

THE PERILS OF PLURALISM: AN EXPLORATION OF THE NATURE OF
POLITICAL DISAGREEMENTS ABOUT ECONOMIC JUSTICE

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ALAN PRESTON REYNOLDS

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Student: Alan Preston Reynolds

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This dissertation has been accepted and approved in partial fulfillment of the requirements for the Doctor of Philosophy degree in the Department of Philosophy by:

Colin Koopman	Chairperson
Cheyney Ryan	Core Member
Rocío Zambrana	Core Member
Burke Hendrix	Institutional Representative

and

Scott L. Pratt	Dean of the Graduate School
----------------	-----------------------------

Original approval signatures are on file with the University of Oregon Graduate School.

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DISSERTATION ABSTRACT

Alan Preston Reynolds

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Much of contemporary mainstream political philosophy operates under the assumption that if reasonable people deliberate about matters of basic justice in the right conditions, agreement will emerge. This assumption implies that although reasonable people will likely disagree about *private* matters concerning the nature of the *good life*, they will nonetheless agree about *public* matters of *justice*. I reject this assumption, and in this dissertation I argue that reasonable people are likely to experience deep and persistent disagreements about matters of basic justice. I concede that there are some domains of justice where broad agreement has been achieved in modern democratic societies, namely those concerning the scope and content of *civil* and *political* liberties. However, when it comes to the scope and content of *economic* liberties, there is little agreement to be had. This is because reasonable people can be committed to radically different premises about matters of basic justice as well as the fact that basic agreed-upon concepts can be interpreted and interconnected in significantly different ways. Even in ideal theory, then, where we restrict ourselves to idealized reasonable people, rational consensus is not a feasible goal on certain core matters of justice. From here, I turn to the realm of non-ideal deliberation about justice and explore the difficult problem of rational political ignorance. I further discuss the effects of the Internet on non-ideal political

deliberation, and I look at the ways in which online deliberation can fuel normal cognitive biases and deepen political polarization. I argue that matters of economic justice are characterized by both *moral pluralism* and *epistemic complexity*, both of which tend to be downplayed within the deliberative enclaves that proliferate on the Internet. How are we to deal with these problems of political disagreement and polarization? To help answer this question, I turn to the tradition of American pragmatism, and especially the writings of William James, to suggest a re-orientation of political philosophy away from the assumption of rational consensus and toward a more humble, but more constructive, vision in which the philosopher attempts to fashion new ideals that might help overcome currently entrenched disagreements.

CURRICULUM VITAE

NAME OF AUTHOR: Alan Preston Reynolds

GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:

University of Oregon, Eugene, OR
Pepperdine University, Malibu, CA

DEGREES AWARDED:

Doctor of Philosophy, Philosophy, 2015, University of Oregon
Master of Arts, Philosophy, 2012, University of Oregon
Bachelor of Arts, Philosophy & Political Science, 2009, Pepperdine University

AREAS OF SPECIAL INTEREST:

Social and Political Philosophy, Ethics, American Pragmatism

PROFESSIONAL EXPERIENCE:

Graduate Teaching Fellow, University of Oregon, 2009-2015

GRANTS, AWARDS, AND HONORS:

Oregon Humanities Center Graduate Research Fellowship, University of Oregon,
2015

Wayne Morse Dissertation Fellowship, Wayne Morse Center for Law and Politics,
University of Oregon School of Law, 2014

Thomas W. Smith Fellowship, Institute for Humane Studies, 2014

Thomas W. Smith Fellowship, Institute for Humane Studies, 2013

Graduate Teaching Fellowship, University of Oregon Department of Philosophy,
2009-2014

Graduate Teaching Fellowship, University of Oregon Department of Religious
Studies, 2013-2014

Graduate Teaching Fellowship, University of Oregon Department of Humanities,
2015

PUBLICATIONS:

Reynolds, Alan. "Animal Ethics and Politics Beyond the Social Contract." *Les Ateliers de l'éthique/The Ethics Forum* 10, no. 1 (2015).

Reynolds, Alan. "Liberalism and/or Liberation: Assessing the Utopian Politics of Richard Rorty and Enrique Dussel." *Minerva* 18 (2014).

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CHAPTER I

INTRODUCTION

The nature of political disagreement over economic issues is front and center in American political consciousness today, with “Tea Partiers” pitted against “Occupiers” over basic issues of taxation, redistribution, regulation, cronyism, outsourcing, the debt and deficit, the financial sector, housing markets, health care markets, labor policy, trade policy, capitalism and the environment, etc. A casual observer of American politics is likely to note two things about these debates: (1) the competing sides seem to hold sharply opposed philosophical views about the nature of society and self, ownership and entitlement, property and justice, etc., and (2) the philosophical ideas underlying these debates are very confused and unclear (even to those who regularly invoke them).

My project, then, is a philosophical intervention that aims to make these underlying ideas explicit and to explore the nature of these disagreements about economic justice. Are these competing ideas actually much closer together than it seems when they are wielded in the heat of everyday politics? I will show that they are not – the competing philosophical views are, in fact, incommensurable and hopelessly at odds. Does one of the sides adhere to ideas that are confused, contradictory, morally abhorrent, or wrong? I will argue that this is not the case – the competing sides are both committed to philosophical views that are in fact reasonable. My conclusion is thus a tragic one, as I cast doubt on the very possibility of consensus around any single conception of economic justice, even among reasonable people. From here, though, I suggest ways in which we can productively think about a politics without the hope of rational consensus, in which

we can peaceably live together while continuing to disagree deeply and indefinitely about important issues of justice.

My intervention aims to make the philosophical ideas underlying our political discourse explicit and clear, so I therefore turn to that tradition of thought where we find our political intuitions most clearly and fully articulated and systematized: political philosophy. In particular, I engage the tradition of “political liberalism,” which stretches back to the classical social contract thinkers of Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Immanuel Kant, and comes up through John Rawls, Jonathan Quong, and Gerald Gaus (and many others). As I explain in chapter II, this tradition of thinkers is committed to the project of articulating a conception of justice that can be the object of *consensus*, while at the same time respecting the reality that there exists, and always will exist, a *pluralism* of philosophical, moral, and religious views among reasonable people. The ideal of consensus comes, in part, from the Enlightenment, and embodies the democratic hope that reasonable people in a political community can arrive at mutually agreeable principles and rules to govern their shared social life. The fact of pluralism becomes clear, in part, during and after the Reformation, and reflects an appreciation for the inescapable pluralism of values and ideals that is produced by practical reason operating under free institutions.

On the surface, however, the *ideal of consensus* and the *fact of pluralism* pull in opposite directions – one embodies our aspiration for agreement, the other signals our recognition of disagreement. How, then, can consensus and pluralism be reconciled, if at all? This is the problem that political liberalism tries to address. The response from political liberals, which I explain in detail in chapter II, is the claim that reasonable

people are bound to agree about *public* principles of *justice* (at least in their broad outlines), even while they are bound to deeply disagree about *private* matters of the *good life*. Thus, the liberal public/private split accommodates the consensus/pluralism split perfectly. Our shared public life is characterized by consensus, while our separate private lives are characterized by pluralism.

I challenge this optimistic assumption at the heart of political liberalism – namely the assumption that reasonable people will agree about the basic contours of justice. Now, in modern democratic societies, reasonable people *do* agree about many justice-related issues. The liberties secured by a liberal democratic state can be divided into three categories: *civil liberties* (freedom of speech, association, press, etc.), *political liberties* (freedom to vote, run for office, etc.), and *economic liberties* (freedom to own and exchange goods and services, etc.). I agree with political liberals that there exists, in modern liberal democracies, widespread agreement (or an “overlapping consensus”) on the nature and scope of civil and political liberties (in their broad outlines, with some notable exceptions). For example, there is a broad consensus in modern liberal democracies concerning the nature and importance of free speech, even while there are disagreements around the periphery of this basic right, such as debates concerning the regulation of hate speech. However, I argue that political liberals are wrong to assume the existence of an overlapping consensus on the nature and scope of economic liberties. In the debates between right-libertarians, left-libertarians, classical liberals, left-liberals, and liberal socialists, as well as between sufficientarians, prioritarrians, and egalitarians, the disagreements over economic justice are indeed as deep and persistent as are the disagreements we experience about matters of the good life. Political liberalism is not

equipped to deal with the fact of our *deep yet reasonable* disagreements about the nature and scope of economic liberty.

In chapter III, then, I explore the various attempts of political philosophers to articulate a conception of economic justice that could be acceptable to all reasonable people, and I explain how and why they fail. Two political philosophers especially of interest are John Rawls and Robert Nozick, with Rawls articulating a conception of economic justice attractive to those on the egalitarian left, and Nozick articulating a conception of economic justice attractive to those on the libertarian right. To explore the nature of their disagreement, I dig down to the core question that divides them: Do people have an entitlement to their unearned natural assets (natural ability, intelligence, work ethic, etc.), and thus to the economic assets that flow from them? Rawls develops the “argument from arbitrariness” to argue that since people do not *earn* their natural assets, they have no entitlement over them, from which he concludes that natural assets are a “common asset,” held collectively by the larger political community. This justifies sharply limiting economic liberty and redistributing income from the lucky to the unlucky. This defense of *luck egalitarianism* provides a powerful philosophical defense of Rawls' economic egalitarianism. Nozick, on the other hand, agrees with Rawls that people do not earn their natural assets, but Nozick (rightly) points out that Rawls does not sufficiently explain how this fact itself transfers the entitlement over natural assets to the larger political community. So, even though people do not earn their natural assets, Nozick argues that each individual should be entitled to her own natural assets and the economic assets that flow from them. This argument thus justifies maximal economic liberty and a minimal state that protects basic rights (including, importantly, private

property rights). This defense of *self-ownership* provides a powerful philosophical defense of Nozick's inegalitarian historical entitlement theory of justice. I will argue that neither Rawls nor Nozick has made a fully persuasive case for his theory of entitlement and justice, and neither Rawls nor Nozick has made a fully persuasive critique of his counterpart. As such, both positions are *reasonable*, and at the same time both positions are *reasonably rejectable*. Reasonable people can, indeed, radically disagree about matters of economic justice.

Nozick's critique of Rawls represents an external critique of political liberalism, since Nozick attacks Rawls' very premises. However, I am also interested in developing an internal critique of Rawls' version of political liberalism. From here, then, I explore some of the debates *within* political liberalism, and show that even those who accept many of the same premises can develop them in radically different ways. This is the case because basic agreed-upon concepts can be interpreted and interconnected in significantly different ways, which I document in the debate over the relationship between economic liberty and moral personhood that divides Samuel Freeman from John Tomasi, and the debate over the nature of liberty and coercion that divides Gerald Gaus from Andrew Lister. Even in ideal theory, then, where we restrict ourselves to idealized reasonable people who shared the basic project of political liberalism, rational consensus is not a feasible goal for certain core matters of justice because of the wide plurality of reasonable yet irreconcilable views.

In chapter IV, I turn away from ideal theory and turn toward the non-ideal world of political deliberation. One of the most important problems for non-ideal deliberation is the problem of *rational political ignorance*. That is, individuals do not have strong

incentives to develop justified beliefs about complex political issues. This is especially the case for issues of economic justice. I argue that what makes economic issues especially challenging is the degree of both *moral pluralism* and *empirical complexity* inherent in them. Unlike other political disagreements (such as cultural issues like same-sex marriage or abortion), which are almost entirely debates over normative commitments (or, as we usually say, *values*), disagreements about economic issues also involve complicated and subtle debates about empirical questions (or, as we usually say, *facts*), such that even experts frequently disagree about the desirability of any given economic policy. For example, evaluating the issue of abortion depends primarily on one's religious worldview, and requires comprehension of only the most basic empirical matters. Evaluating competing views about the merits of Keynesian stimulus, or competing views about monetary policy, requires some heavy-duty training in economics. Many people are capable of developing a coherent set of values, which means that most people are competent to pass judgment on value-heavy cultural issues. However, only the exceptionally well-informed are capable of grasping the complex empirical issues underlying economic policies related to trade or healthcare.

In chapter IV, I also reflect on one of the most important and interesting arenas in which real-world, non-ideal political deliberation takes place today: the Internet. Here I investigate the effects of our new media landscape on the quality of our political disagreements about economic issues. Increasingly, political activism and debate in the United States (and elsewhere) is conducted in, or somehow connected to, online media environments, as participation shifts from the passive consumption of the nightly news to the active participation of online political forums such as comments sections, blogs,

Facebook, and Twitter. So how does this new media environment affect our political lives? I suggest some reasons to be pessimistic about the implications of our new media environment on the quality of our political deliberation.

The upshot of all this is somewhat troubling: the epistemically closed communities of deliberation that too often arise on the Internet have, as one negative effect, a tendency for all sides to downplay the moral pluralism and empirical complexity of economic issues. Thus, the Internet enables the creation of large communities of people who are like-minded not only in their values, but also in their empirical assumptions about the world – however uninformed or flawed these assumptions may be. To fill out this story I will draw on existing empirical studies of online polarization and connect these empirical findings to the structural tendencies toward disagreement rooted in the work of moral psychology. This chapter deepens the pessimism regarding the possibility of consensus about economic justice: chapters II and III point toward the likelihood of deep and persistent disagreement about normative issues in ideal deliberation, while chapter IV points toward the likelihood of hopeless confusion and disagreement about empirical issues in non-ideal deliberation.

Finally, in chapter V, I propose ways of more seriously incorporating deep value pluralism into political philosophy by drawing on the (largely marginalized) traditions of political thought that are not corrupted by the assumption of the eventuality of rational consensus. Most notably I develop some insights from the pragmatist political philosophy of William James. Ultimately, I argue that political philosophers should seek out hitherto unseen or unappreciated nodes of convergence beneath our sedimented debates, and develop these points of convergence into new ideals that might capture the

imaginings of the opposing parties to the disagreement. James exemplifies this practice in his article “The Moral Equivalent of War,” and I try to draw out lessons from this example for contemporary political philosophy. Thus, I propose a vision of political philosophy that is more modest, and in some ways more difficult, but better oriented to directly and productively engage with the ongoing controversies of society.

The structure of this dissertation can be described in the following way: chapters II-IV are diagnostic, while chapter V is reconstructive. Chapters II-IV successively narrow in on a diagnosis, going from very broad and theoretical in chapter II (in which I diagnose the challenge of deep pluralism for the tradition of political liberalism), to a focused example of this problem (the deep yet reasonable disagreements we experience concerning the nature and scope of economic liberty), to an even more focused case (how this disagreement is altered and deepened in the context of online deliberation). Finally, chapter V provides a possible way forward, in which I propose an altered conception of the nature and role of political philosophy, one that is more attuned to our current political conditions.

CHAPTER II

THE PROJECT AND PARADOXES OF POLITICAL LIBERALISM

1. Introduction: The Fundamental Problem

According to liberal political philosophy, political authority is legitimate only if all of those subject to its power consent to the principles of justice that guide its exercise. However, it is an undeniable fact that reasonable people disagree with each other about basic matters of philosophy, religion, and morality. How, then, can consensus be achieved in the midst of a wide-ranging pluralism of values? The tradition within political philosophy that most directly addresses this question is often referred to as “political liberalism”¹ (most systematically articulated by John Rawls in his book of that name). This tradition has its origin in the classical social contract thinkers of Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Immanuel Kant.² The optimistic assumption at the heart of political liberalism is that reasonable people are likely to disagree deeply and indefinitely about private matters of the good life, but nonetheless will be able to agree about the basic principles of justice that govern public life (at least

¹ I use the label “political liberalism” to signify the whole subset of the social contract tradition according to which agreement about justice takes place between equally situated and morally motivated bargainers. My use of the term does arguably blur over some meaningful distinctions in the literature, such as the distinction between political liberalism and epistemic (or justificatory) liberalism (articulated most systematically by Gerald Gaus). The distinction between political liberalism and epistemic liberalism has not fully crystallized in the literature, and the distinction is not especially meaningful in this dissertation. Thus, I use the term “political liberalism” as the broad category of those committed to a moralized social contract. This distinguishes the moralized political liberal social contractarianism from the amoral *modus vivendi* social contractarianism that begins with Thomas Hobbes' *Leviathan* (Peterborough, ON: Broadview Press, 2010) and comes up through (most notably) David Gauthier's *Morals by Agreement* (Oxford: Oxford UP, 1986).

