.”¹⁵⁰

A second perplexity I would like to address relates to public reason liberalism’s understanding of “public.” It may be granted that taking practice seriously does seem to question the usual way in which the public and the private are partitioned, since practices are intrinsically public affairs. However this is an argument that shows why we *cannot* take practices seriously. As we’ve seen Spinner-Halev suggest above, the public-private distinction is intimately tied to a belief-first understanding of religion. What this objection tries to get at, in other words, is that a political society is unworkable without

¹⁴⁹ Kukathas, *The Liberal Archipelago*, p. 129.

¹⁵⁰ Ibid., p. 138.

the kind of public-private distinction the belief-first understanding grounds and that the “public” has to be understood as a site of deep moral agreement.

This claim, however, seems to me to be based on a misunderstanding of the origins of the public-private distinction. It is true that without a distinction between what is public and private a political society is unworkable. This is the lesson we might draw from David Hume’s and F. A. Hayek’s evolutionary account of the origins of society. But, *pace* Spinner-Halev, there is no reason to connect this phenomenon to the Protestant Reformation. All political societies need such a distinction. This is how Kukathas, for example, defines a political community: “an association of individuals who share an understanding of what is public and what is private.”¹⁵¹ Where the line between public and private falls is not fixed *ex ante* but rather depends on what is “generally regarded as an appropriate subject of attention by the political institutions of the society” and what is not. These are things that necessarily vary from polity to polity, since they depend on particular historical trajectories. In a religiously diverse society the necessities of coexistence will very probably require that the ‘public’ sphere be one largely evacuated of religious contents. This has nothing to do, however, with the Protestant Reformation and the values that emerged in its aftermath but rather all to do with the necessities of coexistences under circumstances of deep diversity.¹⁵²

Conclusion

Public reason liberalism has had its greatest impact in the scholarly debate on the role of religious convictions in a liberal polity. I have argued in this chapter that the perspective it offers is more compelling than that of its democratic critics. But since it interprets the

¹⁵¹ Ibid., p. 172

¹⁵² On toleration *before* the Reformation, see Benjamin Kaplan, *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe* (Cambridge, MA, Belknap Press, 2010).

“public” as a site of deep moral agreement, public reason liberalism nonetheless offers an inadequate response to the phenomenon of religious pluralism. It seems only capable of addressing what we might call Reformation religious pluralism. Scholars of religion have shown, however, that the Reformation was a historically unique phenomenon and that the BF conception of religion it spurred is not representative of all religious traditions. Taking religious pluralism seriously necessarily means according to religious practices a much more substantial public role. It means, in other words, diluting the normative consensus of the ‘public’ sphere. We shall see in Parts II and III of this thesis how one might go about doing so.

Chapter Three

Creating Liberals

Public reason liberals follow Rawls in attributing a critical role to the state. The state and its institutions are of central importance, they argue, in the process of socialisation of citizens into pro-social norms. Yet one rarely finds discussions of the state as an institution in their writings. Rawls, for instance, structures his argument in PL on the basis of notions such as “political conception of justice,” the “idea of society as a fair system of cooperation,” the “idea of an overlapping consensus,” or the “basic structure as subject.” Social and political institutions are just assumed to be able to embody the moral agreement of citizens on a set of basic political matters. The sociological analysis of the state, if considered at all, is relinquished to the sphere of feasibility considerations or, more technically, “non-ideal theory.”

In this chapter I want to challenge this approach and ‘bring the state back in’, as it were. I want to question the idea that what I will call the *transformative* role Rawls and other public reason liberals attribute to state institutions is one that the latter can meaningfully and successfully take up. Rawlsian political liberalism is grounded in the unrealistic expectation that political institutions can in fact live up to this transformative task. No “rational hope” can ground such an expectation. We have few reasons to suppose that the state can successfully reform the moral order.

This chapter develops in the following manner. In Section I, I offer an overview of current thinking by political liberals on the relationship between the moral and political orders. My aim is to show just how crucial a role is ascribed to the state by them. In Section II, I draw on historical and sociological evidence to suggest that we have good

reasons to be very sceptical of the state's ability to reform the citizenry. In Section III, I challenge the appeal to the ideal/nonideal split in connection to the limitations of the state. The political order, I argue, cannot but reproduce the frictions and imperfections of the moral order.

I. Creating Liberals: The State of Contemporary Political Liberalism

As I showed in Chapter 1, in Rawls's view PL seeks to address a problem internal to the account of justice as fairness defended in TJ. The problem originates in what he thinks is a flawed account of stability. The problem with stability arises out of TJ assumption that all citizens share the end of living autonomous lives, of living lives, that is, that reflect an ideal of their "nature as free and equal rational beings."¹⁵³ The stability of a well-ordered society governed by the two principles of justice defended by TJ relies on the "congruence" between a person's sense of justice and her conception of the good; if her conception of the good incorporates the endorsement of the two principles, then the conception of justice can be said to be stable, since what is good is something she will naturally strive for. In PL Rawls acknowledges that the ideal of autonomy is a purely Kantian understanding of what a good human life consists in. What it describes is a Kantian philosophy of life, or a "comprehensive doctrine." But in a liberal democratic society, he also observes, there is bound to be reasonable disagreement about the nature of the good. There will be different, reasonable answers to the question of what a good life consists in. If the stability of a conception of justice is anchored to a conception of the good that there is no reason to assume will be unanimously shared, then there is no reason to think that that conception of justice could possibly claim the allegiance of all

¹⁵³ Rawls, *Theory*, p. 452.

citizens. The conception of a well-ordered society in TJ is “unrealistic [...] because it is inconsistent with realizing its own principles under the best foreseeable conditions.”¹⁵⁴

For Rawls, taking reasonable pluralism seriously does not mean giving up on the ideal of a well-ordered society, that is, a political society grounded in a shared conception of justice. Moral consensus over principles of justice is still the aim, but this moral consensus has to be of a specific kind. It can no longer be a consensus over “comprehensive” values but rather purely over “political” values, such that what a well-ordered society under conditions of reasonable pluralism comes to be grounded upon is a “political conception of justice.” According to Rawls’s definition, a political conception of justice is characterized by three features. First, its *scope* is restricted to issues about the basic structure of society, rather than matters of personal and ethical conduct. Second, as far as its *content* is concerned, it must draw purely on the ideas and ideals contained within the political culture of a liberal democracy, rather than on specific philosophies of life. Third, as far as its *justification* is concerned, it must be presented as “free-standing,” that is, as independent of any comprehensive worldview.¹⁵⁵ The reconciliation of comprehensive and political views is achieved by means of an “overlapping consensus.” From the perspective of her own comprehensive doctrine, each citizen will endorse the political values and ideals expressed by the political conception of justice (e.g. the political conception of the citizen as free). The overlapping consensus, Rawls emphasises, is a moral consensus, and not a consensus based on a mere convergence of interests.

Now, if we consider how Rawls reaches this reinterpretation of the idea of a well-ordered society, the obvious question that arises is: why should we assume that a consensus over a political conception of justice is available in a diverse society? What

¹⁵⁴ Rawls, *Political Liberalism*, p. xvii.

¹⁵⁵ Ibid., pp. 11-15.

reasons, in other words, do we have for seeing PL's solution as more realistic than TJ's? I think it is to Joshua Cohen's review of PL that we need to turn for the most perceptive answer to such questions.¹⁵⁶ Cohen there addresses directly the worry of whether PL is just as "hopelessly naive" as TJ is about the attainability of a moral consensus in a deeply pluralistic society. However, it is not in its willingness to address this problem head-on that the singularity of Cohen's commentary rests, but rather in the kind of answer he gives to it. What Cohen's commentary reveals more explicitly than any other commentary, I want to argue, is the crucial, *transformative* role Rawls ascribes to the institutions of the state in bringing about the well-ordered society of justice as fairness.

Cohen, of course, doesn't talk about the "state" in his commentary. What he analyses, rather, is what he calls the "*mechanism* [...]" that might produce convergence on political values but that does not similarly generate consensus on comprehensive moral values."¹⁵⁷ According to Cohen's reading, this mechanism is precisely what the social and political institutions of Rawls's well-ordered society embody. Shared political institutions socialise citizens into sharing certain political ideas and values. More generally, then, in Rawls's scheme shared institutions play an *educative* role with respect to political values and ideas. "When just institutions are established and working well over time," Rawls writes, "the cooperative political virtues are encouraged and sustained."¹⁵⁸ The set of institutions and practices that characterise a stable democratic political system, then, to put it in Cohen's words, "puts some pressure" on all citizens to endorse a shared set of moral-political ideals and values, such as the idea of citizens as equals.¹⁵⁹ The long-run stability of the political conception is guaranteed by the fact that over time institutional forms and moral self-conceptions will reinforce one another, so that citizens who grow

¹⁵⁶ Joshua Cohen, 'A More Democratic Liberalism', *Michigan Law Review*, vol. 92, no. 6 (1994), pp. 1503–46.

¹⁵⁷ Ibid., p. 1530; emphasis in original.

¹⁵⁸ Rawls, *Justice as Fairness*, p. 117.

¹⁵⁹ Cohen, 'A More Democratic Liberalism', p. 1532.

up within a reasonably stable democracy will find the kind of conceptions of the person it embodies both familiar and attractive. “The political ideas ‘expressed’ in common, public institutions and appealed to in the culture to justify those institutions,” Cohen concludes, “will shape citizens’ moral-political education.”

The absence of any concrete institutional consideration or analysis in PL renders Rawls’s framework truly remarkable. The attainment of a just, well-ordered society is in fact premised on the ability of political institutions to generate a specific set of circumstances within which citizens engage in moral-political deliberation. Political institutions do not just guarantee stability, but rather are also instrumental in *engineering* a very specific sort of pluralism (which is what in turn makes stability attainable). These institutions socialise individuals both (i) into accepting a plurality of comprehensive doctrines as well as (ii) accepting the great moral value of achieving consensus over basic political norms. As Freeman observes, overlapping consensus “is essentially a hypothesis about the kind of conceptions of the good that predominantly will be *fostered* by a well-ordered society.”¹⁶⁰ They can achieve this delicate balance between the political and the comprehensive by “expressing” the political values implicit in those norms. Although Cohen’s distinction between convergence and consensus might create some ambiguity on this matter, it is important to stress, with Rawls, that political as well as comprehensive values are “moral.” His overlapping consensus is not a “mere modus vivendi,” that is, a settlement purely based on the fortuitous convergence of self- and group-interests. Citizens see the values expressed by political institutions as morally attractive, and when they select them over their own comprehensive values, they do so for fully moral reasons.

¹⁶⁰ Freeman, *Justice and the Social Contract*, pp. 366-7; emphasis added.

As Cohen notes, Rawls's approach to the relation between institutional forms and the acquisition of self-conceptions is not unique. It belongs, rather, to a specific (and illustrious) tradition of political thought, which includes the likes of Rousseau, Hegel, Marx and Mill.¹⁶¹ For the purposes of this thesis, Cohen's references to Rousseau and Mill are particularly relevant. As Rawls writes in one of his lectures, it is Rousseau's theory of the general will that first articulates an ideal of public reason. According to Rawls's reading, the kind of point of view on the nature of the good, well-ordered society offered by Rousseau's theory of the general will "is an idea of deliberative reason, and as such it has a certain rough structure: that is, it is framed to consider certain kinds of questions – those about which constitutional norms or basic laws best advance the common good – and it admits only certain kinds of reasons as having weight."¹⁶² Both the relevant "kinds of questions" and the relevant "kinds of reasons" Rousseau and Rawls identify express a certain ideal of citizenship. For Rousseau, according to Cohen's reading, sustaining such an ideal of citizenship and ensuring the stability of the well-ordered society of the general will are projects that have to be addressed institutionally.¹⁶³ This is because Rousseau thinks that the capacity to recognise common interests and to be motivated to advance those interests depends on the social circumstances of citizens. The function of political institutions is to engineer a set of circumstances for citizens such that they recognise the common interest and that they have a motivation to advance it. Political institutions achieve such an end by 'expressing' the values of the general will (freedom and equality). Over time, as socialisation runs its course, citizens' self-conceptions and institutional forms will complement and mutually strengthen one another.

¹⁶¹ Cohen, 'A More Democratic Liberalism', p. 1532.

¹⁶² John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, MA, Harvard University Press, 2007), p. 231.

¹⁶³ Joshua Cohen, *Rousseau: A Free Community of Equals* (Oxford, Oxford University Press, 2010).

The case of J.S. Mill is similarly instructive. In his *The Law of Peoples*, Rawls appeals to Mill's idea of nationality to characterise liberal peoples. Citizens in liberal societies, Rawls argues, are united by what Mill, in his chapter on nationality in *Considerations on Representative Government*, calls "common sympathies."¹⁶⁴ "A portion of mankind," Mill there writes, "may be said to constitute a Nationality, if they are united among themselves by common sympathies, which do not exist between them and any others – which make them co-operate with each other more willingly than other people, desire to be under the same government, and desire that it should be government by themselves or a portion of themselves, exclusively."¹⁶⁵ Mill invokes the notion of nationality in the context of his discussion of the preconditions for the success of representative government. His thesis is that it is a "necessary condition of free institutions, that the boundaries of government should coincide in the main with those of nationalities."¹⁶⁶ The fellow-feeling and common sympathies that define the social life of nationalities and that make representative government possible are absent in a country made up of different nationalities, where people "read and speak different languages."

Although it does not appeal to notions such as the general will or public reason, Mill's understanding of the relationship between institutional forms and citizens' self-conception is not dissimilar from Rousseau's: "When an institution, or a set of institutions, has the way prepared for it by the opinion, tastes, and habits of the people, they are not only more easily induced to accept it, but will more easily *learn*, and will be, from the beginning, *better disposed*, to do what is required of them both for the preservation of the institution, and for bringing them into such action as enables them to

¹⁶⁴ John Rawls, *The Law of Peoples* (Cambridge, MA, Harvard University Press, 2002), p. 23.

¹⁶⁵ John Stuart Mill, 'Considerations on Representative Government', in John Gray, ed. *On Liberty and Other Essays* (Oxford, Oxford University Press, 1991 [1862]), p. 426.

¹⁶⁶ *Ibid.*, p. 428.

produce their best results.”¹⁶⁷ Political institutions both rely upon as well as continuously nourish the common sympathies of the liberal citizenry.

When thinking about the educative role of institutions in a regime of public reason it is useful to turn to Rawls due to both the systematicity with which he treats the matter and the influence he has exercised over contemporary liberal political theory. But it is important to note that he is not alone in endowing political institutions with the crucial task of bringing about a just society. Among public reason or political liberals, this is indeed a common presupposition. We could consider, for example, the cases of Stephen Macedo and Gerald Gaus, two theorists who have interpreted Rawls’s project in a radically different way. For Macedo, an order of public reason is one in which citizens all share the *same* reasons for endorsing the political values that regulate a well-ordered society. Only if citizens share the same reasons are they in a position to assure one another of their equal standing, promote cooperation on fair terms, and sustain the institutionalisation of a public morality.¹⁶⁸ Macedo is unmoved by the objection that, according to the ‘shareability’ criterion, only secular reasons would end up counting, disqualifying all religious reasons from having a bearing on public life. To religious citizens and thinkers concerned by this prospect he simply replies that they should “grow up.”

Gaus, on the other hand, thinks that the shareability requirement should be rejected by public reason liberals, precisely because it would exclude religious reason and thus yield an order of public reason that is secularist and sectarian. He thinks that the shareability requirement should be replaced by a more modest “intelligibility” requirement. It is not necessary, in his view, that all citizens share the same reasons; what is necessary for an order of public reason to be instituted is that each citizen

¹⁶⁷ Ibid., p. 421.

¹⁶⁸ Macedo, ‘Why Public Reason?’

acknowledges that the basis of other citizens' evaluations is intelligible. What is sufficient for Gaus, in others words, is merely that citizens recognize that their evaluations and deliberation are based on reasons. Mutual intelligibility is implied by the idea of "reasonable pluralism," that is, a "pluralism based on reasons."¹⁶⁹ Though she will not share them, there is nothing preventing a secular citizen from seeing the religious reasons of her fellow religious citizens in favour of a specific legislative act as reasons. According to the intelligibility requirement, religious reasons and secular reasons are on a par with each other.

In spite of these substantive differences, Macedo and Gaus nevertheless share (with Rawls) an overall orientation to the relationship between the political and the moral domains. Gaus has perhaps stated the shared understanding of the nature of this relationship in the most clear-cut manner. "The political order," he writes, "is needed to *complete and reform* the moral order."¹⁷⁰ He is led to this conclusion by his analysis of the evolution of moral conventions. Though evolution can lead to systems of moral conduct compatible with liberal ideals of freedom and equality, it can also lead to the entrenchment of "immoral social conventions." Only the publicly justified authority of the state can shift society to a morally acceptable social equilibrium. It is because he sees the "laws of the state" as having the "core function of articulating and protecting our fundamental moral rights" that he thinks the political order can complete and reform the moral order. Gaus's emphasis, then, is not so much on the educative role of social and political institutions but rather on the presence of a state – that is, an agent of coercion – that articulates and protects individuals' fundamental moral rights. The exercise of

¹⁶⁹ Gaus, *The Order of Public Reason*, pp. 279-81.

¹⁷⁰ Ibid., p. 548.

authority on the part of a legitimate state can be thought of, in Gaus's view, as "the continuation of moral justification by other means."¹⁷¹

Macedo, on the other hands, follows more closely the kind of Rawlsian approach to institutions we have seen Cohen summarise above. He emphasises the "educative and formative" role of just institutions and the practices of public reason.¹⁷² He faults Gaus for an over-emphasis on the problem of justifying coercion, and an under-appreciation of broader social practices. This disagreement, however, occurs within an overarching agreement: the political order is necessary and can be relied upon to complete and reform the moral order.

II. Bringing the State Back In

A first thing to note in relation to the arguments so far presented is that public reason liberals are certainly right in thinking that social and political institutions can and indeed do affect the behaviour and (over time) the self-conceptions of individuals subjected to them. The thinkers invoked by Cohen – Rousseau, Hegel, Marx and Mill – are not the only theorists to dwell on that relation. Notwithstanding his radical individualistic starting point, Hobbes too, arguably, entertains such a view. Among the key duties of the sovereign in his *Leviathan* is the education of subject, particularly in regard to the grounds of their obligations. The thinker usually referred to as the founder of the utilitarian tradition in moral and political thought, David Hume, similarly endows institutions with such a molding power. When social contract theorists posit that allegiance to government originates in the duty to remain faithful to one's promises, they're getting things the wrong way round, Hume thinks. It is only after government is up and running

¹⁷¹ Ibid., pp. 545-6.

¹⁷² Stephen Macedo, "The Practical Uses of Public Reason: Political Education": http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1900380 (accessed 25 January 2015).

that allegiance to it develops, in his view. Individuals are socialized into the kind of norms that their institutional environment promotes. So strong is the power of institutions to shape self-conceptions, Hume thinks, that it is not infrequent to see citizens morally committed to even the most tyrannical of governments, which clearly is not benefitting them much.

That the importance of social and political institutions should be recognised so widely is not surprising. Following the economist Douglass North, we can think of these institutions as a polity's formal and informal "rules of the game," which structure the patterns of interactions between individuals.¹⁷³ Such rules determine the kind of interactions that are acceptable and those that are not acceptable. Over time individuals interacting with each other within the confines of certain institutional norms develop complementary "moral" norms, which smooth out interaction between individuals and reduce the need for coercive intervention on the part of an external 'arbiter'. Individuals, in other words, internalise certain norms as a result of the operation of institutions. Rule internalisation does not merely shape behaviour, then but also ideas and values. This is a social and moral dynamic that all the thinkers mentioned above, from Hobbes to Rawls, display an awareness of in their political theorising.

If there is a problem with the perspective of public reason liberals on the relationship between institutional forms and moral norms, then, it does not originate in their belief that such a relationship exists. What I want to argue, rather, is that the problem originates in their supposition that the political order can be called upon 'to complete and reform the moral order'. There is in fact no reason to suppose that the political order can achieve so lofty an objective. There is no reason to suppose, in other

¹⁷³ Douglass North, *Institutions, Institutional Change and Economic Performance* (Cambridge, Cambridge University Press, 1990), pp. 3-4.

words, that the state can be the kind of transformative agent that can be relied upon to bring about a well-ordered society in the Rawlsian sense.

Sterling Lynch's critique of Rawls's account of the educative function of political institutions is a good starting point for seeing the limits of the Rawlsian framework.¹⁷⁴ According to Lynch, Rawls's explanation of how a citizen develops the desire to realize in herself an ideal of citizenship is both ambiguous and, ultimately, a failure. He, first, notes that Rawls is ambiguous concerning the precise way in which political institutions educate citizens. Two possible explanation are available. One explanation is that these institutions educate by means of a kind of invisible-hand mechanism. Lynch thinks that this is what Cohen has in mind in the commentary I scrutinized above. Socialisation into the ideal of citizenship, according to this first hypothesis, is a *natural* and *necessary* outcome of the ongoing operation of a well-ordered society. A second possibility is that this socialisation comes about as a result of the ideal being *directly* and *intentionally* taught. The citizen does not, according to this second hypothesis, come to admire the political conception of justice automatically but rather because she is formally taught to admire it.

Lynch thinks that both explanations fail. And the reason why they both fail, in his view, has to do with Rawls's failure to take the fact of reasonable pluralism seriously enough. Both of Rawls's explanations are based on "an unsubstantiated denial of the fact of diversity." The invisible-hand account of the dynamics of political education ignores the extent to which the 'burdens of judgment' make convergence on a single moral point of view an illusory objective. Even if placed in the same socio-political circumstances by socio-political institutions, there is no reason to suppose that citizens will draw the same conclusions when they each imaginatively adopt a particular point of view. The burdens of judgment preclude such an outcome even under ideal circumstances.

¹⁷⁴ Sterling Lynch, 'The Fact of Diversity and Reasonable Pluralism', *Journal of Moral Philosophy* vol. 6 (2009), pp. 84ff.

The second possibility runs into similar difficulties, Lynch observes. Short of resorting to outright authoritarian methods, the success of imparting civic virtues by means of formal educational efforts can only be limited. Again, it is not clear how a moral agreement can be thought to be within sight if one takes the burdens of judgment seriously. Civic education teaches values, and values can be interpreted and absorbed differently. Furthermore, children could disagree with what they are taught, learn what to say and do for examination purposes only, and never properly internalise values. Lynch's conclusion is that if not even schools can consistently impart civic values and ideals, there is no reason to think that other institutions can succeed.

I think that Lynch's arguments are persuasive. It takes a considerable leap of faith to suppose that in a diverse society political institutions can yield the kind of stable consensus on a shared political morality that we have seen Rawls's argument rely upon. There is no reason internal to political liberalism to suppose that political institutions are somehow immune to the centrifugal dynamics of reasonable pluralism. What Lynch's critique very ably shows is that as far as its understanding of the dynamics and purposes of political education is concerned political liberalism fails on its own terms.

But, as a purely internal critique, Lynch's argument does not consider what I think is a much more fundamental problem with the public reason liberal perspective in general. This problem has to do with the state, or political order more generally, rather than the pervasiveness of reasonable pluralism in a diverse society. More particularly, it has to do with the supposition that the political order is in a position to complete and reform the moral order. Notice, for instance, that Lynch's argument doesn't apply to public reason liberals such as Gaus who do not really attribute to political institutions a substantive educative role. Without denying the validity or effectiveness of Lynch's critique, I think that the latter has to be subsumed within a large question: are there any reasons to think that the state and its institutions can mirror an ideal 'moral order'

(however this is conceived)? Do we have valid reasons to think that the state can and should be the agent of justice?

I think that reasons of this kind are not realistically available. A wide range of social-scientific and historical evidence could, for instance, be called upon to support such scepticism. Sociological evidence suggests that it is not justice but rather the interests of the powerful groups in society that the state serves.¹⁷⁵ If the state is to be thought of as an agent, it is the specific configuration of elite relations that happens to be prevalent at a specific moment in time rather than a ‘political conception of justice’ or an ‘ideal of citizenship’ that should be considered its principal. What the political institutions of the state reflect at any moment in time, then, is the specific configuration of complementary or conflicting interests pursued by political, economic and bureaucratic elites. So when the state does ‘put pressure’ to socialise its citizens in a specific way, it is with these priorities, and not with justice, in mind that it does so.

Further historical support for this kind of scepticism can be found in a rather unexpected place: the history of the religious wars of the sixteenth and seventeenth centuries. It is common among liberals to argue that religion was the main cause of these wars. According to Rawls’s narrative, it was precisely the function of the state to socialise Catholics and Protestants into respecting one another and seeing themselves as part of a single, multifaith community. If we consult historical sources, however, we see that *no* historian of the wars sees in the conflict of religious doctrines and sects the decisive

¹⁷⁵ See, e.g., C. Wright Mills, *The Power Elite* (Oxford, Oxford University Press, 1956); Charles Lindblom, *Politics and Markets* (New York, Basic Books, 1977); Anthony Giddens, *The Nation-State and Violence* (Cambridge, Polity, 1985); William Greider, *Who Will Tell the People?* (New York, Simon & Schuster, 1993). Most recently, Jeffrey Winters and Benjamin Page, ‘Oligarchy in the United States?’ *Perspectives on Politics*, vol. 7, no. 4 (2009), p. 731-751; Jeffrey Winters, *Oligarchy* (Cambridge, Cambridge University Press, 2011); Gilens, M. and Page, B.I., ‘Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens’, *Perspectives on Politics*, vol. 12, no. 3 (2014), p. 564-581. The ‘classical’ reference point here is the so-called “elite theory” of the state, put forward by authors such as Gaetano Mosca, Vilfredo Pareto, and Robert Michels.

cause of the wars. The wars, rather, were a byproduct of the state-building process in early-modern Europe.

What historians point out is that there are simply too many examples of *inter*-confessional *alliances* and *intra*-confessional *conflicts* for the standard liberal interpretation of a war-of-all-sects-against-all to hold. Neither in France nor in the Holy Roman Empire (to focus on the two biggest loci of violence) did either Catholics or Protestants form a unified front. It is usually to doctrinal differences between Catholics and Huguenots that the violence in France in the sixteenth and seventeenth centuries is commonly imputed. The problem with this interpretation is that intra-Catholic differences were just as politically salient there. Catholics in France were divided into two main parties, the Catholic League, led by the Guises, and the more moderate so-called “*politique*” faction (to which Jean Bodin notably belonged). It was not only Huguenot nobles that resented the fundamentalist belligerence of the League, but so did moderate Catholic nobles, who did not welcome its attempts to seize power. Threatened by the growing power of the Catholic League, king Henry III first had the League's leaders killed, and then made peace with the Protestant arch-enemy of the League, Henry of Navarre.¹⁷⁶ Henry of Navarre's succession to the throne led to another intra-Catholic split between royalist who supported him and members of the Catholic League who instigated a military rebellion against him.

Resentment towards the crown frequently prevailed over religious affiliations particularly in the more peripheral provinces. Henri de Montmorency, sieur de Damville, one of the most prominent Catholic nobles of the times, allied himself with the Huguenot antimonarchical constitutionalists in Languedoc against the crown.¹⁷⁷ This also

¹⁷⁶ Mack Holt, *The French Wars of Religion, 1562-1629* (Cambridge, Cambridge University Press, 2005), p. 134.

¹⁷⁷ Ibid., pp. 99-100.

happened in the eastern provinces, where “so strong was the disaffection of the nobility, and so little was religion a determining factor in their alignment,” that a number of Huguenot seigneurs showed a readiness to follow Guise's banners.¹⁷⁸

The situation was similar in the Holy Roman Empire. There a large number of Protestant princes joined Charles' war against the Protestant Schmalkaldic League in the 1530s and '40s.¹⁷⁹ “The fact,” Blockmans writes, “that a number of Protestant princes joined Charles army shows that the entire operation was based on sheer opportunism” rather than religious fervour.¹⁸⁰ Alongside such instances of Catholic-Protestant military alliances there were instances of intra-Catholic conflict. The powerful Catholic dukes of Bavaria, on the other hand, saw themselves primarily as the main bulwark against Habsburg hegemony rather than as Habsburg co-religionaries, and never gave their full support to the these policies of the Emperor.¹⁸¹

On the Protestant side the situation was even more chaotic. Not only was there disagreement among Protestants over status and dynasty, but there were also deep doctrinal differences among them. The majority of Lutherans did not even join the main Protestant alliance, the Protestant Union; its two main protagonists – the radically Calvinist Palatine and the moderate Saxony – furthermore frequently disagreed also over doctrinal issues.¹⁸²

I have focused so far on the domestic level. A look at the pattern of international rivalries similarly contradicts conventional liberal wisdom. Just to give two of the most obvious examples. Although Charles V referred to himself as “the greatest

¹⁷⁸ J. H. M. Salmon, *Society in Crisis: France in the Sixteenth Century* (New York, St. Martin's, 1975), pp. 204-5.

¹⁷⁹ The war against the Shmalkaldic League is very important, since it is generally considered by historians to be the opening act of the ‘religious’ violence that was to engulf the Holy Roman Empire for the next century.

¹⁸⁰ Wim Blockmans, *Emperor Charles V 1550-1558* (London, Arnold Publishing, 2002), p. 94.

¹⁸¹ Peter Wilson, *Europe's Tragedy: A New History of the Thirty Years War* (London, Penguin, 2009), p. 228.

¹⁸² *Ibid.*, pp. 212-3.

protector and upholder of the Universal Church,” what we see him being mostly preoccupied all the way up to 1550s is the military struggle against the other two great *Catholic* powers of Europe, the papacy and France. Charles was at war for 23 or the 41 years of his reign, 16 of them against France.¹⁸³ Between 1635 and 1648 Catholic France fought on the side of Protestant Sweden against the Catholic Habsburg emperor and his Lutheran Saxon allies. Richelieu’s aim in the Thirty Years War was to “ruin the House of Austria completely, [...] profit from its dismemberment, and to make the [French] king the head of all the catholic princes of Christendom and thus the most powerful in Europe.”¹⁸⁴

These are but a fraction of the innumerable examples that could be brought to bear on the case against the liberal interpretation of the religious wars. William Cavanaugh has painstakingly gone through the available sources and gathered together all the examples that contradict the standard liberal narrative.¹⁸⁵ It is impossible to treat, he thinks, these examples as mere exceptions to the rule. The sheer quantity of exceptions to the liberal rule points rather towards the conclusion that such a rule itself a mistake, or, as Cavanaugh more bluntly puts it, a “myth.”¹⁸⁶

¹⁸³ Blockmans, *Charles V*.

¹⁸⁴ A. Osiander, ‘Sovereignty, International Relations, and the Westphalian Myth,’ *International Organization*, vol. 55 (2001), p. 251-287.

¹⁸⁵ Cavanaugh, *The Myth of Religious Violence*, pp. 142-150.

¹⁸⁶ Clearly, I do not wish to dispute – and indeed no historian would – the fact that the conflicts of the sixteenth and seventeenth centuries had a ‘religious’ component. This could in fact not have been otherwise. As historians observe, for sixteenth and seventeenth century agents the religious-secular distinction the way we currently conceive of it would have made very little sense. The distinction was simply not available in a social world, such as that of sixteenth century Europe, in which, faith guided all early modern public policy and private behaviour. See Brad Gregory, *The Unintended Reformation* (Cambridge, MA, Harvard University Press, 2012), p. 133. All agents involved in the conflicts, from commoners and merchants to kings and emperors, couldn’t therefore have been anything other than profoundly ‘religious’. But what all this means is that these were wars *of* religion only to the extent and in the sense that religious individuals were involved in them. To say that the religious wars of sixteenth and seventeenth century were caused by religion would be like saying that the conflicts between the Soviet Union and Maoist China were caused by atheism.

If we want to understand the violence of the sixteenth and seventeenth centuries, it is to *political* processes and not the nature of religion that we must turn. More specifically, we need to turn to one political process in particular, the process of state-building, and the resistance it provoked. From the fourteenth century onwards rulers had started to expand their powers at the expense of four other main centres of independent authority: the Church, the empire, the nobility and the towns.¹⁸⁷ As these four centres of authority succumbed to the advances of the emerging sovereign state, the pluralistic social and political landscape of the Middle Ages was thus coercively transmuted into a state-centric one.

Because of the important economic and political role of the medieval Church, challenging the supra-national jurisdictions traditionally exercised by the Pope, such as tax collection and ecclesiastical appointments, was the most impellent task of aggrandising monarchs. These challenges were invariably successful. The Church lost its financial independence and its property was made subject to royal taxation. Skinner observes that if we want to understand why the Reformation succeeded in certain countries and failed in others, it is to this conflict with the Church that we need to turn.¹⁸⁸ In countries like Spain and France, where monarchies had largely been successful in absorbing the church in their clientage systems, and therefore had an interest in guarding the status quo, the Reformation failed. It was successful, on the other hand, in those countries and regions, like England, Germany and Scandinavia, where disputes with the papacy of the kind mentioned above had not been resolved. Lutheranism essentially offered monarchs of the latter group a useful legitimating device in their struggles against the Church as well as, in the German case, the Catholic Emperor.

¹⁸⁷ Martin Van Creveld, *The Rise and Decline of the State* (Cambridge, Cambridge University Press, 1999).

¹⁸⁸ Quentin Skinner, *The Foundations of Modern Political Thought*, vol. II: The Age of Reformation (Cambridge, Cambridge University Press, 1998), p. 60.

Like the clergy, the nobility and the towns too had emerged from the medieval period with a number of privileges and immunities, guaranteed by a pluralistic legal system. All the “ancient liberties” that the nobility and the independent towns had enjoyed were gradually eroded from the fourteenth century onwards. Seigneurial privileges, such as the right to strike money, were taken away, law was homogenised, royal advisors appointed to preside over provincial courts, provincial parliaments places under royal supervision. The main socio-economic structure of the Middle Ages, the clientage system, came to be absorbed by the centralising monarchs at the expense of those powers that from then onwards came to be ‘intermediary’ in the way we currently understand them. The absorption of sovereign powers by the state lead to a shift from feudal obligations to clientage, which intensified the spirit of self-interest among the nobility.¹⁸⁹ Resistance at the local level to these expansionary pretensions of aggrandising monarchs can help explain instances of intra-confessional conflict and inter-confessional cooperation. German princes, both Catholic and Lutheran alike, were concerned about Charles's hegemonic ambitions.¹⁹⁰ In France, in those peripheral provinces where the centralising efforts of the monarchy were felt most acutely, the defense of the ancient rights of the nobility yielded innumerable instances of Protestant-Catholic collaboration.¹⁹¹

I think that James C. Scott's analysis of what he calls “state simplifications” offers a very useful conceptual tool for understanding the logic of the kind of processes that were occurring between (roughly) the fourteenth and seventeenth centuries. According to Scott's investigation, the modern state has since its inception expended great efforts in rendering the social and physical environment in which it matured

¹⁸⁹ Salmon, *Society in Crisis*, p. 234.

¹⁹⁰ Richard Dunn, *The Age of Religious Wars 1559-1689* (New York, Norton, 1970), p. 60.

¹⁹¹ Salmon, *Society in Crisis*, pp. 168-9.

increasingly simple, or “legible.” A simple, legible reality is one that can be easily controlled and manipulated by the state. Scott asks us to consider, for example, the kind of fiscal power gained by a state when an agricultural system based on small individual plots is replaced by one based on large-scale collectivised farms, or the kind of control over a population that the replacement of a chaotic medieval urban environment with a grid-based system ensures.

State simplifications involve profound disruptions of society. There was bound to be resistance to the kind of enormous transformation in social and political relations that the creation of this new form of private-public identity depended upon. The violent nature of this transformation and the resistance it engendered were a large part of what the European religious wars were all about.