² The continuity of the classical social contract tradition with the contemporary project of political liberalism is demonstrated convincingly in Gerald Gaus, “Public Reason Liberalism,” accessed 9 February 2013, <http://www.gaus.biz/PublicReasonLiberalism.pdf>.

in their broad outlines). If this assumption is correct, then political liberalism has a helpful and satisfying solution to the apparent tension between the ideal of consensus and the fact of pluralism. The political liberal solution to this tension is that our reasonable disagreements about the good life are to be defused by privatizing (or devolving) decisions about the good life into the private sphere (where they can govern our personal lives and structure our freely chosen private associations). This move leaves the public sphere free of deep disagreement, thus helping to enable the achievement of consensus about public matters of justice.

However, the assumption that reasonable people are bound to agree about justice is, I will argue, only true within particular domains of justice. The liberties secured in a liberal democratic state can be divided into three categories: *civil liberties* (freedom of speech, association, press, etc.), *political liberties* (freedom to vote, run for office, etc.), and *economic liberties* (freedom to own and exchange goods and services, etc.).³ I agree with political liberals that there exists, in modern liberal democracies, widespread agreement (or an “overlapping consensus”⁴) on the nature and scope of civil and political liberties (in their broad outlines).⁵ However, I argue that political liberals are wrong to

³ This division of liberal justice into three categories of liberties is found in the work of Rawls, but made explicit in Samuel Freeman, *Rawls* (London: Routledge, 2007); James Nickel, “Economic Liberties,” in *The Idea of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2000); and John Tomasi, *Free Market Fairness* (Princeton: Princeton UP, 2012). Rawls describes the individual has having “higher order interests” in advancing their “moral powers,” which include the ability to form and act upon a conception of the good and the ability to form and act upon a conception of justice (*Political Liberalism*, expanded ed. [New York: Columbia UP, 1993], 74-75). Rawls goes on to argue that strong civil liberties enable the formation and pursuit of a conception of the good, while strong political liberties enable the formation and pursuit of a conception of justice. The importance of economic liberty in the tradition of political liberalism is now an important object of debate, and one that will be dealt with at length in chapter III.

⁴ Rawls, *Political Liberalism*, 15.

⁵ For example, there is a broad consensus in modern liberal democracies on the nature and importance of free speech, but there are disagreements around the periphery of this basic civil liberty, evidenced by the debates concerning the regulation of hate speech. For an overview of the debate on this particular issue, see Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard UP, 2012); and Anthony

assume the existence of an overlapping consensus on the nature and scope of economic liberties.⁶ In the debates between right-libertarians, left-libertarians, classical liberals, and left-liberals, as well as between prioritarrians, sufficientarians, and egalitarians, the disagreements are indeed as deep and persistent as are the disagreements we experience about matters of the good life. Political liberalism is not equipped to deal with the fact of our *deep yet reasonable* disagreements about the nature and scope of economic liberty.

In this chapter, I explore and critique some of the most influential accounts of how the general issue of pluralism has been dealt with in the tradition of political liberalism. I engage with the tradition of political liberalism because it takes seriously both the ideal of consensus as well as the fact of reasonable pluralism. I begin by giving an account of the meaning and significance of both of these themes in the liberal tradition, and pointing out their apparent tension. I then reconstruct and critique the main attempts to reconcile these two commitments within the paradigm of political liberalism. I will focus on the strategies developed by two strands of political liberalism: the “shared reasons” model (articulated by John Rawls, Charles Larmore, Jonathan Quong, and Thomas Nagel), and

Lewis, *Freedom for the Thought We Hate* (New York: Basic Books, 2007). However, as I note in Chapter IV, the contemporary “Culture War” in the United States features a great deal of foundational disagreement concerning civil liberties in those areas where religious and secular values continue to clash, such as same-sex marriage and abortion. Arguably issues related to money in politics and campaign finance reform reflect foundational disagreement concerning political liberties. In all, these examples show how thin is the overlapping consensus about justice in a modern liberal democracy like the United States. Nonetheless, I still maintain that the domain of economic justice embodies some of the most persistent and intractable disagreements we face.

⁶ A similar sentiment is expressed by Gerald Gaus, when he writes, “it is plausible to suppose that a major change between the seventeenth and twenty-first centuries was what we might call the general liberalization of conceptions of the good in western democracies. The basic tenets of liberalism, including freedom of speech and thought, representative institutions, wide scope for freedom of action and life styles, privacy and the market order, are very widely embraced and embedded in a wide variety of worldviews. Yet, while we may suppose that there is such a convergence on these essential features of liberal democracy, it is doubtful that... there is agreement of specific property rights, principles of distributive justice, or laws concerning abortion, health care or, say, gay marriage” (“Public Reason Liberalism,” 17-18). My major departure from Gaus is that I try to demonstrate the existence of a much deeper and more radical disagreement about issues of property rights and economic distribution than Gaus admits. I deal with this issue in chapter III.

the “convergent reasons” model (articulated by Gerald Gaus, Kevin Vallier, and Jeffrey Stout).⁷ I will argue that both models are only able to secure consensus about justice by unjustifiably over-narrowing the range of reasonable pluralism. In other words, both models fail on their own terms, as they ultimately fail to respect the depth of the reasonable pluralism that we witness in modern democratic societies.

2. The Project of Political Liberalism: Basic Overview

Both consensus and pluralism are central issues for political philosophy, today as much as ever. Citizens of liberal democracies still aspire to consensus as a condition of political legitimacy – indeed, our democratic ethos has only deepened over time, as more groups and classes of people have been included into the group of people to whom public justification of state power must be given. At the same time, people continue to deeply disagree about any number of important philosophical, moral, and religious issues – indeed, our pluralism has only deepened, as new forms of disagreement have emerged, some of which are just as deep and intractable as religious disagreements were in sixteenth century Europe. We live in a world of deep, and deepening, pluralism. Large patterns of global migration have created conditions of greater cultural, ethnic, and religious diversity within many liberal democratic societies. As the public debate is expanded to include new voices (from racial, gender, and sexual minorities) or new topics (abortion, gay marriage, animals rights, environmental issues), new social, moral, and political divisions emerge that challenge the cherished ideal of consensus. Given this clear (and growing) tension between consensus and pluralism, the project of forging

⁷ These phrases are my own, but they correspond to a division common in the literature. For example, Kevin Vallier refers to the distinction between “consensus” and “convergence,” in his “Convergence and Consensus in Public Reason,” *Public Affairs Quarterly* 25, no. 4 (October 2011).

consensus in the midst of pluralism remains an important task for political philosophy. The tradition within political philosophy that has given this problem the most sustained attention is political liberalism.

Political liberalism is a tradition in political philosophy that is often associated with the later work of Rawls. However, political liberalism is ultimately an extension and culmination of a tradition of thought that has its roots in the classical social contract tradition. Despite the many disagreements within this long tradition, each of its adherents shares a common set of concerns. The whole tradition is an extended attempt at developing an account of legitimate political authority starting from two fundamental commitments: (1) the principle of public justification, and (2) the fact of reasonable pluralism.⁸ Put more simply, political liberalism hopes to reconcile *consensus* with *pluralism*. Consensus about justice is viewed as a necessary condition of political legitimacy, while reasonable pluralism about values is viewed as an unchangeable fact of the social world to be accommodated and not resisted, since it is assumed that the free exercise of practical reason itself leads to a bounded pluralism of values.

On the face of it these commitments pull in opposite directions. Consensus requires agreement, while pluralism reflects disagreement. Consensus is a stabilizing force, while pluralism is a destabilizing force.⁹ Robert Talisse states the apparent inconsistency: “If liberals really stress reasonable pluralism, they will be unable to find any consensus on which to build political legitimacy; if they allow for enough agreement

⁸ Indeed, Fred D'Agostino argues that “public justification” and “evaluative pluralism” are the fundamental commitments in all of liberal political thought. See D'Agostino, *Free Public Reason* (Oxford: Oxford UP: 1996), 6-7.

⁹ Fred D'Agostino argues that this tension between consensus and pluralism is constitutive of and inescapable for the liberal tradition. See D'Agostino, *Free Public Reason*, 7.

to justify the state, pluralism is qualified.”¹⁰ Can political liberalism provide an account of justice that is able to achieve the consent of people who continue to reasonably disagree about important issues? As Rawls canonically states the problem, “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?”¹¹ Before addressing this difficult topic of reconciling consensus and pluralism, I will briefly explain why these two commitments are so central to this long tradition in political philosophy.

3. The Project of Political Liberalism: Consensus and the “Liberal Faith”

Perhaps *the* central feature of all liberal political philosophy is the conviction that political legitimacy rests on the consent of the governed. Every member of society deserves an adequate justification for the political authority she is subjected to if she is to be expected to willingly comply with its demands. Political liberals have come to name this commitment the “principle of public justification.” As Jeremy Waldron puts it in his articulation of the “Theoretical Foundations of Liberalism,” “a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it; the consent or agreement of these people is a condition of its being morally permissible to enforce that order against them.”¹² Nagel echoes, “The task of discovering the conditions of legitimacy is traditionally conceived as that of finding a way to justify a political

¹⁰ Robert Talisse, *Democracy after Liberalism: Pragmatism and Deliberative Politics* (New York: Routledge, 2005), 37.

¹¹ Rawls, *Political Liberalism*, xxxvii.

¹² Jeremy Waldron, “Theoretical Foundations of Liberalism,” *The Philosophical Quarterly* 37, no. 147 (April 1987): 140.

system to everyone who is required to live under it.”¹³ Finally, Fred D’Agostino writes, “No regime is legitimate unless it is reasonable from every point of view.”¹⁴ Some articulation of this commitment can be found in the writings of all contemporary political liberals. Indeed, some variant of this commitment can be found in the writings of most contemporary political philosophers, even those not identified with the tradition of political liberalism.¹⁵

In its commitment to consensus (or public justification), political liberalism traces its roots back to the Enlightenment. Waldron notes, “The relationship between liberal thought and the legacy of the Enlightenment cannot be stressed too strongly.”¹⁶ He explains, “After millenia of ignorance, terror, and superstition, cowering before forces it could neither understand nor control, mankind faced the prospect of being able at last to build a *human* world, a world in which it might feel safely and securely at home.”¹⁷ This desire for a rational, human world was motivated by “an impatience with tradition, mystery, awe and superstition as the basis of order, and of a determination to make authority answer at the tribunal of reason and convince us that it is entitled to respect.”¹⁸ For a citizenry with this new conception of political legitimacy, the principles governing

¹³ Thomas Nagel, *Equality and Partiality* (New York: Oxford UP, 1991), 3.

¹⁴ D’Agostino, *Free Public Reason*, 30.

¹⁵ For example, in the public choice tradition, in *The Calculus of Consent* James Buchanan and Gordon Tullock argue that basic constitutional rules require the unanimous approval of suitably idealized citizens (they call this the “unanimity rule”). See James Buchanan and Gordon Tullock, *The Calculus of Consent. The Collected Works of James Buchanan vol. 3* (Indianapolis: Liberty Fund, Inc, 1999), 6. To see how these ideas are developed in another important strand of the liberal tradition, see Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Malden, MA: Polity Press, 1996).

¹⁶ Waldron, “Theoretical Foundations of Liberalism,” 134.

¹⁷ Waldron, “Theoretical Foundations of Liberalism,” 134.

¹⁸ Waldron, “Theoretical Foundations of Liberalism,” 134.

the political order “must be amenable to explanation and understanding, and the rules and restraints that are necessary must be capable of being justified to the people who are to live under them.”¹⁹ Waldron summarizes, “The social world, even more than the natural world, must be thought of as a world *for us*.”²⁰ The Enlightenment thinkers proposed a radically new relationship between the citizen and the state. Political authority could no longer be *assumed* to be legitimate simply because it was connected with tradition, or a traditional authority like the Church. Instead, political authority has to earn its legitimacy by justifying its coercive rule to each member of society, using reasons that are intelligible and acceptable to the citizens. Only in this way could political authority be truly *self-imposed* authority – the only kind of authority acceptable for many Enlightenment thinkers.²¹

This Enlightenment heritage gives liberalism its *rationalist core*. Notice Waldron’s injunction that we must “make authority answer at the *tribunal of reason* and convince us that it is entitled to respect.”²² Rawls’ famous *original position* device is intended to model this form of unencumbered rationality.²³ We find an analogous device in Jürgen Habermas’ idealized speech situation.²⁴ And this is what Nagel is gesturing at

¹⁹ Waldron, “Theoretical Foundations of Liberalism,” 134.

²⁰ Waldron, “Theoretical Foundations of Liberalism,” 134-35.

²¹ For the canonical defense of this new self-conception of the citizen as both subject *and author* of law, see Immanuel Kant, “What is Enlightenment?”, trans. Mary C. Smith, 1784, accessed 8 June 2013, <http://www.columbia.edu/acis/ets/CCREAD/etscc/kant.html>.

²² Waldron, “Theoretical Foundations of Liberalism,” 134; my italics.

²³ John Rawls, *A Theory of Justice*, revised ed. (Cambridge, MA: Belknap, 1971), chapter 3.

²⁴ See Jürgen Habermas, *The Theory of Communicative Action, Volume 1: Reason and the Rationalization of Society* (Boston: Beacon, 1981).

when he identifies liberalism with the “highest-order impartiality,”²⁵ and as a “highest-order framework of moral reasoning ... which takes us outside ourselves to a standpoint that is independent of who we are.”²⁶ William Galston notes that for political liberalism, “reason is understood as the prime source of authority,”²⁷ and moral and political norms are “immanently derived from the fact and form of moral rationality itself.”²⁸ This connects up contemporary political liberalism with Kant (the paradigmatic Enlightenment rationalist), who insists that “the moral law is imposed *by reason itself*.”²⁹ Beneath these invocations of the authority of reason emerges the assumption that the exercise of human reason, liberated from mysticism, tradition, and ignorance, will converge on the basic principles of liberalism.³⁰ Later, political liberals would argue that the proper exercise of

²⁵ Thomas Nagel, “Moral Conflict and Political Legitimacy,” *Philosophy & Public Affairs* 16, no. 3 (Summer 1987): 216.

²⁶ Nagel, “Moral Conflict and Political Legitimacy,” 229.

²⁷ William Galston, “Two Concepts of Liberalism,” *Ethics* 105, no. 3 (April 1995): 525.

²⁸ William Galston, “Moral Personality and Liberal Theory: John Rawls’ ‘Dewey Lectures,’” *Political Theory* 10, no. 4 (November 1982): 492.

²⁹ Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James W. Ellington, 2nd ed. (Indianapolis: Hackett, 1983), vi; my italics.

³⁰ This hyper-rationalism puts political liberalism, a child of the Continental Enlightenment, at odds with the classical liberalism developed by figures associated with (and influenced by) the Scottish Enlightenment, such as David Hume, Adam Smith, Adam Ferguson, and later F.A. Hayek. This latter tradition tends to view justice not as the product of human reason, but instead as an emergent convention arising and evolving over time through mostly invisible hand processes. It also distinguishes political liberalism from modern conservatism, the latter of which is summarized by Irving Kristol: “Modern conservatism found it necessary to argue what had always been previously assumed by all reasonable men: that institutions which have existed over a long period of time have a reason and a purpose inherent in them, a collective wisdom incarnate in them, and the fact that we don’t perfectly understand or cannot perfectly explain why they ‘work’ is not a defect in them but merely a limitation in us” (*Two Cheers for Capitalism* [New York: Basic Books, 1978], 161). This conservative tradition reaches back to Edmund Burke and includes the contemporary thinker Michael Oakeshott. Hume challenges the central political liberal ideal of consensus as the basis of political legitimacy in “Of the Original Contract,” *Essays: Moral, Political, and Literary* (New York: Cosimo Classics, 2006), arguing that we instead evaluate the legitimacy of political regimes based on the criterion of utility – whether or not the political regime enables its citizens to realize their goals better than alternative feasible regimes. He writes, “The general obligation, which binds us to government, is the interests and necessities of society; and this obligation is very strong” (II.XII.45). On the contrast between modern conservatism and modern liberalism, see Michael Oakeshott, *Rationalism in Politics* (Indianapolis:

reason would have reasonable citizens converge on the principles of a strongly *egalitarian* liberalism.³¹

I call this assumption the “Liberal Faith” – the faith that reason itself compels reasonable people to accept the basic tenants of liberalism. If reason is a common human faculty, and it issues in determinate judgments about moral truths, then reasonable people are bound to agree about the nature of justice. The Enlightenment assumptions about human reason give support to the Liberal Faith, the faith in the possibility of consensus about justice. However, the Enlightenment hope for consensus clashed, historically, with the fact of profound religious pluralism made evident by the Reformation. The Reformation and the Wars of Religion exposed deep divides in Europe that cast doubt upon the Liberal Faith.

4. The Project of Political Liberalism: Pluralism and the “Liberal Nightmare”

It appears as a historical fact that the free exercise of human reason does *not* issue in identical judgments on all issues of religion, morality, and philosophy, but rather it issues in a rich diversity of such judgments. In *Political Liberalism*, Rawls argues that “a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a

Liberty Fund, Inc, 1991); and Thomas Sowell, *A Conflict of Visions: Ideological Origins of Political Struggles* (New York: Basic Books, 2007). For a conservative critique of Rawls, see Allan Bloom, “Justice: John Rawls Vs. The Tradition of Political Philosophy,” *The American Political Science Review* 69, no. 2 (June 1975). For a conservative defense of meritocracy against Rawls' egalitarianism, see Daniel Bell, “On Meritocracy and Equality,” *Public Interest* 29 (Fall 1972). For a conservative take on the topic of chapter III (economic justice), see Irving Kristol, “When Virtue Loses All Her Loveliness’: Some Reflections on Capitalism and ‘The Free Society,’” *The Public Interest* 21 (1970).

³¹ This assumption – that reasonable people can be expected to converge on an egalitarian view of property rights and wealth distribution – will be explored and critiqued at length in chapter III.

constitutional democratic regime.”³² Rawls puts the point more strongly when he argues that pluralism regarding moral worldviews (or, more generally, “comprehensive doctrines”) is the “*inevitable* outcome of free human reason.”³³ Rawls refers to the cause of this reasonable pluralism as “the burdens of judgment,” which refers to the fact that people reasoning in good faith are beset by so many cognitive complexities and difficulties that disagreement is to be expected (and thus respected) even in epistemically ideal conditions.³⁴ Galston likewise notes, “Modern liberal-democratic societies are characterized by an *irreversible* pluralism, that is, by conflicting and incommensurable conceptions of the human good.”³⁵ Reason itself, it seems, breeds a pluralism of values.³⁶

If the French Revolution and the Enlightenment were the noteworthy events that contributed to liberalism’s commitment to rational consensus, then the Reformation and

³² Rawls, *Political Liberalism*, xviii.

³³ Rawls, *Political Liberalism*, 37; my italics.

³⁴ Rawls lists some of the leading contributing factors to the burdens of judgment:

- “(a) The evidence – empirical and scientific – bearing on the case is conflicting and complex, and thus hard to assess and evaluate.
- (b) Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments.
- (c) To some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgments and interpretation (and on judgments about interpretations) within some range (not sharply specifiable) where reasonable persons may differ.
- (d) To some extent (how great we cannot tell) the way we assess evidence and weight moral and political values is shaped by our total experience, our whole course of life up to now; and our total experiences must always differ...
- (e) Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an overall assessment.
- (f) Finally ... any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values that might be realized” (*Political Liberalism*, 56-57).

³⁵ William Galston, “Pluralism and Social Unity,” *Ethics* 99, no. 4 (July 1989): 711; my italics.

³⁶ After mentioning the intractable, millennia-long disputes in epistemology, ethics, and metaphysics, Michael Huemer convincingly notes, “It is therefore difficult to escape the conclusion that the human mind is subject to sources of differing judgment apart from irrationality, ignorance, and person bias” (*The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* [New York: Palgrave Macmillan, 2013], 49).

the Wars of Religion were the events that contributed to liberalism's commitment to accommodating (some degree of) pluralism. As Galston puts it, the Reformation required liberals to "deal with the political consequences of religious differences in the wake of divisions within Christendom."³⁷ It might seem strange to think of religious disagreement as the "outcome of free human reason," since on some accounts, religious belief is a paradigmatic case of irrationality (a common view of certain Enlightenment thinkers³⁸). Nonetheless, liberals came to accept religious pluralism as a fact to be accommodated by a just political community, not a defect to be overcome. Coming to accept religious pluralism as a fact stemmed in part from a realization that the division within Christendom between Catholicism and Protestantism was going to be a permanent feature of European culture.³⁹

In addition, the overthrow of religious and political absolutism in Europe revealed a sprawling diversity of forms of life and moral worldviews, including, eventually, a diversity of highly systematized and compelling secular comprehensive moral doctrines

³⁷ Galston, "Two Concepts of Liberalism," 525. Indeed, Galston is aware that liberalism has these two very different legacies, and he argues that these two legacies issue in two distinct traditions within liberal thought: Enlightenment-based liberalism and Reformation-based liberalism. However, it is clear that thinkers like Rawls (in his later work) are trying to articulate a unified account of liberalism that is committed to the Enlightenment-inspired ideal of rational consensus as well as the Reformation-inspired fact of pluralism.

³⁸ See David Hume, *Dialogues Concerning Natural Religion*, 2nd ed., ed. Kemp Smith (Edinburgh: Nelson & Sons, 1947). The claim that religious belief is straightforwardly irrational has been taken up forcefully by the so-called New Atheists today. See Richard Dawkins, *The God Delusion* (Boston: Houghton Mifflin, 2006); Christopher Hitchens, *God is Not Great: How Religion Poisons Everything* (New York: Hachette, 2007); Daniel Dennett, *Breaking the Spell: Religion as a Natural Phenomenon* (New York: Penguin, 2006); and Sam Harris, *The End of Faith: Religion, Terror, and the Future of Reason* (New York: W.W. Norton, 2005).

³⁹ For an interesting counter-narrative to this typical liberal narrative about the overcoming of religious antagonisms through liberalism, see William Cavanaugh, *The Myth of Religious Violence* (Oxford: Oxford UP, 2009). Cavanaugh argues that rhetoric about "religious violence" became a rationalization for violence caused not by religious disagreements but instead by the formation and consolidation of the liberal nation-state in Europe: "The myth of religious violence should finally be seen for what it is: an important part of the folklore of Western societies. It does not identify any facts about the world, but rather authorizes certain arrangements of power in the modern West. It is a story of salvation from mortal peril by the creation of the secular nation-state" (226).

(e.g. utilitarianism, deontological ethics, and virtue-based moral worldviews). It now seemed clear that the free exercise of practical reason does not always lead to a convergence on a *single true view*, but instead often leads to a *pluralism of reasonable views*. This acceptance of the inevitability of pluralism creates some important difficulties for the principle of public justification. If legitimate political authority has to be reasonable from every point of view, it is now clear that there are a large number of such points of view. Since *each and every (reasonable) citizen* must consent to the principles underlying political authority, it follows that, in a sense, each and every reasonable citizen wields a *veto power* over any proposed principle of justice, creating the worry that perhaps *no form of political authority will be deemed legitimate*. If all it takes to de-legitimize political authority is for one reasonable citizen to withhold consent, then can we really expect *any* form of political authority to pass the stringent liberal test? Perhaps the Liberal Faith in rational consensus is unfounded.

The fear that the liberal faith in the eventuality of rational consensus is unfounded lurks in the background of most liberal political philosophy, and liberal thinkers often give voice to this fear at some point in their writing. Charles Larmore offers a typical example:

It has been the conviction that we can agree on a core morality while continuing to disagree about what makes life worth living. In the end, this conviction may turn out to be baseless. Liberalism may necessarily be just one more partisan ideal. But if that is so, then unless the modern experience is to dissolve in the light of the one irresistible, all-

encompassing Good, our political future will indeed be one “where ignorant armies clash by night.”⁴⁰

Nagel voices this concern when he points out how many of our disagreements about justice come down to “a pure confrontation between personal moral convictions,” as opposed to disagreements “in judgment over the preponderant weight of reasons bearing on an issue.”⁴¹ Because, he recognizes, “the justifications on opposite sides of an issue may come to an end with moral instincts which are simply internal to the points of view of the opposed parties – and this makes them more like conflicts of personal religious conviction.”⁴² If our disagreements about justice closely resemble our disagreements about matters of religion (the paradigmatic case of deep and persistent disagreement), then the very possibility for consensus about justice is threatened. No one expects our disagreements over the claims of religion to be overcome anytime soon. But that is no longer a serious political problem, since liberalism has (for the most part) successfully transitioned religious claims into the private sphere. But what if the same phenomenon of deep and persistent disagreement holds for disagreements over *justice* itself? Liberals have come to accept, as a fact to be accommodated, deep and persistent disagreements about *private values concerning the good life*. But what are the implications of accepting, as a fact to be accommodated, deep and persistent disagreements about *public values concerning justice*?

This fear – that no form of political authority is capable of being justified in the context of reasonable pluralism – I will call (borrowing a phrase from Gaus) the “Liberal

⁴⁰ Charles Larmore, “Political Liberalism,” *Political Theory* 18, no. 3 (August 1990): 357.

⁴¹ Nagel, “Moral Conflict and Political Legitimacy,” 233.

⁴² Nagel, “Moral Conflict and Political Legitimacy,” 233.

Nightmare.” In this scenario, the twin liberal commitments to consensus and pluralism cannot be jointly honored. As Gaus puts it, the Liberal Nightmare is the situation in which “nothing at all will be justified, because someone will exercise her veto for every proposal.”⁴³ Perhaps the liberal commitment to respecting pluralism leads to an invalidation of *all* forms of state power, since disagreement about moral and political issues are so deep that they infect our core disagreements about justice.

Enzo Rossi gestures at the possibility of the Liberal Nightmare when he suggests that perhaps “consensus theorists set themselves an impossible task, given the persistent ethical diversity that characterizes liberal polities.”⁴⁴ If so, he suggests, perhaps political liberalism belongs to a previous and less pluralistic era, not the present one: “on the consensus theorists’ own account of the connection between liberal institutions and persistent diversity, those conditions seem unlikely to obtain in modern liberal democracies.”⁴⁵ He goes on, “[T]he consensus view may owe its deficiencies to its historical roots, in the sense that *it is only designed to accommodate the relatively low level of diversity found in early modern European societies.*”⁴⁶ Chandran Kukathas echoes this sentiment, arguing that the modern “condition of diversity” should make political philosophers give up entirely on the project of articulating a conception of justice capable of achieving consensus.⁴⁷ He explains,

⁴³ Gaus, “Public Reason Liberalism,” 25.

⁴⁴ Enzo Rossi, “Modus Vivendi, Consensus, and (Realist) Political Legitimacy,” *Public Reason: Journal of Political and Moral Philosophy* 2, no. 2 (2010): 37.

⁴⁵ Rossi, “Modus Vivendi, Consensus, and (Realist) Political Legitimacy,” 37.

⁴⁶ Rossi, “Modus Vivendi, Consensus, and (Realist) Political Legitimacy,” 37; my italics.

⁴⁷ Chandran Kukathas, *The Liberal Archipelago* (Oxford: Oxford UP, 2007), 6.

In a world of moral and cultural diversity one of the subjects over which there is dispute and even conflict, is the subject of justice. Different peoples, or groups, or communities, have different views or conceptions of justice. In these circumstances, the question is: how can people live together freely when there is this sort of moral diversity? One kind of answer suggests that the solution is to articulate a conception of justice that is capable of commanding widespread, if not universal, assent. But the problem with this move is that, in order to secure that assent, it is necessary to strip the conception of justice of much of its substantive content or run the risk of having a theory which commands the loyalty of only a small subset of its audience. Yet stripped of too much of its substantive content it ceases to be a theory of justice at all.⁴⁸

Perhaps reasonable people disagree deeply not only about the good life, but also, and with equal force, about justice.⁴⁹ Indeed, Gaus points out how strange it is for political liberals to assume that “while our reasoning about religion, morality and metaphysics [is] deeply pluralistic, our reasoning about our moral and/or political constitution [is] homogeneous.”⁵⁰ Instead, it seems more reasonable to assume that “the very burdens of judgment that produce disagreement in the former leads to pluralism in the latter.”⁵¹

⁴⁸ Kukathas, *The Liberal Archipelago*, 6.

⁴⁹ Others have described the troubled place of pluralism in the liberal tradition, and the possibility that a genuine commitment to pluralism is incompatible with a commitment to consensus. See John Kekes, “The Incompatibility of Liberalism and Pluralism,” *American Philosophical Quarterly* 29, no. 2 (April 1992); John Gray, “Where Pluralists and Liberals Part Company,” *International Journal of Philosophical Studies* 6 no. 1 (1998); and Nicolas Rescher, *Pluralism: Against the Demand for Consensus* (Oxford: Oxford UP, 1995).

⁵⁰ Gaus, “Public Reason Liberalism,” 23.

⁵¹ Gaus, “Public Reason Liberalism,” 23.

Once we take this insight seriously, and “once we abandon this implausible bifurcation of our normative reasoning,”⁵² we are left to wonder whether any conception of justice can achieve consensus given our condition of deep pluralism.

If the Liberal Nightmare turned out to be a reality, we would be forced to either accept that some set of liberal principles must be oppressively imposed against the objections of certain reasonable citizens, or else accept that no form of political authority is publicly justifiable at all, thus embracing a kind of anarchism. This perhaps explains why anarchism often seems to linger in the background of much liberal theorizing. As Gaus notes, “Liberalism is at the edge of anarchy, in the sense that liberal principles, if carried to their extreme, appear to lead to anarchism. If liberty is so fundamental, justifying any limitation on it may be a real challenge.”⁵³ Then what, if anything, keeps liberalism from either spilling over into anarchism (that is, the *illegitimization of political authority as such*⁵⁴) or accepting some form of oppression (that is, the *imposition of*

⁵² Gaus, “Public Reason Liberalism,” 24.

⁵³ Gerald Gaus, “Liberal Neutrality,” accessed 12 January 2013, <http://www.gaus.biz/GausOnNeutrality.pdf>, 20.

⁵⁴ I do not want to rule out the possibility that political authority, as such, is in fact unjustified. For a compelling recent argument against the very possibility of legitimate political authority, see Huemer, *The Problem of Political Authority*. For an example of how a liberal vision can sound quasi-anarchistic, see Kukathas, *The Liberal Archipelago*, which articulates a political vision quite similar to that offered in part 3 of Robert Nozick's *Anarchy, State, and Utopia* (New York: Basic Books, 1977). Kukathas admits to sympathies both “libertarian and anarchistic” (*The Liberal Archipelago*, x). If the anarchist critique of statism is correct, then all forms of political authority are illegitimate. This, in a sense, would represent the ultimate triumph of pluralism over consensus. In chapter V, I try to lay out a way of thinking about liberalism that does not rely upon the flawed assumption of the eventuality of rational consensus, but also does not give up on political authority altogether.

*illegitimate political authority*⁵⁵)? Is there any way out of this impasse? Is there any hope of forging a consensus in the midst of *deep* pluralism?

In response to this threat of the Liberal Nightmare, political liberals all share some version of the Liberal Faith: the faith that while the free exercise of human reason may produce entrenched and deep disagreement about any number of issues, it will also produce broad agreement about justice. If this is true, it would reconcile the two commitments of political liberalism, since consensus would be secured vis-à-vis justice, while pluralism would be respected vis-à-vis comprehensive conceptions of the good. But, I will argue, the familiar strategies of reconciliation all fail.

In what follows, I will describe and critique two specific attempts at reconciliation within the tradition of political liberalism. I will focus on the strategies developed by two strands of political liberalism: the “shared reasons” model (exemplified by Rawls, Larmore, Quong, and Nagel), and the “convergent reasons” model (exemplified by Gaus, Vallier, and Stout). I will argue that both models fail to respect the depth of the pluralism that we witness in modern democratic societies.