The connection between political violence and state-building I have just drawn squares neatly with what historians of the rise of the modern sovereign state have told us about its origins. If anything could be said to be at the origin of the state, they have shown, it is war, or, more precisely, war-making. “It is now generally accepted,” Thomas Ertman writes in his review of the existing literature on state-building, “that the territorial [sovereign] state triumphed over other possible political forms (empire, city-state, lordship) because of the superior fighting ability which it derived from access to both urban capital and coercive authority over peasant taxpayers and army recruits.”¹⁹²

Charles Tilly, one of the leading historians of the rise of modern state, argues that the best way to understand the rise of the modern state is to model it as a protection racket. What a racketeer does is to create a threat and then charge for its reduction. When it claims to be protecting its citizens against threats that are imaginary or even caused by its own actions, a government engages in the same sort of business. I think

¹⁹² Thomas Ertman, *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe* (Cambridge, Cambridge University Press, 1997), p. 4.

that the experience of the religious wars amply confirms Tilly's intuition. State-building elites *themselves* created the violence and threats that were then used as a justification for their acquisition of a monopoly of violence.

Tilly's main conclusion is emblematic: "a portrait of war makers and state makers as coercive and self-seeking entrepreneurs bears a far greater resemblance to the facts than do its chief alternatives: the idea of a social contract, the idea of an open market in which operators of armies and states offer services to willing consumers, the idea of a society whose shared norms and expectations call forth a certain kind of government."¹⁹³ These remarks by Tilly appear in an edited collection of essays titled *Bringing the State Back In*.¹⁹⁴ The purpose of the editors was to inspire a greater appreciation among political scientists and political sociologists of the importance of interpreting the state as a specific kind of agent in its own right. Though there is no reason to categorically exclude the possibility that the state can be the agent of justice, there are ample reasons – in light of the evidence reported – to be sceptical of such an eventuality.

One may be happy to concede that many actual states in the real world are indeed agents of predation. But, the objection continues, generalising such a thesis fails to take into account the paradigmatic change brought about by the spread of democratic government. A democratic government is an agent of the citizenry. It expresses the common will or aggregated preferences of a collective body of citizens. A democratic government is not a corporate agent that pursues its own good at the expense of the general populace but rather the institutional means by which a body of citizens pursues the common good. So, for example, unlike Olson's "stationary bandit" whose only

¹⁹³ Charles Tilly, 'War Making and State Making as Organized Crime', in Peter Evans, Reuschemeyer, D. and Skocpol, T., eds. *Bringing the State Back In* (Cambridge, Cambridge University Press, 1985), p. 169.

¹⁹⁴ Peter Evans, Reuschemeyer, D. and Skocpol, T., eds. *Bringing the State Back In* (Cambridge, Cambridge University Press, 1985).

purpose is that of maximising the ‘theft’ of the populace’s resources¹⁹⁵, a democratic government taxes only as a means of achieving the distribution of resources that the citizenry’s shared sense of justice dictates.

Now, it would be impossible to deny that there is a substantial difference between, say, contemporary Switzerland and North Korea when it comes to government responsiveness to citizens’ demands. Yet all this seems to be a proof of is that *some states are better than others*. It doesn’t contradict the depiction of the state I formulated above. Democratic states are not the institutional expression of the common will of the citizenry but rather simply corporate agents that are more responsive to pressures from below. Indeed, as Margaret Levi has shown, theories of the predatory state (i.e. of the state *qua* corporate agent that acts in a maximizing self-interested manner) are in fact as just as helpful for explaining the fiscal behaviour of democratic states as in the case of non-democratic states.¹⁹⁶

There is certainly a case to be made for the claim that in small-scale settings the democratic ideal can be approximated. (The example of direct democracy in some Swiss villages comes to mind.) But this becomes much less plausible once large and complex modern democratic states are considered. The possibility of identifying the content of a common will or of instituting a mechanism that aggregates all preferences is simply beyond human means in such circumstances.¹⁹⁷ Democracy does not transform the state from an agent that pursues its own interests into an expression of a collective democratic will; all it does is simply place a set of institutional and civic obstacles in the way of the state’s pursuit of its interests.

¹⁹⁵ Mancur Olson, *Power and Prosperity* (New York, Basic Books, 2000).

¹⁹⁶ Margaret Levi, *Of Rule and Revenue* (Cambridge, Cambridge University Press, 1988).

¹⁹⁷ Russell Hardin, ‘Economic Theories of the State’, in Muller, D.C., ed. *Perspectives on Public Choice: A Handbook* (Cambridge, Cambridge University Press 1997), p. 30-1.

III. Displacing Politics

So even if we were to set aside the kind of concerns raised by Lynch about the ubiquity of disagreement, and assume that stable political morality is available, we would still be faced with the insurmountable sociological problem of the state. Liberals, of course, are aware of this problem. It is precisely because the state with its monopoly of violence is so potentially dangerous an entity that ensuring its legitimacy is so urgent a task. “All states, including democratic ones,” Gaus writes, “have enacted seriously unjust legislation,” and it is for this reason that it is imperative that we “interrogate all claims to authority over us, including that of the state.”¹⁹⁸

Yet there is an obvious contradiction between, on the one hand, this common liberal concern with the capture and abuse of state power and, on the other, the faith in the ability of the state to approximate – if not to ‘complete’ and ‘reform’ – the moral order. No realistic understanding of the state can in fact ground any kind of rational belief in the ability of state institutions to ‘express’ moral ideals and socialise citizens into valuing them. It is not clear what the grounds for what can only be called a faith shared by public reason liberals in the redemptive capabilities of the state might be.

There is an obvious rejoinder to the kind of realistic, sceptical considerations I have so far advanced. The above considerations, it might be said, are sociological in nature and, as such, belong to the domain of “non-ideal theory.” The problem of the state I have identified is one of strict feasibility, not of normativity or “ideal theory.” What I have committed above, in other words, is a category mistake, critiquing a normative argument by means of a sociological one.

There are two possible ways of responding to such a rejoinder. One way of responding would be to appeal to the idea of the essence, or the *nature* of the state. Ideal

¹⁹⁸ Gaus, *The Order of Public Reason*, p. 548.

theorising must start from a conception of the nature of man (e.g. rational and reasonable). Similarly, one might argue that the state has a nature too and that if it is legitimate to appeal to an understanding of the nature of man when doing ideal theory it must also be just as legitimate to appeal to a conception of the nature of the state. We might think of this first response as a Marxist response. Following Marx and Engels, Lenin famously argues that the state “is an organ for the *reconciliation* of classes.”¹⁹⁹ The state, according to this understanding, is and can only be an organ of class rule. As decades of fruitless debates among Marxists on the precise nature of the capitalist state have revealed, the problem with such a nature-centered response is that it is in fact extremely difficult to pinpoint just what this nature consists in.²⁰⁰

I think there is a second, more modest and yet more fruitful way of responding to the above challenge. This second way of meeting the challenge resorts to a purely internal argument and therefore does not draw on elusive and controversial ideas of the state’s purported nature. What is problematic about the public reason liberal approach to institutions I outlined above, I want to argue, is its supposition that the state can somehow be called upon to reform the kind of problems plaguing the moral order *whilst not itself succumbing to those same problems*. If a partiality of moral perspectives characterises the citizens which the state is called to actively ‘work on’ through its transformative institutions, why shouldn’t that same moral partiality characterise those same agents of the state doing the work? If citizens can become locked into “immoral social conventions” (Gaus) that only the state can dissolve, why shouldn’t the functionaries of the state themselves be prone to those same immoral equilibria?

Again, I see no justification for the presumed asymmetry between the predicament of citizens on the one hand and the predicament of government

¹⁹⁹ V. I. Lenin, *The State and Revolution* (London, Penguin, 1992 [1918]), p. 9; emphasis in original.

²⁰⁰ Foucault spoke of the “theory of the state” as an “indigestible meal.”

functionaries on the other. There is no political order that stands above and corrects the failures of the moral order. Political institutions do not displace politics, for politics re-emerges within institutions.²⁰¹ Whatever uses institutions might have, correcting the failure of morality cannot be among them. The moral order subsumes the political order, and if the moral order is prone to failures, then so is the political order. In fact, considering the historically unprecedented magnitude of power and resources available to those at the head of any modern state, one could suppose that it is overwhelmingly among those belonging to this power elite that predatory and atomistic behaviour tends to prevail.²⁰²

If Marx is the most obvious point of reference for an essentialist-structuralist theory of the state, I think David Hume is an enlightening point of reference for the kind of de-essentialist, more realistic account of the state I have just outlined. In his *Essays* in particular, Hume returns over and over again to the problem of “factions” in politics.²⁰³ What Hume means by factions is what we would refer to now as interest groups. ‘Interest group’ should be understood here in the broad sense of a group with a coherence of purpose. Self-interest is but one of the many possible amalgamating factors. Factions may be divided, according to Hume, into those of “interest,” of “affection” and of “principle”; the first unite on shared material interest, the second on attachment to specific families or persons, and the third collect around what we would now call an

²⁰¹ Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, NY, Cornell University Press, 1993); also, Glen Newey, *After Politics* (Basingstoke, Palgrave Macmillan, 2001). After Politics.

²⁰² The recent financial crisis, which revealed both intense commingling of political and financial elites as well as the lack of accountability for their wrongdoings, offers an obvious example of such dynamics at work. On the recent financial crisis and crony capitalism, see Luigi Zingales, *A Capitalism for the People* (New York, Basic Books, 2012).

²⁰³ Sheldon Wolin, ‘Hume and Conservatism’ *The American Political Science Review*, vol. 48, no. 4 (1954), pp.1009-10.

ideology.²⁰⁴ Factions (which form the substance of different parties) represent particularistic interests, which often stand in contrast with the general interest. If they acquire too much power, their tendency is to undermine the pursuit of the common good. “Factions,” Hume writes, “subvert government, render laws impotent, and beget the fiercest animosities among men of the same nation, who ought to give mutual assistance and protection to each other.”²⁰⁵

Hume’s analysis, it seems to me, allows us to build upon or deepen (and at times correct) Marx’s, for a number of reasons. First, it does not need to appeal to any essentialist interpretation of the state. It is purely empirical and does not contain references to the vaporous notion of the “nature” of the state. Second, whilst the Marxist analysis approaches the state purely from the perspective of class differentiation, Hume offers a pluralistic account of factions. Factions can be based on interest, affection or ideology; and even here, Hume observes, the truth is that “parties are seldom found pure and unmixed.”²⁰⁶ Hume’s analysis thus allows us to build upon or deepen (and at times correct) Marx’s. Third, Hume’s theory does not presume that the contradictions will ever be resolved. There will never come a point, Hume seems to suggest, when a state that is able stands above such contradictions will ever be within human reach. The state and its institutions will always be vulnerable to capture.

²⁰⁴ David Hume, ‘Of Parties in General’ in *Essays, Moral, Political and Literary* (Indianapolis, IN, Liberty Fund, 1987 [1742]), p. 59ff.

²⁰⁵ Ibid., p. 55. Hume thinks these dynamics are grounded in human nature and what he offers is a psychological explanation (p. 42ff). It is a peculiar aspect of political analysis, he notes, to assume that all individuals in politics are always “knaves,” when this clearly cannot be true as a matter of fact. “But to satisfy us on this head,” he notes, “we may consider, that men are generally more honest in their private than in their public capacity, and will go greater lengths to serve a party, than when their own private interest is alone concerned. Honour,” he continues, “is a great check upon mankind: But where a considerable body of men act together, this check is, in a great measure, removed; since a man is sure to be approved of by his own party, for what promotes the common interest; and he soon learns to despise the clamours of adversaries.” Hume’s reflections, then, echo very closely what I noted above concerning the kind of behaviour that is to be expected on the part of elites in the context of the modern state.

²⁰⁶ Ibid., p. 56.

This last point leads to a broader consideration, which reinforces the kind of critique of the Rawlsian analysis of political institutions I presented above. Factions, Hume seems to suggest, are an inescapable feature of political life. The only meaningful strategy in politics, therefore, is the containment rather than effacement of factions. Something Hume reiterates throughout his essays is that this containment, which is the secret of free government, can only come from a system of checks and balances.²⁰⁷ Because of the nature of the individuals that populate them, it is an illusion to think that political institutions will ever be able to ‘express’ the kind of moral ideals public reason liberals think they are capable of expressing. What they will express, Hume intimates, is the specific configuration of power that happens to be dominant.

There are two things I would like to stress. First, the argument I have so far presented is in no way meant to suggest that states should be understood purely as agents of injustice. This would be a way of essentialising the state, which is something I have just tried to distance myself from. Although there are solid reasons for thinking that, overall, the state pursues the interests of the elites that dominate society, there is no reason to think that it automatically always acts unjustly and always gets everything morally wrong. As the (philosophical) anarchist James C. Scott observes, when the National Guard in 1957 led black children to school through a menacing crowd of angry whites in Little Rock, Arkansas, the state acted in ways compatible with justice and freedom.²⁰⁸ It is the much stronger claim put forward by public reason liberals that the state can be counted upon to *systematically* express by means of its institutions ideals of justice that I have challenged. Although it could conceivably be a force for good at times,

²⁰⁷ Ibid., p. 41. Though even here, Hume is doubtful about whether this can be assured. Good fortune is a big part of the story, for the sources of corruption are many.

²⁰⁸ James C. Scott, *Two Cheers for Anarchism* (Princeton, NJ, Princeton University Press, 2012), pp. xviii–xiv.

if there is one thing that the state can be counted upon to systematically achieve it is the satisfaction of those interests that have captured it.

This first point has already hinted at the second thing I want to emphasise. Nothing I have said so far in this institutional critique of public reason liberalism should be taken as a rejection of the kind of values liberalism is generally taken to stand for. It is not, in other words, moral relativism I have advocated. My point, rather, is simply that, as far as I can see, there are no good reasons to suppose that the improvement of the moral order is something the state could be systematically relied upon to accomplish. My thesis in this chapter has been about the limits of the state's agency—something in which we have seen public reason liberals put considerable faith—rather than the absence of any moral standard. There is no reason to reject Rawls's concern that something should be done about injustices or Gaus's belief that immoral social equilibria might conceivably define the human moral landscape. The problem, rather, has to do with thinking that the state is where solutions should be sought.

Conclusion

As Cohen and Gaus have elaborated upon so effectively, Rawlsian political philosophy attributes to the state a fundamental role, i.e. that of reforming and perfecting the moral order. Justice is not a fact of the moral world but rather something that has to be continuously nurtured. The function of political institutions is that of socialising agents into thinking and behaving justly. But such a view presupposes an untenable view of the political order. It presupposes that somehow the political order can be insulated from the 'flaws' that are believed to plague the moral order. We, in fact, have no reason to think that this will ever be the case and every reason to think instead that these flaws will be replicated at the political level. The hope that political institutions can displace politics is

an illusory one. And if this is the case, it cannot be to the state that we should turn when trying to correct our moral world. The state may be able to provide order and stability, but, realistically not much else.

Part II: David Hume

Chapter Four

Common Will or Shared Interests? David Hume on Political Society

In Part I, I raised a series of objections to the public reason project. My overall claim was although the task it has set for itself – i.e. de-sectarianising liberalism – is a laudable one, public reason liberalism has failed to live up to this promise. Part I was largely negative in orientation. In Part II I develop the bases for the liberalism without liberals, which it will be the task of Part III to develop and defend more fully. A liberalism without liberals is a deeply Humean account of liberalism. It is to the task of offering a new interpretation of David Hume's moral and political thought that Part II is devoted.

In this chapter I focus on Hume's critique of the social contract. Hume's critique of this doctrine, as outlined most pithily in his essay “Of the Original Contract,” is generally taken to consist in the rejection of the Lockean account of where the duty of allegiance to one's own government comes from. But this does not exhaust the breadth of the Humean critique. Hume's account of political obligation is epiphenomenal and rests on a much broader theory of the nature of political society. According to my interpretation, it is an alternative conception of the nature of political society that Hume advances when he takes on the social contract doctrine. If the social contract doctrine understands political society as the *embodiment of a common will*, for Hume it is nothing more than the *product of shared interests*. This is what I take Hume's critique of the social contract doctrine to consist in at its deepest level.

This chapter develops as follows. In Section I, I revisit the link between the public reason project and the social contract tradition. In Section II, I offer an interpretation of the social contract doctrine. I argue that this doctrine conceives of

political society as the embodiment of a common will. In Section III, I present an interpretation of David Hume's critique of the social contract. According to my interpretation, it is precisely the idea of political society as the embodiment of a common will that Hume challenges. For him, it is as a product of shared interest that political society should rather be understood.

I. Public Reason and the Social Contract Tradition

Rawls's TJ is usually taken to represent the resuscitation of the social contract tradition in political philosophy. Rawls says there that his aim is to “generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant.”²⁰⁹ The contract Rawls identifies is not one concerned with individuals entering a particular society or setting up a particular form of government. Rather, he adopts the contract framework to show that the principles of justice for the basic structure of society can be the object of an original agreement. The contract framework is a useful way of conveying the idea that principles of justice may be conceived as principles that would be chosen by rational persons; as such, it reveals how such principles can be both explained and justified. TJ is devoted to the task of showing why justice as fairness is superior to classical utilitarianism. It is superior, Rawls suggests, because its principles would be chosen by rational individuals from an “original position” of perfect equality. This ‘original position’ that Rawls models is equivalent to the “state of nature” in traditional social contract theory. In Rawls’s ‘state of nature’, individuals choose principles of justice from behind a “veil of ignorance,” which forces them to abstract from morally irrelevant factors. Like its predecessors, Rawls’s social contract is hypothetical: it reveals not what real individuals do agree to, but rather what free, equal

²⁰⁹ Rawls, *Theory*, p. xviii.

and fair individuals would agree to. By rejecting the social contract method, classical utilitarianism ends up rejecting the idea that principles of political justice should reflect the agreement of free and equal citizens guided by ideals of fairness and reciprocity.

Rawls's theory of public reason expresses the same basic moral insight of his contractarianism more generally. What citizens engaging in public reasoning are acknowledging is the idea that laws and political institutions have to be justifiable to each and every one of them by reference to some common moral point of view. It is only to the extent that laws and political institutions are supported by reason that all can accept that they can be said to be grounded in the kind of general moral agreement that the social contract doctrine envisages. It is therefore indispensable, Larmore thinks, to keep in mind the contractarian framework Rawls sets out in *TJ* when thinking about his later theory of public reason.²¹⁰ The real import of the language of social contract in Rawls, he explains, lies in its ability to express the value of persons taking one another into account when devising principles of justice, and in this being a matter of public knowledge. In *TJ*, these ideals were captured by what Rawls calls "publicity." When the principles that order the basic structure are publicly known to do so, and the justifications for these principles are knowable by and acceptable to all reasonable citizens, the ideal of publicity has been fulfilled. The theory of public reason is thus a natural development of Rawls's contractarianism, in the sense that it systematises the contractarian idea that principles of justice ought to be grounded in a "shared point of view" that is publicly recognised and acknowledged.²¹¹

It is common among commentators to specify the content of this 'shared point of view' by contrasting Rawls's social contract with Hobbes's. As the founder of the social contract tradition, Hobbes is now also usually identified as the initiator of serious

²¹⁰ Larmore, 'Public Reason'.

²¹¹ Larmore, 'Public Reason', p. 371; also, Freeman, *Justice and the Social Contract*, p. 400.

philosophical reflection on what Rawls has taught us to call public reason.²¹² What Hobbes is concerned with in *Leviathan*, it is now generally understood, is how to solve the political problem caused by the conflict of private reasons. In Hobbes's state of nature, different individuals have different conceptions of the good and the means to go about achieving it. When conflict arises between them, there is the thorny problem of the kind of judgment that could be appealed to in trying to overcome it. Judgments that appeal to specific 'private' values will not ones that can expect to gain unanimous acceptance. The only way a multiplicity of private reasons and judgments can be integrated with one another and the predicament of the state of nature overcome, Hobbes suggests, is by means of an agreement that settles once and for all the matter of whose judgment is to be authoritative in case of dispute:

And therefore, as when there is controversy in an account, the parties must by their own accord, set up for the right Reason, the Reason of some Arbitrator, or Judge, to whose sentence they will both stand, or their controversie must either come to blowes, or be undecided, for want of a right Reason constituted by Nature; so is it also in all debates of what kind soever.²¹³

When dispute arises, the source of the final, authoritative judgment is to be found in the "reason" of an agent that stands above the clash of private judgments. Hobbes's sovereign can be thought of, in other words, as the embodiment or the voice of "public reason." What Hobbes's social contract method shows, then, is the need for a sovereign who speaks with the voice of public reason, what the specific features of such a

²¹² Duncan Ivison, 'The Secret History of Public Reason: Hobbes to Rawls', *History of Political Thought*, vol. 18 (1997), pp. 126–47.

²¹³ Thomas Hobbes, *Leviathan*, Richard Tuck, ed. (Cambridge, Cambridge University Press, [1651] 1996), pp. 32–33.

sovereign are, and in what sense consenting to the establishment of such a sovereign grounds the obligation to do as she commands.²¹⁴

Hobbes's specific take on the nature of the sovereign is unique. The conflict of private reasons can be overcome, he thinks, only by means of a sovereign that retains absolute powers. He is led to such conclusions by his understanding of man's predicament in the state of nature. Man's 'natural' condition is one of mutual hostility and diffidence. Solipsistic and self-interested agents, they are incapable of understanding one another and building relations of trust that can allow their expectations to be met. Even a joint pursuit of peace is impossible, since different individuals will understand what peace requires differently. Under such circumstances, anything less than absolute power implies a return to the state of nature. Hobbes's way of thinking about this is usually called the "regress argument." If sovereignty is not absolute, it means that there is a 'space' in which private judgments are allowed free rein. But this space and the space of sovereignty will inevitably conflict, and this will require the intervention of a third party. Hobbes's logic renders an absolutist solution the only possible one. The "right Reason" on the basis of which political order is founded can only be that which the sovereign imposes. For Hobbes, then, public reason is whatever the sovereign identifies as public reason.

Contemporary public reason liberals reject Hobbes's pessimism. They adopt a more optimistic, Lockean approach. According to Gaus's reading, Locke is the progenitor of the kind of "shared reasons liberal secularism" that reigns in contemporary liberal political theory. In his writings on religious toleration, Gaus suggests, what Locke is advancing is what he calls an "insulation thesis," according to which the civil domain can be insulated from the religious domain, and the organisation of political authority

²¹⁴ David Gauthier, 'Public Reason', *Social Philosophy and Policy*, vol. 12 (1995), pp. 19-42.

taken to be solely a function of the former.²¹⁵ Locke, then, follows Hobbes in distinguishing “public” from “private” judgments, but, unlike Hobbes, he thinks that we do not necessarily have to depend on the imposition on the part of a sovereign of the definition of the boundaries and content of the public or civil domain. He believes, rather, that as rational and reasonable citizens we share many judgments about the right rules that make good social life possible, and therefore exclude the inappropriate ones from what we all agree is the public domain. “All private judgments of every particular Member being excluded, the Community comes to be Umpire, by settled standing Rules, indifferent, and the same to all Parties.”²¹⁶ Public reason, then, is the voice of this ‘Umpire’, which fixes the principles of political right and thus draws the distinction between exercises of power that are justified and those that aren’t. The fact that the Lockean Umpire draws on the substantive moral consideration of a ‘Community’ of public reasoners signals a fundamental difference between Locke and Hobbes. If for Hobbes the sovereign is the one that determines the content of public reason, for Locke the sovereign is determined by public reason. It is, in other words, on the basis of the *substantive merits* of the laws passed by the sovereign that Lockean citizens obey its dictates, and not simply because, as Hobbesian citizens would reason, it is because the sovereign says they are laws.

Public reason liberals often remark on the differences between on the one hand Hobbes’s understanding of the kind of agreement specified by the social contract doctrine and Rawls’s, Locke’s, Rousseau’s and Kant’s on the other. We can take Samuel Freeman’s analysis as a good representative of this tendency.²¹⁷ Freeman distinguishes between the “interest-based” view of the social contract one finds in Hobbes and the

²¹⁵ Gerald Gaus, ‘Public Reason Liberalism’: www.gaus.biz/PublicReasonLiberalism.pdf (accessed 9 December 2014).

²¹⁶ John Locke, ‘Second Treatise’, in Peter Laslett, ed. *Two Treatises on Government* (Cambridge, Cambridge University Press, [1689] 1988), p. 324.

²¹⁷ Freeman, *Justice and the Social Contract*.

“right-based” view one finds in Locke, Rousseau, Kant and Rawls. Both views take the idea of reciprocity – that is, the idea that social cooperation should be for mutual advantage – as being of central importance, but differ on their specification of this idea. For Hobbes and Hobbesians, each person’s basic desires and interests are definable without reference to any moral notions. Morality and political principles originate entirely in the rational choice of self-interested individuals. Although justice is certainly understood by Hobbesians to be necessary for social cooperation, it is also understood as a concept that has a purely instrumental meaning. Justice is the compromise self-interested agents reach to make mutually beneficial social cooperation possible. From this point of view, cooperation for mutual advantage therefore involves no “irreducible moral elements,” Freeman observes. Norms of justice are complied with not because they reflect a conception of the person and a conception of practical reason all agents appreciate and value, but rather because it is the most rational course of action in light of one’s pursuit of the good.

Drawing of Locke, Rousseau and Kant, Rawls endorses a very different understanding of agreement. Though he does not dispute that each individual’s conception of the rational good has a role to play in the social contract, he thinks the idea of social cooperation has an independent moral component. Freeman calls Rawls’s (as well as Locke’s, Rousseau’s and Kant’s) understanding of the social contract “right-based” precisely because it is based on the idea that principles of right and justice cannot be accounted for without appeal to “certain irreducible moral notions.” In Rawls this independent moral component is specified by the notions of fairness and reasonableness. So although individuals have an interest in the pursuit of their own understanding of the good, they also have a “higher-order interest” in the justice of the basic structure of society. The original position is meant to model this shared understanding that the general agreement should not simply be a compromise between conflicting interests but

rather a fair one. The agreement represents “a joint commitment to certain shared ends or ideal modes of interaction which each desires as regulative of his own pursuit of his particular purposes.” After he asks “how deep does the consensus go” in an overlapping consensus, Rawls answer that it “goes down to the fundamental ideas within which justice as fairness is worked out”: “It supposes agreement deep enough to reach such ideas as those of society as a fair system of cooperation and of citizens as reasonable and rational.”²¹⁸ For Freeman, then, the Rawlsian social contract is akin to the idea of “rational precommitment,” in the sense that its aim is not primarily that of resolving conflicts but rather that of tying down the future, that is, keeping the parties from later changing their minds and deviating from the shared norms of the association.

The idea of public reason articulates the basic commitments of this right-based view of the social contract. Public reason is neither the command of the sovereign nor an aggregation of the different private reasons of individual agents. It is something categorically different. Presupposed by the idea of public reason is a notion of legitimate interest, defined by reference to what can serve as a common basis for public agreement. It presupposes, in other words, a higher-order interest in cooperation with other on terms that are publicly justifiable. The idea of public reason affirms a common commitment to an ideal of citizenship, which revolves around the ideas of freedom and equality. Since they affirms ideals they all share, principles of political justice are complied with wholeheartedly and not regrettfully by citizens. Certain norms (and the institutions that embody them) occupy a privileged role in moral deliberation, and can legitimately subordinate the dictates of rational choice. Freeman observes that a different conception of practical rationality prevails in right-based contractarianism. For Rawls, reasoning is not simply about clarifying one’s ends, making them consistent, and deciding on the

²¹⁸ Rawls, *Political Liberalism*, p. 149.

most effective means to satisfy them. His idea of public reason feeds on the “intuitive sense” that practical reasons are not just normative considerations that must motivate an individual but also have a “justificatory aspect” extending beyond the individual’s particular concerns. In this “social sense,” reasons provide a commonly accepted basis for assessing individuals’ ends and desires, and the means they adopt to satisfy them. Hobbesians, with their exclusive concern with the rational choice of self-interested agents, neglect this additional, social dimension of practical reason.

II. The Social Contract as Common Will

Distinctions of the kind Freeman presents between Hobbesian and Rawlsian interpretations of the social contract certainly get us closer to a more satisfying appreciation of the conceptual terrain within which contemporary theories of public reason are elaborated. But they nonetheless remain inadequate, I now want to argue. By failing to specify the exact nature of the agreement implied by the social contract perspective, they end up placing the theory of public reason in an inadequate conceptual and normative context. To identify these problems more clearly, I will offer an interpretation of the social contract doctrine. The idea I want to defend is that the social contract doctrine contains a very specific thesis about the nature of political society. It conceives of political society as *an embodiment of a common will*. Public reason liberalism is, as we’ve seen, an internally diversified perspective and relating public reason liberalism to the broader social-contract inheritance in this manner is a way of offering a reading of it that transcends these internal differences. Hume’s critique of the social contract, I will show, revolves precisely around a critique of the social contract’s understanding of political society as an embodiment of a common will.

Along with this resurrection of the social contract tradition operated by Rawls, then, comes the recuperation and consolidation of a specific view concerning the nature of political society. To see what this view consists, it is useful to turn to the views of the founders of this tradition. In *Leviathan*, Hobbes famously suggests that the “artificial” person of the state arises out of the agreement of individuals who authorize it to act in their name. “The only way to erect such a common power,” he claims, “is to confer all their power and strength upon one Man, or upon one Assembly of men, *that may reduce all their Wills, by plurality of voices, unto one Will.*” A multitude is thereby transformed into a single body, into a single will, into “a real Unitie [...] in one and the same Person.”²¹⁹ The purpose of political association is to track this common will and serve the common good of those partaking in it.²²⁰

Although John Locke is often characterized as Hobbes’s nemesis, in his writings one can evince the same understanding of political society. Political association is the association of individuals interested in constituting a collective will. As he puts it in the *Second Treatise*, “For the Essence and Union of the Society consisting in having *one Will*, the Legislative, when once established by the Majority, has the declaring, and as it were keeping of that Will.”²²¹ Among the canonical figures of the social contract tradition Locke’s position is unique in two respects. First, he gears this collective will to the protection of a set of objective, pre-political natural rights. It is these natural rights (to life, liberty, and property) that direct the common will. Second, he derives these rights from a prior will: the will of God. The substantive agreement that Gaus draws our

²¹⁹ Hobbes, *Leviathan*, p. 120; emphasis added.

²²⁰ There is a possible complication in the case of Hobbes worth noting. There is in fact a line of argument that suggests that Hobbes’s contractarianism is also grounded in a recognition (which is also Hume’s) that interest, not consent, is the driving consideration. See Russell Hardin, ‘Social Yes; Contract No’, *Rationality, Markets and Morals*, vol. 5 (2014), p. 88. Yet Hobbes, we see, still uses the language of “will.” This might be the reason why Rawls, in *TJ*, says that Hobbes “raises special problems” and that he will not draw on him (Rawls, *Theory*, p. 11, fn. 4).

²²¹ Locke, ‘Second Treatise’, p. 407; emphases added, original emphases removed.

attention to in Locke's writings and that Gaus sees as the origins of secular public reason liberalism, then, is therefore very much a product of Locke's theological commitments.

It is in the political thought of Rousseau that one arguably finds the apotheosis of this way of thinking about the nature of political society. The problem his *Social Contract* tackles is that of preserving individual freedom under conditions of civil association. His solution takes the form of the “general will.” “If, then, one sets aside everything that is not of the essence of the social compact,” Rousseau says, “one finds that it can be reduced to the following terms: *Each of us puts his person and his full power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole.*”²²² For Rousseau, the “general will” is the will of the “body politic,” which in his view can be looked upon as an “organized body, alive, and similar to a man's.”²²³ The body politic is not a mere organisation of different elements – with the sovereign power representing the “head” and citizens the “body and the members that make the machine move, live, and work” – but is rather a “moral being that has a will.” Unlike particular wills, which tend to particular goods, the general will always tends to the “preservation and the well-being of the whole and of each part.” Rousseau's social contract is about the constitution of this general will, which establishes the common point of view on the basis of which laws are formulated and thereby secures political society from the “seduction by particular wills.”²²⁴

Kant's social contract too is primarily concerned with the possibility of individual freedom under conditions of civil association. His account of the nature of political society mirrors Rousseau: the contract is “based on *a coalition of wills* of all private

²²² Jean-Jacques Rousseau, ‘The Social Contract’, in Victor Gourevitch, ed. *'The Social Contract' and Other Later Political Writings* (Cambridge, Cambridge University Press, 1997 [1762]), Bk. 1, ch. 7, emphasis in original.

²²³ Jean-Jacques Rousseau, ‘A Discourse on Political Economy’, in Victor Gourevitch, ed. *'The Social Contract' and Other Later Political Writings* (Cambridge, Cambridge University Press, 1997 [1755]), p. 6.

²²⁴ Rousseau, ‘The Social Contract’, pp. 66-8.

individuals in a nation to form a *common public will*.” Civil association does not restrict freedom but rather makes ‘real’ freedom possible. What distinguishes Kant is his emphasis on the social contract not as a historical event but as “an idea of reason”, which “oblige[s] every legislator to frame his laws in such a way that they could have been produced by *the united will of a whole nation*, and to regard each subject, in so far as he can claim citizenship, as if he had consented within *the general will*.²²⁵

In spite of all that distinguishes each thinker from the others, we can see that these four great contractarian thinkers all understand the kind of political society instituted by the social contract as a union of wills. The parties contracting in the state of nature decide to set up a very specific kind of association, one in which a plurality of wills is reduced to a single will, which a sovereign authority then embodies and represents. There is, of course, a great difference between, say, Hobbes’s “one Will” and Kant’s “common public will.” The nature of these two conceptions of will and what each of them thinks this single will wills differs in these two cases. The logic of the social contract, however, leads to a uniform conclusion in both these undoubtedly very different cases. The inconveniences of the state of nature are overcome by the amalgamation of different conflicting wills into a single, homogenous one. This single sovereign will wills what is just and good for all, thus creating that framework of legal and political norms that makes orderly and productive collective life possible. The principles and the justification of those principles willed by the sovereign come to be willed by all members of the political association. Of course, this does not mean that individual wills are completely obliterated. Rather, it means that the basic set of political and legal norms that the sovereign wills are willed by all the members of the political

²²⁵ Immanuel Kant, ‘On the Common Saying: “This May be True in Theory, but it does not Apply in Practice”, in H. S. Reiss, ed. *Political Writings* (Cambridge, Cambridge University Press, 1991 [1793]), p. 79; emphases added, original emphasis removed.

association. All of them collectively *will* the same set of, say, principles of justice instituted by the sovereign.

By approaching Rawls's theory from this broader angle it is possible to gain a new perspective on the nature of the transition from the comprehensive liberalism of *TJ* to the political liberalism of his later works. From this broader angle, in fact, it seems as though there is not much of a transition to account for. With the move to a political liberalism it is not a wholesale rejection of the idea of political society as the embodiment of a common will that we witness; what we witness, rather, is a reformulation of the idea on the basis of the comprehensive-political distinction. Traditional social contract theorists like Rousseau and Kant conceive of political society as a common will that wills a specific comprehensive end. We have seen that Rawls thinks this is no longer possible once the fact of reasonable pluralism is taken into seriously account. Rawls does not reject the idea of the common will but rather redirects the end of that will, from a comprehensive to a strictly political end. In *PL*, then, we see Rawls state that though they do not share a comprehensive doctrine, "in the well-ordered society of justice as fairness citizens share a common aim and one that has high priority: namely, the aim of insuring that political and social institutions are just, and of giving justice to persons generally, as what citizens need for themselves and want for one another."²²⁶ In a context of reasonable pluralism, what the common will wills is no longer an ideal of life but rather, more modestly, an ideal of democratic citizenship.

Public reason is the reason of this common will among democratic citizens in a well-ordered society. I think we can find a confirmation of this reading if we turn to Rawls's own understanding of where the idea of public reason comes from. The place where Rawls tackles this matter most directly is in his *Lectures on the History of Political*

²²⁶ Rawls, *Political Liberalism*, p. 146, fn. 13.

Philosophy. More specifically, it is in lectures on Rousseau that he discusses the idea's pedigree. It is worth citing Rawls in full:

It is the fundamental interests secured for each citizen – and not the greatest satisfaction of our various interests of all kinds both fundamental and particular – that specify our good from the point of view of the general will. These fundamental interests everyone shares. The appropriate grounds for basic laws is that they secure through social cooperation, on terms all would agree to, the social conditions necessary to realize those interests.