⁵⁵ In this case, if no account of justice can be publicly justified, a *modus vivendi* arrangement is the second-best alternative. Some Rawls-inspired contemporary political philosophers have explored the positive dimensions of *modus vivendi*, such as Claudia Mills, “Not a Mere Modus Vivendi: The Bases for Allegiance to the Just State,” in *The Idea of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2000); Bernard Dauenhauer, “A Good Word for a Modus Vivendi,” in *The Idea of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2000); and Scott Hershovitz, “A Mere Modus Vivendi?,” in *The Idea of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2000). Some anti-Rawlsians have done similar work, most notably John Gray, *The Two Faces of Liberalism* (New York: New Press, 2000). This topic will be dealt with more extensively in chapter V. Historically, the view that political authority should be imposed despite lacking public justification is arguably defended in Niccolo Machiavelli's *The Prince* (New York: Dover, 1992), when he suggests that the prince must be guided by virtues that are not shared by the citizens if the prince is to ensure stability and the common good. On this topic, also see Isaiah Berlin, “The Originality of Machiavelli” in *The Proper Study of Mankind: An Anthology of Essays*, ed. Henry Hardy and Roger Hausheer (New York: Farrar, Straus and Giroux, 1949).

5. Theoretical Strategy for Reconciling Pluralism and Consensus: The “Shared Reasons” Model

The primary way that political liberals have attempted to reconcile pluralism and consensus can be described as the “shared reasons” model. The basic idea is that all citizens are obligated to bracket their non-shared “private” reasons and only deploy “shared” reasons in public deliberation about matters of justice.⁵⁶ As Galston puts it, the idea is that if we can “devise a strategy for *excluding from public discourse the matters on which we fundamentally disagree* and for *reflecting collectively on the beliefs we share*, we can be led to workable agreements on the content of just principles and institutions.”⁵⁷ If only shared reasons are used in public justifications, then the outcome of public deliberation will be acceptable to all, since the reasons employed are shared by all. The deep disagreements that exist in society about religion, for example, are dealt with by “privatizing” those religious reasons, allowing them to structure private associations (i.e. the internal operations of a church, family, or other private association), but not allowing them to influence public deliberation. This is because if sectarian religious reasons are used to justify state policy (thus privileging one religion at the expense of others), this would be a violation of the freedom and equality of those disadvantaged citizens who object to such policies. Common reasons are used to agree upon a public conception of justice, while private reasons are used to decide upon a private conception of the good life. This shared reasons model is the dominant paradigm

⁵⁶ Gerald Gaus refers to this as the “bracketing” or “insulation” strategy, and identifies it as the essence of the shared reasons model of political liberalism. See Gerald Gaus, *The Order of Public Reasons* (New York: Cambridge UP, 2011), 40.

⁵⁷ Galston, “Pluralism and Social Unity,” 711; my italics.

in the classical social contract tradition, going back to Locke, Rousseau, and Kant⁵⁸, and coming up through Rawls, Nagel, Larmore, and Quong. In the following section, I will first describe how the shared reasons model was developed by Rawls, I will then highlight some of the problems that emerged in his later work with regards to this issue, and I will finally show how these problems were worked out by a contemporary political liberal, Quong.

5.1. The “Shared Reasons” Model in Early Rawls

In any shared reasons account of liberalism, there needs to be a compelling story about how we determine exactly which reasons qualify as “public” reasons. Historically, liberalism emerged (in part) in reaction to the Wars of Religion, and offered a vision of politics in which divisive religious concerns would not occupy public debate, but instead the state would maintain a stance of neutrality vis-a-vis the competing religious worldviews. So religious reasons became paradigmatic private reasons. But beyond this seemingly easy case, what criteria can be used to determine which reasons are permissible in public deliberation? In *A Theory of Justice*, Rawls argues that public reasons are only those reasons that would be offered by a person behind the “veil of ignorance” - that is, an *idealized person* who is forced into a stance of impartiality by reasoning without knowledge of her class, race, gender, natural endowments, character, work ethic, social position, etc. Behind the veil of ignorance, people would be unable to

⁵⁸ For example, Kant clearly adheres to a “shared reasons” model of public justification in his description of the “realm of ends,” where public reasons are strictly shared reasons: “By ‘realm’ I understand the systematic union of different rational beings through common laws. Because laws determine ends with regard to their universal validity, if we *abstract from the personal differences of rational beings and this from all content of their private ends*, we can think of the whole of all ends in systematic connection, a whole of rational beings in themselves as well as of the particular ends which each man may set himself. This is the realm of ends” (*Grounding for the Metaphysics of Morals*, 51-52; my italics).

bargain for advantages for their particular group, and thus they would be forced to select principles of justice that confer a fair distribution of benefits and burdens on all members of society. This constrained and idealized form of reasoning, which values all positions equally, comes to define what is “reasonable,” and ensures that whatever principles are chosen under such conditions will be fair principles.⁵⁹ Rawls notes that there will be no dialogue or deliberation behind the veil of ignorance, since there will essentially be just one single idealized chooser.⁶⁰ This single chooser will have a list of values and concerns that she will use in choosing principles of justice, and these are called the “social primary goods.”⁶¹ The principles of justice will be evaluated based on how well they secure social primary goods for each member of society. This highlights exactly how Rawls is giving a “shared reasons” account of liberalism: anyone who is appropriately reflecting on the nature of justice will share the same values (the social primary goods) and concerns (get as many social primary goods as possible).

⁵⁹ Gauthier helpfully distinguishes between two kinds of reasoning: *universalizing reasoning*, and *maximizing reasoning*. The former is the Kantian reasoning that places no special value on oneself, but reasons impartially, while the latter is the Hobbesian reasoning that is decidedly partial and egoistic. Rawls' original position is occupied by a maximizing reasoner, but the information constraints of the veil of ignorance ensure that the reasoner (out of self-interest) will reason impartially. See the introduction of David Gauthier's *Morals by Agreement* for a discussion of this distinction.

⁶⁰ Rawls notes: “To begin with, it is clear that since the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments. Therefore we can view the choice in the original position from the standpoint of one person selected at random. If anyone after due reflection prefers a conception of justice to another, then they all do, and a unanimous agreement can be reached... Thus there follows the very important consequence that the parties have no basis for bargaining in the usual sense” (*A Theory of Justice*, 139). Many have criticized Rawls for the absence of the possibility of dialogue in his original position (and thus its “monological” character), including Habermas. Rawls replies to this charge in *Political Liberalism*, “Reply to Habermas.”

⁶¹ The social primary goods include rights and liberties, powers and opportunities, income and wealth, and self-respect. These are “things that every rational man is presumed to want,” regardless of his private ends (Rawls, *A Theory of Justice*, 62). These seemingly universal and shared concerns constitute a “thin” conception of the good, in contrast to a particular and controversial “thick” conception of the good, which Rawls came to call a “comprehensive doctrine.”

Rawls' account in *A Theory of Justice* was quickly attacked by Michael Sandel for presupposing an objectionably atomistic individual as the chooser of justice. For Sandel, Rawls models the reasonable individual as someone who *chooses* (and can thus choose to *alienate*) the basic features of her identity and her deepest values.⁶² Indeed, the idealized chooser behind Rawls' veil of ignorance is an abstraction of the “rational choice” economists – a non-other-regarding maximizer, hoping to secure for herself as many social primary goods as possible. While the informational constraints imposed by the veil of ignorance guarantee the impartiality and “reasonableness” of the decision, the chooser is otherwise a rational maximizer, uninterested in the welfare of others.⁶³ Additionally, Rawls' idealized chooser cares only to maximize her share of social primary goods, and cares nothing about traditional values and communitarian concerns.⁶⁴

Does this model of the self accurately capture our ideal of “reasonableness”? Or does it ask citizens to alienate parts of their identity and values that they are unable to alienate, because certain values are *constitutive* of their identity, not just accidental features of it? Although Rawls is hoping to model a chooser with minimal controversial features, Sandel argues that Rawls relies upon a metaphysics of the self that is quite historically specific, and quite problematic from the point of view of many citizens in

⁶² See Michael Sandel, *Liberalism and the Limits of Justice*, 2nd ed. (New York: Cambridge UP, 1998). For another well-known articulation of this position, see Charles Taylor, “Atomism,” in *Communitarianism and Individualism*, ed. Shlomo Avineri and Avner de-Shalit (Oxford: Oxford UP, 1992).

⁶³ The chooser behind the veil of ignorance is characterized by “mutually disinterested rationality” (Rawls, *A Theory of Justice*, 144).

⁶⁴ In their paper “Disagreement Behind the Veil of Ignorance,” Ryan Muldoon *et al* argue that “there is a kind of moral disagreement that survives the Rawlsian veil of ignorance,” namely, “while a veil of ignorance eliminates sources of disagreement stemming from self-interest, it does not do anything to eliminate deeper sources of disagreement” concerning moral values (“Disagreement Behind the Veil of Ignorance,” *Philosophical Studies* 170, no. 3 [September 2014]: 377). This basic concern resonates with the critique of political liberalism that I develop in this chapter and the next. Also see Ryan Muldoon, “Justice without Agreement,” accessed 5 February 2015, <http://www.sas.upenn.edu/~rmuldoon/papers/JusticeWithoutAgreement.pdf>.

modern liberal democracies. While Rawls was hoping to describe justice for all reasonable people, Sandel argues that Rawls is describing justice merely for modern liberals who already operate with an atomistic view of the individual, who privilege impartiality as the form of justice, and who have mainly secular liberal values. This line of critique helped motivate Rawls to make some important changes to his thinking between *A Theory of Justice* and *Political Liberalism*.

5.2. The “Shared Reasons” Model in Later Rawls

Starting in his Dewey Lectures, Rawls began articulating a conception of justice that claimed to be “political not metaphysical.”⁶⁵ By this, Rawls meant that political philosophy should not aspire to articulate a conception of justice from the “perspective of eternity”⁶⁶ (the goal in *A Theory of Justice*), but instead should start by “looking to the public culture itself as the shared fund of implicitly recognized basic ideas and principles,”⁶⁷ and try to articulate and systematize these principles into a coherent conception of justice. That is, the political philosopher should not take sides in deep metaphysical debates, but should instead articulate a conception of justice that meshes with the many existing metaphysical views held by democratic citizens.⁶⁸ Galston nicely

⁶⁵ See John Rawls, “Justice as Fairness: Political not Metaphysical,” *Philosophy and Public Affairs* 14, no. 3 (Summer 1985).

⁶⁶ John Rawls, *A Theory of Justice*, 587. Just before this, Rawls writes, “Thus to see our place in society from the perspective of this position is to see it *sub specie aeternitatis*: it is to regard the human situation not only from all social but also all temporal points of view” (*A Theory of Justice*, 587).

⁶⁷ Rawls, *Political Liberalism*, 8.

⁶⁸ Rawls helpfully summarizes the methodology of his later work: “What justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, *it is the most reasonable doctrine for us*” (“Kantian Constructivism in Moral Theory,” *The Journal of Philosophy*, 77, no. 9 [September 1980]: 519; my italics).

describes this as a shift from “Kantian” to “Hegelian” political philosophy.⁶⁹ In other words, the early Rawls of *A Theory of Justice* tries to describe the conception of justice dictated by reason itself, while the later Rawls of *Political Liberalism* tries to describe a conception of justice worked up from our (historically specific) deepest and considered convictions.⁷⁰ As a result of this important metaphilosophical move, Rawls admits that

⁶⁹ Yet, while Galston notes that Rawls' transition marks a general shift from Kant to Hegel, he insightfully points out that Rawls is actually quite ambivalent in his later work about his metaphilosophical stance: “The problem with Rawls' revised Kantian doctrine [in *Political Liberalism*] is ... that it prescribes, as valid for all, a single, substantive, eminently debatable ideal of moral personality” while at the same time insisting that he is appealing only to “the principles latent in the common sense” of our culture (“Moral Personality and Liberal Theory,” 504, 511). Later Rawls seems to both prescribe as uniquely reasonable a clearly controversial conception of justice while at the same time insisting that he is merely drawing his values from within our political culture itself. Galston casts this ambiguity as a tension between the Kantian and Hegelian elements of Rawls' thought: “Rawls's reconstructed theory is divided against itself. It is explicitly Kantian, but implicitly Hegelian” (“Moral Personality and Liberal Theory,” 512). Donald Beggs describes the shift in somewhat different terms: “The later pluralism of *Political Liberalism* enacts a move from the moral and comprehensive pluralism of *A Theory of Justice* to an allegedly freestanding pluralism. It is a move from modernist liberalism to postmodern liberalism” (“Rawls' Political Postmodernism,” *Continental Philosophy Review* 32 [1999]: 123). On Rawls' metaphilosophical shift, also see Fred D'Agostino, “The Legacies of John Rawls,” *Journal of Moral Philosophy* 1, no. 3 (2004). The justificatory framework of “reflective equilibrium” is present in *A Theory of Justice*, but becomes more central in *Political Liberalism*. For a discussion of how the method of reflective equilibrium avoids foundationalism without falling prey to relativism, see Fred D'agostino, “Relativism and Reflective Equilibrium,” *The Monist* 71, no. 3 (July 1988); and (more tangentially) Fred D'agostino, “Transcendence and Conversation: Two Conceptions of Objectivity,” *American Philosophical Quarterly* 30, no. 2 (April 1993). On some of the problems with shifting from a “metaphysical” to a “political” conception of justice, see Ryan Davis, “Justice: Metaphysical, After All?” *Ethical Theory and Moral Practice* 14 (2011); as well as David Estlund, “The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth,” *Ethics* 108, no. 2 (January 1998); and David Estlund, “The Truth in Political Liberalism,” in *Truth and Democratic Politics*, ed. Andrew Norris and Jeremy Elkins (Philadelphia: University of Pennsylvania Press, 2012).

⁷⁰ One of the major critics of this metaphilosophical shift from *A Theory of Justice* to *Political Liberalism* is Robert S. Taylor (coming from Rawls' left) in his book *Reconstructing Rawls: The Kantian Foundations of Justice as Fairness* (University Park, Pennsylvania: Pennsylvania State UP, 2011). Taylor argues that if Rawls wants to confine himself to the values implicit in American political culture, then the radical left-wing vision of justice articulated in *A Theory of Justice* will invariably be watered down, as Rawls will be forced to accommodate certain entrenched right-wing ideals about society (as mainly wealth-maximizing) and the individual (as competitively individualistic) into his conception of justice. Coming from Rawls' right, Allan Bloom argues that Rawls' metaphilosophical commitment against finding Truth and opting to instead articulate our deepest intuitions does in fact fall prey to relativism: “Rawls thinks that his procedure is Socratic. Socrates, however, did not begin from sentiments or intuitions but from opinions; all opinions are understood by Socrates to be inadequate perceptions of being; the examination of opinions proves them to be self-contradictory and points toward a noncontradictory view which is adequate to being and can be called knowledge. If opinion cannot be converted into knowledge, then the rational examination of opinions about justice, let alone of senses about justice, is of no avail in establishing principles according to which we should live. It is even questionable whether such examination is of any use at all. Rawls begins with our moral sense,

his account in *A Theory of Justice* did not adequately deal with the problem of “stability”—that is, the problem of actual, diverse citizens voluntarily accepting, internalizing, and acting on the principles of justice developed behind the veil of ignorance.⁷¹ Making a concession to Sandel's critique, Rawls recognizes that a satisfying conception of justice must be congruent with the actual deeply held values of those citizens who are subject to it. If people would choose a particular conception of justice from behind the veil of ignorance (with all the attendant information constraints), but then would strongly object to that conception of justice when the veil of ignorance is lifted (and the information constraints are removed), then that conception of justice would be *unstable*. In other words, the “private” values of citizens, which are bracketed by the veil of ignorance, should have *some* justificatory role for questions of basic justice in the work of later Rawls. As Gaus puts it, this re-incorporation of the justificatory importance of private reasons is, in some sense, internal to Rawls' project, since it is rooted in his commitment to the fact of reasonable pluralism: “Rawls' commitment to the importance of evaluative pluralism prevents him from simply dismissing different

develops the principles which accord with it, and then sees whether we are satisfied with the results; the principles depend on our moral sense and that moral sense on the principles. We are not forced to leave our conventional lives nor compelled, by the very power of being, to move toward a true and natural life. We start from what we are now and end there, since there is nothing beyond us. At best Rawls will help us to be more consistent, if that is an advantage. The distinctions between opinion and knowledge, and between appearance and reality, which made philosophy possible and needful, disappear. Rawls speaks to an audience of the persuaded, excluding not only those who have different sentiments but those who cannot be satisfied by sentiment alone” (“Justice: John Rawls Vs. The Tradition of Political Philosophy,” 649). A defense of Rawls' metaphilosophical shift can be found in Richard Rorty, “The Priority of Democracy to Philosophy,” in *Objectivity, relativism, and truth: Philosophical papers* (Cambridge: Cambridge UP, 1991); Richard Rorty, “Justice as a Larger Loyalty,” *Ethical Perspectives* 4, no. 3 (1997); and Andrew Altman, “Rawls' Pragmatic Turn,” *Journal of Social Philosophy* 14, no. 3 (1983).

⁷¹ The most detailed account of this transition in Rawls' thought is Paul Weithman, *Why Political Liberalism?: On John Rawls's Political Turn* (New York: Oxford UP, 2010). Also see Gerald Gaus, “The Turn to a Political Liberalism,” in *A Companion to Rawls*, ed. Jon Mandle and David Reidy (Malden, MA: John Wiley & Sons, Inc., 2014).

conceptions of the good as irrelevant to moral justification.”⁷² So in his early work, Rawls hoped to fully separate the “right” (or justice) from the “good,” by relegating one's conception of the good life to the private sphere, where it is to have no bearing on public deliberation about justice. But in his later work, Rawls came to believe that justice must be congruent with the many reasonable “comprehensive conceptions of the good” found in modern democratic society, including religious conceptions and communitarian concerns.⁷³

In order to give justificatory power to the private conceptions of the good without abandoning the shared reasons model, Rawls develops a two-stage process of justification. The first stage (called the “freestanding” stage) looks quite similar to the original position of *A Theory of Justice*. Principles of justice are chosen by parties equally situated, such that no party has bargaining power over the others (Rawls now calls this the “criteria of reciprocity”⁷⁴). This requires that the parties lack information that would enable them to bargain on behalf of a particular segment of society. The parties still share certain common values and concerns – namely, securing and maximizing the social primary goods: “the values of equal political and civil liberty; fair equality of opportunity; the values of economic reciprocity; [and] the social bases of mutual respect between citizens.”⁷⁵ Rawls assumes, then, that “justice as fairness” would be a likely candidate for selection, but he recognizes that other similar conceptions of

⁷² Gaus, *The Order of Public Reason*, 40.

⁷³ See Weithman, *Why Political Liberalism?*, especially the chapter “Stability and Congruence.” Also see Samuel Freeman, “Congruence and the Good of Justice,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge UP, 2002).

⁷⁴ Rawls, *Political Liberalism*, 16.

⁷⁵ Rawls, *Political Liberalism*, 139.

justice may emerge from this (somewhat) reformed original position as well. Rawls refers to these as the “family of reasonable liberal conceptions of justice”⁷⁶).

Then, in response to the concern for stability, Rawls introduces a second stage of justification (called the “overlapping consensus” stage), where the parties to the agreement from the first stage are given full information (i.e. they are re-encumbered with their full array of values), and they are then invited to accept or reject the conception of justice that was chosen in the freestanding stage. Ideally, the conception of justice will be congruent with the deepest values of those subject to it, and will not be overturned in this second stage. Ideally, citizens can find reasons *internal to their comprehensive conception of the good* to support the freestanding conception of justice. Thus, while the freestanding conception of justice is articulated by shared public reasons at the first stage, the overlapping consensus features (hopefully) a convergence of private reasons at the second stage.

A question immediately presents itself: why are we to assume that the freestanding conception of justice is stable in the second stage of justification? This is where problems emerge in later Rawls' account of justification. While most liberal citizens will consent to one of the conceptions of justice in the “family of reasonable liberal conceptions of justice,” some illiberal citizens are likely to reject any liberal conception of justice (e.g. a religious fundamentalist will reject any conception of justice that fully relegates religious values to the private sphere). So if Rawls allows illiberal citizens to overturn a liberal conception of justice in the second stage of justification, then an overlapping consensus on any member of the family of liberal conceptions will be impossible, and any agreed-upon conception of justice will have to make concessions to

⁷⁶ Rawls, *Political Liberalism*, xlviii.

illiberal subgroups of the political community. Going this route may result in policies that violate the freedom and equality of certain citizens.

To prevent this, Rawls allows only “reasonable” citizens the chance to veto the conception of justice in the second stage. This move immediately triggers the question: who counts as “reasonable” here? Reasonable persons are idealized in two ways: morally and epistemologically. Morally, reasonable citizens accept the freedom and equality of persons, which means an acceptance that no person has “natural” moral authority over any other person. Epistemologically, reasonable citizens accept the “burdens of judgment,” which entails an acceptance that human reason under free institutions leads to a pluralism of values and views.⁷⁷ Together, these definitions pick out liberal citizens as reasonable, and illiberal citizens as unreasonable. Reasonable conceptions of the good are thus *by definition* congruent with a liberal conception of justice. Given Rawls' definition of reasonableness, *in the second stage of justification, reasonable citizens will necessarily accept the outcome of the first stage of justification.* This seems to make the second stage of justification superfluous.

5.3. The “Shared Reasons” Model in Quong

Recognizing the messiness and confusion of later Rawls' two-stage process of justification, Quong corrects and updates political liberalism. Quong warns political liberals that if their conception of justice is subject to the veto of actually existing citizens of modern democracies, it will surely be overturned by illiberal citizens. Quong concurs with Rawls' intuition that justice should not simply bend around the contours of an unjust

⁷⁷ Rawls writes, “comprehensive doctrines that cannot support such a democratic society *are not reasonable*” (*Political Liberalism*, 483; my italics).

world, but should be the articulation of our most deeply held and cherished values. Quong thus advocates eliminating the two stages of justification and instead just starting with an overlapping consensus around the core values featured within liberal democratic societies: individuals as free and equal, and society as a fair system of social cooperation.⁷⁸ Reasonable people are defined as those committed to the values of freedom, equality, and fairness. Justice, then, is the coherent interpretation and fitting-together of these values. Reasonable people are defined as those willing to bracket and privatize their particular and controversial comprehensive moral, religious, and philosophical commitments (all of which Quong denotes as “perfectionist” commitments). The political philosopher, then, should systematize and articulate the shared liberal values of freedom, equality, and fairness, giving us a “liberalism without perfectionism.” This represents a return to a strict shared reasons model, and a rejection of the convergent reasons supplement in later Rawls' second stage of justification.

Quong recognizes that even if all citizens share the same set of political values in their public deliberations about justice, there will nonetheless be disagreements about how these values fit together, how they are interpreted, how they are implemented, etc. But these disagreements are constrained by an underlying agreement about the values themselves, so Quong refers to these as “justificatory disagreements.” This mirrors the assumption in later Rawls that reasonable people will have some range of reasonable disagreement about principles of justice, but such disagreement will be confined to a

⁷⁸ Quong argues against what he calls an “external” account of political liberalism, whereby the views of actual citizens (liberal and illiberal alike) represent an external check on the success of the liberal project. Quong does not try to justify political liberalism to those he views as unreasonable. Instead, he begins with liberal premises, and tries to unfold a series of liberal conclusions. Thus, he wants to give an “internal” account of political liberalism, which is simply to elaborate and extend basic liberal ideas. Quong worries that Rawls, in his concern with stability, is tempted to give an external account of political liberalism, which is doomed to fail. See Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford UP, 2011), chapter 5.

narrow set or “family” of liberal conceptions of justice.⁷⁹ Disagreements about the nature of the good life, on the other hand, are often not constrained by agreement on an underlying normative framework, and Quong refers to these as “foundational disagreements.” Thus, the exclusion of all conceptions of the good life from public deliberation about justice ensures that all reasonable disagreements about justice remain, by definition, merely “justificatory.”

Quong offers the following helpful example. Two reasonable people disagree about the justice or injustice of the Catholic Church discriminating on the basis of gender when hiring priests. However, Quong maintains, both interlocutors (if they are reasonable) share a commitment to the following two basic liberal values: on the one hand, *religious liberty*, and on the other, *a prohibition against gender discrimination in employment* (that is, *equality of opportunity in employment*). So while they disagree about which value should be given priority in this particular case, they both accept the same basic political values. Quong writes, “The key ... is that they share the same basic normative framework despite the disagreement. Put another way, they share the same view of what counts as a good reason in debating the principles of justice.”⁸⁰ Thus, it is assumed, regardless of which policy is chosen (that is, permitting or prohibiting the church’s policy of gender discrimination), both parties to the disagreement will accept the

⁷⁹ For Quong, this family of liberal conceptions will include sufficientarians as well as egalitarians, contra early Rawls (who only accommodated egalitarians), but it excludes libertarians, consistent with early and later Rawls. On Quong’s inclusion of sufficientarianism in his family of liberal conceptions, see *Liberalism Without Perfection*, 184. For Rawls’ (disappointingly brief) argument for the exclusion of libertarianism from his family of liberal conceptions, see *Political Liberalism*, 262-65. For a much more detailed argument on behalf of the exclusion of libertarianism from the liberal tradition, see Samuel Freeman, “Illiberal Libertarians: Why Libertarianism Is Not a Liberal View,” *Philosophy & Public Affairs* 30, no. 2 (2001): 105–151. I will argue against this presumed unreasonableness of libertarianism in chapter III.

⁸⁰ Jonathan Quong, “Disagreement, Asymmetry, and Political Legitimacy,” *Politics, Philosophy & Economics* 4, no. 3 (October 2005): 313. Also see Quong, *Liberalism without Perfection*.

outcome as legitimate, since they both accept the validity of the values and reasons offered on behalf of both possible outcomes. Each person will feel reconciled to the political community because of this shared underlying set of values.

Importantly, for Quong, the idea that reasonable people will only experience *justificatory* and not *foundational* disagreements about justice is not an empirical assertion, but simply true by definition. He writes,

[R]easonable disagreements about justice are justificatory by definition.

The truth of this claim does not rest on any empirical assertion about substantive agreement between actual citizens on principles of justice at any level of abstraction. Rather, reasonable disagreements about justice are justificatory by definition because they must always involve citizens who share a commitment to the justificatory framework of public reason.⁸¹

So, for Quong, citizens who agree about the basic normative framework of liberalism are reasonable by definition, while those who disagree are by definition unreasonable. This nicely systematizes the shared reasons model of political liberalism: our shared reasons are capable of generating agreement on abstract principles, even if we disagree about their priority and interpretation; our non-shared reasons are relegated to the private realm, thus eliminating the possibility of deep disagreement about matters of justice.

6. Critiques of the “Shared Reasons” Model of Political Liberalism

The revised shared reasons model developed by Quong helps eliminate some of the confusions of later Rawls, but it reintroduces the problem of stability that later Rawls hoped to address. The problem is that Rawls and Quong are demanding that citizens

⁸¹ Quong, “Disagreement, Asymmetry, and Political Legitimacy,” 319-20.

restrict themselves to a narrow set of “shared values” in public deliberations about justice. The question to be asked is *whether or not this demand is itself sectarian and unreasonable*. Returning to Sandel's communitarian critique of early Rawls, it appears that the shared reasons branch of liberalism privileges a particular conception of the individual and a particular set of values that simply are not shared by all citizens. For many people, then, the model of “reasonableness” found in the shared reasons model looks quite exclusionary.⁸² And although shared reasons liberals are committed to a non-sectarian “political not metaphysical” view of justice which will “stay on the surface, philosophically speaking,”⁸³ it seems clear that Rawls and Quong are, indeed, relying upon controversial metaphysical assumptions that are not universally shared by all (seemingly) reasonable citizens of liberal democracies. In a memorable footnote in “Justice as Fairness: Political not Metaphysical,” Rawls notes,

If we look at the presentation of justice as fairness and note how it is set up, and note the ideas and conceptions it uses, no particular metaphysical doctrine about the nature of persons, distinctive and opposed to other metaphysical doctrines, appears among its premises, or seems required by its argument. If metaphysical presuppositions are involved, perhaps they

⁸² There are many critics of Rawls who level this critique. One of the most incisive critics on this point is Chantal Mouffe, who pointedly asks, “But who decides what is and what is not ‘reasonable’? In politics the very distinction between ‘reasonable’ and ‘unreasonable’ is already the drawing of a frontier; it has a political character and is always the expression of a given hegemony” (*The Return of the Political* [Brooklyn: Verso, 2006]: 142-143). Also see Mouffe, *The Democratic Paradox* (Brooklyn: Verso, 2005). For a related critique of these liberal assumptions, see William Connolly, *The Ethos of Pluralization* (Indianapolis: University of Minnesota Press, 1993). Mouffe's critique of political liberalism is mostly an *external* critique, arguing against the very vocabulary of “reasonableness” in political philosophy. While her critique is quite convincing in many ways, it will likely not convince committed political liberals. For an *internal* critique of the role of reasonableness in political liberalism, see Leif Wenar, “Political Liberalism: An Internal Critique,” *Ethics* 106, no. 1 (October 1995). Also see Gaus, “Public Reason Liberalism”; and Shaun Young, “Rawlsian Reasonableness: A Problematic Assumption?,” *Canadian Journal of Political Science* 39, no. 1 (2001).

⁸³ Rawls, “Justice as Fairness,” 230.

are so general that they would not distinguish between the distinctive metaphysical views—Cartesian, Leibnizian, or Kantian; realist, idealist, or materialist—with which philosophy traditionally has been concerned. In this case, they would not appear to be relevant for the structure and content of a political conception of justice one way or the other.⁸⁴

The concern, then, is that the pledge to “stay on the surface, philosophically speaking” is violated every time that Rawls or Quong invokes a distinctively Kantian interpretation of “free and equal persons” to justify their conception of justice.⁸⁵ Even if some people are likely to be unsatisfied with the policy implications of communitarianism,⁸⁶ the communitarian critique of the shared reasons branch of political liberalism helps make evident the controversial metaphysical assumptions that are implicit in its conceptions of “reasonableness,” personhood, and justice.

Seen from this perspective, it does not appear that the shared reasons model really takes seriously the pluralism that it aspires to respect. Instead of trying to forge consensus in the midst of pluralism, it now appears that the shared reasons liberals simply *posit* consensus (which does not in fact exist) and *ignore* pluralism (which does in fact exist). In other words, the shared reasons liberals solve the problem of pluralism by simply avoiding it. While political liberalism is characterized by the two commitments of

⁸⁴ Rawls, “Justice as Fairness,” 240n22.

⁸⁵ Again, later Rawls is committed to the starting point that “the conception of the person [presupposed when theorizing about justice] is a moral conception, one that *begins from our everyday conception of persons*” (“Justice as Fairness,” 232n15; my italics). As Robert Taylor correctly notes, the everyday conception of the person implicit in American culture is quite different than that implicit in Rawls’ thought. See Taylor, *Reconstructing Rawls*.

⁸⁶ For one influential development of the policy implications of communitarianism, see Michael Sandel, *What Money Can't Buy: The Moral Limits of Markets* (New York: Farrar, Straus and Giroux, 2012). For a classical liberal critique of Sandel's prescriptions, see Richard Epstein, “Michael Sandel is Wrong on Markets,” 15 May 2012, accessed 8 March 2013, <http://www.hoover.org/research/michael-sandel-wrong-markets>.

consensus and pluralism, the shared reasons liberals have insisted on securing consensus even if it requires dramatic and unconvincing restrictions on the scope of reasonable pluralism. As Gaus puts it, “What started out as a collective legislation problem under conditions of disagreement became an account in which everyone cares about the same things and reasons about them in the same way.”⁸⁷ Gaus goes on, “Even though Rawls continued to describe his account as requiring 'unanimous choice,' the essence of the unanimity requirement was lost,” since we “simply stipulate the correct single motivation to get the result we want, so that the unanimity requirement becomes otiose.”⁸⁸

The shared reasons model does not seem up to the task of guiding us through our condition of reasonable pluralism. Indeed, the shared reasons liberals seem to be working with conceptions of “reasonableness,” personhood, and justice that many well-intentioned and well-informed (and thus seemingly reasonable) people will reject when encumbered by their full range of values. Seen in this light, the shared reasons model seems, against all its intentions, to be *sectarian*.⁸⁹ As Gaus starkly puts it in a critique of Quong, “Quong’s political liberalism is not an opponent of sectarianism,” since Quong is essentially only replacing one kind of sectarianism (namely, “perfectionism”) with

⁸⁷ Gaus, *The Order of Public Reason*, 528.