To express this idea from the point of view of the general will, we say that only reasons based on the fundamental interests we share as citizens should count as reasons when we are acting as members of the assembly in enacting constitutional norms or basic laws. From that point of view, those fundamental interests take absolute priority over our particular interests in the order of reasons there appropriate. When we vote on fundamental laws, we are to give our opinion as to which laws best establish the political and social conditions enabling everyone equally to advance their fundamental interests.

Note that the idea of a point of view, as used in these remarks, is an idea of deliberative reason, and as such has a certain rough structure: that is, it is framed to consider certain kinds of questions – those about which constitutional norms or basic laws best advance the common good – and it admits only certain kinds of reasons as having any weight. Thus, it is clear from this that Rousseau's view contains an idea of what I have called public reason. So far as I know the idea originates with him.²²⁷

The idea of public reason, Rawls suggests in this passage, essentially rearticulates the logic of Rousseau's idea of the general will. For Rousseau, the general will is the will of the “body politic,” which in his view can be looked upon as an “organized body, alive, and similar to a man's.”²²⁸ The body politic is not a mere organisation of different elements – with the sovereign power representing the “head” and citizens the “body and the members that make the machine move, live, and work” – but is rather a “moral being that has a will.” “For all the members of the state, in relation to one another and to it,” the general will is the “rule of what is just and what is unjust.” Unlike particular wills, which tend to particular goods, the general will always tends to the “preservation and the well-being of the whole and of each part.” Rousseau's social contract is about the constitution of this general will, which establishes the common point of view on the

²²⁷ Rawls, *Lectures on the History of Political Philosophy*, pp. 230-231.

²²⁸ Rousseau, ‘Political Economy’, p. 6.

basis of which laws are formulated and thereby secures political society from the “seduction by particular wills.”²²⁹

The idea of public reason is not one that has to be reconstructed from materials scattered throughout Rousseau’s texts. It is, rather, something that Rousseau talks about explicitly and that develops naturally from his idea of the general will. In his *Discourse on Political Economy*, for example, Rousseau examines the differences between the government of the family and the government of political society. Since the family’s chief has a natural interest in the happiness of the private individuals constituting the family, by pursuing his own ‘private’ happiness he automatically pursues that of the other family members. This is not the case in political society, where the leader’s good usually comes at the price of the citizens’ misery. “Abuses are inevitable and its consequences fatal in any society,” Rousseau writes, “where the public interest and the laws have no natural force whatsoever, and are constantly under attack from the personal interest and the passions of the chief as well as of the members.”²³⁰ Whilst the chief in a family can follow “his heart” (i.e. his “natural” instincts) when deliberating and making decisions, the magistrate should “follow no other rule than the public reason, which is the law.” When deliberating and legislating on matters that affect all, magistrates and citizens should appeal to reasons based on the fundamental interests of all. We have seen that this is precisely what public reason is taken to mean in contemporary liberal theory. Laws and institutions that are publicly justified by means of public reasoning are an expression of a general will that unites citizens around a set of shared moral commitments. As Freeman puts it, the kind of publicly justified principles Rawls is after are those that

²²⁹ Rousseau, ‘Social Contract’, pp. 66-8.

²³⁰ Rousseau, ‘Political Economy’, p. 5.

“would be willed and agreed to from a shared point of view.”²³¹ A well-ordered society of public reasoners is a society of the general will.

III. David Hume’s Critique of the Social Contract

In his essay “Of the Original Contract”, Hume’s critique of the social contract doctrine amounts to a three-pronged attack.²³² First, he asks us to fathom the absurdity of supposing that government is based on a contract when in reality all governments can be traced back to violence, force, conquest or (in the case of most monarchies) succession. Second, he asks us to simply look around us, and acknowledge how few are the citizens that would trace back their allegiance to government to any form of either explicit or tacit consent. Third, he deconstructs the idea of “promise” to show how logically absurd the contractarian approach to obligation is. The contract can only be valid if a reliable system of promise-making is in place. However, contractarian thinking cannot account for this specific social norm, which it conjures out of thin air. Promise-making must precede the contract, which means that no kind of contract can be origin of government. Hume therefore thinks that contractarian thinkers have got things political the wrong way round. “The exact observance [of civil duties],” he writes, “is to be consider’d as an effect of the institution of government, and not the obedience to government as an effect of the obligation of a promise.”

After going through the arguments of the essay, Russell Hardin concludes that “this astonishingly smart essay, which is short and acute, should have put an end to contractarian thinking.”²³³ But Hume’s critique of the social contract points to something

²³¹ Freeman, *Justice and the Social Contract*.

²³² David Hume, ‘Of the Original Contract’ in Eugene F. Miller, ed. *Essays, Moral, Political and Literary* (Indianapolis, Liberty Fund, 1987 [1752]).

²³³ Russell Hardin, *David Hume: Moral and Political Theorist* (Oxford, Oxford University Press, 2007), p. 120.

deeper, which Hardin doesn't notice, or at least examine. It points, I want to suggest, to a radically different understanding of the nature of political society.

We should start by going thought Hume's reasoning on the origin of government.²³⁴ To understand the origin of government, Hume thinks, one needs first to understand the origins of justice. Justice, for Hume, pertains exclusively to the sphere of property relations. His starting point is the observation that human society is impossible without a system of property relations, which defines what property is, and how it is demarcated and protected. Property does not exist prior to society, in the sense that it does not originate from relations between an individual and external object. Property, rather, is a function of relations between individuals, who agree upon what is property, and how it is to be transferred and secured.

Because it derives from relations between individuals, property is vulnerable to all the imperfections and limitations that inhere in the nature of those individuals. Of those features pertaining to the “natural temper” of man, Hume notes the indisputable preference that every individual has for herself and all those things closer to herself. Individuals are partial towards all those things that affect themselves directly, and this has a bearing on property relations. Selfishness and limited generosity are intrinsic to human nature. Certain characteristics of the external objects generally treated as property compound these difficulties and vulnerabilities. The possession of certain external goods (e.g. a book) is always vulnerable to the appropriative desires of others and can be transferred without loss. Goods whose possession is inherently unstable also tend to be scarce. Selfishness, instability of possessions and scarcity are the three features that

²³⁴ Unless otherwise stated, page numbers in parentheses refer to David Hume, *A Treatise of Human Nature*, edited by L. A. Selby-Bigge, 2nd ed. revised by P. H. Nidditch, (Oxford, Clarendon Press, 1975).

render property vulnerable in the ‘natural’ state of human affairs. They constitute the internal and external “circumstances of justice” that Rawls refers to.

Justice, in Hume’s scheme, is a remedial virtue, “invented” for the purpose of overcoming the vulnerabilities to which property is inherently subject. Realising that the pursuit of anybody’s ends is jeopardised by the instability of property, members of society agree to a “convention” that stabilises property and leaves “every one in the peaceable enjoyment of what he may acquire by his fortune and industry.” It is important to be clear about what Hume means by ‘invented’ and ‘agreed’ in this context. Members of a society ‘invented’ justice and the laws of nature *by* restraining their natural appetites. There was no agreement *prior* to the invention of justice. Just as the source of the inconveniences that give rise to circumstances of justice is internal to human nature, so, Hume thinks, are the sources of the solution to this predicament: “nature provides a remedy in the judgment and understanding, for what is irregular and incommodious in the affections.” The necessity of instituting such a convention that regulates property does not require refined judgment or sophisticated understanding; every member of society, rather, understands “upon the least reflection” that the codification, in the form of conventions, of the requirement to abstain from the property of others (if others reciprocate) is a fundamental prerequisite for peace and order.

All that a convention like justice is grounded upon, according to Hume, is “a general sense of common interest.” This general sense is something that every member of society ‘intuitively’, we might say, has. Because human society is impossible without justice, Hume thinks that the human condition is an intrinsically social one. In fact, according to Hume’s account, society, property and justice all arise simultaneously. They are the constitutive features of social order. Since the stability of property is necessary for the establishment of (any) human society, he thinks he can refer to norms governing property – the stability of possessions, the transfer of property by consent, and the

performance of promises – as the fundamental “laws of nature.” Once these laws of nature are met and the conventions for the regulation of property are established, there is very little else that remains to be done “towards settling a perfect harmony and concord” between members of society.

Political society arises because these ‘spontaneous’ conventions for the stability of property do not suffice. The fact that the human condition is intrinsically social and that human societies devise conventions regulating property without much reflection or awareness does not mean that societies can rely purely on such spontaneous means. Some features of human nature continue to militate against any purely spontaneous kind of ordering. Even though members of society realise that the proper pursuit of interests can only be accomplished by “oblique and indirect means” (i.e. by conventions), they cannot consistently overcome their tendency to prefer what is near and contiguous to what is remote and detached. Individuals will very seldom act in contradiction to their known and direct interests in the name of intangible, remote ones. The benefits of the system of justice are remote and indirect, whilst the benefits of (say) that apple that I can easily steal are near and direct. Since the system of justice is based (at this early ‘spontaneous’ stage) purely on the stability of expectations, others who will see me steal that apple will do so as well when presented with the opportunity to do so with impunity. Societies become locked in what game theorists would now call a generalised Prisoner’s Dilemma, in which non-compliance becomes the default strategic choice. The difficulties societies face in overcoming this predicament are considerable, Hume observes:

This quality [...] of human nature, not only is very dangerous to society, but also seems, on a cursory view, to be incapable of any remedy. The remedy can only come from the consent of men; and if men be incapable of themselves to prefer remote to contiguous, they will never consent to any such thing, which wou’d oblige them to such a choice, and contradict, in so sensible a manner, their natural principles and propensities. Whoever chuses the means, chuses also the end; and if it be impossible for us to prefer what is remote, ’tis equally impossible for us to submit to any necessity, which wou’d oblige us to such a method of acting. (535-6)

There is no feature of human nature “which causes more fatal errors in our conduct, than that which leads us to prefer whatever is present to the distant and remote, and makes us desire objects more according to their situation than their intrinsic values.” In small-scale, simple societies, where the interest of complying with the norms of justice are obvious and ‘near’, and where temptations are few (because what we might call the economic surplus is minimal), this human propensity to shirk or free-ride is contained. As soon as society becomes large and complex, however, and the benefits of the general scheme of justice becomes increasingly remote for any individual (why would my stealing this apple lead to a collapse of the entire system of norms?), it is no longer possible to rely entirely on the ‘spontaneous’ generation of order. The possibility of overcoming this predicament by transforming human nature is one that Hume quickly does away with by simply stating that human nature cannot be changed.²³⁵ It is upon the *circumstances* within which individuals act rather than upon human nature that one must focus if the aim is that of altering human behaviour.

According to Hume’s analysis, to institute government is precisely, and most fundamentally, about actuating such a change in the circumstances of some of society’s members, so that what for the majority of them is remote and detached becomes near and contiguous. Government achieves this by placing some individuals – “civil magistrates, kings and their ministers, our governors and rulers” – in a position that induces them to see every injustice as something that affects their interest directly. Since they are generally indifferent to the greatest part of society, these magistrates (i) do not benefit from any specific act of injustice and, since they are generally satisfied with their position, (ii) they do not have any personal pursuit diverting them from the strict

²³⁵ This does not mean that Hume thinks that education is always bound to fail (523).

enforcement of justice. Since man's "violent passions" have a bearing both on the specification of the norms of justice as well as the enforcement of such norms, the task of the magistrate is not merely that of enforcing justice but also identifying what they norms of justice and equality require.

This is not all that government is necessary for, or capable of achieving, however. Because of its ability to alter the incentives people face, it is also able to *make* new conventions by placing members of society in a position to develop new common ends or purposes. Assume an interest arises, among the majority of society's members, in the development of (say) a new bridge connecting the two parts of its country. Both the amalgamation of individuals' interest in the construction of the bridge as well the construction itself, however, are vulnerable to free-riding, which makes it impossible for society to coordinate on the construction of the bridge. It is government that makes it possible for society to overcome this stasis and build the bridge. Magistrates are individuals placed in a particular position such that the only interest they have is the interest of seeing that the interests of a "considerable part" of the population are met. Since they only consult themselves when deciding on the construction of the bridge, they can not only reach a decision rapidly but also implement it without hindrances. "Thus," Hume surmises, "bridges are built; harbours open'd; ramparts rais'd; canals form'd; fleets equip'd; and armies disciplin'd; everywhere, by the care of government, which tho' composed of men subject to all human infirmities, becomes, by one of the finest and subtle inventions imaginable, a composition, that is, in some measure, exempted from all these infirmities."

As for the sources of obligation, Hume again traces them back to interest. With the emergence of justice and property comes a "natural obligation to justice" (498). Since the emergence of justice is connected to the sense of advantage of compliance to certain norms, it is only 'natural' or logical that a sense of obligation should follow. As he puts it,

“After men have found by experience, that their selfishness and confin’d generosity, acting at their liberty, totally incapacitate them for society; and at the same time have observ’d, that society is necessary to the satisfaction of those very passions, they are naturally induc’d to lay themselves under the restraint of such rules, as may render their commerce more safe and commodious” (499).

A problem arises, however, “when society has become numerous, and has encreas’d to a tribe or nation” (499). The problem is that the direct interest individuals have in compliance becomes more “remote,” in the sense that they lose sight of the long-term benefits of compliance and start focusing more on their short-term interests. The scheme that renders ‘their commerce more safe and commodious’ is thus jeopardised. A stronger form of obligation is necessitated by these circumstances: a moral obligation. Again, Hume speaks of an invention, an artifice, dictated by the demands of social order. Moral obligation is invented as people start appreciating the value of binding themselves to the performance of specific actions by means of “*a certain form of words*,” that is, by promises (522). “A sentiment of morals concurs with interest, and becomes a new obligation upon mankind,” Hume says (523). It is to this sentiment that education, public interest and “the artifices of politicians” contribute.

When discussing political or “civil” obligation, Hume initially admits that his portrait of the origins of government seems to mirror the theory of the social contract. Government would seem to originate in the realisation on the part of members of society that by setting up such an institution justice can be executed and peace maintained. These members of society gather together, select their magistrates, and promise them obedience. The moral obligation intrinsic to promise-making thus appears as the first obligation to obedience. This is very similar to the idea of government as being based on an original contract. According to that theory, the act of contracting gives

rise to a new obligation on the part of the contractors, who promise to obey the government.

But the similarity between the two doctrines, Hume emphatically stresses, is only superficial. It is only in those (surely, very few) cases in which individuals contracted their way into political association that the logic of the social contract is pertinent (541). Like natural duties, political duties too are founded on nothing but interest and human conventions. Both natural and political duties “are contriv’d to remedy like inconveniences, and acquire their moral sanction in the same manner, from their remedying those inconveniences” (543). In large, complex societies, peace and social intercourse would be impossible without the institution of government. The duty of allegiance *follows* the institution of government, so that government may be erected on more solid foundations. Political duties, in other words, “are invented chiefly for the sake” of natural duties and it is, he writes, “fruitless [...] to [...] seek [...] a stronger foundation for our political duties than interest, and human conventions” (543).

Hume, then, turns the social-contract logic upside-down: it is because the effective operation of government (its ability, that is, of protecting the pursuit of interest on the part of individuals) requires more than just a ‘natural’ support that political duties are ‘invented’, rather than the other way round, that is, the emergence of government as the expression of a preceding obligation of morality.

We are bound to obey our sovereign, it is said; because we have given a tacit promise to that purpose. But why are we bound to observe our promise? It must here be asserted, that the commerce and intercourse of mankind, which are of such mighty advantage, can have no security where men pay no regard to their engagements.²³⁶

²³⁶ David Hume ‘Of the Original Contract’ in *Essays, Moral, Political and Literary* (Indianapolis, IN, Liberty Fund, 1987 [1752]), p. 481.

Natural duties and political duties can both be traced back to interest, though they refer to two distinct kinds of interests: natural duties and the performance of promises ground the trust and reciprocity that makes collective action possible, whilst allegiance to the magistrate ensures security and protection. Hume's conclusion is unambiguous: "There evidently is no other principle than interest; and if interest first produces obedience to government, the obligation to obedience must cease, whenever the interest ceases, in any great degree, and in a considerable number of instances" (553).

All this does not imply, however, that political obligation should be taken lightly. Government is, after all, entirely "useless" without an "exact obedience," he remarks. In fact, people tend to take obedience seriously precisely because those in power spend considerable efforts instilling such values in the population. It is largely because of the activities of government that people internalise the sense of the value of allegiance. Politicians do so "in order to govern men more easily" (499).

What Hume shows us, then, is that it is not as an embodiment of a common will that we should understand political society, but rather as a *product of shared interests*. Necessity and interest explain much of the story. Justice and property make it possible for individuals to coordinate their actions in mutually beneficent ways. Once society becomes too big, a new institution becomes necessary to enforce justice. This is where government comes in, and with it political obligation. The story Hume tells about the origins of government and political obligation, then, has nothing to do with the free and equal individuals contracting their ways out of the state of nature, but rather with the emergence of a shared interest in the consolidation of a central institution able to overcome certain practical inconveniences.²³⁷ So, in a sense, it could be said that, as is the

²³⁷ If we really had to go back to the origins of political society, he points out, and to what made this shared interest obvious in the first place, it is to war that we must turn. A leader makes the task of defending one's own country much more effective. Military "camps," Hume argues, "are the true mothers of cities" (540-1). Duties that were not originally there – i.e. civil duties – arose

case for the social contract, what the political order secures is the public interest or the common good. But this shouldn't be understood as the embodiment of a common will; this public interest should be understood, rather, as a shared...*interest*.

To the extent that public reason liberalism relies on a normative consensus over an ideal of deliberative reason and a selection procedure for good or bad reasons, as well as a specific notion of the common good, Hume's critique of the social contract loses none of its relevance. Hume's point is that what looks like an independent sphere of conventions is in fact an epiphenomenal reality: conventions are always reducible to interests. There is no categorical distinction to be drawn between the sphere of interest and the sphere of political right. Political right is grounded in interest.²³⁸ There is no common will capable of overcoming or obliterating this fact. Norms of justice are complied with and the laws of government observed because, ultimately, they satisfy people's interests.

A "publicly justified" political society, then, is not one that establishes new forms of obligation or duty on its subject. From a Humean perspective, it is nothing more than a particular kind of story some politicians, educators, and intellectuals speaking in the name of political society tell themselves and others about its nature and purpose. Political society is a domain saturated with different legitimization stories that aspire to speak in the name of a common will. In Chapter 3 I note the prominence attributed to political factions by Hume. A defining feature of factions in politics is very often the attempt on their part to clothe their particular interests in the language of the common good. As Hume says in the opening line of his essay on the original contract, "As no party, in the present age, can well support itself without a philosophical or speculative system of

as government made it increasingly clear that it alone was able to provide public goods that all individuals benefitted greatly from.

²³⁸ For an insightful discussion, see Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979* (London, Palgrave Macmillan, 2010), pp. 272ff.

principles annexed to its political or practical one, we accordingly find, that each of the factions into which this nation is divided has reared up a fabric of the former kind, in order to protect and cover that scheme of actions which it pursues.” The idea that government can only rest on consent – i.e. on will – was the “creed” of one specific party in Hume’s days (542).²³⁹ Hume’s empirical-naturalistic dissection of the nature of political society shows us why should take such foundational claims with a great degree of scepticism.

Conclusion

Rawls often speaks about two contrasting ideas of society: the social contract one and the utilitarian one.²⁴⁰ I have shown that there is another contrast that is more important: that between society as a communion of wills and society as a product of shared interests. According to the reading I have here proposed, Hume’s critique of the social contract is of critical importance, since it allows us to refocus our attention away from the standard utilitarian reading of Hume and towards a theory of society that focuses on shared interests rather than a common will. This theory conceives of political society as a conventional reality sustained a set of basic shared interests, such as an interest in cooperation, peace and stability.

Hume’s theory also allows us to see why we should treat with a good dose of scepticism the kind of claims made by theories about the correct “common point of view” from which political arrangements are to be evaluated and standards for political conduct constructed. They do not add much to the idea that it is as a system catering to the shared interests of individuals that political society should be understood. In fact, they may actually distract us from taking seriously the diversity of such interests and

²³⁹ Stuart D. Warner, ‘David Hume on Public Interest’, *Reason Papers*, no. 15 (1990), p. 88.

²⁴⁰ Rawls, *Justice as Fairness*, pp. 95-6.

from recognising the extent to which the kind of grand theories of justice and legitimacy theorists and magistrates champion actually represent particular interests.

It is Hume's critique of the social contract that, I believe, represents the best first step towards the formulation of a liberalism without liberals. This point is further reinforced, I think, if we look in a rather unfamiliar direction: Hume's opinions on the matter of political resistance and revolution.

Chapter Five

Hume on Revolution

It is a very infrequent occurrence to see Hume included in the studies of revolution or disobedience in the history of political thought. To take but the most recent example, Raffaele Laudani's comprehensive *Disobedience in Western Political Thought: A Genealogy*, which strives to include all that is of relevance to the theme between Antigone and the Occupy Wall Street movement, does not contain any reference at all to Hume or any of his writings.²⁴¹ If anything, Hume is likely to be situated by commentators on the other side of the barricades, alongside the many conservative critics of revolution and philosophers of obedience. As one commentator has suggested, we should understand Hume as the “prophet of the counter-revolution.”²⁴²

The thesis I want to defend in this chapter is that it is possible to extract from Hume's political theory a theory of revolution and disobedience that is in fact much more radical than that of Locke, Rawls or other social contract theorists willing to countenance such an eventuality. One can only appreciate a 'radical' interpretation of Hume's political thought, however, if one understands what Hume's critique of the social contract is really about. As I argued in the previous chapter, what Hume rejects is not simply the idea of consent or voluntarism. Hume is not a 'utilitarian' philosopher that faults social contract theory for its reliance on the notion of rights. What he rejects, rather, is the social contract theorist's understanding of political society as an embodiment of a common will. By examining Hume's thinking on the matter of

²⁴¹ Raffaele Laudani, *Disobedience in Western Political Thought: A Genealogy* (Cambridge, Cambridge University Press, 2013).

²⁴² Laurence L. Bongie, *David Hume: Prophet of the Counter-Revolution* (Indianapolis, IN, Liberty Fund, 2000).

revolution, I want to argue, we can further deepen our understanding of the specificity of his political thought and his contribution to a liberalism without liberals.

This chapter develops as follows. In Section I, I consider three social contract approaches to revolution and disobedience, namely, those offered by John Locke, Immanuel Kant, and John Rawls. In Section II, I offer an interpretation of Hume's approach.

I. The Social Contract Tradition and Revolution

I want to start by turning to an assessment of the approach to revolution presented by key thinkers in the social contract tradition. Due to the importance they attribute they attribute to this theme, I will focus on Locke, Kant and Rawls.

(i) John Locke

If it has become common to associate the social contract doctrine with the philosophical justification of a right to revolution, this is largely due to the influence of John Locke's political theory. The Lockean paradigm permeated the eighteenth century, the century of the two great revolutions in America and France. The French Revolution of 1789 was brewed in the conceptual language of "equality," "natural law," "inalienable rights" and the "social contract," all concepts Locke's treatises popularised. The situation was similar in America. Thomas Jefferson's Declaration of Independence is pervaded by Lockean concepts and themes. George Smith solves the diatribe among historians about the extent to which Thomas Jefferson was influenced by John Locke's *Second Treatise* in penning the Declaration by arguing that Jefferson was so familiar with the treatise that he

“unconsciously duplicated some of its wordings.”²⁴³ The notion that John Locke was the principal architect of the ideas that were used to justify the American Revolution was one that was common already in the eighteenth century. As George Smith’s recent book illustrates, the revolutionary potential of Locke’s political theory is one liberals continue to point out today.

The reasons for this are seemingly straightforward. Locke’s target in his two famous treatises is political absolutism. The *First Treatise* is a direct critique of Robert Filmer’s *Patriarcha*, which offers a defence of the theory of the divine right of kings. The *Second Treatise* (on which I will here focus) is where Locke builds on his critique of Filmer and puts forward a more positive, constructive theory of political society and authority.²⁴⁴ His method in the *Second Treatise* is contractarian. Like Hobbes, he commences his reasoning by theorising a “State of Nature,” in which individuals are in a state of perfect freedom and equality. Individuals are free to order their actions and dispose of their possessions as they see fit, and they are all equally free to do so. Against the divine right theory, he thus argues that in man’s natural condition there is no form of subordination or hierarchy (§4). The only thing individuals are subordinated to in the state of nature is the “Law of Nature,” which Locke understands as a precept of “Reason” that aims at the “Peace and Preservation of all Mankind” (§6-7). According to this fundamental law of nature, no one ought to harm another in his “Life, Health, Liberty, or Possessions.” If one does harm another’s person or property, the offended party has a right – which follows from the law of nature – to preserve herself by punishing the offender. This punishment cannot be arbitrary, but rather has to be proportionate to the transgression

²⁴³ George H. Smith, *The System of Liberty: Themes in the History of Classical Liberalism* (New York, Cambridge University Press, 2013), p. 114.

²⁴⁴ Peter Laslett thinks it is a mistake to see the *Second Treatise* as a critique of Hobbes. In his view, Locke’s target remained Filmer. See Peter Laslett, ‘Introduction’, in Peter Laslett, ed. *Two Treatises on Government* (Cambridge, Cambridge University Press, [1689] 1988), pp. 67ff. Paragraph numbers in this section refer to this edition of the *Treatise*.

(§8). In Locke's state of nature, then, “*every one has the Executive Power* of the Law of Nature” (§13). Every individual applies her reason to assess when the law of nature has been infringed and the kind of retribution called for by such infringements.

Unlike Hobbes, Locke assumes that in the state of nature we already have some rights. We, first, have rights over our person. “Every Man has a *Property* in his own *Person*,” he says (§27). From this basic right, he derives a second one, which is a right over physical possessions with which one mixes one's own “Labour”. “Property” is whatever an individual removes “from the common state Nature placed it in” by means of his own labour. Hobbes, of course, rejects the notion that in the state of nature individuals have any rights. Among the things individuals disagree upon in the Hobbesian state of nature is precisely what counts as a right. It is the role of the sovereign instituted by means of the social contract to specify what counts and what is to be enforced as a right. Locke understands the kind of “State of War” that characterises the state of nature very differently from Hobbes. He is eager to point out that the state of war is different from the state of nature. Reason could be theoretically sufficient to illuminate individuals on the rights and duties that derive from the law of nature. They are in a state of nature, according to Locke, precisely when they let themselves be governed solely by reason, without, that is, an “Authority to judge between them” (§19). The state of nature is understood by Locke as a condition where there is a “*want of a common Judge with Authority*,” rather than as a “war of all against all.” The state of war, on the other hand, is where “Force and Violence” prevail over “Right” (§16). Defined in this way, the state of war is actually compatible with sovereignty. When it is governed by a common Judge that rules coercively and arbitrarily, society is in a state of war. If society is able to transcend the state of nature in the ‘right’ way, it also overcomes the state of war.

The only way out of the state of nature that is compatible with the natural freedom and equality of all is specified by the logic of the social contract. Central to the social contract doctrine is the idea of consent. Political authority can be exercised on free and equal individuals only if these consent to it. The only way one can submit oneself to “bonds of Civil Society” whilst conserving the freedom and equality one enjoys in the state of nature is by “agreeing with other Men to joyn and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it” (§95). To achieve these ends, what the social contract is designed to institute is a “Power” that has two key functions. First, it preserves the life and property of all individuals. Second, it impartially judges and punishes the breaches of the law of nature. As public reason theorists have recently elaborated upon, the key problem in Locke’s state of nature is the conflict between ‘private’ judgments on what the law of nature demands. Different individuals will interpret these demands differently. To overcome this predicament the contractors decide to set up an impartial arbitrator that appeals only to ‘public’ judgments all can accept. “Thus all private judgment of every particular Member being excluded,” Locke writes, “the Community comes to be Umpire, by settled standing Rules, indifferent, and the same to all Parties” (§87). The “decisive power” acquired by this new “Judge on Earth” is of both “Legislative” and “Executive” kinds; it has the power both to make the laws as well as to determine the kind of punishment to be meted out to transgressors (§88). The Umpire interprets the law in an impartial and definitive way. As Gaus would say, this Umpire speaks in the voice of public reason.²⁴⁵

But what kind of power does this umpire possess? For Locke (and for the purposes of this chapter) this is a fundamental question. Locke explains that although the

²⁴⁵ Gerald Gaus, *Justificatory Liberalism: An Essay on Epistemology and Political Theory* (Oxford, Oxford University Press, 1996).

power of the Legislative can only be “one Supream Power” if it is to resolve the controversies that plague the state of nature, this power is only a “Fiduciary Power to act for certain ends” (§149). These ends consist solely in the “Peace, Safety, and publick Good of the People” (§131). Whenever these ends are manifestly neglected or contravened by the rulers, the “trust” reposed in them by contractors is necessarily forfeited, and the power devolves back to those who possessed it in the first place: “*the People.*” Ultimate power thus rests with the people, who have the right to both institute and overturn specific governments. When a ruler enacts measures or laws that the people have not consented to, he is acting on the basis of “force” not “authority.” “The use of *force* without Authority,” Locke suggests, “always puts him that uses it into a *state of War*, as the Aggressor, and renders him liable to be treated accordingly” (§155). So for Locke it is not simply a matter of resistance, that is, of being emancipated from any obligation vis-à-vis the rulings of such an aggressor. Rather, when oppressed by an arbitrary and coercive power, “the People have a right to remove it by force.” What revolution means for Locke is the ability of the people to reject their subjection and reconstitute themselves as “a new Legislative” (§212). In fact, Locke suggests that it is in fact those who reject reason in favour of pure force that are the real “rebels.” If rebellion is taken to mean a return to the state of war, then it is the aggressors and the oppressors that engage in it, and not the people who are merely after a Legislative that responds to their desires and follows the law of nature (§226). Ensuring that government rests on consent is in fact the “*best fence against Rebellion.*”

The simplicity and power of Locke’s reasoning is remarkable: supreme power is with the people, and can always be taken back by them. It is therefore not surprising that it had such a profound influence on the political events of the eighteenth century and beyond. But this shouldn’t blind us to the weaknesses and limitations of Locke’s arguments. And these, I want to argue, are substantial. Locke’s right to revolution is I

think as straightforward as it is ambiguous. Consider Locke's formula for when revolution is legitimate: "*Force* is to be *opposed* to nothing, but to unjust and unlawful *Force*" (§204). This raises an obvious question: *who* is to determine which exercises of force are unjust and unlawful and which are just and lawful? Who determines when the "trust" that the people repose in the Legislative can be withdrawn? On such matters there is bound to be disagreement between individuals. It is for precisely this reason that Hobbes thinks that only the sovereign can determine such matters. Locke on the other hand seems to suppose that reason alone can offer determinate answers to such questions. But if reason encounters difficulties in giving definitive interpretations of the law of nature, there seems to be no reason why it should have more success in interpreting when the right to revolution can be legitimately activated or not. How are disagreements between the Legislative and the People to be resolved? Which ultimate standard is appealed to in such cases?

Locke is far from being unaware of this difficulty. In fact, he deals with this problem repeatedly when discussing the various instances in which the Legislature and the People may find themselves at variance with each other. His answer to this fundamental question – "*who shall be Judge?*" – is always the same: "where there is no Judicature on Earth, to decide Controversies amongst Men, *God* in Heaven is *Judge*: He alone, 'tis true, is Judge of the Right" (§241; also, §168, 176). When confronted with the problem of whose opinion should count when Legislative and People disagree, then, Locke resorts to an "appeal to Heaven." Individually, we will all resolve the matter of whether it is time to rebel against an unjust ruler in different ways. However, it is God alone who can judge impartially and definitively whether such an act is rightful or not at a specific moment in time. When 'human' options have run out, it is to God that one must turn. But turning to God is a tricky business, since God's judicature can never be a wholly transparent affair. "He that *appeals to Heaven*," then, "must be sure he has Right on

his side; and a Right too that is worth the Trouble and Cost of the Appeal, as he will answer at a Tribunal that cannot be deceived, and will be sure to retribute to every one according to the Mischiefs he hath created to his Fellow-Subjects; that is, any part of Mankind" (§176). God's judgment pervades Locke's theory of the right to revolution. It is God's 'intervention' that allows Locke to refute political absolutism: God, and not the sovereign, is the ultimate arbiter of what is right and what is wrong.

I think we are now in a better position to appreciate what Locke has in mind when he suggests, as we saw in the previous chapter, that political society should be understood as consisting in "one Will." "*Allegiance*," Locke writes, is "nothing but an *Obedience according to Law*" (§151). A ruler who violates the law has therefore no right to obedience. But we have seen that it is God that is the judge of what is lawful and what is just. When Locke therefore says that "members ow[e] no *Obedience* but to the publick Will of the Society," he is drawing a connection between this will and the will of God. The "publick Will" is the will of a society united under God. Beyond the realm of particularity there is a divine realm of objectivity, impartiality and justice. The legitimate Umpire is the one that reflects this divine order, whilst an illegitimate one is one whose illegitimacy is a function precisely of the extent to which it departs from divine standards. Political society, then, is an expression of divine justice, in the sense that it allows for the fulfilment of what in the state of nature is only accomplished precariously: God's will.

From the perspective developed in Chapter 4, i.e. that of the common will, Locke's right to revolution manifests all its weaknesses. I want to point to two in particular. First, the importance of God in Locke's argument implies that the latter loses much of its value in a society in which belief in God is questioned and often rejected. For Locke, who in *A Letter Concerning Toleration* writes that "the taking away of God, tho

but even in thought, dissolves all,” this is not much of a problem.²⁴⁶ From his point of view, atheists should not have much of a say on how government should be run. However, this is no longer a possibility contemporary liberals can countenance. For those who do not believe in ‘Heaven’, the appeal to Heaven is not very meaningful. The second problem is more general in scope. It has to do with Locke’s endorsement of the idea of society as the embodiment of a common will. Notice that the task of instituting a Legislative is for Locke the *telos* of political society: “the Society can never, by fault of another, lose the Native and Original Right it has to preserve it self, which can *only* be done by a settled Legislative, and a fair and impartial execution of the Laws made by it” (§220; emphasis added). Revolution, for Locke, is thus always nothing but a transitory step between one (corrupt) Legislative and another (legitimate one). An oppressive rule or a conqueror can never dissolve a common will. All they can do is temporarily obstruct it. The reason for this, from Locke’s perspective, is obvious; rights and liberties – that is, the goods God has in store for mankind – can only be enjoyed by means of political association. God’s will finds its accomplishment in the common will of political society. But, again, once one allows Locke’s theological perspective to be dislodged by the fact of religious pluralism and atheism, it is not clear whether one can save anything of Locke’s theory. Locke’s right of revolution only makes sense if one supposes that political association is as indispensable as Locke thinks it is. In fact, it is precisely because Locke thinks it is that he has to identify a “right” to rebel. Once light is shed on the weaknesses of Locke’s account of right, the limits of Locke’s right to revolution all come to the surface.²⁴⁷

²⁴⁶ John Locke, *A Letter Concerning Toleration*, James Tully, ed. (Indianapolis, IN, Hackett, 1983 [1689]), p. 51.

²⁴⁷ The interpretation I have here presented of Locke on revolution, I should note, diverges from standard one. See Richard Ashcraft, ‘Revolutionary Politics and Locke’s *Two Treatises of Government*: Radicalism and Lockean Political Theory’, *Political Theory*, vol. 8, no. 4 (1980), pp. 429–

(ii) *Immanuel Kant*

Kant summarises his thinking on the matter of revolution in the essay “On the Common Saying: ‘This May be True in Theory, but it does not Apply in Practice’”; henceforth, “Theory and Practice”).²⁴⁸ There we find a perspective on the legitimacy of revolution that is very different from Locke’s. According to Kant, “no-one in the commonwealth can have a right to contest [the head of state’s] authority” (82). Kant’s rejection of the right of revolution is “*absolute*” (81). The power of the state to put the law into effect is, in Kant’s words, “irresistible,” since “no rightfully established commonwealth can exist without a force of this kind to suppress all internal resistance” (*ibid.*). Resistance against the supreme legislative power, incitements of the subjects to violent expressions of discontent and defiance which breaks into rebellion are the “greatest and most punishable crime[s] in a commonwealth,” for they “destroy[...] its very foundations” (*ibid.*). It is hard to imagine a more comprehensive rejection of the right of citizens to get rid of a government they don’t like. What leads Kant to such radical conclusions?