⁸⁸ Gaus, *The Order of Public Reason*, 528. Relatedly, Gaus notes, “it is hard to see how we can make progress in understanding how people who disagree can live together by assuming that, in justificatory contexts, we are identical” (*The Order of Public Reason*, 285).

⁸⁹ For example, religious citizens will view the demand to entirely “bracket” their religious values from public deliberations about justice as unacceptable. Gaus notes, “Citizens of faith insist that they could not possibly evaluate moral rules without knowledge of their religious convictions and are certainly not willing to accord others a veto over whether they may do so” (*The Order of Public Reason*, 286).

another form of sectarianism - “a Rawlsian sectarianism.”⁹⁰ If this critique is at all convincing, it strikes a fatal blow to the shared reasons model of political liberalism.

7. The Theoretical Strategy for Reconciling Pluralism and Consensus: The “Convergent Reasons” Model

This critique of the shared reasons model has inspired a new branch of political liberalism: the convergent reasons model. This tradition of political liberalism is smaller and less developed than the shared reasons branch (which reaches back to the classical social contract liberals). Its primary proponents are Gaus, Vallier, and Stout.⁹¹ In an attempt to genuinely respect the deep pluralism characteristic of modern liberal democracies, these thinkers insist that citizens should have the right to draw on their full array of values in public deliberations about justice. Vallier summarizes the aspiration of the convergent reasons model: “For only by embracing convergence can public reason liberals truly respect reasonable pluralism and individual liberty. By restricting the set of permissible reasons, [shared reasons] liberals inevitably discriminate against some reasonable individuals by privileging the reasoning of others. These individuals are thereby partly excluded from being recognized as reasonable.”⁹² Those genuinely committed to pluralism should, Gaus argues, “wish to expand the range of admissible

⁹⁰ Gerald Gaus, “Sectarianism without Perfection? Quong’s Political Liberalism,” *Philosophy and Public Issues* 2, no. 1 (2012): 9. Gaus asks, “Isn’t the Church of Perfection simply replaced with that of High Rawlsianism?” (“Sectarianism without Perfection?”, 9). For a helpful back-and-forth between Gaus and Quong which highlights their points of agreement and disagreement, see the symposium entitled “Political Liberalism vs. Liberal Perfectionism,” *Philosophy and Public Issues* 2, no. 1 (2012).

⁹¹ I will mainly focus here on the work of Gaus, because his political philosophy is most systematically worked out, especially in his recent book *The Order of Public Reason*. Vallier defends the convergent reasons model in “Convergence and Consensus in Public Reason,” and Jeffrey Stout defends the convergent reasons model in “Religious Reasons in Political Argument,” in *The Ethics of Citizenship: Liberal Democracy and Religious Conviction*, ed. Caleb Clanton (Waco, TX: Baylor UP, 2009).

⁹² Vallier, “Convergence and Consensus in Public Reason,” 262.

evaluative standards as far as possible.”⁹³ In other words, a genuine respect for pluralism requires that people be allowed to draw upon their full range of values when evaluating justice, since only this will sufficiently capture “the idea of pluralistic reasoning.”⁹⁴

In relation to the two-step justificatory process in later Rawls, convergent reasons liberals eliminate the first step (where information is restricted and only shared values are considered) and instead begin with the second step (where citizens are encumbered with their full range of values). The strength of political liberalism, Gaus claims, ought to be in its ability to *draw on* (and not *exclude*) the rich diversity of values found in modern liberal democracies. Gaus insists, “the future of public reason liberalism is not to develop a controversial ideological position that seeks to exclude large parts of our society as ‘unreasonable,’” but instead to “press the bounds of inclusiveness as far as possible — and in so doing, showing that the deep strength of liberalism is its unique ability to not only accommodate, but draw upon, our deep diversity.”⁹⁵

For shared reasons liberals, allowing “private” reasons into public deliberation is bound to corrupt the content of justice by accommodating the views of people who are blatantly unreasonable. Surely, Rawls and Quong insist, we do not want justice to be held hostage by people who are ill-willed (such as committed racists, sexists, theocrats, sadists, etc.), or by people who are ill-informed (such as ignorant citizens, or “low-information voters”⁹⁶). These arguments on behalf of restricting certain people and

⁹³ Gaus, *The Order of Public Reason*, 283.

⁹⁴ Gaus, *The Order of Public Reason*, 284. Gaus quips, “It is especially striking that Rawlsians such as Quong, who have so impressed upon us the importance of reasonable pluralism, seem so perplexed by pluralistic reasoning” (*The Order of Public Reason*, 292).

⁹⁵ Gaus, “Public Reason Liberalism,” 28.

⁹⁶ For a compelling (and frightening) account of the systematic biases and misconceptions among American voters, see Bryan Caplan, *The Myth of the Rational Voter* (Princeton: Princeton UP, 2008), chapter 2. He identifies four systematic misconceptions about economics among American voters: (1)

certain views from public deliberation about justice seem to address a serious and necessary concern, even if shared reasons liberals do not present a compelling solution. How then do convergent reasons liberals respond to this concern?

The basic conviction of the convergent reasons liberals is that the shared reasons model excludes not only the ill-willed and ill-informed (who, convergent reasons liberals agree, *should* be excluded), but it also excludes a large swath of well-intentioned and well-informed citizens (who should *not* be excluded). As Gaus puts it, shared reasons liberals exclude as unreasonable not only “the most extreme sorts of evaluative perspectives (say, fanatics who have no interest in mutually acceptable terms for our common life),” but also many “good-willed moral agents.”⁹⁷ This is a crucial part of Gaus' critique of the shared reasons liberals: while they are right to exclude certain clearly abhorrent values and reasons from consideration, their elaboration of justice reveals that they have excluded values and reasons from consideration that *many seemingly reasonable people do not consider unreasonable*. If this is the case, then it exposes the project of the shared reasons liberals to be a failure. Shared reasons liberalism does not show us which principles of justice would be agreed upon by reasonable people, but instead it tautologically shows us which principles of justice would be agreed upon by a group of people (who only represent a subset of all reasonable people) who already share a common set of justice-related values. This would destroy

anti-market bias, (2) anti-foreign bias, (3) make-work bias, and (4) pessimistic bias. Since they reflect ignorance about the empirical world, these biases would presumably be filtered out through epistemic idealization for the sake of public justification, both in the shared and convergent reasons models. For a similar argument documenting the harmful political effects of rational ignorance among American citizens, see Ilya Somin, *Democracy and Political Ignorance: Why Smaller Government is Smarter* (Stanford: Stanford UP, 2013). For a counterargument to these pessimistic accounts of democratic institutions, see Donald Wittman, *The Myth of Democratic Failure: Why Political Institutions Are Efficient* (Chicago: University of Chicago Press, 1995). This issue is taken up at greater length in chapter IV.

⁹⁷ Gaus, “Sectarianism without Perfection?”, 10.

the claim of the shared reasons liberals that their conception of justice can legitimately be imposed upon all. Remember: if some set of reasonable people would choose to withhold consent from a particular conception of justice, then, by the standards of political liberalism, that conception of justice is without legitimate authority. This critique exposes the shared reasons approach as circular in its justification, and sectarianism in its effect.

Gaus makes his critique more specific, arguing that the shared reasons liberals bias their conception of justice in favor of left-leaning secular citizens at the expense of right-leaning religious citizens.⁹⁸ Gaus insists, “Quong’s liberal exclusionary view systematically favors the moral attitudes of those on the left while discriminating against those on the right.”⁹⁹ To make this point, Gaus draws on the “moral foundations theory” documented by Jonathan Haidt in his recent book *The Righteous Mind: Why Good People are Divided by Politics and Religion*. Drawing on extensive survey data from American citizens, Haidt identifies six moral foundations that ordinary people draw upon when evaluating moral and political issues: liberty/oppression, fairness/anti-cheating, care/harm, loyalty/betrayal, authority/subversion, and sanctity/degradation.¹⁰⁰ What Haidt finds is that left-liberals draw primarily upon the liberty/oppression, fairness/anti-cheating, and care/harm foundations in their thinking about justice,¹⁰¹ while conservatives

⁹⁸ The debate about the place of religious conviction in political liberalism is wide-ranging. For a good overview of the debate, see Robert Audi and Nicholas Wolterstorff, *Religion in the Public Sphere: The Place of Religious Convictions in Political Debate* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 1997), which features a debate on the subject between Audi and Wolterstorff.

⁹⁹ Gerald Gaus, “Sectarianism without Perfection?,” 12.

¹⁰⁰ To see a chart organizing and summarizing these six moral foundations, see Appendix A.

¹⁰¹ Haidt calls this liberal morality “WEIRD” morality, found primarily among Western, Educated, Industrialized, Rich, and Democratic citizens. The “WEIRD” acronym gestures to the cultural and historical uniqueness (or weirdness) of the left-liberal morality. Most people, in most places, in most times, have drawn upon a larger array of the moral foundations than modern liberals do. This finding

draw upon all six.¹⁰² In the particular way that they restrict the set of reasons and values admissible in public deliberation, Rawls and Quong implicitly privilege the intuitions of left-liberals at the expense of conservatives. Gaus rightly points out that Rawls and Quong are implicitly committed to the idea that “morality is really only about treating all as free and equal, avoiding harm and ensuring that needs are met,” implying that “all other foundations are irrelevant.”¹⁰³ So we must ask: is this bias against conservative and religious citizens justified?

In response to Gaus' critique of the biases of the shared reasons model, Quong continues to insist that the uniquely conservative moral foundations are in fact irrelevant to public deliberation. The implication of Quong's stance is that a huge plurality of (well-

helps weaken the illusion that the liberal morality is a universal feature of normal human moral reasoning. See Jonathan Haidt, *The Righteous Mind: Why Good People are Divided by Politics and Religion* (New York: Pantheon, 2012), chapter 5. For a recent critique of moral foundations theory, see Kurt Gray, Chelsea Schein, and Adrian Ward, “The Myth of Harmless Wrongs in Moral Cognition: Automatic Dyadic Completion From Sin to Suffering,” *Journal of Experimental Psychology: General* 143, no. 4 (2014). For an influential (albeit very controversial) discussion of the deep pluralism of values, moralities, and identities witnessed at the international level, see Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Touchstone, 1996).

¹⁰² A note on Haidt's methodology. Haidt presented ordinary people with stories like the following: “Julie and Mark, who are sister and brother, are traveling together in France. They are both on summer vacation from college. One night they are staying alone in a cabin near the beach. They decide it would be interesting and fun if they tried making love. At the very least it would be a new experience for each of them. Julie is taking birth control pills, but Mark uses a condom too, just to be safe. They both enjoy it, but they decide not to do it again. They keep that night as a special secret between them, which makes them feel even closer to each other. So what do you think about this? Was it wrong for them to have sex?” (*The Righteous Mind*, 38). Haidt then asks his interviewees for their reactions to the story, and then for a response to the question (Was it wrong for them to have sex?). Although the vast majority of respondents intuitively feel that it was wrong for the siblings to have sex, the left-leaning liberals were unable to offer good reasons for their intuitive response. Haidt argues that the reason for this is that liberals do not draw on the sanctity/degradation moral foundation in their justifications, and are unable to give good reasons for their intuition by drawing primarily from the foundations of liberty/oppression, fairness/anti-cheating, and care/harm. This causes liberals to be “morally dumbfounded.” Conservatives, on the other hand, are able to offer reasons for their intuitive disapproval of the siblings because conservatives draw on the sanctity/degradation moral foundation, and they view sex as a sacred act that is only proper within the confines of marriage.

¹⁰³ Gaus, “Sectarianism without Perfection?”, 14. Some political philosophers, no doubt, will have no problem dismissing the actual intuitions and views of most people. On a helpful discussion of why such a move is mistaken, see David Miller, *Justice for Earthlings: Essays in Political Philosophy* (Cambridge: Cambridge UP, 2013); as well as Joshua Cohen, “Taking People as They Are?” *Philosophy & Public Affairs* 30, no. 4 (Fall 2001).

intentioned and well-informed) American citizens are excluded from public deliberation about justice in the shared reasons model of political liberalism. This seems troubling, especially since Haidt's research shows that conservatives do not *reject* the left-liberal foundations, but instead merely *draw upon others as well*. For those who are unwilling to exclude conservatives (and their values) from public deliberation, Gaus' accusation that Quong's account of liberalism is sectarian is compelling. While everyone agrees that certain clearly abhorrent views should be excluded from public deliberation, the shared reasons liberals exclude too many seemingly reasonable views, and thus offer an overly narrow view of reasonableness.

We might say that Rawls (and his followers, like Quong) is committed to a *strong moral idealization* while Gaus is committed to a *weak moral idealization*. That is, Rawls models his choice-situation of the original position (or, later, his criteria of reciprocity) such that only the left-liberal moral foundations (as described by Haidt) have justificatory relevance, thus guaranteeing a left-liberal outcome, which threatens to have his principles of justice overturned in the second stage of justification by people (and for reasons) that we tend to view as reasonable. Gaus, instead, envisions public deliberation about matters of basic justice as featuring justifications that incorporate mixtures of some or all of Haidt's six moral foundations. For Gaus, then, the notion of "reasonableness" should not embody controversial assumptions so as to privilege left-liberals, but it should instead be recast to refer simply to those people who are seen as generally well-informed and well-intentioned (using uncontroversial standards of "well-"). Given this strong and compelling critique of the shared reasons model, an alternative model that permits a

convergence of reasons (from a plurality of values, identities, and worldviews) seems quite appealing.¹⁰⁴

But the convergent reasons model is not without its own problems. The shared reasons liberals rightfully ask convergence reasons liberals the following question: is there, in fact, a conception of justice that could feasibly be the object of an overlapping consensus for this *expanded set* of reasoners and reasons? Or does this more expansive view of pluralism (espoused by the convergent reasons model) make consensus simply impossible, triggering the Liberal Nightmare? In response to this query, Gaus agrees that a more expansive view of pluralism does make consensus more difficult. But he insists that this problem should lead political liberals to give up on the goal of a *determinate* conception of justice being publicly justified. In other words, perhaps we cannot hope for a deep plurality of reasoners to agree upon a single, determinate conception of justice. But, Gaus argues, we have reason to believe that they can converge upon a *set* of conceptions of justice, each of which is preferable (to every reasoner) to the default position of no agreement (and no gains from social cooperation).¹⁰⁵ Gaus works this

¹⁰⁴ Gaus makes a more forceful argument for the positive contributions of conservatism to the maintenance of a just society in his unpublished piece “The Role of Conservatism in Securing and Maintaining Just Moral Constitutions: Toward a Theory of Complex Normative Systems,” accessed 7 July 2013, <http://www.gaus.biz/Gaus-PoliticalTheoryOfComplexSystems.pdf>. Gaus and Vallier make the case in more detail for the permissibility of religious reasons in the public sphere in “The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions,” *Philosophy & Social Criticism* 35, no. 1-2 (January 2009).

¹⁰⁵ I should note that Gaus' conviction here is not at all obvious. Gaus seems to be assuming that all those deliberating about justice will be willing to accept principles of justice other than their own highest-ranked preference. It is undoubtedly true that many people are willing to accept (without protest) an *nth*-best conception of justice to govern their political community, but this is surely not the case with *everyone*. Many people are, we might say, fundamentalists when it comes to their views of justice. Gregory Liggett elaborates the point: “Gaus argues that the set of acceptable theories of justice is relatively wide. His epistemic commitments bring him to the wide-set conclusion because the threshold for rejecting a MOP's [deliberating Member of the Public's] preferred conception of justice is very high since there exists a wide range of reasonable evaluative systems distributed among the MoPs. Therefore, according to Gaus, as long as the MoPs each individually affirm Gaus's evaluative pluralism thesis, these MoPs have no reason to cry “INJUSTICE!” just because their own preferred conception is not selected by society. As long as the conception that has been selected is inside the eligible set, the

argument out in detail in *The Order of Public Reason*,¹⁰⁶ but there is no need to go into the details of it here. In many ways, it is not much different than the position Rawls adopts in *Political Liberalism* that the overlapping consensus will not contain merely “justice as fairness” (as articulated in *A Theory of Justice*), but will include a broader “family of reasonable liberal conceptions of justice.”