Kant starts ‘Theory and Practice’ by laying out what he thinks are the three principles that a “civil” or “lawful state” is based upon. These are (1) the *freedom* of every member of society as a human being, (2) the *equality* of each with all the others as subject and (3) the independence of each member of a commonwealth as a citizen (74). As far as (1) is concerned, Kant illustrates the concept of freedom by distinguishing between two kinds of government. The first he calls a “paternal government.” What he has in mind is what we would now call a ‘paternalistic’ form of rule. For the paternalistic ruler, citizens

86, and Jonathan Scott, ‘The Law of War: Grotius, Sidney, Locke and the Political Theory of Rebellion’, *History of Political Thought*, vol. 13, no. 4 (1992), p. 565-85.

²⁴⁸ Immanuel Kant, ‘On the Common Saying: ‘This May be True in Theory, but it does not Apply in Practice’’, in H. S. Reiss, ed. *Political Writings* (Cambridge, Cambridge University Press, [1793] 1991). Page numbers in parentheses refer to this edition. Unless otherwise noted, italics are in original.

are but “immature children” incapable of understanding what is good and right for them. Only the ruler knows what ought to make them happy, and it is this collective happiness that she wills when ruling. For Kant, paternal government is the “greatest conceivable *despotism*,” since it doesn’t conceive of citizens as bearers of rights. Political decisions are determined purely by what the ruler thinks ought to make citizens happy; if the rights and liberties of the latter are infringed along the way, then so be it. The situation is radically different under what he calls a “patriotic government.” Under such a government, each citizen regards himself as authorised to protect the rights of the commonwealth by laws of the general will, but not to submit it to his personal use at his own absolute pleasure. The right of freedom belongs to each member of the commonwealth as a human being. Kant calls the kind of attitude underlying such government ‘patriotic’ since it is one, in his view, that conceives of the commonwealth as a “maternal womb,” as “paternal ground” from which each citizens sees herself as springing.

As far as (2) is concerned, what Kant has in mind is a purely juridical form of equality. Though they will be unequal as far as physical and mental capacities are concerned, the important thing is that citizens are equal before the law (75). All citizens are equal subjects of a lawful state. Since for Kant law is the “pronouncement of the general will,” equality is affirmed by a state whose laws do not discriminate against specific individuals or groups. No member has any sort of legal privilege over others. Thus “the *birthright* of each individual in such a state [...] is absolutely *equal* as regards his authority to coercive others to use their freedom in a way which harmonises with his freedom” (76). The only inequalities permitted are those made possible by this condition of juridical equality, that is, those that a citizen can earn through his talent, his industry and his good fortune.

The third element, “independence,” has to do with the status of the citizen as a co-legislator. Laws, as embodiments of the general will, have to speak for all. The way this unity of the will of all the citizens comes about is through a “general vote” (77). For such a vote to represent the will of all citizens, the key precondition is that these enjoy what Kant calls independence. What he means by this is that each citizen must be “*his own master* [...]”, and must have some property (which can include any skill, trade, fine art or science) to support himself” (78). A citizen who participates in the formation of the general will must “in the true sense of the word *serve* no-one but the commonwealth.” When voting, his will must be his own. For this to be the case he mustn’t be subservient to the interests and will of others he depends upon. For Kant, then, ownership of one’s self and ownership of some private property are two fundamental requirements of independence and therefore two basic preconditions for being a vote-wielding citizen.

These three principles – freedom, equality and independence – are the pillars of the “basic law” of a commonwealth. This basic law Kant calls the “original contract,” which in his view is the means by which “a civil and completely lawful constitution and commonwealth can *alone* be established” (79; emphasis added). Public law and public right can only be acts of a public will and it is precisely such a public will that the original contract gives rise to or embodies. The contract expresses the free, equal and independent nature of each and every citizen. Unlike paternal government, when civil government allows or prohibits something, it does so purely in accordance with principles of public right. The original contract abstracts from particularistic conceptions of the good and grounds political authority purely in the united will of all citizens.

The basic contours of Kant’s argument, so far, do not seem to be substantially different from those of Locke’s. For both, the social contract is a method for transcending particularity and designating a general, public sphere of right that all citizens, regardless of their particularities, can find justifiable. So where does Kant’s

absolute rejection of revolution come from? Kant's own argument starts with a specification of what he takes the notion of an original contract to signify. Although scholarly controversy persists on this point, there are a number of passages in the *Second Treatise* where Locke suggests that the act of contracting should be understood as a real historical event (e.g. §104). Kant rejects this view. For him, the original contract is not an actual historical occurrence but rather merely an “*idea of reason*” (79). It is by probing the perspective of reason on moral and political matters rather than by engaging in historical inquiries that one vindicates the logic of the contract. Regardless of what history teaches, it is reason that connects right to the ideals of freedom, equality and independence, thus revealing the nature of a lawful commonwealth. For Kant this is a very important point. He thinks that those who extract a right of revolution from the logic of the original contract interpret the latter as something that actually happened. If it happened once, they think, it can clearly happen again. But as an idea of reason the contract works in a very different way. The original contract in other words, has nothing to do with the actual origins of society. As an idea of reason, its purpose is merely “to test the rightfulness of every public law” (79). The logic of the original contract is one that addresses an existing and ongoing political society that wishes to think critically about the kind of laws it is regulated by and not a political society that thinks about its formation and possible re-formation. The question it pushes a political community to ask itself, then, is not whether its origins were consensual, but rather whether its constitutional and legislative modus operandi expresses or reflects an ideal of moral personhood.

But Kant's perspective raises an important question: *who* is to judge whether laws and norms conform to principles of right? For Kant, it is only the judgment of the legislator that counts when such matters arise (79f). His reasoning here echoes Hobbes's ‘regress’ argument. If the people were to partake in the formation of such judgment, then

the problem of what to do when the people and the legislator disagree arises. Who would then adjudicate *that* disagreement? Kant's answer is the same as Hobbes's: only the "head of state" can judge on such matters. Kant's understand of the social contract as purely an idea of reason helps reduce some of the possible sources of disagreement in judgment. What is valuable about the idea of an original contract is not its re-enactment of what real people actually consent to; rather, as an idea of reason, its purpose is to define what it is "at least *possible* that a people *could* agree to" (79; second emphasis added). Real individuals are motivated by all sorts of interests that have nothing to do with right. Kant refers to the set of self-interested motivations as "happiness" (74). The pursuit of happiness often leads real individuals to be in such a "position or attitude of mind" that leads them to reject principles of right. People usually reject a law because they feel it prejudgets their happiness. But the legislator should not be moved by such refusals. His only concern is whether a law reflects a public will sustained by the three principles outlined above or not. If it reflects the public will, then it has the legitimate authority to coerce all citizens. No resistance or revolution against such a lawful authority is permitted. Thus, the whole idea of there being a "right" to revolution seems to Kant to be ultimately incoherent.

Kant allows two important concessions to citizens. These two concessions distance him from Hobbes, and explain why, in spite of the similarities I have just discussed, the thrust of his discussion of political right in 'Theory and Practice' is "Against Hobbes" (73). First, he accepts that the people have certain "inalienable rights" against the legislator. These rights can never be given up, and everyone is entitled to have her own opinions about them. His basic point, however, is that these cannot be rights of coercion (84). Second, he thinks that whenever a citizen feels she has been wronged by the head of state she is entitled to make her opinion public about it. The "true safeguard" of citizens' rights is not resistance and rebellion but rather "*freedom of the pen*" (84-5).

Either orally or in writing, the citizens is always entitled to express her disapproval of measures she thinks are unjust. Even this concession, however, Kant immediately qualifies. Any remonstrance, he says, “must not transcend the bounds of respect and devotion towards the existing constitution” (85). As the expression of the public will, the citizen must always assume that it is error and not ill will on the part of the head of state that yielded the injustice. Freedom of the pen is necessary precisely to give to the head of state the maximum amount of information she requires to make choice that really represent the general will. Criticism of the legislator should never be an ‘agonistic’ enterprise but rather always remain respectful and constructive.

The modesty of Kant’s concessions is striking. And because of their modesty they seem, if anything, only to render more vivid just how absolute – and potentially worrying – his rejection of resistance and rebellion is. Surely it is too strong to suggest that the judgment of the people should *always* be subordinated to that of the legislator and that citizens have *no* rights of coercion against the legislator. Also, the proposition that “happiness” has *no* role to play in political matters seems excessively strong. One could respond to these worries by noting that Kant is here restricting himself to the analysis of ‘completely lawful constitutions and commonwealth’, where the legislator acts purely in accordance with principles of right. It is in *these cases only*, it could be objected, that Kant thinks judgment can be entrusted entirely to the legislator. But this objection is refuted by Kant’s own words. For Kant explicitly says that “even if the power of the state or its agent, the head of state, has violated the original contract by authorising the government to act tyrannically, and has thereby, in the eyes of the subject, forfeited his right to legislate, the subject is still not entitled to offer counter-resistance” (81). So even an unlawful a government as a tyrannical one, according to Kant, should not be subverted. Kant is making a much more general claim, then, about the justification of resistance and rebellion. It is right after the passage just cited that Kant introduces the

regress argument. So what could be behind this truly remarkably absolute stance on revolution?

I think that the perspective I have adopted in this chapter and the previous one offers an answer. The answer has to do with Kant's understanding of the kind of common will political society should be seen as embodying. "All right," he thinks, "depends on laws" (77). What we don't see him elaborate upon, however, is whether he thinks only particular laws (say, only the laws of governments) embody right. Since he thinks rightful laws cannot legitimately be resisted, we can suppose that he also thinks that there is 'right' to be found even in the laws of tyrannical governments. But what could a constitutional government and a tyrannical regime possibly share? The answer is that they are both institutions with a monopoly of power. And what his monopoly of power makes possible, Kant stresses, is the effective enforcement of rights. The difference between forms of government, in other words, is for him less significant than the difference between anarchy and state. The state alone is capable of enforcing rights uniformly and thus generating if not a perfect moral order, then at least the possibility of such an order. For Kant, in fact, the problem with the state of nature is not so much the ubiquity of violence but rather the moral disorder that characterises it. Without an institution capable of articulating and enforcing the rights specified by the moral law, there is no possibility of attaining any moral order.

If for Locke it is an expression of a divine plan, for Kant, then, the common will that political society embodies is a specific kind of moral order. The nature of such a moral order is for him specified by the universal moral law, from which rights, duties and obligations can be derived. The most fundamental things that this moral law requires is that the moral disorder of the state of nature be overcome. What the moral law establishes has to become clear and enforced. Political society makes this possible by permitting individuals to enter into juridical relations with one another. The moral law

requires that individuals set happiness aside and let themselves be governed by principles of right. What this moral law *demands*, in other words, is that ‘natural’ individuals become citizens. If observance of the moral law is the “common aim” of all citizens, we can see why for Kant revolution is not only always unjustified but even, in principle, incoherent. If the duty of individuals is to enter juridical relations with one another, then reverting, even if temporarily, to a state of anarchy cannot make any sense. Even a suboptimal political order (indeed even a tyrannical one!) is better than none, since it still represents a juridical system capable of enforcing certain rights. The reason why a citizen oughtn’t rebel against even a tyrannical government is not, then, according to Kant, because he doesn’t stand a chance of succeeding, or because overall it is best to put up with it; rather, it is because that is what *right* requires.²⁴⁹

(iii) John Rawls

I would like to turn, finally, to John Rawls. In Rawls’s work, one doesn’t find the kind of explicit discussion of the right of revolution that one finds in the writings of the founders of the social contract doctrine. Rather than rebellion or revolution, what Rawls addresses are the kinds of problems posed for a theory of justice by the practices of civil disobedience. It is not the possibility of seditious individuals or groups violently overturning a political order that attracts his attention, but rather the possibility that disgruntled members of society might lose any sense of obligation towards the political order and thus shirk from the duty of upholding principles of justice. It is in fact over the

²⁴⁹ I have here benefitted from the discussion in Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge, New York, Cambridge University Press, 1986), pp. 258ff. See also Katrin Flikschuh, ‘Reason, Right, and Revolution: Kant and Locke,’ *Philosophy & Public Affairs*, vol. 36, no. 4 (2008), pp. 375-404 and Christine Korsgaard, ‘Taking the Law into Our Own Hands: Kant on the Right to Revolution,’ in Andrews Reath et al., eds. *Reclaiming the History of Ethics: Essays for John Rawls* (Cambridge, Cambridge University Press, 1997), pp. 300ff. But see also Thomas Hill, ‘A Kantian Perspective on Political Violence,’ in his *Respect, Pluralism and Justice* (Oxford, Oxford University Press, 2000), p. 200–237.

course of his discussion of “Duty and Obligation” in Part II of *TJ* that we see Rawls elaborate a “theory of civil disobedience.”²⁵⁰ His purposes there are (1) to offer a definition of civil disobedience, (2) to distinguish it from what he calls “conscientious objection” and, most importantly, (3) to provide an account of the circumstances under which civil disobedience is justified. These purposes are certainly more modest than those of the social contract theorists treated above. Nonetheless, what Rawls does in setting out his arguments on civil disobedience is essentially recapitulate the social contract tradition’s take on the nature of political society and the relationship between the individual and political order. Rawls’s approach does not redefine the logic of that tradition but rather updates it, thereby inaugurating the justice-centred method that defines much of contemporary liberal theory.

A crucial difference between Rawls’s discussion of civil disobedience and the discussions of revolution I reported above is the much more modest scope of Rawls’s enterprise. Rawls is not concerned with what we might call the process of foundation and re-foundation of political orders. He does not start his discussion of obligation and disobedience by positing an anarchic ‘state of nature’ that individuals desperately want to escape. Rather than addressing every conceivable political order, he only focuses on the “special case of a nearly just society” (319). What he means by this is a society that, although for the most part well-ordered, also exhibits some serious violations of justice. Rawls also assumes that a state of near justice requires a democratic regime. As such, the issue he sets himself to resolve is merely that of the appropriateness of civil disobedience to legitimately established democratic authority (319). He refrains from considering the cases of blatantly unjust regimes, as well as from evaluating other regime types and other forms of dissent. As he interprets it, then, the problem of civil disobedience arises only

²⁵⁰ Unless otherwise stated, numbers in parentheses in this section refer to Rawls, *Theory*.

within a more or less just democratic state for those citizens who recognise and accept the legitimacy of the constitution. The latter – i.e. allegiance to the constitution order – is for Rawls a defining feature of a well-ordered society. For Rawls, then, civil disobedience is not situated in the interstices between ‘anarchy’ and order, but is rather all about a conflict of duties potentially faced by a democratic citizen: the conflict between the duty to comply with laws and duty to oppose injustice and defend liberty.

Rawls defines civil disobedience as “a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government” (320). Civil disobedience is a “public act” in the sense that it takes place in the “public forum.” It is not engaged in secretly, covertly, but rather always “openly with fair notice.” If it is public in this sense, then it must also necessarily be nonviolent in nature. Civil disobedience is a mode of address that engages with the moral reasons and principles of other citizens. “While it may warn and admonish, it is not itself a threat” (322). Rawls suggests that it is nonviolent also in a second sense. Although it is situated at the “outer edge” of the law, civil disobedience ultimately takes place within the “limits of fidelity to law.” It is not an expression of a rejection of a legal system but rather an affirmation of it. The proof of this is that someone who engages in it is willing to accept the legal consequences of her conduct. Finally, by describing civil disobedience as “political” Rawls has in mind two things. First, it is addressed to those who hold political power. Second, it is an act “guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally” (321). One does not engage in civil disobedience by appealing to non-political reasons, such as religious doctrine, or to self- or group-interests. Instead, what individuals or groups engaging in it always invoke is the “commonly shared conception of justice that underlies the political order.” A minority engages in civil disobedience when it believes that the majority is not living up to the shared conception of justice. It

can only express this kind of discontent by speaking in the shared language of justice. Being an appeal to the “moral basis of civic life,” civil disobedience is a purely political act.

When is civil disobedience justified? Rawls identifies three conditions for engaging in it (326ff). First, it should be resorted to only in the case of substantial and clear injustice. For Rawls, it should be restricted to serious infringements of the liberty principle and to blatant violations of the second part of the second principle, the principle of fair equality of opportunity. A minority whose basic liberties were violated or whose ability to vote or gain employment was obstructed would be justified to engage in civil disobedience. The second condition is procedural. Civil disobedience can only be resorted to once all the legal avenues available have been tried and proved of no avail. Civil disobedience is a “last resort,” not a standard way of expressing grievances. The third condition has to do with the overall opportunity of engaging in such acts of disobedience. If there are many groups that fulfill the first and second conditions and if they all engage in civil disobedience, the result is very likely to be the collapse of the well-ordered society and the breakdown of the efficacy of the just constitution. In such cases, minorities would have to engage in self-restraint, to guarantee the survival of the constitutional order. From a theoretical point of view, Rawls thinks that the ideal response to such a scenario would have to be a “cooperative political alliance of the minorities to regulate the overall level of dissent.” Such a political alliance would be able to balance the conflict of duties experienced by disgruntled minorities and make sure that the limits of civil disobedience are not transcended.

It is not my intention here to assess how well Rawls’s definition compares to that proposed by other theorists of civil disobedience. Nor is it my intention to gauge the extent to which Rawls’s definition can help us make sense of the actual historical practice

– from Thoreau to Martin Luther King – of civil disobedience.²⁵¹ My purpose, rather, is to relate the contractarian methodology Rawls adopts in TJ to his account of the justification of civil disobedience. As Rawls makes explicitly clear at various stages of his discussion, it is the “contract doctrine” that shapes that account. To understand the logic and justification of civil disobedience, he argues, it “is necessary to look at [it] from the standpoint of persons in the original position” (336). How would they interpret civil disobedience, and in what circumstances would they deem it justified? In the original position, Rawls thinks, there are two problems to be addressed. First, persons there must work out, once they have identified the principles of justice, guidelines for assessing the strength of the duty to comply with a just constitution. Second, they must find reasonable principles for dealing with unjust situations. Rawls’s thesis is that persons in the original position would define civil disobedience in the way he proposes and would constrain it by means of the three conditions outlined above. In the original position, persons wouldn’t ‘tolerate’ a form of dissent that is violent (i.e. infringes on the life and liberties of others), that takes covert and non-public forms and that appeals to non-political reasons (e.g. religious reasons) that it would be impossible for all citizens to accept. What they would accept, however, is a kind of mechanism society could resort to when addressing some of the imbalances or imperfections of a constitutional order:

The parties would adopt the conditions defining justified civil disobedience as a way of setting up, within the limits of fidelity to law, a final device to maintain the stability of a just constitution. Although this mode of action is strictly speaking contrary to law, it is nevertheless a morally correct way of maintaining a constitutional regime (337).

When thinking about the problem of dissent, Rawls’s contractors (echoing Kant’s) approach it purely from the perspective of what is necessary to ensure stability. What

²⁵¹ Thoreau and Martin Luther King are the two activists Rawls refers to in a footnote.

they realise is that the stability of a constitutional-legal order may at times depend on illegal measures.

For Rawls, then, “the constitutional theory of civil disobedience rests solely upon a conception of justice” (337). Civil disobedience can never be a product of disagreement over what justice requires but is rather always a phenomenon that is ‘internal’ to a theory of justice. The key idea here is that what civil disobedience always expresses is the dissenter’s ultimate “fidelity to law.” When used with “due restraint and sound judgment,” it is of indispensable value in rectifying the imperfections of a well-ordered society and strengthening its constitutional order. And this is precisely the reason, Rawls thinks, why a civil dissenter resorts to it. In extreme circumstances a dissenter breaks the law as a way of forcing the majority to return to the just path laid out by the constitution. Publicity and nonviolence are not strategic choices but rather ways to “give bond of one’s sincerity” (322). Rather than a revolutionary exercise, civil disobedience is in reality an exercise in conservation and self-restraint. Its aim is the recuperation of the ‘original’ meaning of the constitution. To achieve this, dissenters have to remain faithful to the law and restrain themselves from transcending the boundary that separates civil from uncivil remonstrance. Although this is certainly a delicate undertaking in practice, from the moral point of view that issue is relatively simple: interpreting civil disobedience from the perspective of a background moral consensus on principles of justice follows naturally from Rawls’s contractarian approach.

Again, to make sense of Rawls’s approach to civil disobedience I think it is useful to interpret it through the lens of the common-will perspective I have employed above. Rawls writes that “a theory of justice must work out *from its own point of view* how to treat those who dissent from it” (325; emphasis added). The point of view of a Rawlsian theory of justice, we might say, is the point of view of the common will. We can interpret the idea of ‘fidelity to law’ as a defining feature of Rawls’s understanding of

the common will. By remaining faithful to the law, a dissenting minority makes it clear that its intention is to “address the public’s sense of justice” (322). Rawls’s ‘public’ is a moral sphere in which a specific sense of justice prevails. A just democratic regime is one in which there is a “public conception of justice by reference to which citizens regulate their political affairs and interpret the constitution” (321). When inhabiting such a democratic public, citizens agree to set aside considerations of self- and group-interest and relate to one another purely in terms of the “common sense of justice.” According to Rawls, the contract doctrine allows us to make sense of this conception of political society. In the original position contractors set their interests aside and agree to certain principles of justice that are to govern their political relations. Affirming this sense of justice is precisely what political relations and institutions are ultimately there to do. We have seen that for Rawls this affirmation is also achieved by means of civil disobedience within the boundaries of fidelity to law.

In Rawls’s view, the logic of the contract also allows us to think in a principled way about the kind of principles of duty and obligation that should govern a just society. Since they define the institutional ties of citizens and how citizens relate to one another, these principles are an essential part of a conception of right. The principles he thinks persons in the original position would choose are those of “natural duty and obligation” (293ff). From the standpoint of a theory of justice, Rawls explains, the most important natural duty is the duty to support and further just institutions.²⁵² This duty has two parts. First, we have a duty to comply with and to do our share in just institutions when they exist and apply to us. Second, we have a duty to assist in the establishment of just arrangements when they do not exist (at least when this can be done without too great a cost to ourselves). If the basic structure of society is just, or as just as it is reasonable to

²⁵² Cf. Locke, *Second Treatise*, §18-19.

expect it to be in the circumstances, everyone, then, has a natural duty to do what is required of her. What makes it a ‘natural’ duty is the fact that each is bound irrespective of her voluntary acts, performative or otherwise (294). Another important natural duty is that of “mutual respect” (297). What this duty instructs us to do is to give reasons to others for our actions whenever the interests of others are at stake. As far as obligations are concerned, Rawls thinks that they all derive from the principle of fairness (301ff). We are not to gain from the cooperation of others without doing our fair share. Those who have submitted to certain restrictions of their liberty have a right to a similar acquiescence on the part of those who have benefitted from their submission. From his discussion of our natural duties and obligations, Rawls evinces the principle that “when the basic structure of society is reasonably just, as estimated by what the current state of things allows, we are to recognize unjust laws as binding provided that they do not exceed certain limits of justice” (308).

The importance of Rawls’s appeal to natural duties and obligations becomes manifest once he broaches the vexed question we have seen other theorists of the social contract grapple with: *who* is to say when circumstances are such as to justify civil disobedience? (341-2). For Rawls the answer is clear: it is individuals themselves who have to exercise such judgment. To the charge that this solution risks paving the way for anarchy, Rawls responds that “while each person must decide for himself whether the circumstances justify civil disobedience, it does not follow that one is to decide as one pleases” (341). When deciding such matters, one has to set partisan interests aside and deliberate solely in the public terms that are congruent with the common will. The lack of final authority does not mean that confusion is bound to ensue:

Equals accepting and applying reasonable principles need have no established superior. To the question, who is to decide? the answer is: all are to decide, everyone taking counsel with himself, and with reasonableness, comity, and good fortune, it often works out well (342).

Though it is individuals who deliberate on the possibility of resorting to civil disobedience, it is individuals of a very specific kind that Rawls has in mind: individuals who participate in a common will defined by norms of justice, reasonableness and fairness.

II. Hume on Revolution

That Hume is usually taken to be a ‘conservative’ political theorist is not surprising. In his writings he seems to treat the matter of revolution or “rebellion” very cautiously. On this issue, he says two things in particular. First, he says that obedience is in our nature, and that we therefore tend to feel uneasy about the collapse of any government. Conventions, enculturation and the public instructions of politicians all tend towards the safeguarding of order and peace. “Our interest is always engag’d on the side of obedience,” he says, and this “naturally gives us an uneasiness in considering such seditious and disloyal actions, and makes us attach to them the idea of vice and moral deformity” (545).²⁵³ We are morally invested in any status quo, even a tyrannical one, as long as it guarantees a certain degree of social stability. We sense that revolution tends to undermine faith or commitment in all governments, “causing universal anarchy and confusion among mankind,” and we know that revolutions are always followed by “convulsion” which lead to the irreparable subversion of peace and order. “In the ordinary course of human affairs, nothing can be more pernicious and criminal” than resisting the government (553). Though we may conceive of the origin of government as deriving from consent and the promise to obey, in reality over time loyalty to

²⁵³ Unless otherwise stated, page numbers in parentheses refer to David Hume, *A Treatise of Human Nature*, edited by L. A. Selby-Bigge, 2nd ed. revised by P. H. Nidditch, (Oxford, Clarendon Press, 1975 [1739-40]).

government becomes an independent moral principle, which sustains obedience without reference to any prior consent or promise. “Education” and the “artifice of politicians” play a major role in bringing about this independent moral principle, on the basis of which “all rebellion” is branded with a greater degree of guilt and infamy” (546). This is a fact that should be welcomed, since it strengthens stability, rather than regretted, Hume thinks.

His second observation concerns the possibility of theorising revolution normatively. There certainly is, he thinks, a “general rule” suggesting that revolution against government is permissible in cases of “enormous tyranny and oppression” (563). But this sensibility is dictated simply by “common sense” and the “practice of all ages.” Hume thinks it is futile, if not “impossible,” to turn to philosophy or law when seeking out “particular rules” by which we may assess whether resistance is lawful or not. It is “impossible” to submit the matter to precise philosophical scrutiny or hope for an unambiguous philosophical resolution. A tyranny that though oppressive still meets some basic interest of its population – a ‘mild’ tyranny, let’s say – is not necessarily one whose overthrow philosophy is in a position to advocate. All one can do when it comes to thinking about revolution is weigh the advantages and disadvantages of government. Though this cost-benefit analysis is very far from being an easy undertaking, it is not the kind of undertaking for which philosophy is indispensable. It should be noted, finally, that Hume’s objective in appealing to cost-benefit analysis in his discussion of revolution is to further *strengthen* the tendency to attribute independent moral validity to loyalty. Very few instances of particular oppression, he thinks, will be able to overshadow the indisputable advantages that derive from the “common rule requiring submission” (554). As with Montaigne before him, then, it seems as though Hume’s scepticism about the powers and political relevance of reason feeds a profoundly conservative disposition, which prizes the perpetuation of the status quo over any drive towards its amelioration.

However, if my reconstruction of Locke's, Kant's and Rawls's arguments above is correct, we can I think see in what sense a radical interpretation of Hume's thinking on revolution becomes available. Although (in some cases) it does open up normative spaces for the justification of dissent or revolution, the social contract perspective is one that overall seems to be designed with the purpose of singling out precisely the *justification* of dissent as the central normative issue. Dissent and revolution are not ordinary 'empirical' features of the political landscape; they are, rather, moral phenomena that require principled regulation. The contract doctrine's proposal consists in endowing society's common will with the responsibility of figuring out what these principles are. It is the "point of view" of the common will that settles these moral issues.

Once we appreciate the difficulties involved in identifying – let alone constituting – a common will in a complex, diverse society, the limits of contractarian approach become manifest. Neither God (Locke) nor justice (Rawls) can be of much help in a society in which different religions and atheists seek terms of coexistence and in which individuals' and groups' conceptions of what is reasonable or fair differ. From the perspective of an atheist minority or that of a group whose conception of justice is deemed 'unreasonable' by the majority, the requirement of drawing on the moral resources of the common will when justifying dissent or revolt is a very problematic one. So even though it may very well be the case that the common will may sometimes (as it does in Locke and Rawls) will resistance and rebellion in principle, the key point is that whatever that will does not will is automatically ruled out. In Kant this reasoning is taken to its logical conclusion. What is particularly interesting about the perspective of the common will is that its response to the 'unjustified' disobedient is not necessarily that she is 'wrong' but that what she is attempting is 'incoherent' or 'contradictory', since one cannot will x and non-x at the same time.

I think that by rejecting the logic of the social contract Hume is in effect rejecting the approach to revolution that comes with it. As we've seen in Chapter 4, political society, for Hume, is a product of shared interests. It is a cooperative venture for mutual advantage. Government becomes necessary only once the size (and wealth) of society increases to such an extent that cooperation starts to break down. Once it is established, it continues to draw its justification, ultimately, simply from its ability to cater to the interests of the population. Hume's basic, reiterated claim is that these interests will tend to side with authority, in the sense that the interest all members of society have in the order and stability that only a government can provide will tend to be obvious to them all. But Hume's claim is a primarily *empirical* claim. For Hume, the matter comes to be framed in terms of a cost-benefit analysis: "We ought always to weigh the advantages, which we reap from authority, against the disadvantages" (554). With the exception of cases of egregious forms of tyranny, this cost-benefit analysis will side with obedience, Hume avers.

There is no common will, however, or set of categorical rights to which one may appeal to resolve the matter at a theoretical level. Philosophy, he thinks, does not have the tools to come up with fixed principles capable of settling at an abstract level the matter of which revolutions are justified and which are unjustified (563).²⁵⁴ It is indisputable that, as a matter of fact, people actually do have a 'right' to revolt, if by that we mean that they have a *liberty* to do so. No government, no matter how absolute, can completely strip them of such liberty. The question, then, is purely a matter of whether they think that the benefits outstrip the costs. Different interests and perspectives will engage one another on such matters, and it will be the kind of agreements and conventions that come to be thus established that will offer the final verdict. There is no

²⁵⁴ See also Richard H. Dees, 'Hume and the Contexts of Politics', *Journal of the History of Philosophy*, vol. 30, no. 2 (1992), p. 223.

need, in Hume's account, to presume that a normative consensus over what constitutes a right to revolution exists, or has to exist. As an empirical matter, the arguments for stability will tend to win over a vast majority of the population. I believe it is tempting to argue that Hume feels the need to stress, repeatedly, the importance of obedience precisely because he realises how corrosive his interest-based account of political society is of all attempts to ground the latter in more solid foundations.

I think it is at this stage of the discussion that one can appreciate the true nature and significance of a concept that is central in Hume's political thought but that I have purposively not yet treated. This is the concept of "opinion." Opinion, Hume writes in his essay "Of the First Principles of Government," is the only foundation of political society:

Nothing appears more surprising to those, who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few; and the implicit submission, with which men resign their own sentiments and passions to those of their rulers. When we enquire by what means this wonder is effected, we shall find, that, as FORCE is always on the side of the governed, the governors have nothing to support them but opinion. It is therefore, on opinion only that government is founded; and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular.²⁵⁵

Appealing to the idea of opinion is another way for Hume of referring to the idea of political society as the product of shared interests. The best way to think about Hume's use of the concept of opinion, then, is to contrast it to the idea of will.²⁵⁶ The idea of will presupposes unity and purpose. The common will of the social contract speaks for the ideal of a moral community united in its pursuit of the "common aim" of justice, as we've seen Rawls suggest. The political society of the common will is one in which the

²⁵⁵ David Hume, 'Of the First Principles of Government', Eugene F. Miller, ed. *Essays, Moral, Political and Literary* (Indianapolis, IN, Liberty Fund, 1987 [1742]), p. 32.

²⁵⁶ Cf. F. A. Hayek, *Law, Legislation and Liberty* (London, Routledge, 1982), p. 88.

subject of interest is absorbed by the subject of right; it is a shared conception of right that guides the ‘sovereign’ and motivates individuals. The political society of shared interests, on the other hand, presupposes no such unity or common purpose. Individuals and their individuality are never absorbed by the common will. They of course engage in shared projects and cooperative endeavours; but not because they all see these as reflections of what the common will requires but only because each one of them, from her own point of view, see their interests satisfied by such activities. There is no strong “common aim,” in other words, in a political society regulated by opinion. And, consequently, government can never be conceived as the incarnation of such a common aim.

Since it lacks purposiveness and unity, the power of opinion can only be a “negative power,” as F. A. Hayek points out. It does not possess the positive, justificatory power of the common will of the social contract, but only the negative “power of *withholding* allegiance.”²⁵⁷ From Hume’s point of view, then, what governments do is take collective decisions that they can only *suppose* to be in line with opinion. Individuals then ‘consult’ their interests and decide whether those decisions are worthy of allegiance or not.

Just how radical Hume’s approach is can I think be gauged if we compare him to Etienne de la Boetie. La Boetie’s *Discourse of Voluntary Servitude* addresses a very “mysterious” phenomenon: how does one account for the fact that a tyrant, who is just a single individual, can command the obedience of an entire country?²⁵⁸ His answer to this question – that this “servitude” is “voluntary” – marked a revolution in political thinking. In the sixteenth century it was common to interpret political authority as a function of

²⁵⁷ Ibid., p. 89; emphasis added.

²⁵⁸ Etienne de La Boetie, *The Politics Of Obedience The Discourse Of Voluntary Servitude* (CreateSpace Independent Publishing Platform 2008 [1548]), p. 40.

the extraordinary powers of the monarch or an expression of a divine will. For La Boetie, on the other hand, it rests purely in the consent that those subject to it decide to give it. Obedience to authority, for La Boetie, is no longer, then, part of the natural or divine order of things, but rather always something contingent, like a garment that subjects can *choose* or not to wear. This choice, La Boetie observes, is hampered by “fascination” and “habit,” that is, by enculturation. But no active effort on the part of the tyrant to inculcate devotion to her rule can dissolve the natural liberty of man. Individuals who remain unconvinced by the laws and justifications of the tyrant have one very simple act to resort to: the withdrawal of their consent. Political authority rests on nothing else than what we decide to erect for its sustenance. La Boetie’s answer to the consolidation of the French state and the numerous popular revolts that this process engendered was a radical one: what it suggested was that political power is ultimately unfounded.²⁵⁹ According to Laudani, this is what renders La Boetie’s *Discourse* a watershed moment in the history of political thought.

The similarities between La Boetie’s reasoning on authority and allegiance and Hume’s are striking. We could borrow from Hume and say that the main thesis La Boetie seems to be defending in the *Discourse* is that “the governors have nothing to support them but opinion.” Like La Boetie, Hume too thinks that the political power is ultimately devoid of philosophical foundations. For Hume, political society is unfounded, in the sense that it has no normative basis. Its legitimacy is contingent on opinion, with legitimacy here meaning nothing more than ‘not rejected in fact’. The key consideration when thinking about revolution is whether the cost to people of a particular regime is not so great as to make anything other than acquiescence worthwhile.²⁶⁰

²⁵⁹ Laudani, *Disobedience*, p. 39

²⁶⁰ On acquiescence in Hume, see Hardin, ‘Social Yes; Contract No’.

I would like to conclude with one final consideration. It has to do with what we might call the absolute primacy of political society that one finds in the social contract tradition. Following the act of contracting, the absolute freedom of the individual in the state of nature dissolves into the common will of the instituted ‘sovereign’. In Kant one finds perhaps the most extreme example of this logic at work. Since entering into the domain of right requires the presence of a state with a monopoly of violence, we have seen that for Kant rebellion against any state is ruled out. Even a suboptimal political order, in other words, is for Kant *always* better than a condition of anarchy. This is an idea that can be generalised. Dissent, disobedience, resistance and revolt, we have seen, are either generally ruled out (Kant, Hobbes), or appealed to as a way of stabilising political society (Rawls, Kant), or resorted to *solely* with the aim of returning to a *political* condition that is more rightful (Locke, Kant, Rawls). In the social contract tradition, in other words, dissent is always both exceptional as well as institutional (i.e. its purpose is to ‘institute’).