MoPs should be content: disappointed that their own preferred conception wasn't selected, yes, but satisfied that one of the eligible options was in fact selected. Gaus thereby keeps the set as wide as possible without including (a) conceptions that would violate the agency principle; and (b) conceptions that rely upon a false understanding of economics. But there's a twist. The vast majority of individuals—from their own respective individual evaluative systems—don't actually affirm Gaus's epistemic commitment according to which there is a wide range of reasonable/acceptable evaluative systems and therefore a correspondingly wide range of reasonable/acceptable conceptions of justice in the first place. In *Anarchy, State, and Utopia*, for instance, Nozick says that no system other than the minimal state is justifiable. Period. Huemer, in *The Problem of Political Authority*, argues that no state at all is justifiable. Period. Gaus expects MoPs to be second-order pluralists (and accommodationists) about their first-order political beliefs, but, I'd venture to say... that the vast majority of people are second-order fundamentalists about their first-order beliefs. Actually, a better way of saying this is that most people don't distinguish between their first- and second-order beliefs. Most people, like Nozick, have certain beliefs about justice and want the state to enforce them (or refuse to enforce them, depending on the belief). The irony, I think, is that Gaus's argument would create an *empty set* of eligible options once MoPs transition away from the pro tanto into the freestanding phase of construction (once all the information is again made available to the MoPs). The only way around this is to claim that MoPs must be conceptualized to hold certain idealized moral and epistemic features, by which Gaus means that the MoPs, among other idealized characteristics, will be second-order pluralists about their first-order justice-related beliefs. I get the motivation, but what could possibly justify this sort of self-serving and circular idealization choice made by Gaus?" (email correspondence). Gaus' rejoinder is, simply, to exclude these fundamentalists as “sectarian” and “immature.” Gaus writes, “There is no reason to think that a person only has reason to adopt these sentiments and attitudes towards the rule she thinks best. As rules of social and political morality, the rules of justice are generally a great good, ordering our social life so as to provide the framework for cooperation and mutual benefit... The first impulse of the political philosopher is to optimize—to demand the best, the ideal, the perfect according to his own reflections. To be sure if (and only if) his sectual preference is within the eligible set, he may press for it in the public forum on disputed issues. But he must abjure all claim that his is the uniquely just view, the others being merely impostors or, worse, disguised evils... The morally mature citizen and philosopher knows that a diverse society will never come to share a conception of the best, and that means that she must reconcile herself to living under principles and practices that she does not think are the best, or in fact anything very close to it. Only this mature attitude allows widespread reconciliation to a social world of diversity, which includes diversity of political views” (“The Range of Justice [Or, How to Retrieve Liberal Sectual Tolerance],” 10 October 2012, accessed 25 October 2012, <http://www.cato-unbound.org/2011/10/10/gerald-gaus/range-justice-or-how-retrieve-liberal-sectual-tolerance>). This exclusionary move is highly problematic, and exposes the limits of Gaus' “expanded” pluralism. The argument I develop below (drawing on the concerns of Quong) further troubles the convergent reasons model and exposes its own biases and exclusions.

¹⁰⁶ Gerald Gaus, *The Order of Public Reason*, 261-333.

But there is an important challenge that Quong issues to Gaus at this point. Quong points out that if we allow “private” reasons into public deliberation, by permitting the more conservative moral foundations to have some justificatory force in deliberations about matters of basic justice, then there is no guarantee that the agreed-upon set of conceptions of justice will be *liberal* (in the broad sense of the term). For example, if the conservative moral foundation of sanctity/degradation is permitted a place in public deliberation, then illiberal laws that discriminate against sexual minorities very well may be institutionalized. Indeed, the basic liberties of liberalism may be held hostage to illiberal moral intuitions. Quong insightfully notes, “We can have a theory of public reason that won’t be sectarian [including the sense in which Gaus accuses Quong of being a Rawlsian sectarian], but then we can’t be sure it will be a liberal theory.”¹⁰⁷ The tension between the shared reasons model and the convergent reasons model seems to offer two equally but differently problematic routes: either (1) narrow the range of pluralism so as to secure a liberal consensus, or (2) expand the range of pluralism and accept the possibility of an illiberal compromise. This is exactly the tension between consensus and pluralism that, as I noted earlier in this chapter, has been persistent in the history of liberalism.

Gaus, however, insists that his convergent reasons account will remain liberal. To show this, Gaus needs to make a move that is structurally identical to the shared reasons model: he needs to demarcate the boundaries of the reasonable so as to exclude certain obviously undesirable kinds of moral reasons. However, since Gaus wants to remain “non-sectarian,” he needs to show how this boundary is implied in the moral commitments and attitudes of *all* those moral reasoners (left-liberal *and* conservative *and*

¹⁰⁷ Jonathan Quong, “Reply to Gaus,” *Philosophy and Public Issues* 2, no. 1 (2012): 58.

libertarian, etc.) who are well-intentioned and well-informed. Gaus thus needs to avoid the Kantian starting point of Rawls and Quong, since “the Kantian tradition has itself proven to be a controversial starting point,” and Gaus instead vows to commit himself to a non-sectarian conception of the reasonable that is “internal to our practice of social morality.”¹⁰⁸ Even though Gaus wants to begin his account with non-controversial starting points so as not to unfairly exclude certain persons and values, he recognizes that even a convergent reasons model of political liberalism requires some “significant but realistic level of idealization” so as to filter out citizens who have obviously unacceptable views.¹⁰⁹ Even *weak moral idealization* is idealization, and it requires demarcation and exclusion of the unreasonable.

To this end, Gaus argues that each normal moral reasoner, from left to right, is implicitly committed to the notion that she is an “agent,” and because of this she will (in public deliberation about justice) insist upon securing a set of “agency rights.” Gaus notes that even conservatives and religious traditionalists see themselves, in the modern world, as fundamentally active choosers of their commitments: “In pluralistic orders, in which identities and roles are constantly challenged and open to revision, *even those who endorse tradition cannot help but see this as a choice of theirs*—an exercise of their agency. We employ roles not as an alternative to agency but as a way to express and manage our presentation to others.”¹¹⁰ It is crucial to Gaus' argument that this quasi-individualistic self-conception is shared by virtually *all* members modern societies: “The perspective of agency *forces itself on us*, and *we are unable not to see ourselves as*

¹⁰⁸ Gaus, *The Order of Public Reason*, 21.

¹⁰⁹ Gaus, *The Order of Public Reason*, 276.

¹¹⁰ Gaus, *The Order of Public Reason*, 337; my italics.

agents, whose actions are properly determined by our own deliberations.”¹¹¹ If this is an accurate description of our self-understandings, then deploying and extending the concept of “agency rights” would not be viewed as inappropriately sectarian, and it would help guarantee that the converged-upon set of conceptions of justice be broadly liberal (in so far as liberalism is fundamentally a political philosophy committed to securing individual liberties, i.e. “agency rights”). Gaus hopes that this common commitment to agency rights can serve to “narrow the maximal set over core questions of social morality,” thus giving us “a much better idea of the contours of the set [of feasible conceptions of justice].”¹¹²

Is Gaus right that all people in the modern world inescapably view themselves as agents in the ways he describes? In some very weak sense, Gaus is correct. Given the many identities and values that flourish in modern liberal democracies, each person will recognize that she *could* change her own identity and values, and thus both changing or preserving one's identity and values is recognized to be, at some level, a choice. But if we understand agency in a stronger sense, in which each person is seen as first and foremost an *unencumbered chooser* of identities and values that can be selected and rejected at will, then Gaus is surely wrong. Returning again to Sandel's critique of Rawls' early work, not all citizens view themselves as separable from and antecedent to their identity and values, but instead some (even most) citizens view themselves as constituted by the identify and values given to them through their socialization in a particular community. Now, Gaus insists that he is not relying upon a controversial Millian or Kantian conception of autonomy (here echoing later Rawls' commitment to being

¹¹¹ Gaus, *The Order of Public Reason*, 337; my italics.

¹¹² Gaus, *The Order of Public Reason*, 335.

“political not metaphysical”), but rather that his view of agency is uncontroversial across a large spectrum of religious, moral, and philosophical commitments. However, Gaus needs his weak conception of agency to entail a whole series of liberal rights if he is to adequately respond to Quong's challenge (and secure a liberal outcome from a convergent reasons model). Indeed, in *The Order of Public Reason*, Gaus argues that a common commitment to agency rights entails convergence upon politically institutionalizing freedom of thought,¹¹³ rights against harm,¹¹⁴ a right to assistance,¹¹⁵ privacy rights (including freedom of association),¹¹⁶ and, finally, rights to private property.¹¹⁷

The trouble with Gaus' argument is that it is unclear whether his slate of traditional liberal rights is strictly entailed by his uncontroversial and weak notion of agency, or if it requires a more controversial and strong notion of agency. If Gaus needs the stronger notion of agency to guarantee that his convergent reasons account will remain liberal, then he seems to be guilty of the same kind of sectarianism found in the shared reasons model, since he will be excluding citizens who do not hold an individualistic self-conception.¹¹⁸ Indeed, it seems hard to envision how a weak

¹¹³ Gaus, *The Order of Public Reason*, 353.

¹¹⁴ Gaus, *The Order of Public Reason*, 357.

¹¹⁵ Gaus, *The Order of Public Reason*, 359.

¹¹⁶ Gaus, *The Order of Public Reason*, 381.

¹¹⁷ Gaus, *The Order of Public Reason*, 375. Gaus' insistence that all reasonable views of justice will include strong private property rights will be critically evaluated in chapter III.

¹¹⁸ This language of understanding agency in a “weak” and “strong” sense is influenced by Michael Walzer's language of “thin” and “thick” versions of concepts in *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, IN: University of Notre Dame Press, 2006), especially the chapter “Moral Minimalism.” Thinness refers to the presentation of a concept stripped of its concrete, detailed content, while thickness refers to the concept fully filled out. The lesson is that even if we achieve agreement about a “thin” understanding of “agency,” there is no guarantee that we will agree about “thick” interpretations of it. So even if Gaus is right that people view themselves as agents in some vague and thin sense, that does not necessarily entail that they view, for example, *private property* as entailed by that agency. In other words, thick conclusions cannot emerge from thin premises, and Gaus

conception of agency (necessarily held by all modern people) entails *private property rights*. Gaus seems to be quietly smuggling in controversial conclusions through uncontroversial premises. Michael Huemer similarly sees Gaus' project as falling prey to the same problems that Rawls' project does: "Gaus argues that political legitimacy requires agreement among all reasonable persons on general principles, though disagreements on the interpretation of those principles may remain. He mistakenly assumes that agreement on general principles is common."¹¹⁹ Some modern and reasonable people do not hold an individualistic self-conception, and do not see private property rights as a requirement of justice.

That is, the convergent reasons model shares with the shared reasons model two problematic features: the unjustified assumption of consensus and the unjustified narrowing of pluralism. Insofar as we are convinced by Gaus' critique of the shared reasons model, we will be unsatisfied with Gaus' articulation of the convergent reasons model as well.

8. The Historical Strategy for Reconciling Pluralism and Consensus: The *Telos* of Tolerance

The problems identified with the shared reasons and convergent reasons models suggests the possibility that the forging of consensus in the midst of deep pluralism is not a task that can satisfactorily be achieved by the work of ideal theory. That is, when a modern democratic society features foundational disagreements about justice, the political philosopher generally cannot convincingly show how a consensus in fact exists

tries to do exactly that.

¹¹⁹ Huemer, *The Problem of Political Authority*, 42n12.

between the “reasonable” citizens without first invoking a controversial and contested demarcation between the “reasonable” and “unreasonable” citizens. Instead, these foundational disagreements about justice may require the development of a *modus vivendi* arrangement, whereby society achieves *stability*, even if the political arrangement does not achieve *consensus*. However, even if liberals cannot always work out the problem of pluralism in “theory,” liberalism has a solid track record of working out the problem of pluralism in “practice.”

To return to an earlier point, liberalism emerged in response to the pluralism of religious faiths in the wake of the Reformation, and offered a very promising strategy for dealing with religious conflict: privatize religious belief, encourage religious tolerance, and rely on common (non-religious) values in public deliberation. As was pointed out in the last section, the *strict* privatization of religious values has been seen as oppressive and unacceptable by a number of modern religious citizens, so the liberal model (in its “shared reasons” version) has not been entirely successful. Nonetheless, the liberal values of religious tolerance and freedom of conscience have been widely embraced by religious and non-religious citizens alike, and most modern religious citizens accept that they cannot *only* rely on their religious values when making public arguments. In other words, the liberal response (combining elements from the shared and convergent reasons models) to the problem of religious pluralism was largely successful, and certainly contributed to the defusing of religious violence and the widespread acceptance of the freedom of worship and conscience.

This particular historical example offers some insight into the general historical trajectory of the liberal project and it is worth making more explicit. The Wars of

Religion broke out in Europe because matters of justice were decided based on sectarian religious values. The private beliefs of individual citizens were widely understood to be a public concern, such that it was considered legitimate for state coercion to be exercised to the end of encouraging religious observance and belief in the citizenry. The unstable peace that emerged after the Wars of Religion was a *modus vivendi* between parties of relatively equal power, each side hoping to take more ground if the opportunity presented itself. Then, slowly, the liberal alternative caught on, and the *modus vivendi* evolved into an overlapping consensus.

The liberal alternative was to see religious beliefs as having relatively little to do with *justice*, but instead as speaking to questions about the *good life*. In other words, religious beliefs were reinterpreted and re-framed as *private, not public*.¹²⁰ In his influential pamphlet *Letter Concerning Toleration*, John Locke argues that churches should care about the soul and otherworldly matters while states should worry about the body (namely, its rights against interference and aggression by others) and this-worldly matters. He insists that religious beliefs are *essentially* private by their very nature, since genuine belief cannot be *coerced* by external authorities. Furthermore, Locke argues for the then-counterintuitive position that allowing for a diversity of private religious views is actually more conducive to social harmony than trying to enforce consensus on religious questions. These arguments were eventually found to be convincing by most people. More and more religious citizens came to embrace the virtue of religious

¹²⁰ As John Locke argues, “I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other. If this is not done, there can be no end put to the controversies that will be always arising between those that have, or at least pretend to have, on the one side, a concernment [sic] for the interest of men's souls, and, on the other side, a care of the commonwealth” (*Letter Concerning Toleration*, ed. James Tully [Indianapolis: Hackett, 1983], 9-10).

tolerance,¹²¹ and thus the cold war of *modus vivendi* was transformed, over time, into the genuine peace of an overlapping consensus.¹²²

The general liberal strategy, then, is something like the following: if an object of *public* disagreement about *justice* can coherently be reinterpreted and re-framed as a *private* concern about the *good life*, and this transitioning of the object from public to private will facilitate *social harmony*, then that object should be *privatized*.¹²³ This strategy is insightfully explored by Nagel in his important essay “Moral Conflict and Political Legitimacy.” For Nagel, if an issue generates foundational disagreement (in Quong's sense), and the state does not *need* to be involved, then the issue is a candidate for “liberal toleration”¹²⁴ – that is, privatization. Nagel points out that this same strategy has been deployed quite successfully in the twentieth century regarding the issue of sexual practices. Like religious beliefs, for centuries the sexual activities of individual citizens were understood to be a public concern subject to political regulation. However, throughout the twentieth century a number of issues surrounding sexuality were politicized (such as abortion, contraceptive usage, homosexual sex, same-sex marriage), and this phenomenon created social disharmony. The liberal response to these controversies about sexual activity is to point out that sexual activity can coherently be

¹²¹ It should be noted that in his *Letter Concerning Toleration*, Locke advocated tolerance towards the pluralism of Protestant sects; he did not extend full tolerance towards atheists or Catholics, who Locke believed were incapable of being trustworthy liberal citizens.

¹²² This typical account of the rise of religious liberty ascribes great power to the liberal ideas developed by figures like Locke and Spinoza. However, it is clear that religious liberty caught on also because it enabled economic progress and political stability. For this more “materialistic” account of the rise of religious liberty, see Anthony Gill, *The Political Origins of Religious Liberty* (New York: Cambridge UP, 2008).

¹²³ For a discussion of the role of “redescription” in shifting the historical boundary between the public and private, see Richard Rorty, *Contingency, Irony, and Solidarity* (New York: Cambridge UP, 1989), chapter 3.