But it is simply unclear why we should adopt such an absolutist conception of political society. Circumstances, it seems to me, matter. In certain circumstances – such as contemporary Somalia – ‘anarchy’ may work better than any available political society.²⁶¹ There is even evidence of societies living for centuries *deliberately* in a condition of ‘anarchy’, thereby escaping the state-building efforts of imperial powers.²⁶² From the perspective of the common will, the absence of a constitutional or centralised institutional framework is a predicament that society has to transcend. But from a Humean perspective I think we can make perfect sense of these instances. There is nothing inevitable or necessary for social life in political society, according to Hume. It is conditions on the ground and not the categorical moral demands of a common will that

²⁶¹ Leeson, *Anarchy Unbound*, Part IV.

²⁶² James C. Scott, *The Art of Not Being Governed* (New Haven, CT, Yale University Press, 2012).

make resort to political organisation appealing. It is the ability to cater to individuals' interests and not the fulfillment of the aims of the common will that is the key discriminating variable. If, as Peter Leeson argues, a stateless Somalia can do better than a Somalia ordered in state form, then so be it.

Conclusion

Rather than a 'prophet of the counter-revolution' Hume is a potentially very radical, even subversive thinker. We can only appreciate this and thus move away from standard interpretations of his political thought if we compare his account of political society with that offered by social contract theorists. Political society is not founded on the will of God or a conception of right. It is a product of shared interests and is sustained entirely by opinion. It is sustained purely, in other words, by what people *actually* think about it.

Once again, we therefore see that a non-sectarian liberalism, a liberalism without liberals, finds in Hume's political thought an obvious support. Hume doesn't see the need for resorting to the idea of a foundational consensus on the moral purpose of political society. Political society does not embody a common will and it is not by appealing to a common will that its legitimacy is appraised. It is rather the much more modest, non-sectarian idea of acquiescence that gains centre stage.

But does this focus on shared interests and de facto acceptance of political rule deplete political society of any moral content? Is there any room for moral criticism in such an account? It is to this matter that I now wish to turn.

Chapter Six

Hume on Pluralism and Moral Deliberation

According to social contract theory, the standard on the basis of which political life is to be evaluated and regulated can be extracted from a political society's common will. Hume's critique of the social contract, which I have outlined in the previous two chapters, raises the question of whether Hume thinks there are *any* standards that can be appealed to. This question reconnects our discussing to a common way of interpreting Hume. Hume is generally thought to be a sceptic or a relativist, a thinker, in other words, who does not admit the possibility of appealing to external standards of judgment when moral and political matters are being deliberated.

In this chapter I argue that this standard interpretation is mistaken. It is not, I suggest, the absence of any objective moral standards that Hume defends. Rather, his point is ultimately one – going back to an idea introduced in Chapter 1 – about the authority of reason. To see in what sense this is so, we need to turn to Hume's understanding of the human moral landscape. For Hume, morality is not the product of reasoned agreement, nor is it about compliance with an external standard validated by reason. Hume thinks morality is a 'convention'.²⁶³ According to his account, it is *within* conventions that conceptions of right and obligation arise. Since conventions vary, these conceptions vary as well. And they all have authority for those 'inhabiting' those conventions. By attributing to a putative common will the authority to fix the standard for moral and political evaluation, the contractarian approach fails to address this

²⁶³ Cf. David Gauthier, 'David Hume, Contractarian', *The Philosophical Review*, vol. 88, no. 1 (1979), pp. 3-38.

authority problem. Hume, on the other hand, is able to offer an account that takes this problem seriously.

I develop the argument as follows. In Section I, I offer an account of Hume's understanding of pluralism. In Section II, I reject the idea, put forward by John Gray, that Hume's Enlightenment-based, universalist understanding of human nature prevents him from taking pluralism seriously. I argue that this charge is based on a misinterpretation of what Hume takes human nature to mean. In Section III, I address the worry that Hume's thinking is hopelessly relativistic. Once again, I reject this challenge. Hume's point, I argue, is not that moral life lacks authority, but rather that this authority is fragmented.

I. Hume's Pluralism

Numerous are the passages in his writings in which Hume seems to marvel at the extent to which human practices, customs, laws and judgments vary across time, space and even from person to person. A cursory look around, and one seems compelled to conclude that diversity is the natural condition of man.

In the essay "Of the Standard of Taste," Hume asks us to consider just how varied judgments of taste are across time and space. "The great variety of Taste, as well as of opinion, which prevails in the world is too obvious not to have fallen under every one's observation."²⁶⁴ Even among one's narrow circle of acquaintances, he observes, this variety is impressive. Enlarging one's view to encompass "distant nations and remote ages" cannot but render this feature of the human condition even more astounding. In fact, Hume argues, diversity in taste is something that "on examination" is actually more pervasive than might seem at first. This is because language necessarily masks

²⁶⁴ David Hume, 'Of the Standards of Taste', in E. F. Miller, ed. *Essays Moral, Political, and Literary* (Indianapolis, IN, Liberty Fund 1985 [1742]), pp. 465–487.

disagreement. Two persons in conversation might agree that, say, Homer's *Odyssey* is "wonderful"; but this convergence in judgment is due to the fact that they have to communicate with one another using a certain language. There is nothing that guarantees that both mean the same thing when they use the word "wonderful." According to Hume's moral theory, the diversity that characterises the domain of taste is reflected in the domain of morals. This is because Hume thinks that it is taste that is at the origin of sentiments of beauty and deformity as well as of vice and virtue.²⁶⁵ If taste varies across time and space, so do moral judgments.

Nowhere does Hume elaborate on this point as emphatically and eloquently as in the essay "A Dialogue." A central claim he wishes to defend is one about the ineluctable "uncertainty of all [...] judgments concerning characters."²⁶⁶ Too deep and pervasive seem the disagreements over what characters and actions are to be judged virtuous, especially if one considers societies or cultures distant from us in time. If one adopts an impartial view, one cannot but conclude that "fashion, vogue, custom, and law [are] the chief foundation of all moral determinations." As long as these continue to evolve and change, moral judgments will evolve and change with them. One may decide to ignore this 'uncertainty', have "no indulgence for the manners and customs of different ages" and judge morally superior whatever happens to be most familiar; one would have to also acknowledge, however, that "there are no manners so innocent or reasonable, but may be rendered odious or ridiculous, if measured by a standard, unknown to the persons."²⁶⁷ "All these artifices," Hume observes, "may be retorted on you." What counts as morally 'civilised' or 'barbaric' is relative to the point of view one adopts. No moral perspective can hope to be exempted from being viewed as 'barbaric' by some distant 'others'.

²⁶⁵ David Hume, 'An Enquiry Concerning the Principles of Morals', in Hume, D., *Enquiries*, ed. by L. A. Selby-Bigge and P. H. Nidditch, 3rd edition, (Oxford, Oxford University Press, 1975 [1751]), p. 294.

²⁶⁶ Ibid., p. 333.

²⁶⁷ Ibid., p. 330.

Nonetheless, Hume thinks there *is* a way of reconciling differences. The search for a standard that can help resolve disagreements and confusion is, he thinks, not a chimerical undertaking. This reconciliation can be achieved with the help of philosophy, that is, by setting aside the world of ‘appearances’ and “tracing matters [...] a little higher, and examining the first principles, which each nation establishes, of blame and censure.”²⁶⁸ The origin of moral distinctions is traceable to a set of universal principles. There is no way to improve on Hume’s metaphor:

The Rhine flows north, the Rhone south; yet both spring from the *same* mountain, and are also actuated in their opposite directions, by the *same* principle of gravity. The different inclinations of the ground, on which they run, cause all the difference of their courses.²⁶⁹

Moral difference or disagreement, in other words, is a product of external circumstances, or, as Hume says, “fashion, vogue, custom, and law.” Although “the principles upon which men reason in morals are always the same,” they reach different “conclusions” because of the influence of environmental circumstances, which are necessarily different in different times and places.

But what are these principles that remain invariant across time and space? According to Hume, the “one general foundation” of morals is the tendency to associate virtue or moral excellence with what is “*useful* or *agreeable* to a man *himself*, or to *others*.”²⁷⁰ What is useful or agreeable varies in different places and at different times; in war, for example, what is considered virtuous will be very different from what will be the case during peacetime. The basic moral orientation, however, is determined by a fixed set of universally valid principles.

²⁶⁸ Ibid., p. 333.

²⁶⁹ Ibid.

²⁷⁰ Ibid., p. 336; emphasis in original.

Faithful to the Enlightenment's aspiration of improving the human condition by means of reason, Hume thinks that by getting the method of enquiry right one can contribute to moral progress among individuals and peoples. This method, in his view, is the philosophical method, which consists in “tracing matters [...] a little higher” whenever phenomena seem conflict or be in a state of confusion in order to designate general or universal first principles that cut across differences. The moral philosopher operates, according to Hume, like an anatomist rather than a painter. Both are concerned with the human body, but whilst the painter is engaged in giving “his figures any graceful and engaging attitude or expression,” the anatomist has an “exact knowledge of the parts, their situation and connexion.” An anatomist, he observes, is admirably fitted to give advice to a painter, since one can scarcely paint with “elegance or correctness” if one is not familiar with the body’s anatomy.²⁷¹ Although a philosophical enquiry into human nature may seem “cold and unentertaining,” it actually has a direct bearing, Hume thinks, on *practical* morality, for “it may render this science more correct in its precepts, and more persuasive in its exhortations.”

Though remarkably capacious, then, Hume’s pluralism is not a limitless pluralism. It assumes two things: first, that human nature has a fixed content and, second, that reason can help us uncover that fixed content and express it in the form of general principles. As the fluvial metaphor above made clear, pluralism for Hume does not go all the way down, as it were; rather, he thinks it is a product of the different circumstances in which different peoples live. People judge the same things differently in different times and places because that is what different external circumstances lead them to do. But that diversity is, we might say, ‘rational’, in the sense that it can be rationally

²⁷¹ Hume, *Treatise*, p. 621.

explained. It is the task of philosophy to uncover the invariant structure of moral variations.

II. Pluralism, Human Nature and Moral Deliberation

Hume's moral theory has been the object of two lines of criticism. These two challenges pull in two diametrically opposed directions. The first challenge we might think of as the anti-Enlightenment challenge. According to critics like John Gray, Hume's project of developing a moral science is one that participates too intimately in the failed Enlightenment project.²⁷² Hume's universalistic ambitions founder in the face of a moral universe characterised by what has come to be known as radical "value-pluralism." No philosophical project can hope to reconcile or transcend this radical pluralism, and it is only an Enlightenment superstition to suppose that such an end could be attained. Although Hume is certainly to be praised for having seen more clearly than most Enlightenment thinkers how much moral and ethical judgments vary across time and space, his project must ultimately be designated as a failure. Taking pluralism seriously means abandoning the hope of a philosophical reconciliation. For Gray and others, relinquishing the Enlightenment's heritage has meant adopting a much more 'agonistic' approach to moral and political enquiry. Conflicts of values are pervasive and are here to stay; the sole response available is to think of how such conflicts can be mediated and compromises fleshed out. As Isaiah Berlin first intimated, for such a project it is to thinkers of the "*Counter-Enlightenment*," like Vico or Herder, that one must turn for illumination.

The second challenge points in the opposite direction. The problem with Hume is not that his thought is permeated by the dogmatic universalism of the Enlightenment,

²⁷² John Gray, *Isaiah Berlin* (Princeton, Princeton University Press, 2013), p. 46.

but rather that it actually fails to yield universal standards. Hume's moral science *describes* the nature of morality but seems unable to yield anything *prescriptive*. The limits of Hume's science are evident in "A Dialogue," where Hume refrains from coming down on the side of one moral practice over another, but rather hovers above such differences and appeals to a principle of human nature that is as general as it is vacuous. Though being an 'anatomist' may certainly be a pursuit of some value, being a moral theorist is about offering principles on the basis of which it becomes possible to discriminate moral from immoral practices. It is in other words about painting some practices in colours that are more appealing than others. The 'is' of human nature is generally irrelevant for the 'ought' of judgments concerning propriety. Explaining what a moral judgment *is* does not get us closer to figuring out how to discriminate moral and immoral characters and actions. Hume's application of the experimental method of reasoning to moral subject is valuable in allowing us to gain a better appreciation of how morality is determined by human nature. But like Charles Darwin's enquiries into the evolution of moral sentiments in *The Descent of Man* it is of very limited relevance to the main task of moral philosophy, which is that of prescribing universal rules.

I think both objections fail. And understanding why they fail is I think very important, since it helps us gain a better appreciation of the nature and relevance of Hume's moral science not only on its own terms but also for the broader project of a liberalism without liberals. I'll start by considering the agonistic objection. From an agonistic perspective, we've seen, Hume's moral and political thought is to be faulted for sharing the rationalism of the Enlightenment project. Symptomatic of this is Hume's belief that 'human nature' can be made the object of a philosophical treatise, that is, of systematic, rational scrutiny. This presupposes a degree of fixity in the nature of man that only Enlightenment hubris could seriously countenance. The Enlightenment's view of man ought to be replaced, the agonist would counter, with a "view of man as inherently

unfinished and incomplete, as essentially self-transforming and only partly determinate, of man as at least partly the author of himself and not subject comprehensively to any natural order....a view of man in which the idea of a common or constant human nature has little place, one in which the capacity of man as a supremely inventive species to fashion for itself a plurality of divergent natures is central.”²⁷³ Hume’s attempt to solve a number of moral and political controversies by “march[ing] up directly to the capital or centre of the sciences, to human nature itself”²⁷⁴ can only be a misguided one. Beneath the complexity and diversity of cultural manifestations, there is no constant human nature to be found. And presuming that such a fixed human nature exists can only lead to perverse political outcomes in a culturally heterogeneous world. It is only once we reject the view of man as “a natural object in a natural world, subject to natural laws and intelligible in his behaviour and nature by reference to those laws” that we become cognizant of new political possibilities for a radically pluralistic social world.

Now, I think a first issue that must be critically assessed is the relationship Gray supposes between assuming a degree of fixity in human nature across time and space and the political closing down of spaces of cultural diversity. As I noted above, what is remarkable about Hume is the seemingly unbounded degree of toleration with which he responds to unfamiliar ways of life. In “A Dialogue,” we’ve seen, he unhinges all moral certainties by pointing out the extent to which what is ‘civilised’ and what is ‘barbaric’ is relative to where one happens to be culturally situated. One has to be very careful, Hume stresses, in applying moral standards across cultural divides: “Would you try a Greek or Roman by the common law of England?” As long as social and environmental circumstances differ, moral standards will differ. Effacing this diversity is beyond human

²⁷³ Gray, *Isaiah Berlin*, pp. 45-6. Gray is here recounting what he thinks is the view of man underlying Isaiah Berlin’s political thinking.

²⁷⁴ Hume, *Treatise*, p. xvi.

means. Diversity is a permanent feature of human reality. Hume's writings are replete with warnings about the tendency to minimise the extent to which customs and laws differ. Whenever an obvious conceptual solution capable of tidying up the complex human moral landscape presents itself, Hume is quick to point out why we should be sceptical of its ability to help us make sense of all things moral. "Chance," for example, is something that has a pervasive influence over human affairs but that we also cannot hope to systematise philosophically.

Hume's belief that 'human nature' is something constant enough to be the object of philosophical scrutiny, then, is not accompanied by an unwillingness to account for the true extent to which moral judgments vary across time and space. This consideration raises the question of what Hume has in mind when he appeals to human nature. The agonist's concern is, after all, far from unwarranted. Human nature is a concept that has historically played an important function in fixing the boundaries between the civilised (i.e. that compatible with whatever human nature was thought to consist in) and the barbaric.²⁷⁵ Human nature, as Gray rightly points out, has tended to be an exclusionary conceptual and political device.

But I think that one can extend this concern to include Hume only if one misunderstands the function that the notion of human nature plays in his moral science. It is not to identify moral practices that stand beyond the pale that Hume resorts to that notion. Rather, what an enquiry into human nature that yields the conclusion that moral virtue depends on a useful/agreeable principle makes available is, first, the ability to make sense of moral diversity and, second, a way of thinking about how moral controversies may be solved. The appeal to human nature in Hume is a way of identifying possible bridges between cultural islands rather than identifying those islands

²⁷⁵ Sankar Muthu, *Enlightenment Against Empire* (Princeton, NJ, Princeton University Press, 2003).

populated by the civilised and those populated by the barbarians. Hume's proposal is to deal with the necessity of identifying standards for moral judgments by 'tracing matters a little higher', at a level, that is, where some degree of common ground can be identified by all parties involved in the controversy. An inter-cultural dialogue stuck in the quagmire of mutual incomprehension can (possibly) find some sort of solution if it is recognised that the 'principles upon which men reason in morals are always the same'. There is of course no guarantee that this solution will succeed or even that the principle will be acknowledged by all parties. This, however, is a distinct matter. The important point is that human nature is appealed to by Hume as a way of making sense of the bases of inter-cultural dialogue. As such, the function of such an appeal is *inseparable* from Hume's commitment to pluralism. Hume's point about a common human nature is about opening up spaces for conversation rather than closing them down in the pursuit of unity.²⁷⁶

But an agonist need not necessarily reject this interpretation. It may very well be the case, she might acknowledge, that Hume's pluralism is uncompromising. The problem, however, rests in his belief that conversation is always in principle possible. The problem, in other words, is that Hume's enquiry into human nature supposes that human behaviour is always intelligible. Human behaviour is capable of being illuminated by first principles uncovered by means of rational enquiry. This is the key Enlightenment insight, which has been rehearsed most vociferously in recent times by theorists of 'rational choice'. According to such theorists, human behaviour can be explained by thinking about what the rational choice an individual would take in a certain set of circumstances would be. Human action is rational, strategic action, aimed at maximising whatever good the individual happens to privilege. The logic of rational choice, Gray

²⁷⁶ For a very useful reflection on the use of "nature" in Hume, see Don Herzog, *Without Foundations: Justification in Political Theory* (Ithaca, NY, Cornell University Press, 1985).

observes, is one that all contemporary liberals – Kantians or Millians, Lockeans or Hobbesians – have made their own. But this clearly cannot be anything else than a very impoverished account of human action and rationality. Rational choice can make sense of some kinds of behaviour (e.g. market interactions) but cannot account for the entire human social reality. Most importantly, Gray points out, in a complex, pluralistic world rationality is not always capable of ordering the various options, values and goods in terms of preference and thus select the ‘optimal’ one. It is “radical choice,” and not rational choice, that characterises the human condition.²⁷⁷ And what characterises radical choice is precisely the fact that it is difficult to render it intelligible. Under such circumstances it is not the possibility of conversation that should exercise the political theorist’s mind but rather the necessity of working out rough, messy compromises.

What is interesting about this possible agonistic objection to rational choice is that it is in fact in Hume’s writings themselves that it can find robust corroboration. Although Hume political thought has in recent years been interpreted by a number of commentators as a precursor to game theory,²⁷⁸ Hume’s account of human motivation is difficult to reconcile with what Gray would call the “rationalism” of game theorists. Although as we’ve seen he makes much of the role of interest in his account of justice, Hume in the same *Treatise* also writes that “tho’ it be rare to meet with one, who loves any single person better than himself; yet ’tis as rare to meet with one, in whom all the kind affections, taken together, do not over-balance all the selfish.”²⁷⁹ As David Miller observes, Hume offers us “a pluralistic conception of human nature, in which a number of irreducibly distinct forces content within each breast, self-interest being powerful but

²⁷⁷ Gray, *Isaiah Berlin*, pp. 44-6.

²⁷⁸ Hardin, *David Hume*.

²⁷⁹ Hume, *Treatise*, p. 487.

by no means predominant.”²⁸⁰ That human beings generally seem to act on the basis of limited or partial benevolence is not something Hume derives from a solipsistic conception of man but rather from observing the intrinsically *social* framework every individual human being is embedded in from birth. Each man is taken by Hume as standing in a network of social relationships and proportioning his benevolence to the strength of all his different social ties. And it is precisely because he is a social creature that he requires rules of justice to constrain him. In society man starts comparing himself with others and develops a want for more goods than he has available. Ambition, greed and resentments arise in the heart of man precisely because he is an intrinsically social creature.²⁸¹ Hume’s psychological realism provides as good a corrective to the rational choice reductionism as any.

The economist Robert Sugden has perhaps delineated more effectively than any other commentator the chasm that separates Hume’s account of human motivation from the rational choice orthodoxy that prevails amongst contemporary economists. The central concept in rational choice theory, Sugden notes, is the idea of preference. An individual is modelled as having a number of preferences for different goods, and that individual’s preference ordering describes her ends. Rational choice is about the activity of instrumental rationality in selecting actions on the basis of preferences orderings. But for Hume rational choice theorists operate on the basis of an inaccurate picture of the human mind. The idea that human deliberation can be modelled as a choice between fixed preferences – with preferences modelled as a set of propositions – is one that he rejects. As Sugden notes, Hume’s picture of the human mind is dynamic, not static. He considers mental items not as a stock of propositions but as transitory states of

²⁸⁰ David Miller, *Philosophy and Ideology in Hume’s Political Thought* (Oxford and New York, Clarendon Press, Oxford University Press, 1981), p. 105.

²⁸¹ Ibid., p. 108.

subjective experience that come into and go out of existence as the result of psychologically-explicable operations of the mind.²⁸² This is a depiction of the human mind that is much messier than that with which rational choice theorists operate. But Hume doesn't sacrifice difference and complexity at the altar of systematicity. Hume's account is empirical – i.e. consonant with reality as it is observed and experienced – in a way rational choice theory is not. Herein, Sugden thinks, lies Hume's superiority. And it is for this reason that the temptation to interpret Hume as a progenitor of the rational choice tradition is, he thinks, one that should be resisted.

But Hume does, ultimately, think that the logic of human behaviour can be decoded by means of rational enquiry. He evinces from his empirical-cum-philosophical study of human nature a set of principles or laws that renders the social and moral life of man rationally intelligible. This basic intelligibility, we have seen, makes it possible for individuals and people to reach across cultural divides and designate a shared language on the basis of which productive moral engagement becomes a possibility. But this mutual intelligibility need not depend on a reductionist view of human motivation, of the kind rational choice presupposes.

So what does Hume identify as the basis for this common language? I think that what Hume presupposes is the idea that *human behaviour is amenable to rational explanation*. There is a rationality to human action that derives from the fact that humans act because they are motivated to act in a certain way. Humans are moved to act because they are in pursuit of certain ends. It is to the extent that this is the case that human behaviour is intelligible. This seems to me to be both a very thin account of human motivation as well as a relatively uncontroversial one. It is thin in the sense that it doesn't assume that choice originates from a specific motive (e.g. utility maximisation) or involves just one

²⁸² David Sugden, 'David Hume's *Treatise of Human Nature*', *Topoi*, vol. 27, no. 1-2 (2007), p. 155.

faculty of the human mind (e.g. rationality). Different cultural contexts will priorities certain ends and certain faculties. But it will usually be possible – once the social and moral features of the terrain will have been scrutinised in depth – to make sense of what individuals are doing there. When faced with a strange cultural manifestation of a distant ‘other’, a verdict of unintelligibility should be taken as a stimulus to pursue the enquiry more carefully rather than the end of the story. This seems to me to be also less controversial than the possibility Gray countenances. Good historical and anthropological enquiries into the lives of distant others manage to endow those lives with a reasonable degree of meaningfulness. It is only when faced with extreme social phenomena that the meaning behind certain actions seems difficult to recover. Once the variety of customs is acknowledged, the proposition that individuals tend to be moved by certain ends and resort to certain means to attain them is one that can be generalised comfortably. This is nothing more and nothing less than what I take Hume to be proposing. The social scientist can make sense of human behaviour; and if the scientist can succeed at the task, so can the ‘participants’ in the study themselves.

III. Authority and Moral Deliberation

It is now time to take up the second charge. This second charge is about the inability of Hume’s moral theory to yield a universal standard for moral assessment. What is at issue is whether Hume’s moral theory is relativistic. Far from it being unrelated, taking on this charge allows us in fact to complete the analysis of moral deliberation pursued in Section II above. If in Section II I related Hume’s anatomical study of human nature to moral engagement across deep cultural divides, what I now want to suggest is that by responding to the relativist charge one can appreciate the *kind* of engagement that Hume thinks a plural social world requires.

To address this second challenge it is useful to contrast Hume's approach to that recently proposed by Amartya Sen.²⁸³ Sen seeks to defend an approach to justice that in his view accommodates pluralism more successfully than Rawls's celebrated theory. Since he draws explicitly on Adam Smith's moral philosophy, it is not surprising to see Sen rely on a number of Humean themes. These Humean themes are generally brought into his argument when he thinking of ways to reconcile justice with pluralism in a way he thinks Rawls's theory comes short.

Sen's key proposal is to distinguish between what he takes to be the two dominant ways in which justice has been theorised in the history of political thought, "transcendental institutionalism" and "realization-focused comparison" (5ff). The former is defined by two key features. First, it devotes all its attention to what it identifies as perfect justice. Its first aim, in other words, is to clarify in abstract terms the nature of 'the just'. Second, it focuses exclusively on getting institutions right. Actual human behaviour is beside the point for transcendental institutionalists. They assume that individuals will comply fully with the demands of perfectly just institutions. Sen thinks that the most influential form of transcendental institutionalism has been that of the social contract tradition. What animates the political thought of thinkers like Hobbes, Locke, Rousseau, Kant and Rawls is, first, to devise an ideal alternative to the chaos of the 'state of nature' and, second, to point out the kind of institutions the contract would give rise to.

Although it has come to dominate contemporary political philosophy, Sen thinks that it is important not to allow transcendental institutionalism to monopolise our thinking on justice. There is another tradition that has been relatively neglected in recent times but that in fact offers a superior way of theorising justice. Rather than

²⁸³ Amartya Sen, *The Idea of Justice* (London, Penguin, 2010). Unless otherwise stated, page numbers in parentheses in this section refer to this text.

transcendental, this alternative tradition is comparative in nature. In the works of Adam Smith, Condorcet, Bentham, Wollstonecraft, Karl Marx and J. S. Mill one finds justice discussed in terms of comparisons of different societies that already existed or could feasibly emerge. Rather than a transcendental search for pure justice, one sees these thinkers focusing on what Sen calls “realization-focused” enquiries. These are enquiries that centre on *actual* instances of the societies moving towards justice and away from injustice. In fact, since they are concerned with concrete social circumstances they are trying to ameliorate, it is usually the case that these comparativists are often primarily interested in the removal of manifest *injustices*.

Sen thinks that transcendental institutionalism suffers from two key weaknesses. First, it supposes that a reasoned agreement on the nature of the ‘just society’ is at least in principle attainable. The problem with this supposition is one of “feasibility”: in a diverse society, there is no reason to assume that unanimity over any transcendental solution will ever be within reach (9). There can be wide and yet reasonable disagreement on which principles are able to survive critical scrutiny and meet the demands of impartiality or fairness. This problem mines the very bases of a transcendental institutionalist solution to the problem of justice. The second problem Sen calls one of “redundancy.” “If we are trying to choose between a Picasso and a Dali,” Sen illustrates, “it is of no help to invoke the diagnosis (even if such a transcendental diagnosis could be made) that the ideal picture in the world is the *Mona Lisa*” (16). In other words, if one is concerned with a theory of justice as a way to reason about choices of policies, strategies or institutions, the identification of perfectly just social arrangements is neither necessary nor sufficient. “There would be something deeply odd in a general belief that a comparison of any two alternatives cannot be sensibly made without a prior identification of a supreme alternative” (102). Sen does not deny that transcendental institutionalists engage in a kind of enquiry that has some sort of intellectual value; he

does deny, however, that they have anything of value to offer to the theorist or the activist engaged in the task of improving actual conditions of actual societies, in choosing between two realistically attainable social scenarios.

It is odd to see Sen failing to include Hume in his list of comparative theorists. In Hume's writings one in fact can find ample corroboration of the kind of claims Sen advances. After having observed that as the size of society increases the interest we have in complying with the rule of justice becomes more remote, Hume notes the following:

Tho' in our own actions we may frequently lose sight of that interest, which we have in maintaining order, and may follow a lesser and more present interest, we never fail to observe the prejudice we receive, either mediately or immediately, from the injustice of others; as not being in that case either blinded by passion, or bypass'd by any contrary temptation. Nay when injustice is so distant from us as in no way to affect our interest, it still displeases us; because we consider it as prejudicial to human society, and pernicious to every one that approaches the person guilty of it.²⁸⁴

What the anatomist of human nature Hume is here recording is that – as H. L. Mencken once observed – injustice “stings” in a way justice does not. Instances of injustice are more immediately accessible to human beings than instances of justice. If the relationship between interest, justice and order is a complex and mediated one, injustice automatically raises in our breast the feeling that something prejudicial to peace and order has been committed. Injustice hurts in a way that bypasses reflexive considerations of interest. There is therefore an important psychological difference, Hume intimates, between perceptions of justice and injustice. In psychological terms, the pursuit of justice and the repudiation of injustice are two categorically distinct phenomena. Injustice, Hume suggests, is psychologically prior to justice, since it strikes the human mind more forthrightly than the latter. This is a remarkable conclusion for Hume to reach, since his

²⁸⁴ Hume, *Treatise*, p. 499.

understanding of justice is of course much more prosaic than the lofty ideal advocated by transcendental institutionalists. For Hume, justice is a negative ideal designed to minimise conflict over property claims, which he designates as the main source of violence and instability in large, complex societies.

Hume and Sen, I would therefore argue, complement each other nicely. As Sen so effectively illustrates with his *Mona Lisa* example, figuring out what an ideal of justice demands is analytically distinct from the task of identifying instances of injustice and irrelevant to the task of working out ways of choosing between two non-ideal social states. Just as important a consideration against transcendental institutionalism is the fact of ethical diversity: in a diverse, open society, it is unlikely that unanimity will ever be within reach concerning the nature of ‘the just’. If Rawls had difficulty identifying a single conception of justice in the context of a society he assumes to be populated by liberals, one cannot hold out much hope once the actual degree of pluralism characteristic of contemporary liberal societies is taken seriously.

Hume, then, offers a convincing set of arguments in favour of Sen’s proposal. We have seen that his understanding of ethical and moral pluralism is wide and uncompromising. In a diverse society, the conception of the just favoured by any transcendental institutionalist theorist will have to coexist with many other conceptions, which may diverge widely from it. Hume’s psychological realism and conceptual account of the origins of morality offer further ammunition for Sen’s privileging of questions concerning injustice rather than justice.

However, although he draws on Humean themes, Sen does not end up defending a Humean theory. The problem with Hume, he suggests, is that he “often seems to take passion to be more powerful than reason” (50). He fails, in other words, to endow reason with the ability to make objective moral judgments. He does not provide a standard that

allows one to step outside one's parochial perspective and judge on moral matters impartially.

According to Sen, justice is about impartiality and it is in the writings of Adam Smith that this ideal is most fruitfully and convincingly explicated. Smith's "impartial spectator" thought-experiment captures the essence of justice more successfully, Sen thinks, than Rawls's original position thought-experiment. It is in fact to the extent that it echoes the principles and orientation of the former that the latter is convincing. The 'veil of ignorance', for example, can be thought of as a Smithian device, in the sense that it embodies a procedural demand of impartiality that is meant to constrain any person's moral and political reflections whether or not a contract is ultimately invoked (132). The method of appealing to the judgment of a "fair and impartial spectator" is for Smith a reflective device whose task is that of pushing the individual to examine her own conduct in a way that is not captive to local, parochial conventions of thought and behaviour.

The critical point, for Sen, is that Smith's spectator need not be thought as a member of our own society, in the way Rawls's contractarian approach supposes. Indeed, the further away, the better, since, as Smith remarks, "it is always from that spectator, from which we can expect the least sympathy and indulgence, that we are likely to learn the most complete lesson of self-command."²⁸⁵ Smithian impartiality knows no national boundaries; in fact, it is characterised by a centrifugal push that seeks to overcome all parochialisms and partialities. 'Justice as fairness' has much to learn from Adam Smith: by means of an impartial spectator procedure it can overcome its potential vulnerability to local prejudices and parochialism.

Sen thinks that it is precisely this ideal that theorists of public reason designate. "Despite the differences between the distinct type of arguments presented by Smith,

²⁸⁵ Adam Smith, *The Theory of Moral Sentiments* (Indianapolis, IN, Liberty Fund, 2009 [1759]), pp. 153-4.

Habermas and Rawls, there is an essential similarity in their respective approaches to objectivity to the extent that objectivity is linked, directly or indirectly, by each of them to the ability to survive challenges from informed scrutiny coming from diverse quarters” (45). Public reasoning is the method by which we can seek resolution of controversies in a way that allows all parties involved to escape the reach of their respective parochial biases. It is the method, in other words, by which we can reach “reasoned agreement on ways and means of enhancing justice” (131).

For all his attempts to distance himself from the Rawlsian project, then, Sen in the end falls into line. Although he allows more scope for pluralism and challenges the dogma of the ‘closed society’ (i.e. the nation-state), Sen conserves the basic Rawlsian insight that the pursuit of justice depends on public reasoning. Although his Smithian proposal develops out of a sustained critique of Rawls’s theory of justice, Sen’s overall project is ultimately to contribute to the theory of public reason. One could in fact conceive of Sen’s project as an attempt to ground the Rawlsian idea of public reason in Smithian rather than Kantian foundations. According to Sen’s reading, Smith’s impartial spectator is the most successful instantiation of the logic of public reason. Unlike Hume, Sen writes, “Smith [...] gave reason a huge role in *assessing* our sentiments and psychological concerns” (50; emphasis added).

We see a very similar logic at work in Sharon Krause’s *Civil Passions*.²⁸⁶ Krause’s attempt to correct what she perceives to be the excessively rationalistic accounts of democratic deliberation one finds in Rawls and Habermas draws explicitly on Hume’s moral philosophy. Hume, in her view, shows in what sense moral judgment cannot be separated from passions and affect. Most of her exegetical works is devoted to the task

²⁸⁶ Sharon Krause, *Civil Passions: Moral Sentiment and Democratic Deliberation* (Princeton, Princeton University Press).

of defending Hume against the relativism charge so commonly leveled against sentimentalist accounts of moral judgment.

She identifies three possible antidotes to relativism in Hume's own theory²⁸⁷. First, since Hume sees the phenomenon of morality as intrinsically social in character, he is the first to resist a privatised conception of moral judgment. Second, Hume, though refraining from attributing universalistic features to it, recognises that morality speaks from a “generalized perspective” that transcends individuals' interests and self-love. Third, Hume's attempt to ground morality in human nature proves that he conceives of the former as something that is common across the human species.

For Krause, Hume's theory of moral judgment is valuable but incomplete. Correcting more systematically for the partiality of judgment requires a set of institutional features that Hume doesn't envisage: an egalitarian political order sustained by liberal rights, vigorous public deliberation and active democratic contestation.²⁸⁸ It is nonetheless to Hume that we ought to turn, Krause argues, if we want to conceive of a democratic order in a more realistic and open way.

Sen's and Krause's recent democratic appropriations of Hume's moral thought differ a great deal. Krause is not particularly interested in the public reason project, for example. Yet they share an important conclusion: although Hume's theories of sympathy and the impartial spectator capture something of fundamental value that the rationalist-contractarian tradition has however unfortunately neglected, these theories – and his thinking about morality more generally – remains incomplete. As Krause writes, “Hume himself never articulated a systematic standard for assessing the propriety or normative

²⁸⁷ Ibid., pp. 78ff.

²⁸⁸ Ibid., p. 89.

value of the sentiments that figure in moral judgment.”²⁸⁹ We have seen that Sen expresses the same worry by reflecting on Hume’s approach to reason.

Interestingly, this shared diagnosis of the vices of Hume’s moral theory leads to a shared endorsement of Adam Smith’s moral theory. For Krause, Smith’s superiority rests precisely in his ability to provide “a standard of propriety” that allows for some clear-cut assessments of what is morally acceptable and what is not.²⁹⁰ The verdict is unanimous: although his theory comprises many truths about moral experience, by failing to offer a standard to resolve controversies in a clear-cut manner Hume dooms his project to failure. The moral of the story seems relatively clear: Smith completes Hume by approximating the ideal that with Kant becomes the standard interpretation of what morality is about, that is, an exercise in judging according to well-defined, categorical standards determined by reflective impartiality. By failing to clarify the moral order along the line suggested by Smith and Kant, Hume’s moral theory remains dangerously, incurably close to relativism.

The problem with this interpretation is that, as we have seen above, Hume *does* think that morality can be reduced to principles or standards. Although he stresses the fact that moral judgments vary deeply across time and space, he also thinks there is an underlying, universal logic capable of explaining these variations. Here I think it is important to be clear about what we take relativism to mean. If relativism is the appreciation that moral judgments vary deeply across time and space, then the author of ‘A Dialogue’ is a relativist. But if on the other hand we take relativism to be an anything-goes approach to ethics, then this cannot be said to be something that applies to Hume’s moral thought. There *is* a universal standard for Hume.

²⁸⁹ Ibid., p. 87.

²⁹⁰ Ibid., pp. 86-7.

What I think Sen and Krause fail to appreciate is that the kind of standard Hume appeals to is a distinctive one. They fail to see it as a standard because standards tend to be thought of in very different terms. To appreciate this distinctiveness I think we have to turn back to the categories I introduced in Chapter 4. Standards are usually thought to be the expression of a common will. They originate in the idealised, will-ful unity of a moral community. The authority of these standards derives from the fact that they are backed up by such a will. Public reason is authoritative because it is reason of the common will. Public reason is a sovereign standard, which issues peremptory, apodictic judgments. This sovereignty is what allows it to resolve moral controversies.

Hume does away with the idea of common will, yet retains the idea of standards. How is that possible? It is possible for him to do so, I would argue, because what he offers is a non-sovereign account of standards. I would define Humean standards as *interpretative* standards. They are not backed up by a sovereign will but rather recovered by means of the interpretation of different moral practices, backed up by a non-teleological account of human nature. The anthropological and conceptual analysis of moral practices seems to suggest that universal standards are in fact available. There *are* grounds for judging the worth of different practices. But these grounds are special kinds of grounds. They are grounds that we discover as we engage in the process of interpreting the moral world. They are not the product of a will that stands outside that world, but rather the result of an interpretative effort inspired by all the different wills that that world has produced.

We need to briefly return to Hume's account of the origins of justice to fully appreciate this point. For Hume, justice is not the product of reasoned agreement, nor is it about compliance with an external standard validated by reason. We have seen in Chapter 3, rather, that Hume thinks justice is a product of 'convention'. A convention is the set of rules that allows disparate individuals to coordinate their actions, and is

ultimately founded on interest. Initially compliance with this convention is assured by the “natural obligation to justice.” Eventually, however, once society reaches a certain size, this natural obligation is no longer enough. Something else, something stronger is required: a moral obligation. According to his account, it is *within* conventions that conceptions of right and obligation arise. The ideas of right and obligation, in other words, make no sense outside of specific conventions. To draw on Hume’s example: we are not morally bound together by the act of promising, but rather the value of promising itself emerges as a way of strengthening a community of interests that exists already. Morality for Hume is a practice, and it is the practice that generates meaning. It is not a will that generates morality; it is practices that mold the will.

For these reasons, Hume thinks that one cannot avoid relying on the kind of values individuals *actually* endorse, since it is these, after all, that motivate *actual* persons. As Hume writes, “though an appeal to general opinion may justly, in the speculative sciences of metaphysics, natural philosophy, or astronomy, be deemed unfair and inconclusive, yet in all questions with regards to morals, as well as criticism, there is really no other standard, by which any controversy can ever be decided.”²⁹¹ Borrowing from Bernard Williams, we could say that for Hume all reasons (for action) are necessarily “internal reasons.”²⁹² To say that John has a reason to ∂ means that John is subjectively motivated to ∂ ; were he not to have a motive to ∂ , there would be no sense in which he could be said to have a reason for ∂ . Morality, for Hume, develops and thus has to be analysed from the bottom up. This is why one cannot avoid looking at what actual people actually value – i.e. general opinion – if one wants to understand morality.

Public reason theorists believe that authoritative external reasons are required to resolve controversies. But the problem here, of course, is that the solution proposed by

²⁹¹ Hume, *Enquiries*, p. 486.

²⁹² Bernard Williams, *Moral Luck* (Cambridge, Cambridge University Press, 1981), ch. 8.

public reason will only convince some, not all. It will convince, one would suppose, those who find the set of demands incorporated by public reason an adequate internal standard. Hume, on the other hand, offers a very different type of solution. He draws on the skills of the anatomist and the philosopher to locate a sphere of inter-subjective deliberation in which agreement is possible even among individuals or peoples holding radically different values. His strategy is to work from the bottom up, and identify the grammar of a moral language that all human beings can understand and thus share. Humean conversations take place at this much 'higher' level of engagement. As long as human beings act on the basis of a certain rationality – i.e. share a common human nature – such conversations are possible.

Since it conceives of moral authority as something distributed equally across 'conventional' ways of life, then, Hume's moral and political theory can be thought of as a philosophy of persuasion. We have seen Sen, like many contemporary liberal theorists, divide the moral order into reasonable and unreasonable, or parochial and impartial viewpoints. Some of Sen's labels may certainly be appropriate. From a Humean perspective, however, this is irrelevant. In the moral and ethical realm, this kind of authority is always necessarily a contested one. If one abstains from recurring to force whenever one incurs in practices one finds morally abhorrent, one can only rely on persuasion. Unlike force, persuasion, importantly, targets the 'internal' reasons of a person. It is important for Hume that the person one is confronting actually buys what she is morally charged with. The critique of, say, her marriage practice has to make sense for her and induce an internal change in her way of thinking about that practice. And if this attempt at persuasion doesn't work out, there is always the fall-back option available of interpreting the two practices as two meaningful responses to different circumstances.

The virtues of Hume's view are clear. His approach doesn't have to rely on the problematic idea of common will, yet manages to conserve the ability to issue a critical

perspective on morality. What I have called his interpretative approach manages both to accept the internal nature of reasons while at the same time constituting the grounds for a genuinely critical engagement. It is able to generate critical distance from existing practices without resorting to the kind of external, sovereign standard the common-will approach resorts to.

Conclusion

Following Kant's early verdict, contemporary political theorists tend to treat Hume's project as merely 'anthropological' in nature, as being, in other words, descriptive and thus irrelevant to the task of normative political philosophy. Alasdair MacIntyre has for example argued that for Hume "philosophy becomes a marginal activity."²⁹³ What they have failed to appreciate, however, is Hume's radical re-interpretation of what the tasks of philosophy are in a world deeply divided over moral and ethical issues. In such a world, philosophy does not take sides but rather illuminates the nature of such controversies so that these may be more amenable to solution. Philosophy, for Hume, becomes a way of thinking beyond the all-too-common resort to force.²⁹⁴

If the interpretation of Hume I have offered in this chapter is correct, I think we have reasons to see in Hume's moral and political thought a very different and very appealing way to think politically about moral disagreement. Hume's key concern is with authority, and this is a concern that the recent discovery of the fact of reasonable pluralism on the part of Rawls and Rawlsians has only become more concrete. The fact of diversity raises the question of what standards are to guide moral evaluation. Public

²⁹³ Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IL, University of Notre Dame Press, 1988), p. 301.

²⁹⁴ It is precisely because he conceives of his *Treatise* as a *philosophical* work that he takes its main aim to be that of persuading its public and gaining its approbation: "The approbation of the public I consider as the greatest reward of my labours, but am determined to regard its judgement, whatever it may be, as my best instruction" (Hume, *Treatise*, p. xii).

reason liberalism follows the logic of social contract and extracts standards from the nature of the common will of political society. The internal reasons of agents meekly give way to the sovereignty of the external reasons of this will. Hume substitutes this sovereignty model with what I have called an interpretative model grounded in a thin, non-teleological account of human nature. This model continues to inhabit solely the sphere of internal reasons. It nonetheless issues thin, universal standards that are genuinely critical and that constitute a rational yet non-sovereign basis for moral engagement and deliberation.

Part III: A Liberalism Without Liberals

Chapter Seven

How to (Really) De-Sectarianise Liberalism

Public reason liberalism conceives of a liberal political order as one in which no private, or non-public perspective dictates the terms on the basis of which that political order is to be regulated. Political and legal proposals and decisions that pass the ‘test’ of public reason are interpreted as measures that express the common will of the united body of citizens. These measures do not restrict individual freedom but rather make individual freedom possible and meaningful. The same cannot be said of those measures sustained purely by the private, non-public reasons of only a portion of the citizenry. These are experienced as purely coercive by those incapable of understanding them or unwilling to endorse them. Public reason liberalism thus understands itself as the most convincing fulfillment of the quintessentially liberal aspiration of grounding a political order in a moral perspective that does not represent the will of the powerful few but rather the will of all. It is not the will of a ‘sect’, in other words, that it brings to prominence but rather the will of all citizens united. Public reason liberalism, according to its advocates, is the first, real non-sectarian liberalism.

In this chapter I intend to do two things. First, I want to challenge the idea that public reason liberalism offers a successful account of a non-sectarian liberalism. Its contractarian approach, I argue, makes this end one it cannot achieve. De-sectarianising liberalism means turning to a non-contractarian, Humean alternative. Interpreted correctly, in fact, this Humean tradition can be taken to offer an account of political order in which no private will dominates others. My argument will be that by doing away with the idea of common will this tradition does a better job at desectarianising liberalism. Second, I want to start fleshing out my own account of a Humean, non-

sectarian liberal order, or, as I prefer to call it, a liberalism without liberals. I focus in this chapter on how a liberalism without liberals conceives of moral and political authority in particular, and how it interprets the nature of moral criticism.

This chapter develops in the following way. In Section I, I rehearse the development of the public reason project, focusing in particular on the way it sees itself as the first successful attempt to offer a non-sectarian account of liberalism. In Section II, I argue that for a genuinely non-sectarian account we need to turn to a Humean, non-contractarian alternative. In Section III, I elaborate my own non-sectarian proposal – a liberalism without liberals – by working through some of the weaknesses of Gerald Gaus's public reason liberalism.

I. Public Reason and the Quest to De-Sectarianise Liberalism

The nature of the public reason project has been the subject of a number of possible interpretations. This is not surprising considering how diverse the various thinkers who conceive of their work as contributions to that project are. The complexity and sophistication of John Rawls's later works, to which they all somehow trace back the origins of this philosophical venture, is an important explanation for the lack of unanimity. The debate continues among public reason liberals about what the transition from TJ to PL 'really' means. The logic of Rawls's political liberalism has been taken in both a social democratic direction (e.g. by Rawls himself) as well as classical liberal or libertarian one (e.g. by Gaus). Public reason remains a contested concept and public reason liberals deeply divided over the nature of their project.

If one keeps the field of enquiry distant enough, however, one can indubitably note certain shared core commitments that justify the characterisation of the likes of Rawls, Stephen Macedo, Gerald Gaus and Jonathan Quong as thinkers partaking in a

joint philosophical project. Public reason liberalism is essentially a philosophically sophisticated attempt to de-sectarianise liberalism. In the language of this thesis's title, it is an attempt to sever the connection usually taken as granted between *liberalism*, or a liberal political order, and liberals, or the kind of agents thought to be necessary to that order. Liberalism is a political home, public reason liberals think, that can accommodate a lot more diversity than has usually been assumed. The political thought of Locke, Kant and Mill to which the liberal tradition usually traces its origins assumes a degree of uniformity over values that is just not there to be had in contemporary societies. Liberalism has to be able to accommodate ways of life that do not necessarily see in the pursuit of Kantian autonomy or Millian self-perfection the sole meaning or end of human life. A liberalism that was to assume that all citizens agree on such an end would be an exclusionary political settlement rather than a framework capable of making the free pursuit of various different ends possible. Liberals, in such an order, would be nothing more than the most powerful sect, imposing their own conceptions of the good on recalcitrant minorities. In fact, amongst the numerous valuable contributions of public reason liberalism are, first, an unprecedented degree of self-reflection, meant to stand as a bulwark against sectarian temptations, and, second, a new conceptual apparatus that places the problem of sectarianism at the very centre of the philosophical discussion.

Both elements clearly originate in Rawls's later writings. As far as self-reflection is concerned, certainly amongst Rawls's most radical ideas in PL is that "political liberalism applies the principle of toleration to philosophy itself."²⁹⁵ In a diverse, non-oppressive society, Rawls reasons, the basic political agreement among citizens can only be based on reasons that all citizens, regardless of their religious, philosophical or metaphysical views,

²⁹⁵ Rawls, *Political Liberalism*, p. 10.

are willing to accept and embrace. Liberalism, then, to the extent that it relies on substantive philosophical views about the good life, faces a problem, since its views of the good life are not going to be shared by all. A liberalism that relies on such conceptions is not substantially different from the kind of controversial religious views that justified coercive political authority in the pre-liberal age. Views that are not accepted by all will still be coercive, regardless of whether they are religious or liberal. Liberalism, therefore, has to submit itself to a form of self-criticism, and expunge all traces of substantive ethical conceptions from its justificatory logic. “To apply the principle of toleration to philosophy itself,” Rawls writes, “is to leave to citizens themselves to settle the questions of religion, philosophy, and morals in accordance with views they freely affirm.”²⁹⁶ Philosophical matters, on which there is bound to be reasonable disagreement, is something citizens have to settle themselves, just as religious matters are.

Relativising philosophy in the way Rawls proposes calls for a new conceptual apparatus. Rawls’s key distinction here is the comprehensive-political distinction. If with the attribute ‘comprehensive’ Rawls identifies all those controversial views on which it would be unreasonable to expect unanimity in a free society, by ‘political’ Rawls has in mind the kind of views or conceptions all citizens can freely agree upon. The kind of comprehensive doctrines that have proven themselves to be particularly problematic, politically speaking, are religious comprehensive views. Liberalism emerged at a time in which people started reflecting on how to deal politically with the inability of different religious comprehensive views to coexist with one another. That the problem was religious at the time was purely contingent. The key political problem liberalism seeks to address is the peaceful and free coexistence of individuals and groups divided along

²⁹⁶ Ibid., p. 154.

comprehensive lines. Comprehensive views speak of the ends of life and when endowed with political authority they will use coercion to make sure those ends are met. A comprehensive liberal view like Mill's is therefore not substantially different from a Catholic comprehensive view. The possibility of a non-oppressive political authority depends on the hope of isolating a political realm in which the conflict of comprehensive doctrines is transcended.

Due to the serious problems some commentators have identified in Rawls's comprehensive-political distinction,²⁹⁷ among public reason liberals the key distinction is now usually taken to be that between "public" and "private" reasons. Private reason is sectarian reason, representing only the will of some, whilst public reason is shared reason, reflecting a basic moral orientation shared by all citizens. Public reasoning is that which relies on moral principles and modes of argumentation that all citizens are capable of appreciating and on whose basis are willing to engage with one another. As the political order of free and equal citizens, a liberal order is one sustained purely by such public reasoning.

Inspired by such rethinking of liberalism on the basis of this new conceptual apparatus centred on this public-private dichotomy is a radical reinterpretation of traditional understandings of the liberal doctrine. Since it cannot be supposed that they could be the basis of free agreement in a diverse society, dominant understandings of liberalism such as Kant's or Mill's emerge as nothing more than expressions of the private reason of a Kant and a Mill, as well as those subscribing to their conceptions of the good. Public reason liberalism reinterprets the history of liberal thought as a history of a sectarian way of thinking and of liberal regimes as oppressive regimes whenever it was upon such sectarian justifications that they drew in exercising political power. Only

²⁹⁷ Gaus, *Contemporary Theories of Liberalism*.

public reason is compatible with a non-oppressive exercise of political power. And to the extent that what it is after is a philosophical conceptualisation of non-oppressive political authority, liberalism can only be meaningfully and convincingly understood as shorthand for public reason liberalism. In spite of all the philosophical and normative controversies in which they have been engaging each other, these basic ideas and ideals are ones on which all public reason liberals agree. Although they disagree on the moral basis of public reason – some appealing to a Kantian account of autonomy (e.g. early Rawls), others to the idea of respect (e.g. Larmore, Gaus), and others still to justice (e.g. Quong)²⁹⁸ – they are all moved by the idea that liberalism has to be more than just a sectarian doctrine, and that public reason allows it to fulfill this promise.

There is of course another fundamental premise all public reason liberals share, resulting, again, from Rawls's influence. This is the idea that liberalism is a political doctrine that is best explicated in contractarian terms. The aim of the social contract doctrine is precisely that of explaining how a legal-political order in which liberty is guaranteed can emerge. If that order is the product of a social contract, the liberty which persons enjoy 'prior' to the contractual procedure is carried through intact in political society, and liberty is thus fully reconciled with law. The political-legal order that is the product of the social contract, in other words, is an expression of the equal freedom of all. The social contract, from a public reason liberal perspective, is therefore best understood as the expression of public reason. A political-legal order grounded in public reason is one that all citizens are willing to accept and endorse. Citizens interpret and experience that order not as an infringement of their liberty but rather as an affirmation of it. A political order sustained solely by the private reason of some of its citizens is one in which many citizens won't see a reconciliation between liberty and law and will thus

²⁹⁸ For a summary of these different positions, see Quong, 'Public Reason'.

experience that order as coercive. Public reason liberalism understands itself as a reinterpretation of the logic of the social contract. As the frequent references in the literature to Rousseau illustrate, its goal is that of making sense of liberty in the context of a political order with coercive potential. How is freedom and equality possible once government becomes a reality? The most plausible answer, public reason liberals believe, is to be found in the reinterpretation of the social contract as the voice of public reason.

II. An Alternative Tradition

Public reason liberalism, then, offers a contractarian theory of a political order in which no private reason dominates. As such, it claims to have successfully de-sectarianised liberalism. Are we then confronted with an incarnation of a liberalism without liberals? In previous chapters I have already pointed out a number of reasons why one should be sceptical of the public reason proposals. I would now like to raise some further doubts and do so by fleshing out an alternative account of a non-sectarian liberal order. This alternative account is not contractarian, and it is this alternative account, I want to argue, that can form the basis for a liberalism without liberals.

In Chapter 4 I showed that social contract theory conceives of political order as the embodiment of a common will. Legal and political institutions are the product, according to this logic, of a deliberate act of will on the part of the collective body of citizens. Though it may seem crucial, the distinction between real and hypothetical contract isn't actually significant in this respect. Both accounts see justified political and legal institutions as the product of conscious design on the part of the citizenry. Even those institutions that have developed customarily and then prove themselves worthy of hypothetical allegiance are, in effect, 'made' at the moment in which they pass the

contractarian test. They are appraised as a whole, then conserved if deemed justified or changed if deemed unjustified.

Public reason liberals claim they have finally been able to provide an account of the common will – and hence of the legal and political order it embodies – that is not sectarian, and thus genuinely liberal. But in fact I want to argue that a different framework is required by the de-sectarianising project. This framework is the one offered by, again, Hume. It has more recently been taken up by F.A. Hayek. Due to Hayek's influential interpretation this framework has come to be known as that of "spontaneous order." I will refer to it rather as the Humean account of social, legal and political orders.

For Hume, a legal order should not be understood as something that can be 'created'. A legal order, rather, is something that grows organically and spontaneously out of the repeated interactions of self-interested individuals:

Those rules, by which property, right, and obligation are determin'd [...] have all of them a direct and evident tendency to public good, and the support of society. 'This last circumstance is remarkable upon two accounts. First, because, tho' the cause of the establishment of these laws *had been* a regard for the public good, as much as the public good is their natural tendency, they wou'd still have been artificial, as being purposely contriv'd and directed to a certain end. Secondly, because, if men had been endow'd with such a strong regard for public good, they wou'd never have restrain'd themselves by these rules; so that the laws of justice arise from natural principles in a manner still more oblique and artificial. 'Tis self-love which is their real origin; and as the self-love of one person is naturally contrary to that of another, these several interested passions are oblig'd to adjust themselves after such a manner as to concur in some system of conduct and behaviour. *This system, therefore, comprehending the interest of each individual, is of course advantageous to the public; tho' it be not intended for that purpose by the inventors.*²⁹⁹

Although it serves a clear human purpose, it was not the intention of those it benefits to create such an order serving that specific purpose. As Adam Ferguson pithily puts it,

²⁹⁹ Hume, *Treatise*, pp. 528-9; emphasis added.

such an order is “the result of human action, but not the execution of human design.”³⁰⁰

As individuals endowed with “selfishness and confin’d generosity” try to accommodate one another’s actions and purposes, a system of norms emerges from the bottom-up, as it were, allowing for the coordination of a plurality of activities and the compatibility of a plurality of self-interested pursuits. Laws represent nothing but a specific articulation of such norms, and as such have the same origins.

Although Hume focuses only on the origin of the norms dealing with property, his theory can be expanded to explain the entire legal order of a society. The legal order is but an “artifice,” a “convention,” that finds its origins in the necessities of social life. Like any other convention, a legal order too can be said to exist prior to any attempt to codify it in writing or even articulate it linguistically. The radical innovation brought about by Hume (and by the thinkers of the Scottish Enlightenment more generally) was that of conceiving a social theory in which ‘artifices’ need not depend on the existence of an ‘inventor’.³⁰¹ It is the pressures of social life, the precariousness of living in common, that call for certain artifices; pace Hobbes, however, the response to such pressures need not rely on a central agent. As Hume says, “two men, who pull the oars of a boat, do it by agreement or convention, tho’ they have never given promises to each other. Nor is the rule concerning stability of possession the less deriv’d from human conventions, that it arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconveniences of transgressing it.”³⁰²

By interpreting the legal rules that govern property as an artifice or convention that emerges to meet the requirements of social life, Hume is implying that there is no categorical distinction between moral and legal norms. Moral norms of justice and legal

³⁰⁰ Adam Ferguson, *An Essay on the History of Civil Society* (Cambridge, Cambridge University Press, 1996 [1767]), p. 119.

³⁰¹ F. A. Hayek, *Studies in Philosophy, Politics and Economics* (London, Routledge and Kegan Paul, 1967).

³⁰² Hume, *Treatise*, p. 490.

norms are both an “obvious and absolutely necessary” artifice in a large, complex and pluralistic society. It is when moral sensibilities are made to confront the concrete complexities and difficulties of large-scale social life that law emerges. Law is therefore not categorically distinct from morality, but rather what we might call a mere evolution of it. Law responds to and accommodates ‘pre-existing’ standards of conduct that the population has internalised.³⁰³ From a Humean perspective, the authority to govern conduct, in other words, rests ultimately in the moral sensibilities of the general population, to which law ultimately *has to be* subservient, if it wishes to be effective.

This theory of spontaneous order is often taken to be a theory about the *actual evolution* of social orders. But I think this is a mistake. I think that the main problem with evolutionary interpretations of Hume’s and Hayek’s moral and political theories is that pure or ‘spontaneous’ evolutionary paths are impossible to come by in the real world. Power and chance are constitutive features of our moral, social and political reality. Take the case of property, for example. What historical evidence suggests is that far from being the result of spontaneous evolutionary processes, the definition of actual property boundaries has usually been the result of the exercise of force on the part of the powerful.³⁰⁴ Rousseau, in other words, was largely right about this.³⁰⁵

But this doesn’t mean that Hume’s insights should be jettisoned. We can recover the value of his thesis for liberal theory if we interpret it as a claim about *power*. What defines a Humean order, I would suggest, is the absence of a monopoly of power. The law of such an order is independent of the will of any specific ‘law-giver’. Its life is

³⁰³ To express this sense in which sociality, morality and the legal order are indissolubly tied, Barden and Murphy use the expression “living law” when talking about the legal order. See Garrett, Barden and Tim Murphy, *Law and Justice in Community* (Oxford, Oxford University Press, 2009).

³⁰⁴ Karl Widerquist, ‘What Does Prehistoric Anthropology have to do with Modern Political Philosophy? Evidence of Five False Claims’ (USBIG Discussion Paper, 2010).

³⁰⁵ Jean-Jacques Rousseau, ‘Discourse on the Origin and Basis of Inequality Among Men’, in Victor Gourevitch, ed. *The Discourses and Other Early Political Writings* (Cambridge, Cambridge University Press, 1997 [1754]).

animated by the myriad of decisions taken myriads of individuals pursuing their own ends and purposes. In the *Treatise* Hume acknowledges that one possible source of law is what he calls “positive laws.” Government, or the legislature, can influence the legal order. But as testified by the fact that there are limits to what it can do (e.g. change the whole system of government), the legislature is *itself* a legal institution. The legislative order has its origin in the legal order, which has its origins in the social order. “Hence the notion of fundamental laws,” Hume writes, “which are supposed to be unalterable by the will of the sovereign.”³⁰⁶ Humean order knows no sovereignty.

My interpretation of the Humean project should make manifest what I see as its basic elective affinity with the project public reason liberals have been pursuing. The two projects share a common worry about the possibility that a political order express the will of only a certain dominant portion of society, at the expense of all the rest. If a Humean order is one that does not privilege any particular outlook, if its terms of association are not the commands of a dominant will, then it would seem as though the best way to understand such an order is as an order of public reason. It is the will, interests and desires of all members of the entire public, and not just that of the powerful few, that the exercise of political power tracks. The process by which such an order that transcends the conflict of private reasons emerges could be described as one that embodies the logic of public reason.

There is however one obvious obstacle in the way of such a rapprochement. As I noted above, public reason liberalism is a form of contractarian liberalism. A commitment to the idea of the social contract is one of the key things all public reason liberals share. Yet if anything can be said to define the alternative Humean tradition I have just sketched it is precisely its comprehensive rejection of the social contract

³⁰⁶ Hume, *Treatise*, p. 561.

doctrine. In fact, it is as the direct antithesis of the social contract tradition that contemporary exponents of this alternative tradition understand it.³⁰⁷ Rehearsing some of the arguments I put forward in Chapter 4, we can easily see why this would be the case. What the social contract procedure seeks to specify is the moral content of a common will that unites all members of society and founds their political order. Contracting members engage in the contractual process with a very clear purpose in mind: to define explicitly the moral values society is going to commit itself to and affirm by means of its political and legal processes. This purpose – according to the logic of the social contract – transcends all the other purposes individuals may have when entering society.³⁰⁸

Hume, we have seen, rejects this understanding of the political order. For Hume, participation in a social or political order is about weighing the different tasks, commitments, obligations and burdens that living in such an order engenders. It is because the political order is, overall, beneficial and not because of any prior promise on our part that we tend to obey its rulings. Political society for Hume is not kept together by deep moral agreement but rather by interlocking webs of rules and practices that allow for the pursuit of a vast variety of different interests.

Two contrasting understandings of “public” emerge from these two perspectives. For the public reason perspective the public is the site of deep moral agreement. What is public is fixed by the contractual procedure within specific limits. In the public we all share an understanding about how people should be treated and what the moral ends of political association should be. Public is the place where a particular moral perspective is sovereign. For the Humean perspective, on the other hand, what is public is determined on the ground, as it were, on the basis of the patterns of interactions that develop as individuals pursue their interests. Public is not the site of deep moral agreement but of

³⁰⁷ See, e.g., Hayek, *Law, Liberty and Legislation*, and Barden and Murphy, *Law and Justice*.

³⁰⁸ Cf. Barden and Murphy, *Law and Justice*, p. 9.

shared interests. No particular moral perspective is sovereign there; different moral perspectives, rather, work out agreements and compromises in order for the overall arrangement to yield the desired outcomes.

Another way of stating the difference is the following. Public reason liberalism can be thought of as a liberalism of *membership*. Its public is a site of membership, in the sense that it is peopled by individuals involved in a shared pursuit of a particular (moral) end. These members share a view about the person and about the ends of political association. They see themselves as a moral community, and therefore as a will distinct from other foreign wills. In the case of the Humean perspective, the notion of membership is not particularly meaningful. A plurality of different moral orientations coexist in a Humean public. They do not see themselves as members of a joint moral project but rather as participants in overlapping networks of norms and institutions that overall seem to be doing a good job at catering to diverse interests. Anybody willing to subscribe to the (fluid) terms of association is welcome. The political order is important, but it never transcends the sphere of interest. As such, it competes with other orders when it comes to allegiance.

The Humean perspective does a better job than public reason liberalism at de-sectarianising liberalism. It does so in two ways. First, it refuses to see political order as the site of deep moral agreement and thus let one particular moral perspective acquire sovereignty over others. One could say that it is as an expression of private reason that the contractual logic is best understood, from a Humean perspective. Second, it ‘relativises’ (we might say) the importance of political orders. Political life is not the sphere of high morality philosophers like Plato, Aristotle, Rousseau, Kant, Hegel and Rawls have supposed. It is rather a more mundane sphere of interests. It serves very important purposes; but these purposes are not categorically different from the ones pursued in, say, commercial life. Political order is simply an artifice invented for a specific

purpose, not the Archimedean point on the basis of which the plurality of human purposes is systematised and ranked.

It is the Humean perspective, then, not that of the social contract, that articulates a liberalism without liberals. No normative perspective fixes the normative purpose of a Humean order. This order is not governed by the cultural or normative code of any of its members but rather by common practices of mutual accommodation (and conventions of acquiescence). Hume's account of how norms of property emerge out of mutual forbearance is a perfect example of this. Property, for Hume, is not the practical instantiation of a normative principle (e.g. Lockean self-ownership), but rather the result of a general disposition to refrain from taking others' "possessions," that is, what they have in their grasp. This is how Hume puts it:

This convention is not of the nature of a promise: For even promises themselves, as we shall see afterwards, arise from human conventions. It is only a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules. I observe, that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common sense of interest is mutually expressed, and is known to both, it produces a suitable resolution and behaviour.³⁰⁹

Rules of property, according to Hume, do not, then, describe a uniform normative order but rather a general appreciation of the need for and value of mutual forbearance. Humean rules of property are not, in other words, the expression of the power of a dominant or a collective will. They are 'spontaneous' precisely in the sense that they cannot be traced back to the power of any one will.

³⁰⁹ Hume, *Treatise*, p. 490.

III. ‘Planning’ Humean Orders

Gerald Gaus has recently sought to resurrect the Humean tradition.³¹⁰ For him, the Humean perspective is necessary but insufficient for public reason liberalism. It is necessary because without it we cannot make sense of morality. Hume sets out a case for thinking “that moralities are social facts with histories” (44). “Social morality,” or that set of rules that governs the conduct of individuals in a society, is something that, as Hume correctly points out, has evolved over time. Gaus thinks Hume is also correct in relating both moral rules and their evolution to the requirements of social life. Without “social moral rules,” life in common would be impossible (102). These rules make the coordination of the actions of a large number of individuals possible.

By failing to take these Humean insights on the nature of morality seriously, Kantian moral philosophers have presented a philosophically rigorous yet ultimately indeterminate picture of social morality. As we have also seen Sen argue, the impartial reason in which they ground morality is compatible with a plurality of moral outlooks, and it is for this reason that it remains incurably indeterminate (42-4). “Hume’s helping hand,” as Gaus calls it, is indispensable here, precisely to give some flesh to the notion of social morality.

The Humean tradition’s ability to better account for diversity in ways of life is also crucial, he thinks. In his view the Kantian approach that dominates contemporary liberal political philosophy assumes too much moral and ethical uniformity, and as such can only end up proposing terms of political association that are too controversial. A Humean account of the origins and nature of morality can best account for the vast degree of pluralism that characterises the moral domain. The determinacy it brings is a profoundly pluralistic kind of determinacy, in other words.

³¹⁰ Unless otherwise stated, page numbers in parentheses in this section refer to Gaus, *The Order of Public Reason*.

But Hume alone is insufficient, Gaus thinks. The evolutionary approach is certainly indispensable if we want to understand what morality is and what it is for. But it does not exhaust the content of morality. This is obvious once we consider instances of evolved norms that fail to live up to the standards of morality. Just because something is the product of an evolutionary process, in other words, does not make it ipso facto morally acceptable (418-24). Evolution is a process determined by a wide range of variables. Oppression may definitely play a part in it. Social coordination may be achieved by oppressive means, yet few would want to define the rules governing that order as 'moral'.

The social moral norms that result from any evolutionary process have to be submitted to an external critical test. And it is the perspective of public reason, he thinks, that offers such a test. Social cooperation has to be at the service of free and equal moral persons and it can prove itself worthy, therefore, by passing the test of public reason. Public reason, then, is the means by which we can step outside our current practices and customs and impartially assess our moral universe. It is what allows us to identify those norms and practices that are worthy of our allegiance and those that it would be best to try to reform or eliminate.

The function of a democratic political order is that of allowing us to achieve such a morally desirable end. As Gaus understands it, the democratic state's "critical function" is the "continuation of moral justification by other means" (546). As we have already seen in a previous chapter Gaus thinks that "the political order is needed to complete and reform the moral order." The laws of the democratic state articulate and protect the moral rights of free and equal citizens. Without the authority of the democratic state it would be impossible to move a society away from the immoral social conventions the 'spontaneous' processes of evolution (or chance) could have induced it to be stuck in.

Moral and political justification must necessarily feed on such spontaneous processes, but it cannot allow the latter to exhaust its reach.

In sum, then, for Gaus liberalism must turn to Hume as a way of *correcting* the Kantian framework that necessarily lies at its foundation. Kant-inspired moral conceptions of personhood and society remain foundational, but have to be able to accommodate a greater degree of pluralism than contemporary Kant-inspired philosophers tend to allow for. Without Hume's finishing touches, public reason liberalism remains a sectarian doctrine. But pluralism and immanent criticism cannot go all the way. An external standard is necessary and this is what the idea of public reason provides.

The key question here is about the pertinence of the search for standards under circumstances of deep pluralism. Any attempt to fix a standard will engender disagreement. What one group takes to be virtuous another might find abhorrent. What one group singles out as the ultimate purpose for life other groups might find intolerable. The key question, then, is how to go about coping with disagreement. Resorting to force is a common way in which disagreement is dealt with. The standard that prevails, in such cases, is that of the most powerful.

The value of Hume's moral and political thought – as I have interpreted it in Section II – is in helping us think in a different way about disagreement and its possible resolution. This is because, as I have argued, he helps us think in a different way about authority. Authority is not given *ex ante* but rather constructed in the process of engaged deliberation and interaction between agents figuring out ways to coexist with one another. Disagreement is not a signal of the inability to live up to the demands of a particular standard or threshold; it is, rather, just that: disagreement. We have seen that Hume has reasons to think that if the conversation is taken at an abstract enough level, common grounds may be found. We might think of this as a possible rhetorical strategy

amongst agents who disagree radically about morality but want nonetheless to reach a *modus vivendi*. If the strategy works, such an arrangement will be reached; if it doesn't, the agents may decide to part ways. Either way, in both cases what we are doing is abandoning the realm of force or power and entering the realm of persuasion and peace. We are relinquishing the temptation of resorting to force and putting our efforts into convincing those who disagree with us that we are right. But we may also decide to agree to disagree, and leave things in a state of mutual indifference. The great variability of standards and the absence of 'sovereign' authority may at times make this possibility the only feasible one.

It is worth looking closer at Gaus's standard. As a theorist of public reason, Gaus follows closely Rawls's later strategy of eschewing appeals to controversial ethical or philosophical doctrines. Public justification under conditions of reasonable pluralism is only achievable on the basis of reasons all can accept, independently of their different conceptions of the good. Gaus's project is to 'pluralise' (we might say) this Rawlsian insight, rendering it compatible with a wider degree of pluralism than Rawls is able to account for. As he describes his project: "we are not proposing a definition of wrongness, nor are we seeking to develop a theory of justice. Our concern is whether the rules of our social morality are publicly justifiable to moral agents" (276).

It is most clearly by means of his conception of the addressees – or, the "constituency," as it is usually called³¹¹ – of public justification that Gaus pluralises public reason. According to Rawls's influential account, public justification is not addressed to all actual persons to whom rules apply, but rather only to an idealised version of them. It is addressed to only "rational and reasonable persons." As we saw in a previous chapter, "reasonable" persons for Rawls are characterised by two features: first, they are ready to

³¹¹ Quong, 'Public Reason'.

propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so, and, second, they accept what he calls the ‘burdens of judgment’. It is because reasonable persons accept these two ideas that, for Rawls, they will also accept the idea of public reason. Rationality is also an important feature of these idealised agents. In reasoning together and drawing inferences, they follow the basic rules of rationality. Irrational inferences, in other words, do not defeat public justification. According to Rawls’s conception, then, the constituency of public reason is idealised both epistemically and normatively.

Gaus challenges this standard Rawlsian picture. And he does so precisely with the intent of reconciling public reason with a greater “plurality of evaluative standards” (276ff). In his view, Rawls’s constituency is excessively idealised, and as such supposes a degree of evaluative uniformity than is unwarranted if the task is that of justifying social morality in a pluralistic social world. The Rawlsian picture departs too much from the way real agents reason and value in the actual world. Though it may certainly be a worthwhile philosophical exercise, idealising agents to an excessive extent takes us too far away from the actual reasons that real agents in the real world have for supporting or rejecting the rules of their social morality. As Gaus sees it, agents bring a greater variety of evaluative standards and a more ‘bounded’ rationality to their justificatory deliberations than is usually assumed by public reason liberals. They will bring reasons that are not necessarily shared by all members of the constituency (and as such might be deemed mere ‘private’ reasons by other public reason liberals).

All that is necessary for public justification, for Gaus, is that agents see each other’s reason as “intelligible” (279ff). They also cannot be expected to enjoy “full rationality,” that is, expected to endorse the kind of reasons that we could expect only fully rational agents to endorse. All that matters for public justification is that the agent has “sufficient reason” to endorse or reject a proposal (244ff). A sufficient reason, Gaus

proposes, is one an agent has after having engaged in a “respectable amount” of rational deliberation (249-51). This requirement is substantially more modest than the full rationality requirement; all that it necessitates is that the agent engage in some reasoning in search of reasons that might defeat her initial beliefs. Gaus characterises this depiction of the agent as involving a “significant but realistic level of idealisation” (276). It allows him to better specify the “problem of public reason”: “how can we identify social demands that all have sufficient reason to acknowledge as moral demands?” (262). It should be noted that Gaus too is concerned only with accommodating ‘reasonable’ forms of pluralism. Public justification makes no sense unless it is assumed that agents have a commitment to respecting each other as free and equal moral beings (279).

As a public reason theorist, Gaus remains involved in the business of setting standards for identifying which reasons should count and which shouldn’t. Now, appealing to a standard that refers to the need to engage in a “respectable amount” of rational deliberation is a more realistic way of dealing with pluralism than the highly idealised ones to which other public reason liberals appeal. But the problem here is how we are to determine what counts as a ‘respectable amount’ of deliberation. According to what standard do we fix the threshold? On this matter, again, there is bound to be disagreement. The response to these questions is not obvious. There is, in other words, a *discussion* to be had as to whether an agent has achieved that respectable degree of reasoning or not.

Rather than seek to solve the matter at a conceptual level, the Humean response is to acknowledge and take seriously the fact of disagreement. Trying to solve disagreements by tweaking the relevant thresholds so that a more inclusivist outcome is achieved is not a solution at all. As I said in Chapter 6, the important thing is that the other agent buys the argument you are offering her. In the context of deep value pluralism, appealing to the idea of a ‘respectable’ amount of reasoning or what it means

for a moral system to be ‘justified’ won’t do. It is to the kind of more abstract Humean strategies I have delineated in Chapter 6 that one must turn in those cases. And if bridges cannot be built, the only outcome left is a peaceful parting of ways. No matter how much he seeks to pluralise the public reason tradition, by remaining employed in its business of seeking to settle what counts as a reason for or against a rule, Gaus is unable live up to the realities of pluralism.³¹²

But what about Gaus’s concerns about following Hume all the way? We have noted his remarks about the possibility that evolutionary processes lead to the development and entrenchment of immoral social equilibria. We need to appeal to an external standard precisely to be able to identify such equilibria and know what to do about them. The Humean account offers no such authoritative standard. It thus leaves us in the grip of immoral quagmires, at the mercy of the powerful.

Addressing this concern is very important as it allows me to start fleshing out the account of a genuinely de-sectarianised, Humean account of liberalism, or, in short, a liberalism without liberals. The starting point is not a relativistic denial of morality or of the fact that social groups may very well end bogged down in immoral conventions. There is no reason to think that the latter is impossible. The starting point is rather what, for want of a better word, we might call a ‘political’ one: moral standards vary greatly and attempts to impose standards raise political problems. For who is to determine that a particular convention is immoral? Who is to determine that a particular (invariably non-liberal) way of life is beyond the pale and necessitates the emancipatory intervention of the liberal state? The answer is not ‘no-one’, as this answer would suggest that there is no authority to make to such judgments. This relativistic, anarchist answer is a mirror-image of the social contract perspective, which hands this kind of authority over to the

³¹² All this of course also applies to Gaus’s use of the notion of “reasonable.”

common will. When standards differ but the exigencies of social life render coexistence important, it is a third option that gains prominence: the judging authority as a product of *agreement*. The standard is not an external imposition but rather the result negotiation and compromise. Standards of judgments and coexistence are ‘constructed’ as disparate groups and associations accommodate one another. A ‘public’ is therefore certainly formed, yet it is not one united by specific foundational commitments but rather one defined by practices of mutual accommodation supported by the convergence of a vast variety of different foundational views.

Seeing standards as the product of agreement rather than imposition is a way of taking seriously the idea that reasons are internal. As we’ve seen Hume describe so eloquently, different individuals are socialised in different ways. What is moral for some will seem morally abhorrent to others. This is not a counsel of relativism or fatalism. It *may* be the case that there is a moral truth to be found about x if only, say, we talked enough and sincerely about it. The crucial point, rather, is about authority. If reasons are necessarily internal, there is no sovereignty in the sphere of reasons. Shared reasons are not the affirmation of an external standard over which a normative consensus has been achieved. They are rather internal reasons that have *converged*.³¹³ Terms of coexistence that are not the imposition of a powerful will are terms determined by the convergence of the internal reasons of all involved.

It is often supposed that criticism is only made possible or meaningful by the availability of an external standard. Criticising a moral practice is often thought to involve (i) stepping outside that practice, (ii) developing a moral theory adequately insulated from the morally arbitrary features of that practice, and then (iii) passing judgment on what

³¹³ The idea of convergence I am here proposing should not be mistaken with that advanced by Gerald Gaus and Kevin Vallier most recently. Their ideal of convergence is firmly embedded in a contractarian framework. See Gaus, *The Order of Public Reason* and Kevin Vallier, *Liberal Politics and Public Faith: Beyond Separation* (London, Routledge, 2014).

one sees on the basis of that theory. We need the external standard of public reason, for example, to help us distinguish between moral and immoral social evolutionary paths. But as Michael Walzer has explained so well, this kind of detachment is in fact not a necessary condition for moral criticism. A moral practice is a complex phenomenon, saturated with both certainties and contradictions. As Walzer puts it, “the moral world and the social world are more or less coherent, but they are never more than more or less coherent.” What this implies is that “morality is always potentially subversive of class and power.”³¹⁴ One needn’t stand outside, one needn’t appeal to a dispassionate external standard to see and publicly point out room for criticism and if necessary subversion.

Criticism, *meaningful* criticism is therefore an ever-present possibility. The discriminating question is one about authority: does authority to pass judgment originate in the dispassionate external reasons proffered by the ‘right’ moral theory, or is it constructed together by the convergence of disparate, passionate internal reasons? Is this authority, in other words, viewed as possessing the features of sovereignty or the features of agreement? Taking the problem of disagreement over standards seriously does not mean rejecting criticism but rather appreciating the logic and necessity of *immanent* criticism. Criticism is an ever-present possibility, but it should always engage with the internal reasons of those involved. Walzer seems to acknowledge that the problem of moral criticism is ultimately one concerning authority. An immanent or “connected” critic, he says, is one “who *earns his authority*, or fails to do so, by arguing with his fellows.”³¹⁵ This critic does not appeal to external standards but rather to local principles. If she’s a ‘foreigner’, she “enters imaginatively into local practices and arrangements.”

³¹⁴ Michael Walzer, *Interpretation and Social Criticism* (Cambridge, MA, Harvard University Press, 1987), pp. 21-2.

³¹⁵ *Ibid.*, p. 39, emphasis added.

She seeks to persuade and not dictate. Authority and persuasion are two sides of the same coin: authority is earned *in the act* of successfully persuading.

This perspective gives a whole different meaning to the idea of criticism by means of external standards. It does not dispute that the kind of criticism Gaus promotes is in fact a form of criticism. What it does suggest is that this kind of criticism is not only about criticism; it looks as though it is also about devising an enforcement mechanism or justification in the face of recalcitrance. If public reason liberalism (like most liberalisms) conceives of the moral and political orders in terms of the right standard and varying degrees of recalcitrance, a non-sectarian liberalism without liberals interprets these orders as spaces in which shared meanings and standards are constructed collaboratively. Where public reason liberalism sees recalcitrance, a liberalism without liberals sees spaces of disagreement and potential for engagement and persuasion. By seeing criticism as necessarily immanent, a liberalism without liberals succeeds in de-sectarianising liberalism in a way public reason liberalism fails to do. Instead of viewing a liberal political order as a space in which a (liberal) common will is sovereign, it interprets it as a space of radical diversity, persuasion and accommodation. There is no sovereign will, but rather a plurality of wills coexisting with each other, and in the process of coexistence constructing standards that all can live with.

Conclusion

In this chapter I have critically examined the proposal put forward by public reason liberals to de-sectarianise liberalism. Public reason liberalism seeks an account of a political order in which no private will – no ‘sect’ – prevails. I have suggested that it fares worse in this regard than an alternative, Humean tradition. Once we move beyond the standard utilitarian interpretation of this tradition we can appreciate the idea that it too

aims at a non-sectarian account of liberalism. Its conception of political order is one based on the idea of shared interests. Political settlements, according to this view, are the products of shared interests, not the embodiments of a deep moral consensus. This account is able to make sense of a political order that reflects the shared interests of all but the foundational views of none. This is what allows it to fare better than public reason liberalism at de-sectarianising liberalism. As a version of social contractarianism, public reason liberalism remains committed to the idea that a political order should be grounded in a common will.

By critically zooming in on Gaus's account of public reason liberalism, I have in this chapter also started fleshing out the idea of a liberalism without liberals. A truly non-sectarian liberalism, I have argued, is one that starts from a different understanding of the nature of moral and political authority. This authority is not something that, in a sense, 'stands outside' the social order the way dispassionate moral theories are meant to stand outside it; rather, it is something that is constructed during the social and political process of working out ways to coexist with others.³¹⁶ This stress on the immanence of authority does not mean that meaningful moral engagement and criticism are banished. What it is rather meant to bring out most vividly is, we might say, just how easy it is to slip from authority to authoritarianism. Authority is not something that comes with possessing the right moral theory but is rather something earned by means of persuasion. I will continue fleshing out the idea of a liberalism without liberals further in the next

³¹⁶ One might argue that this critique does not apply Rawls's 'political' turn. Some have suggested that this turn should be understood as a move away from Kant and towards Hegel, that is, a move away from universal moral ideals and towards reconciliation with specific practices. As he puts it, his concern in *PL* is with certain fundamental ideas "latent in the public political culture of a democratic society." (Rawls, *Political Liberalism*, p. 175) Nonetheless, as I noted in Chapter 4, Rawls remains committed in his later writings to the idea of political society as an embodiment of a common will. As such, the critique I have advanced stands. For a discussion of the communitarian critiques of Rawls's early writings and how these led to a Hegelian response on Rawls's part, see Chandran Kukathas and Philip Pettit, *Rawls: A Theory of Justice and Its Critics* (Cambridge, Polity Press, 1990).

chapter, where I compare and contrasted with the kind of contemporary liberalism it seems to share much with, that is, *modus vivendi* liberalism.

Chapter Eight

A Liberalism Without Liberals

In this final chapter I wish to draw together some of the key insights of the previous chapters and continue the task of offering an account of a liberalism without liberals. This account of liberalism develops out of the conversation on the nature of liberalism inspired by the turn to a political liberalism. Liberalism is now generally understood as “a *political doctrine*, not a philosophy of life,” as Judith Shklar puts it. What this shift in the understanding of the nature of liberalism actually means has been the subject of considerable debate. For Shklar, it means leaving the rhetoric of rights behind and “putting cruelty first.” For Rawls, more influentially, it has meant elaborating the ideas of “overlapping consensus” and “public reason.”

Some theorists have taken this ‘political’ logic even further. For thinkers like John Gray, John Horton, Patrick Neal, Chandran Kukathas and David McCabe, liberalism should be understood as a mode of coexistence. Reappraising a notion disparaged by Rawlsian political liberals, they have suggested that liberalism should be understood as a *modus vivendi*. Against Rawlsian political liberalism they have advanced forms of *modus vivendi* liberalism. Central to their endeavour has been the quest to remove justice from the pedestal upon which Rawls has placed it. Conceptions of justice, they think, differ too widely for the Rawlsian project to be a meaningful one.

It is within this broad and heterogeneous family of *modus vivendi* liberalism that a liberalism without liberals is most at home. Like other forms of *modus vivendi* liberalism it seeks to challenge the idea that political society should be understood as the site of deep moral agreement. But what I will try to show is that it is also distinctive, and that its

distinctiveness derives from its Humean nature. The interpretation of Hume's political thought I have advanced in previous chapters builds up to a distinctive account of liberalism. This liberalism without liberals shares important features with other forms of *modus vivendi* liberalism; but it also, I want to argue, does better than them on a number of fronts.

This chapter develops in the following manner. In Section I, I provide an overview of existing accounts of *modus vivendi* liberalism. In Section II, these accounts are confronted with the Humean perspective I have elaborated in previous chapters. My aim here is to show in what ways a Humean *modus vivendi* liberalism is both distinctive and more convincing than other available options. In Section III, I sum up by offering an account of a Humean liberalism without liberals.

I. Varieties of *Modus Vivendi* Liberalism

Modus vivendi liberalism (henceforth, MVL) is not an easily definable phenomenon in contemporary liberal theorising. To a large extent this is due to the fact that, as Patrick Neal notes, it remains largely a creation of its critics.³¹⁷ *Modus vivendi* (henceforth, MV) approaches tend to be relegated beyond the confines of liberal theory proper largely due to the influence of John Rawls's characterisation of MV. In PL Rawls famously defines MV as a political settlement sustained solely by the balance of relative powers between purely self-interested groups or agents.³¹⁸ This is the way MV is understood in International Relations theory, Rawls acknowledges. A treaty between two nation-states is an instance of MV when the “agreement proposed represents an equilibrium point”: it is the best that the two parties can each get away with. Rawls's emphasis is on the fact that as soon as one party finds it in its own interest to breach the agreement at the other

³¹⁷ Patrick Neal, ‘Vulgar Liberalism’, *Political Theory*, vol. 21, n. 4 (1993), p. 191.

³¹⁸ Rawls, *Political Liberalism*, pp. 147ff.

party's expense, it will do so. MV is a truce within an overarching state of war. Only a deep moral consensus on foundational matters, Rawls thinks, can bring real social unity and moral peace.

Although there are as many different accounts of MV as there are MV theorists, one thing that can safely be said to characterise all MV theories is a rejection of this Rawlsian/IR definition of MV.³¹⁹ No MV theorist thinks political life should amount to a balance of relative powers between purely self-interested agents. What they are aiming at is not a form of amoralism but rather a form of moral minimalism. They seek to occupy, in other words, the space between the amoralism of Rawls's MV and the deep normative consensus of Rawls's overlapping consensus.

The language of contemporary political realism is particularly helpful here. Like realists, MV theorists rebel against what following Bernard Williams we might call “political moralism.”³²⁰ The problem with political moralism, Williams avers, is that it “make[s] the moral prior to the political.” Now, there are different ways in which this claim may be interpreted and in which it has been interpreted by realists. I cannot here discuss this complex issue. But I take the general idea Williams here wishes to put forward – and which all MV theorists accept – to be that much contemporary liberal theory seeks to resolve political disagreements and conflict at the level of ideal moral theorising rather than allowing real agents to work out their conflicts and disagreements in the context of political processes and institutions.³²¹ The problem, in other words, is

³¹⁹ See, e.g., John Horton ‘Realism, Liberal Moralism and a Political Theory of Modus Vivendi’, *European Journal of Political Theory*, vol. 9, no. 4 (2010), pp. 431–48, and Kukathas, *The Liberal Archipelago*.

³²⁰ Bernard Williams, ‘In the Beginning Was the Deed: Realism and Moralism’ in *Political Argument*, ed. Geoffrey Hawthorn (Princeton, NJ and Woodstock, Oxon, Princeton University Press, 2005). pp. 1-3.

³²¹ For a summary of the realist critique of political moralism, see William A. Galston ‘Realism in Political Theory’, *European Journal of Political Theory*, vol. 9 (2010) pp. 385–411, and Enzo Rossi and Matt Sleat, ‘Realism in Normative Political Theory’, *Philosophy Compass*, vol. 9, no. 10 (2014), pp. 689–701.

with thinking that political theory can simply be a form of applied ethics. What realists see as giving “greater autonomy to distinctively political thought,” MV theorists see as emphasizing the messy, unresolved nature of politics. As Dauenhauer sums it up, a MV is “an arrangement between [...] groups that effects a workable compromise on issues in dispute without permanently settling them.”³²²

What kind of political theory have MV liberals put forward on such bases? As I said, MV theorists do not reject morality but rather seek to offer an alternative account of the relationship between politics and morality. One of their core, shared claims is that political morality centers on legitimacy, not justice. If Rawls and Rawlsians focus on justice, MV theorists focus on the rightful exercise of political power. Or, to put it as Chandran Kukathas does: “The important question is taken to be, not ‘what should the state or government – that is, authority – do?’ but ‘who should have the authority?’”³²³ What matters for MV theorists is not that a political order conform to a theory of justice but rather that those subjected to political power deem it rightful. In a pluralistic society we are bound to disagree about what justice requires; our focus should therefore be on the whether the exercise of power – which is taken to be indispensable for collective life – is deemed acceptable by those subject to it.³²⁴

In line with their moral minimalism, MV theorists tend to put forward very thin accounts of legitimacy. Legitimacy is not tied to substantive agreement on principles or values but rather a shared willingness to acknowledge the legitimacy of a particular set of political arrangements. “To count as a modus vivendi,” Horton says, “an arrangement

³²² Bernard Dauenhauer, ‘A Good Word for a Modus Vivendi’ in Davion, V. and Wolf, C., eds. *The Idea of a Political Liberalism*. (Lanham, MD: Rowman & Littlefield, 2000), p. 219. See also, Claudia Mills, ‘Not A Mere Modus Vivendi: The Bases for Allegiance to the Just State’, in Davion, V. and Wolf, C., eds. *The Idea of a Political Liberalism* (Lanham, MD, Rowman & Littlefield, 2000).

³²³ Kukathas, *The Liberal Archipelago*, p. 5.

³²⁴ John Horton, ‘Toward a Political Theory of Modus Vivendi’ (2009), and John Gray, *Two Faces of Liberalism* (Oxford, Blackwell, 2000).

has to be broadly ‘acceptable’ or ‘agreeable’ to those who are party to it, even if only reluctantly and for diverse reasons.”³²⁵ Horton’s own minimalistic proposal, for example, draws on Williams’s “critical theory principle”: so long as the acceptance itself is not the product of systematic and comprehensive deception by those with political power, then the reasons why it is accepted can be many and various, and do not really matter as regards the legitimacy of the settlement.³²⁶

Against this shared understanding of the centrality of legitimacy, different theorists offer different accounts of MV theory. John Horton draws on the political thought of Bernard Williams, John Gray, Glen Newey, Bonnie Honig, Judith Shklar, Patrick Neal, Michael Oakeshott and Richard Rorty. His main interest is in developing a political theory that bears a closer relationship to the lived experience of politics in the modern world. His account is realist and anti-rationalist. It values “whatever moral, intellectual, cultural, rhetorical, emotional, material, motivational and other resources [...] parties can mobilise in the political process” and sees “compromise, negotiation, bargaining, give and take, fudging, strategies of avoidance, even evasion, of difficult questions and similar practices [as being] at the heart of a politics of modus vivendi.”³²⁷

John Gray’s MV builds on the political theories of Thomas Hobbes and Isaiah Berlin. From Hobbes he gets the idea that peaceful coexistence and order rather than lofty ideals of moral truth or justice are the true ends of political association.³²⁸ Of Hobbesian derivation too is the related idea of tying the morality of MV to “evils that can make any kind of good life difficult or impossible.”³²⁹ Gray seeks to replace the standard liberal pursuit of the ideal regime with the more modest Hobbesian task of identifying and avoiding a universal *summum malum*. There are set of evils that all human

³²⁵ Horton, ‘Realism, Liberal Moralism and a Political Theory of Modus Vivendi’, p. 439.

³²⁶ Ibid. See Williams, ‘In the Beginning was the Deed’, p. 5.

³²⁷ Horton, ‘Toward a Political Theory of Modus Vivendi’, pp. 7-8.

³²⁸ Gray, *Two Faces*, p. 3.

³²⁹ Ibid., p. 66.

beings recognise as such. These universal evils, Gray stresses, do not ground a universal morality. “When faced with conflicts among them,” he observes, “different individuals and ways of life can reasonably make incompatible choices.”³³⁰ The pursuit of the ideal becomes vacuous under such circumstances.

The linchpin of Gray’s theory is the Berlinian theory of value-pluralism. Gray thinks there is a direct connection between the latter and the philosophical justification of a MV regime. According to the theory of value-pluralism, not only is the moral universe populated by discrete moral values, but very often different values cannot be compared in worth. Not only is there a plurality of values, in other words, but often these values are “incommensurable.”³³¹ Incommensurable values cannot be compared with each other or ranked in any rational way. There is no way to resolve rationally conflict among incommensurable values. Choice between two incommensurable values can only be ‘irrational’, unprincipled. The quest for an ideal regime that is capable of ordering rationally different values conflicts with the reality of our moral life. Value-pluralism and MV are thus intimately related:

Modus vivendi expresses the belief that there are many forms of life in which humans can thrive. Among these are some whose worth cannot be compared. Where such ways of life are rivals, there is no one of them that is best. People who belong to different ways of life need have no disagreement. They may simply be different.³³²

Compromise, toleration, mediation and negotiation thus become the core aspects of political life. “The aim of modus vivendi cannot be to still the conflict of values. It is to

³³⁰ Ibid.

³³¹ Ibid., p. 34.

³³² Ibid., p. 5.

reconcile individuals and ways of life honouring conflicting values to a life in common.”³³³

Patrick Neal too thinks that liberalism should return to Hobbes. His MVL is in fact a self-conscious, confident “Hobbesian liberalism.” A crucial Hobbesian feature of his account is, as we saw in Gray’s, the focus on evils to be averted rather than ideals to be pursued. “Hobbesians,” Neal writes, “take the measure of civil polity by the yardstick of the *summum malum*.”³³⁴ This *malum* consists in obvious evils like disorder, personal insecurity, violence and war. The political goods of civil peace and stability have been neglected by ideal-pursuing liberal theorists, he thinks. Neal of course acknowledges that there are goods greater than peace and personal security; however, he thinks these should not be made the stuff of politics. It is great if a polity achieves them, but this is not what liberal theorists should set their eyes on. In a world of conflict and disagreement we should see a liberal order as something that can “fulfill the longings of the heart, soul and body that move us”; if it can guarantee an acceptable level of peace and security, it has achieved all it is reasonable to expect it to achieve.

If Gray’s and Neal’s accounts are ‘Hobbesian’ to the extent that they seek to replace justice with civil peace, then we have reason to use the same epithet in describing Kukathas’s proposal. As he puts it, “the state should not be concerned about anything except order or peace.” The reason for this is that, in his view, “it cannot accomplish any more.”³³⁵ It would be unrealistic to expect more from the liberal state. But it is not only realism animating Kukathas’s perspective. There is something implausible, he notes, in thinking that a liberal political order should be geared to a specific understanding of what counts as good conduct when it is precisely the question of what to do when there is

³³³ ibid., p. 6.

³³⁴ Neal, ‘Vulgar Liberalism’, p. 638.

³³⁵ Kukathas, *The Liberal Archipelago*, p. 252.

disagreement about such matters that liberalism should address.³³⁶ A liberal political order is one in which, as he puts it, different ways of life “coexist” rather than “cohere.”

The two principles that ground Kukathas’s MVL are freedom of conscience and freedom of association. According to his theory of human nature, human beings have an overwhelming interest in living in accordance with the dictates of their own consciences. And they can only live in accordance with conscience, he argues, in a political system in which freedom of association and disassociation is available. Living a good life depends on associating with those who think like you, who enable you to be the person you think in your conscience you should be. Kukathas uses the analogy of the archipelago when describing his vision of the good society: a plurality of moral-legal jurisdictions – ‘islands’ – constituted by freely associated individuals. The liberal state’s task is not that of making each island more just but rather creating the preconditions for peaceful coexistence between them. It is MV arrangements that regulate relations between the islands. This is all the liberal state could and should look like.

Like Kukathas’s, David McCabe’s MVL develops more explicitly within the liberal tradition than Gray’s, Neal’s or Horton’s. If Kukathas appeals to the quintessentially liberal ideas of freedom of conscience and freedom of association, McCabe singles out and endorses the value of what he calls the “ideal of justification.”³³⁷ Liberal theorists, he notes, are “committed to an account of political legitimacy which states that the fundamental principles structuring the political realm must be such as can be rationally vindicated to citizens subject to it.” This is a view one finds in Jeremy Waldron’s essay “The Theoretical Foundations of Liberalism,” in Rawls’s “liberal principle of legitimacy,” and in all the public reason literature inspired by Rawls’s later

³³⁶ Ibid., p. 76.

³³⁷ David McCabe, *Modus Vivendi Liberalism* (Cambridge, Cambridge University Press, 2010), pp. 5ff.

works.³³⁸ A liberal political order grounded in a liberal ideal of the good life will be viewed as unjustified by all those who do not share that ideal. He endorses the Scanlonian idea of reasonable rejectability in this context: the liberal order is one that reasonable people would not reject. He calls this test “the acid test for an adequate liberal theory.”³³⁹

Only a liberal regime understood as a MV can fulfill the promise of reconciling the justificatory ideal with pluralism. As McCabe puts it, “MVL suggests that agreement to liberal terms might thus emerge as a compromise among citizens who recognize the value of ordered political life but realize that the political vision recommended by their distinct normative frameworks cannot be achieved.”³⁴⁰ McCabe describes this account of MVL as “anti-utopian”; rather than the expression of a moral ideal, a liberal political order should be understood as “second-best,” that is “something diverse citizens can agree to as an acceptable compromise.”³⁴¹ By pursuing this MV path many illiberal ways of life can be brought within liberalism’s fold.

But why would illiberal ways of life find the call of MVL an enticing one? The answer, McCabe thinks, has to do with the ends MVL pursues. His own account of MVL is grounded in a “minimal moral universalism,” which in its turn is grounded in a presumption that the interests of all persons matter equally.³⁴² The “thin morality” that grounds McCabe’s MVL is constituted by values that no reasonable person could reject. These rule out, he thinks, evils such as slavery and severe or permanent bodily harm, while guaranteeing access to such things as education, basic physical and psychological needs, and security. McCabe speaks of “a core set of human rights which the MVL state

³³⁸ Jeremy Waldron, ‘Theoretical Foundations of Liberalism’, *The Philosophical Quarterly*, vol. 37 (1987), pp. 127–50, Rawls, *Political Liberalism*, Quong, ‘Public Reason’.

³³⁹ McCabe, *Modus Vivendi Liberalism*, p. 7.

³⁴⁰ Ibid., p. 126.

³⁴¹ Ibid.

³⁴² Ibid., p. 138.

is committed to protect and which draw the limits of the tolerable.”³⁴³ He thus seeks to distance MVL from the kind of rhetoric centering on order and peace one finds in Gray, Neal or Kukathas and realign it with the kind of rights-based discourse that MV theorists usually rebel against.³⁴⁴

For McCabe the liberal state thus acquires a moral relevance and political salience that other MV theorists tend to shy away from. The state in his account is not concerned solely with the provision of public goods and peace, but rather also with the protection of certain universal human rights. As such, it guarantees, for example, health and education by means of centralised public provisioning and compels all to partake in them. Unlike Kukathas’s state, it also interferes directly in inter-group relations whenever it feels human rights are being violated. MVL does not ground a decentralised, ‘archipelagic’ juridical system but rather a form of what McCabe calls “moderate centralism.”³⁴⁵ Liberalism for McCabe is ultimately about the protection of certain universal human rights and a centralised authority with a monopoly of violence is necessitated by it. McCabe’s MVL is based on the idea that all reasonable people can see the value of this arrangement, even though many illiberal groups will conceive of it as a second-best.

II. Hume and MVLs

In Chapters 4-6 I proposed an interpretation of David Hume’s moral and political thought that is strikingly congruent with key features of the MVLs I have just considered. According to that interpretation too political order is not the site of deep moral consensus but rather the product of a willingness on the part of individuals and groups

³⁴³ Ibid.

³⁴⁴ See esp. John Gray, *Enlightenment’s Wake* (London, Routledge, 1995), p. 77.

³⁴⁵ McCabe, *Modus Vivendi Liberalism*, pp. 148ff.

who hold different normative frameworks to inhabit a common space in which affairs are conducted in a manner acceptable to all. Political institutions are not the expression of a common will but rather the product of settlements that all can live with. Political order is not the site of moral harmony but rather the intricate and laborious historical product of compromise and negotiation of differences. As MV theorists stress, this portrait of political order is not one that sees stability as the product of temporary truces dictated by the balance of relative powers but rather of, as Gray puts it, “the recurrent renegotiation of interests and values [that] is necessary for any sustainable modus vivendi.”³⁴⁶

David Hume has remained a marginal figure in the contemporary debate on the nature and future of liberalism. As I suggested in Chapter 4 this is probably due to the utilitarian reading of his thought. But even among the critics of the Rawlsian project Hume’s voice has remained marginal. MV critics, we’ve seen, have tended to appeal generally to Hobbes. The agonistic view of social and political life, the sceptical reluctance to appeal to universally valid moral ideals, the minimalistic emphasis on compromise as the basis of political settlements are basic aspects of Hobbes’s political thought that thinkers like Gray and Neal have found congenial.

Horton’s anti-rationalism has clear Humean undertones. When he writes that in his view “a modus vivendi emerges through the deployment of whatever moral, intellectual, cultural, rhetorical, emotional, material, motivational and other resources that the parties can mobilise in the political process,” it is obvious in what sense such a pluralistic account of the sources of political order could be interpreted as Humean.³⁴⁷ However, he does not explicitly present references to Hume, or acknowledge any debt to him.

³⁴⁶ Gray, *Two Faces*, p. 108.

³⁴⁷ Horton, “Toward a Political Theory of Modus Vivendi”, pp. 7-8.

Kukathas represents an important exception here. He defines his MV theory as “sceptical, Humean.”³⁴⁸ There are two places in his argument where he draws explicitly on Hume. First, his political theory draws on a philosophical anthropology that is profoundly Humean.³⁴⁹ Kukathas’s account of human nature is based on Hume’s pluralistic account of human motivation. According to Hume, humans are motivated by what he calls “interest,” “affection,” and “principle.” Second, Hume is again invoked in Kukathas’s discussion of political obligation. Kukathas makes his own Hume’s rejection of consent-based theories of political obligation.³⁵⁰ He appeals to Hume when discussing the case of voluntary immigrants and what can be legitimately expected of them. However, the foundations of his theory – the principles of freedom of conscience and freedom of association – are not Humean.

It is worth mentioning here also Andrew Sabl’s recent intervention in the debate between “moralism” and “realism,” since it marks an important shift in the appreciation of Hume’s potential contribution to contemporary debates.³⁵¹ Sabl thinks that from Hume’s *History of England* a distinctive account of politics can be evinced. Political society need not be seen to rest on a normative consensus, according to Hume’s account, but should rather be understood as a response to coordination problems between individuals and groups with different interests. Hume responds to the problem of coordinating large-scale and complex social endeavours with a theory of “constitutional conventions.” Rather than a normative consensus on principles of political justice, it is peaceful procedures for choosing political officers and the legitimate bounds of political power that, according to Hume, are the best response available to both the threat of civil war

³⁴⁸ Kukathas, *The Liberal Archipelago*, p. 210.

³⁴⁹ Ibid., ch. 2.

³⁵⁰ Ibid., pp. 162ff.

³⁵¹ Andrew Sabl, *Hume’s Politics: Coordination and Crisis in the History of England* (Princeton, NJ and Woodstock, Oxon, Princeton University Press, 2012).

and the potential for abuse of political power. Sabl thinks that Hume is putting forward in his *History* a realist (in the sense of anti-moralist) theory of political life. Sabl does not mention MVL, but the consonance is obvious.

Nonetheless, Sabl's Hume comes across more as a precursor of twentieth century social scientific discoveries than as a distinctive voice in the conversation on the nature and future of liberalism. Hume is seen as anticipating late-twentieth century theories of conventions or coordination problems. Sabl's Hume is, first and foremost, a remarkably acute and prescient political scientist who confronts the realities of political life with a degree of realism and theoretical rigour that only now we are starting to appreciate. He gives us the intellectual tools for thinking more clearly about how our pluralistic democracies should be governed. Setting out a case for seeing Hume in this way is certainly an important achievement. And there is surely a lot of truth in it. But whether this exhausts Hume's potential contribution to liberal theory is, I would argue, less clear.

For the remainder of this chapter I want to spell out the distinctiveness of Hume's proposal. And I would like to do so by approaching existing MVLs from a Humean perspective. For Hume is useful not merely in helping us see the value of a MV approach to political matters but also, I want to argue, in helping us visualise what a convincing account of MVL looks like. We can do so by taking up some challenges existing MVLs have faced and see how a Humean approach would fare instead. I will focus on three in particular. In general, one might say that these three aspects of existing MVLs reflect heavily the influence of Hobbes on current challenges to high liberalism.³⁵² First, I want to scrutinise the idea of replacing the *summum bonum* with *summum malum*. Second, I want to scrutinise the idea of putting order and peace first. Third, I want to

³⁵² I cannot pursue here the matter of whether MV theorists like Gray and Neal are right in their interpretations of Hobbes. I shall simply assume for the sake of argument that they are.

scrutinise the idea of replacing justice with legitimacy. On all three points, I want to show, a Humean perspective fares better than a (broadly understood) Hobbesian one.

(i) *Summum Malum*

We have seen that some accounts of MVL, Gray's and Neal's in particular, rely heavily on the 'anti-utopian' idea that a liberal political order is one in which evils are averted rather than ideals attained. It is not a *summum bonum* that liberalism aspires to achieve but rather the more modest task of keeping the *summum malum* at bay. MVL is an arrangement that guarantees that evils that all human beings recognise as such will be warded off. Both Gray and Neal draw explicitly on Hobbes when pursuing this line of argument. Hobbes's Leviathan is not meant to ennoble humanity but simply to check humanity's worst, most socially destructive tendencies. As Gray puts it, MVL is fundamentally "Hobbesian in conceiving the avoidance of war as the rationale of politics."³⁵³

This kind of MVL then relies on the idea of a *summum malum* that applies to all human beings, universally. The thought is that there are some supreme evils that all human beings recognise as such and that it is to stave off these evils that politics is resorted to. War, as we've seen Gray propose, is an obvious candidate for such a *summum malum*. Personal security is another related one Neal stresses. MV theorists tend not to draw lists of evils that the idea of *summum malum* is meant to capture. The assumption here is that there simply are some evils that no human being would deny and that all human beings turn to politics to repel. If on what constitutes the *summum bonum* disagreement reigns, these MV theorists argue, on what counts as a *summum malum* universal agreement exists.

³⁵³ Gray, *Enlightenment's Wake*, p. 130.

The problem, however, is that it seems as though the shortcomings of the notion of *summum bonum* also apply to that of *summum malum*. MV theorists claim that (a) there will be disagreement over what counts as a *bonum* and (b) that different individuals/groups will value different goods differently and that no universal ranking is available. But this clearly applies to the idea of *summum malum* as well. In different contexts what is considered bad or worst will vary and has historically varied.³⁵⁴ And the moral and political task of comparing different evils and trading one off against the other is not any easier than the case when *bona* rather than *mala* are involved. When addressed to pluralists like Gray and Neal this seems to be a particularly pertinent worry.

A possible response here could be that it would be simply impossible and unreasonable to deny that there *are* supreme evils that all human beings recognise as such and that they would never want in their lives. Isn't war precisely such an evil? But, first, it is not obvious that any price is worth paying to avoid war. A proud, ancient civilisation might find a prolonged state of subjection and humiliation worse than a state of belligerence. Second, even assuming that war is indeed a universal *summum malum*, it is not clear how such a minimalist vision can be of help in the task of constructing a political theory. Even less clear is how it of help in the task of constructing a *liberal* political theory. Hobbes is of course the clearest example of how fear of war can lead to deeply illiberal outcomes.

Another response could be to argue that as a matter of *empirical* fact there is more agreement over the *summum malum* than the *summum bonum*. Over some evils, one might say, there is pretty much unanimous agreement. Such a response, however, would signal a significant departure from the Hobbesian accounts of MVL I have so far considered. The latter are looking for moral values over which there is unanimity and build their

³⁵⁴ John Kekes, 'Cruelty and Liberalism', *Ethics*, vol. 106, n. 4 (1996), p. 843.

MVLs on the basis of those values. To argue instead that as a matter of empirical fact it does in fact seem possible to identify a *summum malum* is to engage in an entirely different kind of enquiry. This is to engage, I would argue, in a Humean rather than Hobbesian kind of enquiry. Hume's key idea, we've seen, is that political society is a particular space in which diverse individuals and groups 'meet' to pursue a set of shared interests. Among the shared interests we have, as the Humean would put it, is that of containing violence, or preserving personal security. But this – averting war – is only one of the many shared interests we have. The Humean perspective leaves open the question of whether there is a supreme interest and what this supreme interest might consist in.

This account gives us a more flexible understanding of political life. As I noted above, war might not be staved off at just any cost. Certain circumstances might lead individuals and groups to overturn a political system and risk civil war. Certain circumstances might lead individuals and groups to prefer anarchy to the order of the Weberian-Westphalian state.³⁵⁵ As we saw in Chapter 5, a Humean would of course add that overturning any political order involves risks that rarely it makes sense to run. But by seeing political order as a product of shared interests, rather than the embodiment of a common will or as the only mechanism for staving off a universally morally abhorrent *summum malum*, a Humean perspective allows us to make sense of such a plurality of political possibilities.

(ii) Order and Peace

If what we think politics is there to achieve is the staving off of a *summum malum*, and if we minimalistically associate the latter with a condition of war, then the one overarching thing we will come to value politically is the end of peace, or civil order. We have seen

³⁵⁵ Leeson, *Anarchy Unbound*, and Scott, *The Art of Not Being Governed*.

that part of what makes MVL anti-utopian in the eyes of its advocates is that it rests normatively content when an acceptable degree of peace in society is achieved. It is not justice that liberalism revolves around but rather the pursuit of civil peace among individuals and groups that disagree radically about the good life. MV liberals (particularly those inspired by Hobbes) do not, as Neal puts it, put the adjective “mere” in front of “civil peace.”³⁵⁶ They acknowledge, rather, the fragility of human orders and lower their expectations as to what may be realistically achieved in political life. It would be great to achieve a just society, they think, but we shouldn’t think that achieving a peaceful one is a meaningless task.

An obvious question that arises here is how exactly “peace” or “order” should be understood. MV liberals have unfortunately not spent much time defining these key terms so far.³⁵⁷ But without a clear definition appealing to these notions is problematic. Peace and order are not empirical facts but rather complex social phenomena that are a mixture of normative and descriptive aspects. For *liberal* theorists this is a particularly pertinent worry. Conservative or Marxist theorists won’t see much peace or order when confronted with the perpetual disagreements and conflicts that characterise free and open liberal societies. MV liberals, then, are certainly right in suggesting that the “love of ideals” guiding the normative enquiries of most contemporary liberals risks obscuring the value of civil peace in diverse societies. The pursuit of justice at all costs, as Kukathas and Gray stress, might threaten peace. Without a clear account of peace, however, these observations necessarily remain critical and negative in nature and do not point the way to a more positive alternative.

³⁵⁶ Neal, ‘Vulgar Liberalism’, p. 638. See also Williams’s comments on Rawls’s use of the expression “mere modus vivendi.” Williams ‘In the Beginning was the Deed’.

³⁵⁷ For a very useful analysis, see Fabian Wendt ‘Peace beyond Compromise’ in *Critical Review of International Social and Political Philosophy* vol. 16, no. 4 (2013), pp. 573-593.

A second possible worry parallels the one I discussed above in the context of my discussion of the *summum malum* idea. Civil peace seems to be so minimalistic an idea that it is not clear that any theory could be built on it. This is even more so the case when it is a liberal theory that is being built. Dictatorships and graveyards are after all very peaceful places. Liberal theories need an account of a *liberal* peace. And the idea of liberal peace will necessarily involve a lot more than the absence of open hostilities. Hobbes's political theory is once again a testament to this.

These two limitations of existing accounts of MVL have been noted by commentators.³⁵⁸ I think they do identify an obvious gap in these accounts. But I would argue that a Humean perspective would point to another, more general shortcoming. The Humean worry does not focus on the '*what* peace?' question but rather the '*why* peace?' one. Why should peace displace other values and reach centre stage? Peace is of course a great political good, one, indeed, that makes possible a whole range of other political goods. But it remains one good among many. It may at times politically compete with other goods and it is not clear that it should always, by default win. Peace and order – just like, it is important to stress, utility – are just two amongst a plurality of values or ends that populate a political society. We see the Humean perspective on MVL once again resisting any attempt to found a political order on any one value. The problem with the Rawlsian perspective is not that it values justice; it is that it takes justice and sets it alone on stage.

The pluralistic approach Hume favours comes across nicely in his essay "Of the Origin of Government." In this essay Hume discusses the relationship between justice and government, the development of artificial virtues out of natural ones, and the way military organisation led to civil government. But he also discusses what he takes to be

³⁵⁸ Ibid. Also, McCabe, *Modus Vivendi Liberalism*, p. 137.

the intrinsically dualistic nature of political life. “In all governments,” he writes, “there is a perpetual intestine struggle, open or secret, between Authority and Liberty; and neither of them can ever absolutely prevail in the contest.”³⁵⁹ The tension between obedience and freedom is one that is never resolved. This is not a matter of regret, or a condition that has to be overcome. The tension between these two values simply defines the political condition according to Hume. The values of order and peace that MV liberals value, we might therefore say, can never prevail but must rather remain in a state of negotiated tension with values that challenge them.

Now, one has to be careful not to attribute to the value of civil peace and order within the MVL scheme the same kind of foundational value that, say, the notion of ‘free and equal person’ has in the Rawlsian scheme. Horton notes, for example, that he doesn’t see peace and security as a “*summum bonum* or super-good.” All he wants to say is that “virtually all parties to a conflict will have *some* interest in these goods.”³⁶⁰ Hume would of course agree. But if the claim is one of this kind, then I would suggest that the Humean path is more convincing. The core of a Humean MVL is the notion of shared interests and acquiescence, not the end of peace and order. And an interest we are all likely to share is that of living in peaceful conditions. Hume acknowledges that order is a great value: “it must be owned, that liberty is the perfection of civil society; but still authority must be acknowledged essential to its very existence: and in those contests, which so often take place between the one and the other, the latter may, on that account, challenge the preference.” We see, however, that his perspective never papers over the tensions that exist in political society and shies away from ever elevating one value to a place that is beyond challenge.

³⁵⁹ David Hume ‘Of the Origin of Government’ in Eugene F. Miller, ed. *Essays, Moral, Political and Literary*, p. 42.

³⁶⁰ Horton, ‘Toward a Political Theory of Modus Vivendi’, p. 9.

(iii) *Legitimacy*

As Horton says, “modus vivendi [is] a theory of political legitimacy, rather than a theory of justice,” that is, “it is an account of what it is for a political arrangement to be legitimate.”³⁶¹ Most MV liberals, we’ve seen, would agree. For them the first virtue of social institutions is not justice but legitimacy. This does not mean that justice is not an important value, or that it wouldn’t be better to live in a just than an unjust regime. But justice, they suggest, simply is not the stuff of politics. Kukathas stresses the fact that over justice there is too much disagreement, and that liberalism should focus instead on authority and its justification. MV liberals of a more realist bent, like Horton, seem to be after a more conceptual point. Politics *is* about the exercise of power over people, they claim.³⁶² And it is legitimacy, not justice, that is the evaluative standard that pertains to this specific activity. MVL looks at whether the exercise of authority is deemed rightful by those subjected to it rather than the justice of the distribution of goods in the polity.

This raises the question of what legitimacy is taken to consist in. According to Horton, “political arrangements are legitimate [...] if they secure or sustain peace and security in a way that people find broadly *acceptable*.³⁶³ This account of legitimacy, then, revolves around the idea of ‘acceptability’. The challenge for MV theorists here is to offer an account of this acceptability condition that is not too ‘moralised’. They seek to fill the space between an idealised conception of legitimacy and one that sees legitimacy as whatever real agents happen to accept. Bernard Williams has offered an interesting and influential possibility in the form of what he calls the “critical theory principle,” according to which “the acceptance of a justification does not count if the acceptance

³⁶¹ Ibid., p. 1.

³⁶² For this more conceptual strategy the key source of inspiration is Williams, ‘In the Beginning Was the Deed’.

³⁶³ Horton, ‘Toward a Political Theory of Modus Vivendi’, p. 10; emphasis added.

itself is produced by the coercive power which is supposedly being justified.”³⁶⁴ This formulation is enticing, as it seems able to navigate between the Scylla of moralism and the Charybdis of anything-goes realism. However, it does raise the question of what being ‘produced by’ actually means. How directly does coercive power need to intervene? It more generally raises the spectre of false consciousness. And once this spectre is raised, it is difficult, it seems to me, not to start sliding down the slippery slope of moralism.

Some critics of the realist enterprise have suggested that the pursuit of legitimacy and the pursuit of justice in political theory are in reality one and the same thing. Legitimacy ultimately has to do with the way we think people should be treated; it is subordinate, in other words, to the value of justice.³⁶⁵ These are important questions, which MV theorists have to have plausible answers to. But I think that these are not the kind of questions that would animate a Humean MVL. Even on the matter of legitimacy, I want to suggest, a Humean perspective is distinctive.

Legitimacy is about the claims governments have over us. The more importance we attribute to governments, the more solid we will want these claims to be. If government is deemed indispensable for social order, it is important that these claims are as solid as they can be. MV theorists tend to follow Hobbes in thinking this is indeed the case.³⁶⁶ Hume’s reasoning on government starts from a different angle. What he first of all stresses is the fact that political societies have morally questionable origins.³⁶⁷ This is one of the core ideas he presents in his critique of the social contract. It is not the quest

³⁶⁴ Williams, ‘In the Beginning Was the Deed’.

³⁶⁵ Laura Valentini ‘Assessing the Global Order: Justice, Legitimacy, or Political Justice?’, *Critical Review of International and Social Political Theory*, vol. 15 (2012), pp. 593-612, but see Matt Sleat ‘Justice and Legitimacy in Contemporary Liberal Thought: A Critique’, *Social Theory and Practice*, vol. 41, no. 2 (2015), pp. 230-52. See also Charles Larmore, ‘What is Political Philosophy?’ *Journal of Moral Philosophy*, vol. 10 (2013), pp. 276-306.

³⁶⁶ See esp. Williams ‘In the Beginning Was the Deed’, Gray, *Two Faces*, and Neal, ‘Vulgar Liberalism’.

³⁶⁷ Hobbes of course recognised this too.

for the legitimate exercise of power that gives rise to political societies, he points out. Rather, as he puts it in the essay “Of the Original Contract,” “almost all the governments, which exist at present, or of which there remains any record in story, have been founded originally, either on usurpation or conquest, or both.”³⁶⁸ In Chapter 3 we have seen that historians of state formation have reached identical conclusions about the origins of states. Of course, Hume recognises, as we saw in Chapter 4, that governments have a role to play once society has become too large for the natural virtues alone. But he also shows that social order does not depend on governments. We acquiesce to government power as part of the pursuit of interests. The emphasis on the violent and contingent nature of political order along with the logic of interest establishes a significant ‘distance’ between government and its subjects. That governments have a claim on us becomes a significantly less significant issue.

This does not mean, of course, that legitimacy is irrelevant from a Humean perspective. Legitimacy is very important, Hume suggests, when thinking about the stability of government. Governments that are thought to be legitimate will be more stable. A shared sense of a government’s legitimacy is a very useful coordination device, we might say following Sabl and Hardin. Yet, this makes Hume’s position radically different from that of both social contract theorists as well as the MV liberals I considered above. For them, we have seen, the relationship between politics and legitimacy is a necessary, if not conceptual, one. Legitimacy is the ur-value; if we don’t understand legitimacy, we don’t understand politics. Hume’s account, once again, is pluralistic. Rather than a necessary or conceptual one, for Hume the connection between political order and legitimacy is a contingent one. And it is also profoundly sceptical. Once the violent origins of government have been recovered, once its indispensability

³⁶⁸ Hume, ‘Of the Original Contract’.

for social order rejected, and the idea of a common will dislodged, the pressing task of *justifying* government – shared by both Kantian moralists and Hobbesian realists – becomes much less pressing.

III. Interests and the Moral Life of a Liberalism Without Liberals

Although it has much in common with existing accounts of MVL, I also hope to have shown that the Humean account that I have extracted from my own reading of Hume's political thought is distinctive. The idea of liberalism without liberals seeks to capture this distinctiveness. A Humean liberalism without liberals shares enough with other MVLs for it to be seen as partaking in the kind of project Horton, Gray, Neal, Kukathas and McCabe see themselves as engaging with. Like these liberalisms, it too presents a challenge to Rawlsian liberalism and it does so by eroding the idea of political society having to rest on a deep moral agreement. The challenge it presents, however, rests on a unique set of ideas. A Hume-inspired liberalism without liberals is a combination of (a) a specific idea concerning the nature of political society, (b) an attempt to take pluralism more seriously than has so far been countenanced by liberals, (c) a specific view concerning the distribution of authority in moral deliberation, and (d) scepticism about political institutions. Some MVLs would endorse (perhaps only implicitly) some of these ideas. A liberalism without liberals is distinctive in that combines these four ideas.

MV liberals, we have seen, reject the idea that a moralised consensus should be taken to constitute the core of political society. Though they devote substantial efforts to detailing the kind of processes and dynamics that in their view holds political society together, they nevertheless fail to offer, clearly and explicitly, an alternative account of political order. A liberalism without liberals takes the Humean distinction between political society as the product of shared interests and political society as the

embodiment of a common will as its starting point. Political society is not a site of agreement on fundamentals but rather a social space in which a plurality of agents ‘meet’ in pursuit of their disparate ends. It is the interests that these diverse agents share that *constitute* political society. There is no deep moral agreement about the nature and ends of the person, or the *telos* of political society. Political society is not moved forward by a collective will. It is a much ‘thinner’, less permanent achievement. When interests coincide they do not amount to a common will, and when they do not fully coincide they give rise to compromises. Furthermore, interests change over time. To go back to Dauenhauser’s definition of MV, political society is then best thought of as ‘an arrangement between [...] groups that effects a workable compromise on issues in dispute without permanently settling them.’

What has motivated some liberals to pursue the MV route has been the concern that Rawlsian political liberalism fails to take pluralism seriously enough. If we start from the idea of the necessity of a deep moral agreement on fundamentals we are in effect closing off significant spaces of political disagreement (and freedom). If political liberalism takes as its starting point the idea that, as Judith Shklar puts it, “liberalism refers to a *political doctrine*, not a philosophy of life,” then MV liberals argue that it has failed to live up to this promise.³⁶⁹ Although it has shed the pursuit of a comprehensive good it has remained committed to the idea of a moral consensus.

A Hume-inspired liberalism without liberals can help us systematise these worries in a way that current MVLs fail to do. It is doubtful, I would argue, that any liberalism of the common will can live up to the promise of a genuinely political liberalism. The idea of a common will that we find in social contract theories ultimately aspires to define a realm of morality that is categorically independent of the particularistic attachments of

³⁶⁹ Shklar, ‘The Liberalism of Fear’.

specific individuals and in which such attachments are dissolved. So the idea of a common will does not simply rely on a categorical distinction between what is particular and what is common; it also supposes that the former will be subsumed by the latter. As Rawls puts it, the values expressed by the common will are “very great values and hence not easily overridden.”³⁷⁰

A liberalism without liberals, like Hume, does away with such distinctions. We have seen that on Hume’s account political society is the complex, laborious and historical product of shared interests and not the embodiment of a common will. Political society is no doubt there to serve a public interest, but this public interest is in fact nothing more than a shared...*interest*. It does not serve any deeper moral purpose. This gives rise, if you will, to a different understanding of *political* liberalism. A genuinely ‘political’ liberalism is not one that conserves the idea of common will but shifts it from the comprehensive to the political spheres, but rather one that does away with the idea of common will altogether. A liberalism is political if it sees political society as the site of shared, competing and conflicting interests.

By abandoning the idea of a common will the Humean account opens the door to a kind of pluralism that political liberals have so far been unable to countenance: pluralism about foundational commitments. This is where the idea of a liberalism *without liberals* acquires its specificity. The liberalism of the common will is the liberalism of foundational harmony. In Chapter 3 we saw the extent to which political liberals are ready to rely on what I there called the transformative effect of political institutions to bring this foundational harmony about. The liberalism of shared interests, on the other hand, can welcome within its fold individuals and peoples with different foundational commitments. All these different individuals and peoples ‘meet’ in political society to

³⁷⁰ Rawls, *Political Liberalism*, p. 139.

pursue their ends. By thus meeting, they develop and learn to nurture shared interests. The important point is that this process needn't affect their foundational commitments. Though it requires convergence over a set of shared interests, a liberalism without liberals doesn't require convergence over foundations.

The idea of foundational pluralism can help us make sense of certain defining characteristics of MVL. For example, compromise and negotiation acquire their value and logic precisely from the political necessity of making sense of disagreement about foundational commitments as well. Appealing to specific foundational commitments to solve a controversy is not very useful when there is disagreement over foundations. The solution has to take another form, and it will be political processes, compromise and negotiation that will play a big part here. We see here also the problem with 'moralism' in a diverse society. The problem, from the perspective I am here advocating, is not necessarily a conceptual one. It doesn't rest, in other words, on the conceptual distinction between the 'moral' and the 'political'. It is rather a purely political one: political moralism is politically impotent in a world characterised by foundational pluralism. As Kukathas observes, getting the theory of justice right is not very helpful in those circumstances in which people disagree about justice. The problem with political moralism is the same. We need an account of liberalism that can deal with foundational pluralism. This is what a liberalism without liberals can provide.

Another issue on which MV liberals have not devoted enough attention is that of what is meant to replace the idea of a normative consensus. For Hume, we've seen, rejecting the idea of a common will doesn't mean that a political society is one in which particularistic attachments are given free rein. The pursuit of interests in society requires a certain degree of self-restraint, it requires very often putting self-interest aside. Justice and property arise, on his account, on the basis of a "convention concerning abstinence

from the possession of others.”³⁷¹ The key lesson of Hume’s story, however, which a liberalism without liberals makes its own, is that one needn’t rely on collective participation in a common will to obtain such results. The reasons for abstaining from the ‘possessions’ of others need not all originate from the ‘shared point of view’ that it is the aim of the social contract procedure to identify. They originate in the shared need to get along.

A related question is whether the notion of interest and the end of simply getting along end up evacuating the moral and political domains of any meaningful kind of inter-subjectively deliberative dimension. Once again, I don’t think this necessarily follows. Notice in fact that nothing in the idea of interest precludes meaningful moral deliberation or moral learning. As Hume accepts, other-regarding considerations may be weightier than self-interested ones in an agent’s own internal deliberations. The pertinent question, then, is not *whether* moral engagement is possible among Humean agents but rather *on what basis* such deliberation takes place. The social contract logic finds the answer to the latter question in the common will (and its associated principles of right, or principle of reason).

For a liberalism without liberals, on the other hand, moral deliberation is not about the affirmation of foundational principles but rather must be about the constant, mutually acceptable negotiation of differing values and interests. Moral deliberation is not the affirmation of what ‘right reason’ requires but an intrinsically open-ended process in which differing conceptions of what right reason consist in work out mutually acceptable compromises. At the core of moral life is ultimately a question of authority: who has the authority to make a final moral judgment? To take pluralism seriously is about recognising that this authority is decentralised and that only by means of

³⁷¹ Hume, *Treatise*, p. 490.

persuasion can I bring someone to my side. Enforcing a reason external to an agent can only and *must always* be an exercise of force. A liberalism without liberals is not morally lifeless. To the contrary, it is saturated with intersubjectivity. After all, it will only be by entering the moral universe of others, only by engaging with their own internal reasons that free life in common will blossom. This process might not always work; disagreement may be too deep, and a parting of ways the only available option. But when it does work, a level of reciprocal understanding will have been reached that, arguably, the morality of the common will cannot aspire to.

This is a demanding account of moral life. And it is partly due to this demandingness that a liberalism without liberals is sceptical about political institutions. The liberalism of the common will assumes that the state is the kind of agent that can bring about a well-ordered society and incarnate the liberal ideal of reason. Interestingly, with the exception of Kukathas, MV theorists have not taken seriously the problem of the state either. A liberalism without liberals, on the other hand, starts from a realistic take on political institutions. The state is best understood as a corporate agent, which pursues interests of its own. Identifying what these interests are is not always obvious, since, rather than the class-based account Marxists privilege, this liberalism sees the state as a sphere in which factions struggle for supremacy. This kind of institution is not one that has lofty ideals of justice within its reach. A liberalism without liberals agrees with Kukathas: the only reasonable thing we can expect from the state is that it guarantees peace and order. But even here, I would add, scepticism is in order: peace is more likely to be the by-product of the state's attempt to create stable conditions for its own predation than a genuine concern for the welfare of the populace.

The more general point a liberalism without liberals wishes to make here is one about the 'distance' (we might say) between society and the state. The social contract doctrine elides this distance and sees the state as a reflection of an idealised version of

society. The interests of the rulers and the ruled are congruent. A liberalism without liberals offers a two-pronged challenge to this thesis: it questions the idea of society as a common will but it also questions the idea of the state as a reflection of an underlying society. The gulf between the state and society is not one that can be filled. Society is too heterogeneous, too anarchic a phenomenon to be plausibly brought under the purview of the state. And in any case the state is moved by its own interests. This is a tension that this form of liberalism believes cannot be resolved. We could say that it takes it as a defining feature of the political condition.

The fact that there is an unbridgeable gap between society and the state might seem to lead to resignation, if not despair. But this is so only if one decides to adopt the view of what Adam Smith calls the ‘man of system’ at the steering wheel of the state. For, as I said in Chapter 7, a liberalism without liberals is one that places no limits on the reach or content of criticism. And if enough people are persuaded of the need for a change, change may very well ensue. The nature of the political condition itself will be open to critical enquiry. If the political order is so morally light a veil spread on the social order, experimentation with different arrangements will seem less colossal a task. In a world in which the model of the sovereign, Weberian-Westphalian state is increasingly challenged, a liberalism without liberals might be an important source of inspiration for forward-looking and radical alternatives.

Conclusion

Rather than drawing on Hume to improve our understanding of the ‘circumstances of justice’,³⁷² the evolution of social norms,³⁷³ democratic sentiments,³⁷⁴ or political

³⁷² Rawls, *Theory*.

³⁷³ Gaus, *The Order of Public Reason*.

³⁷⁴ Krause, *Civil Passions*.

realism,³⁷⁵ I hope to have offered enough reasons to see Hume as a distinctive voice in the conversation on liberalism. I have put forward a set of reasons for thinking that we can extract from Hume's critique of the social contract an account of liberalism. This account has much in common with existing MV liberalisms. Like the latter, a Humean MVL eschews appeals to deep moral consensus and emphasises the centrality of compromise, bargaining and negotiation in political life.

But I have also suggested that Hume's MVL is *distinctive*. At its core is the idea of political society as the product of shared interests, and compatible with this idea is the idea of foundational pluralism. Hume thus doesn't see the need to replace justice with order. We have seen that his account is also pluralistic about the values necessarily connected to political order. Legitimacy is important, but it is not the ur-value. A Humean MVL then departs from existing MVLs in fundamental ways. For this reason, it is most fruitful to conceive of it as a distinctive theoretical creature. This is what the idea of a liberalism without liberals seeks to specify.

³⁷⁵ Sabl, *Hume's Politics*.

Concluding Remarks

At its core, liberalism is a celebration of human reason.³⁷⁶ It is not a teleological doctrine that supposes that reason is bound to eventually prevail over coercion. Nor is it a doctrine that supposes that reason can refashion the world anew, devoid of coercion. It is a doctrine, rather, that accepts the ubiquity and permanence of coercion but also supposes that we have resources at our disposal to at least create social and moral spaces in which coercion is not the norm. Liberalism sees reason as our main resource in this daunting task. What reason can offer is the principled basis for a mode of coexistence that does not rely on coercion. It is able to make the critique of coercion more than a whim, more than a fortuitous, undecipherable event; it is able to make it something systematic, potentially universal. When the critique succeeds, a new, shared, structured meaning will have been given to life in common. But a liberal is always aware of the fact that this victory will necessarily be a precarious and limited one.³⁷⁷ The struggle between reason and coercion is a permanent one.

It is because of the centrality of reason to the liberal project that I argued in the introduction of this thesis that John Rawls's theory of public reason may very well prove to be his greatest contribution to liberal theory. For Rawls, public reason is the reason of a liberal polity. It incorporates a conception of personhood, of moral relations and of the ends of political association. Importantly, when public reason prevails, the exercise of

³⁷⁶ Of course, enemies of liberalism would dispute this. Conservative critics see liberalism as a form of rationalism (that is, a perversion of reason), whilst Marxist critics see it as an affirmation of bourgeois reason. I think that a liberalism without liberals is much less vulnerable to such critiques, though I cannot elaborate further here.

³⁷⁷ Necessarily and, one might add, *fortunately*. What Mario Vargas Llosa says of literature, the liberal can say of reason: it can be of help in “reducing violence, not ending it. Because ours will always be, fortunately, an unfinished story.” Mario Vargas Llosa, ‘In Praise of Reading and Fiction’ (http://www.nobelprize.org/nobel_prizes/literature/laureates/2010/vargas_llosa-lecture_en.html, accessed 25 April 2015).

political power is no longer experienced as coercive by those subjected to it. Liberal reason is once again identified as the antithesis of coercion. An order of public reason is one that has been expunged of coercion, one in which relations between individuals are governed by reason. We can appreciate the importance Rawls attributes to the task of distinguishing his overlapping consensus from *modus vivendi*. The problem with *modus vivendi* is not that it is unable to guarantee stability once and for all. A *modus vivendi* may in fact be stable at times. Yet even when it yields stability and toleration, it always remains an expression of the logic of coercion, not reason. Liberal peace is not the peace yielded by an equality in the ability to threaten each other, but rather the peace of reason. For the ‘political’ Rawls, liberal peace is the peace of public reason.

But there is a complication here. This complication is well brought out by the passage from Kant on which we focussed in chapter 1. It is very difficult, Kant there suggests, to set limits on reason’s power of critique. “Nothing is so important through its usefulness, nothing so sacred, that is may be exempted from [reason’s] searching examination,” Kant writes. This, of course, has to apply to reason itself, which “must in all its undertakings subject itself to criticism.” The question, ultimately, becomes one concerning reason’s authority. Is liberal reason the kind of thing that can settle something once and for all? Should liberal reason follow the model of sovereignty? Kant’s answer is ‘no’, “for reason has no dictatorial authority.” Reason is defeated whenever a limit is placed on its powers of critique, since “reason depends on this freedom for its very existence.” If we start saying that beyond point x reason should not venture because there things have been settled, we have abandoned the sphere of reason and emigrated to the sphere of coercion.

As I have tried to argue at various stages of this thesis, Rawlsian public reason liberalism stumbles on this issue. It turns to (public) reason to resolve the question of what standards should regulate the life in common of diverse ways of life. These

standards are authoritative, definitive, sovereign. They originate from the collective will of an idealised body of citizens. This will is taken to be united by a shared commitment to certain foundational ideals, to a certain understanding of the moral nature and ends of political society. Reason is not something that can challenge these ideas but rather the ground of their sovereign power. But what about ways of life that do not share those ideals? What is to be said to them? Since she assumes justice has to be enforced, the public reason liberal will here enact what in chapter 1 I call a strategy of exclusion: are they ‘reasonable’? Have they thought about it enough? All will be well vis-à-vis those she sees as participants in the common will; as far as the rest are concerned, different theorists have different views as to what is to be done with them. Notice how the whole strategy rests on the belief that a political order – which by definition is there to yield definitive decisions – can be justified by (public) reason – which, on the other hand, knows no dictatorial authority. That this can be thought of as a meaningful objective in a diverse society is, I have argued, not very compelling.

The liberalism without liberals I have articulated in this thesis does a better job at approximating this liberal ideal of reason. I say ‘approximate’ because it seems to me clear that Kant’s ideal is not compatible with political order. Ordering political society is about taking decisions, sometimes definitive ones. It very often is about closing spaces of discussion and reasoning in order to get things done. Reconnecting the reality of political life to liberal ideals, I have argued, requires a different approach. A liberalism without liberals relies on a Humean approach to moral and political life. Its cornerstone is the Humean idea that political society is a product of shared interests rather than the embodiment of a common will. It refuses to see society as the site of a deep moral agreement and thus circumvents the problematic task of justifying the political order. A Humean approach is one that accepts that a political order is simply not something amenable to the kind of justification public reason liberals are after. It does not possess

the moral gravitas public reason liberalism seeks to find in it. Shared interests are the essence of political society. The question an individual asks when confronted with a political decision is not ‘Does it reflect my foundational commitment?’ but rather ‘Can I live with it?’ Acquiescence, not justification, is the key Humean idea.

Unlike the liberalism of the common will, the liberalism of shared interests is capable of embracing foundational pluralism. It is in sense that what is describes is a liberalism *without liberals*. Even the very thin account proposed by public reason liberalism of what a ‘liberal’ consists in (i.e. ‘reasonable’) is rendered unnecessary by it. A Humean polity is not one in which individuals look for constructive justifications to offer to their fellows for the enforcement of justice but rather one in which they often set aside self-interest in ‘public’ and they abstain from intruding in the ‘private’ sphere of others.³⁷⁸ Hume’s great insight is that none of this requires a common will. The conventions that regulate these matters are not products of agreement. We can appreciate these demands of public life and what they require of us from all our different foundational starting points.

We have seen that on the matter of standards too the Humean account is distinctive. It is again able to offer an account of standards in common that does not rely on a common will. This is due to the fact that it presents what I have called an interpretative account of standards. It takes the internal reasons of actors seriously and works out interpretatively standards that may apply to all. The immanence of its critical standards is what endows these with a certain kind of authority. Simply because they are immanent doesn’t mean they aren’t genuinely critical. The idea that interests matter, for example, is one that can be rationally vindicated, that is, that cuts across cultural boundaries. The same can be said for the idea that one shouldn’t live by standards one

³⁷⁸ Bearing in mind here what I said in Chapter 2 about how this distinction should be understood.

cannot accept.³⁷⁹ Since they do not originate in a sovereign common will, these are standards whose force depends on their persuasiveness. A liberalism without liberals is very much a liberalism *of this world*, in the sense that it seeks commonalities in the *convergence of internal reasons*. Rather than assuming the authoritativeness of an external standard, a liberalism without liberals is primarily a form of engagement with reasons currently available. It strives, in other words, to take seriously the question of authority of normative standards that arises in diverse societies. As such, it arguably approximates the ideal of reason Kant describes better than contemporary Kantian liberalisms.

'Realist' is one possible way of characterising this liberalism. I have put forward throughout this thesis arguments with a strongly descriptive component. The starting point, elaborated in Chapter 4, is that of political society as the product of shared interests. In Chapter 3, one of the arguments I raised against public reason liberalism is that it has an unrealistic account of institutions. The idea that much of contemporary liberal theory is premised on the 'displacement of politics' is a familiar realist one. I take the key realist insight to be that the political condition is one that lacks resolution, or, as John Gray would put it, one not amenable to "rational re-construction."³⁸⁰ I have spoken in several chapters about the unbridgeable 'distance' between the moral and political orders. Like Andrew Sabl's *Hume's Politics*, this thesis too can be interpreted as an investigation of a Humean strand of realist thought.

But I hope and like to think that this thesis has offered something more far-reaching and original. Starting out with a critical analysis of Rawlsian public reason and returning to it throughout was more than just an argumentative strategy. In Rawls's later work in particular we see an engagement with some of the core ideas of the liberal tradition. Much of contemporary realism is based on a wholesale rejection of the

³⁷⁹ Bearing in mind that by 'acceptance' we mean 'not rejected in fact'.

³⁸⁰ Gray, *Isaiah Berlin*, p. 9.

Rawlsian inheritance. My intention in this thesis was more constructive. Like Gerald Gaus and John Tomasi before me, I set up a conversation between the Rawlsian and the Humean traditions.³⁸¹ My conclusions are much more Humean than theirs, but I hope to have pointed out as effectively as they have the possible convergence points between these two traditions and the room for meaningful dialogue between them. This has been made possible by the fact that, like them, I have here been primarily interested in contributing to liberal theory. Unlike Gaus and Tomasi, I have suggested that there are some potentially very interesting areas of convergence between liberalism and contemporary political realism. But a liberalism without liberals is first and foremost an account of *liberalism*, not realism. The idea that our political condition is one that lacks resolution is not something that inspires resignation in me; rather, as I've suggested in Chapter 5 most vividly, it is something meant to open up new political possibilities for freedom.

I would like to just point out one such possibility, in concluding. The dominant contemporary conceptions of liberalism start from the ideal of a 'closed society' and see a political order as the site of deep agreement. In doing so, they are held captive by the political imaginary of what we might call the Westphalian-Weberian state. The social contract doctrine has, historically, provided the most influential interpretation and justification of this form of political organisation.³⁸² As I have pointed out in Chapter 3, however, this way of organising the world is transient, it is a product of a specific historical phase. There has been a world without Westphalian-Weberian state in the past, and there will inevitably be one in the future.³⁸³ In fact, as the growing importance of regional integration and international institutions testifies, the future may already be here.

³⁸¹ John Tomasi, *Free Market Fairness* (Princeton, NJ, Princeton University Press, 2012).

³⁸² Jacob T. Levy, *Rationalism, Pluralism and Freedom* (Oxford, Oxford University Press, 2015).

³⁸³ Van Creveld, *The Rise and Decline*.

In a world in which the Westphalian-Weberian state is losing grounds, to what kind of liberalism should we turn to for normative guidance? I cannot pretend that this thesis is already able to provide a complete answer to this question. More work has to be done on the way a liberalism without liberals understands the idea of compromise for example, or the precise way it understands the dynamics that lead from shared interests to political association. But if I have succeeded in showing at least that there are principled reasons for believing that liberalism *could* be thought in this way and that Hume can be of great help in this task, I hope that, despite its limitations, this thesis will have earned itself a place in the conversation on the nature and future of liberalism.

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