¹²⁴ Nagel, “Moral Conflict and Political Legitimacy,” 233.

seen as a private concern about the good life, and that such a privatization would facilitate social harmony. Sexual practices are thus a perfect candidate for “liberal toleration.”¹²⁵

Again, this historical liberal strategy has not been entirely accepted by certain citizens. Many religious citizens, for example, do not accept that their religious values have *no* place in public deliberation, and this partly fuels the debate between shared reasons liberals and convergent reasons liberals (and critics of liberalism). Thus, issues surrounding sexuality continue to be a matter of heated public debate in the United States (and elsewhere). My point is simply that the liberal paradigm has a generally successful, although imperfect, solution to the problem of foundational disagreement about issues that can coherently be reinterpreted and re-framed as private concerns about the good life. Gaus notes this important historical fact: “it is plausible to suppose that a major change between the seventeenth and twenty-first centuries was what we might call the general liberalization of conceptions of the good in western democracies.”¹²⁶ In other words, the last few centuries illustrate a slow change in how democratic citizens view their conceptions of the good. Namely, they recognize and accept the need to make room for the values of others, even if that requires privatizing (or partially privatizing) their conception of the good, or at least downgrading its justificatory importance for questions of justice in a pluralistic society. Thus, the last few centuries demonstrate a movement in the direction of liberal tolerance, lending support to the hope that such a movement will continue as societies become increasingly pluralistic.

¹²⁵ Nagel also includes the topic of “the killing of animals for food” as a candidate for liberal toleration, since it is a decision that can be devolved to individuals (“Moral Conflict and Political Legitimacy,” 233).

¹²⁶ Gaus, “Public Reason Liberalism,” 17.

I can now return to the original question that provoked this inquiry: what to do when a modern democratic society features a foundational disagreement about justice. Even if the political theorist cannot convincingly argue what solution the “reasonable” citizens would agree upon, western political history suggests that with the continued pluralization of values, social cooperation will be most successfully secured by privatizing those issues that can coherently be understood as matters of the good life. This largely vindicates the theory of the shared reasons model, wherein public deliberation takes place with mainly those values that are shared, while non-shared reasons are deemed mostly private. No doubt, however, there will always be political debates about which values, exactly, should be pushed off into the private sphere and which values should continue to have justificatory force in the public sphere. This continued tension (unlikely to cease anytime soon) vindicates the continued relevance of the convergent reasons model.

In both cases, though, the liberal paradigm seems to have a blind spot: what is to be done when a modern democratic society features a foundational disagreement about an issue that *cannot coherently be reinterpreted and re-framed as a private concern about the good life?* For issues fitting this category, Nagel offers the examples of the death penalty and nuclear policy (or foreign policy more generally): “these issues are poor candidates for liberal toleration because they are not matters of individual conduct, which the state may or may not decide to regulate,”¹²⁷ since in these cases “the state *must* decide.”¹²⁸ Unlike religious belief or sexual conduct, it is not feasible to devolve

¹²⁷ Nagel, “Moral Conflict and Political Legitimacy,” 233.

¹²⁸ Nagel, “Moral Conflict and Political Legitimacy,” 234.

decisions about military strategy to private citizens and their private associations.¹²⁹

When the Cold War pitted foreign policy hawks against advocates of nuclear disarmament in the United States, American citizens were locked in a foundational disagreement about matters of justice. For these cases of actually existing foundational disagreement about justice, the liberal privatization strategy cannot be straightforwardly applied. When the political culture is deeply divided about matters of basic justice on these inherently public questions, we have neither theory nor history to turn to in order to help us overcome such a divide.

9. Conclusion: The Blind Spot of Political Liberalism

I have argued that political liberalism, both in its shared reasons and convergent reasons models, has an unjustified faith that while reasonable people will likely disagree deeply and persistently about matters of the good life, they will nonetheless surely agree about the basic principles of justice (at least in their broad outlines). The history of liberalism seems to lend credence to this optimism by featuring impressive cases in which issues that once generated socially disruptive foundational public disagreement were successfully (semi-)privatized, thus eliminating deep disagreement from the public sphere. However, political liberalism does not have an adequate solution (in either theory or practice) to situations in which there exists well-intentioned and well-informed (and

¹²⁹ Of course, there is a tradition of political philosophy that does insist that *all* issues can coherently be privatized: anarchism. Indeed, anarchists take great pleasure in trying to demonstrate how every last function of government could be taken over by private voluntary entities, including roads, defense, law, courts, etc. For interesting and compelling attempts to defend the anarchist vision, see Murray Rothbard's *For a New Liberty* (Auburn, AL: Ludwig von Mises Institute, 2006); David Friedman's *Machinery of Freedom*, 2nd ed. (La Salle, IL: Open Court, 1989); part 2 of Linda and Morris Tannehill's *The Market for Liberty* (Auburn, AL: Ludwig von Mises Institute, 2007); and part 2 of Huemer's *The Problem of Political Authority*. It strikes me that these texts help show the “reasonableness” of anarchism – a claim that, if accepted, has serious implications for the project of egalitarian political liberalism (and even for non-egalitarian but still statist political liberalism).

thus “reasonable”) citizens who find themselves locked in foundational disagreements about issues that *cannot* be privatized, and thus *require* a public decision.

I have already mentioned the case of foreign policy, which is an inherently public concern that cannot be privatized. There is another case which arguably falls in this category that will be the subject of the next chapter: property rights and economic distributions. Nagel makes note of this issue in passing, recognizing it as a difficult case for political liberalism.¹³⁰ In the United States, questions about property rights and economic distributions divide reasonable people into right-libertarians, left-libertarians, classical liberals, left-liberals, and liberal socialists, as well as libertarians, prioritarrians, and egalitarians, and these disagreements are often foundational. The liberal privatization strategy can, in principle, apply in the domain of economic justice, by permitting ownership of private property and then allowing individuals to freely influence the overall economic distribution through private choices (private charities, gifts, consumer behavior, etc.).¹³¹ However, to deploy this privatization strategy is already to essentially

¹³⁰ That is, Nagel recognizes that decisions about the distribution of property can *technically* be devolved and privatized, but he does not count this as a decisive argument in favor of libertarianism: “The same question [about whether the state *must* decide about the matter or whether it can privatize the decision] might also be raised about fundamental issues of social justice—the conflicts of economic liberals with radical libertarians, or with radical collectivists who regard individualism as an evil. Here I would give a more complex answer. I do not believe these moral oppositions are as ‘personal’ as the others: even radical disagreements about freedom and distributive justice are usually part of some recognizable public argument. On the other hand, social provision is not so essentially the function of the state as is warfare: voluntary collective action is certainly possible. So to the extent that some of these disagreements are like religious disagreements, there would be a place for liberal toleration in the economic sphere—for example, toleration of private ownership even by those who think it is an evil” (“Moral Conflict and Political Legitimacy,” 234).

¹³¹ This privatization strategy for dealing with disagreements about property rights is defended in part 3 of Nozick’s *Anarchy, State, and Utopia*, where he argues that in a libertarian state, each private association would have the freedom to choose the principles that govern its internal life, including those principles that affect the distribution of property and the nature of property rights. People would be encouraged to be tolerant toward other views about economic distribution, and the state would permit the existence of a pluralism of communities organized around different conceptions of economic justice (e.g. socialist communes, free enterprise zones, etc.). The appeal and problems with this proposal will be discussed in chapter III.

take sides in the disagreement in favor of libertarianism to the detriment of left-liberals, since egalitarian goals are virtually impossible without state-enforced regulation and redistribution. How likely is it that people would voluntarily, in coordination with others, transfer their wealth so as to achieve and maintain over time an egalitarian pattern? It is theoretically possible, but highly unlikely.

What, then, is to be done when we disagree deeply and persistently about issues of economic justice? In the next chapter, I will detail some of the attempts of liberal political philosophers to offer solutions to this dilemma. I will argue there, as I have here, that political liberals can only secure a consensus about justice by sacrificing their commitment to respecting pluralism. If the political philosopher remains committed to accommodating the views of justice of all well-intentioned and well-informed citizens, then in certain cases the disagreements will be so deep that consensus is impossible. As I will argue, in the case of economic justice, the Liberal Nightmare is a reality.

CHAPTER III

POLITICAL LIBERALISM AND THE PROBLEM OF PROPERTY

1. Introduction: The Fundamental Problem

As discussed in the preceding chapter, the tradition of political liberalism attempts to articulate a conception of justice while at the same time respecting reasonable pluralism. That is, political liberals assume that people with diverse views about philosophy, morality, and religion can nonetheless agree about justice (at least in its broad outlines). I attempted to show that this optimistic assumption is unjustified. Political liberals are only able to secure consensus about justice by positing a consensus (that does not obtain) and by restricting the range of reasonable pluralism (more so than is justified). In this chapter, I further elucidate this general critique by focusing on a specific example of political disagreement: matters of economic justice. I will argue that reasonable people – defined broadly as people who are considered neither morally nor epistemically deficient, using uncontroversial criteria for “deficiency” – can arrive at radically divergent views about the nature and scope of economic justice. That is, the scope of reasonable pluralism on this issue admits of the possibility of deep and foundational disagreement. This demonstrates a serious flaw in the political liberal project, which relies upon the assumption of the eventuality of rational consensus around the principles of justice.

In the first section, I briefly explain what all is meant by “economic liberty,” since it is (in part) the nature and scope of economic liberty that is (I will claim) subject to deep

disagreement within the liberal tradition. Next, I present an *external* critique of political liberalism, by returning to the unresolved core of the debate between John Rawls and Robert Nozick, which deals with the question: do people have entitlement to their unearned natural assets (IQ, looks, natural talents, character, level of motivation, work ethic, etc.) – and thus to the economic assets that flow from them? Rawls develops the “argument from arbitrariness”¹³² to argue that since people do not *earn* their natural assets, they have no entitlement over them, from which he concludes that the natural assets of individual citizens should be viewed as a “common asset”¹³³ under the control of the larger political community. This defense of luck egalitarianism provides a powerful philosophical defense of Rawls' economic egalitarianism. Nozick, on the other hand, agrees with Rawls that people do not earn their natural assets, but then Nozick rightly points out that Rawls does not explain how this fact alone transfers their entitlement to the larger political community. So, even though people do not earn their natural assets, Nozick argues that each individual should be entitled to her own stock of unearned natural assets. This defense of self-ownership provides a powerful philosophical defense of Nozick's inegalitarian historical entitlement theory of justice. I will argue that neither Rawls nor Nozick have made a fully persuasive case for either theory of entitlement. As it stands, both positions are reasonable, and yet both positions are reasonably rejectable. Thus, I conclude that the dominant view of economic justice within political liberalism (the economic egalitarianism of Rawls) is vulnerable in its very opening premises to reasonable external critics.

¹³² This phrase comes from Sandel, *Liberalism and the Limits of Justice*, 96.

¹³³ Rawls, *A Theory of Justice*, 101.

Next, I present an *internal* critique of political liberalism. I take political liberalism to be grounded in two basic commitments: the principle of public justification and the fact of reasonable pluralism. I will show that these premises can be part of a coherent argument for economic egalitarianism (as developed by “high liberals” like Rawls, Samuel Freeman, or Thomas Nagel) *or* for limited government and strong property rights (as developed by classical liberals like John Tomasi, Gerald Gaus, and Jason Brennan).¹³⁴ Both the high liberals and classical liberals need to incorporate additional *controversial* assumptions (in addition to the basic two) into their arguments to achieve their desired conceptions of economic justice. The high liberals assume a model of moral personhood according to which economic activity is relatively unimportant for one's moral development, while classical liberals assume a model of moral personhood according to which economic activity is deeply significant. Both positions are reasonable, and yet both positions are reasonably rejectable.

The high liberals additionally argue that strong property rights and free markets undermine the fair value of political liberty by leading to political corruption and domination, but the classical liberals point out that the empirical data suggest otherwise. At the very least, the empirical argument by high liberals is not fully persuasive on this point. The classical liberals then argue that strong property rights are part of the liberal privatization strategy (as discussed in chapter II) which allows for individualized spheres of moral control as a way to avoid social conflict. This solution, the high liberals are right to point out, cannot be expected to achieve universal consensus, since it forecloses certain reasonable egalitarian goals. By highlighting these internal debates within the

¹³⁴ I leave aside debates about the relationship between classical liberalism and what is now called “neoliberalism.” For a fair treatment of this contentious topic, see Stedman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics* (Princeton: Princeton UP, 2012), especially p. 100-110.

paradigm of political liberalism, I hope to show that the dominant egalitarian view of economic justice within political liberalism is not uniquely entailed by its basic premises.

Indeed, political liberals are wrong when they conclude that reasonable people will agree upon the proper nature and scope of economic liberty. The range of reasonable disagreement here is vast.¹³⁵ I argue that this range of reasonable disagreement is so vast that political philosophers should give up hope that consensus around a single conception (or around a narrow family of similar conceptions) of economic justice is possible.

2. Defining the Economic Liberties

Before going on to outline and evaluate the main debates about economic liberty and economic justice within the liberal tradition, it is important to first explain what the category “economic liberty” includes. It will be most helpful to articulate what we would consider a *complete set* of economic liberties (or *absolute* economic liberty).

In his article “Economic Liberties,” James Nickel breaks down economic liberty into four categories: liberty of (1) working, (2) transacting, (3) holding, and (4) using. Robust liberty in the realm of working includes the liberty to buy, sell, and donate one’s labor on whatever conditions one voluntarily chooses. Robust liberty in the realm of transacting encompasses all forms of independent economic activity – the right to buy and sell, to create things, to engage in market competition, to earn a profit from one’s resources; also, the right to start, run, or close down any kind of commercial enterprise (e.g. a business, factory, or farm). Robust liberty in the realm of holding includes the right to hold both personal non-productive and personal productive property (i.e. capital

¹³⁵ For a chart depicting the range of views about economic justice within the liberal tradition, see Appendix B.

assets), which includes creating goods for commercial purposes, and the legal guarantee that these goods are free from expropriation without due process. Robust liberty in the realm of using includes the right to buy, sell, use, and consume goods and services.¹³⁶

We get a similar picture from Gaus in his article “The Idea and Ideal of Capitalism.” Gaus explains that absolute economic liberty (which characterizes an idealized capitalist economic regime) is characterized by *maximally extensive feasible property rights*, in which property rights are maximized along two axes: (x) the extent of the bundle of one’s rights over one’s property, and (y) the range of objects over which one can legally hold as property.¹³⁷ Regarding the first (x) axis, in order for me to enjoy the *full extent* of the bundle of property rights over commodity P, I would enjoy the following economic liberties:

- The right to use P as I wish so long as this is not harmful to others or their property;
- The right to exclude others from using P;
- The right to manage: I may give permission to any others I wish to use P, and determine how it may be used by them;
- The right to compensation: if someone damages or uses P without my consent, I have a right to compensation for the loss of P’s value from that person;
- The rights to destroy, waste, or modify: I may destroy P, waste it, or change it;
- The right to income: I have a right to the financial benefits of forgoing my own use of P and letting someone else use it;

¹³⁶ James Nickel, “Economic Liberties,” in *The Idea of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2000), 156-157.

¹³⁷ To see a visual of this graph, see Appendix C.

- Immunity from expropriation: P (or any part of P) may not be made the property of another or the government without my consent, with a few exceptions such as taxation;
- Liability to execution: P may be taken away from me by authorized persons for repayment of a debt;
- Absence of term: my rights over P are of indefinite duration;
- Rights to rent and sale (transfer rights): I may temporarily or permanently transfer all or some of my rights over P to anyone I choose.¹³⁸

Regarding the second (y) axis, absolute economic liberty would include the widest feasible range of objects over which one can legally hold as property. This would include consumer goods, productive assets, financial instruments, ideas, natural resources, land, and one's labor. As Gaus notes, all actually existing political regimes restrict and/or regulate economic liberty along both axes of property rights to some extent. In the United States, for example, the range of objects over which one can hold as property is restricted (e.g. the regulation of drugs, organ sales, and parental rights over children), and the extent of the bundle of property rights is restricted (e.g. licensing laws, environmental regulations, and health and safety requirements).¹³⁹

Thus, libertarians (like Nozick and Eric Mack) endorse a conception of *absolute economic liberty*, classical liberals (like Gaus and Tomasi) endorse a conception of *thick but not absolute economic liberty*, and high liberals (like Rawls and Freeman) endorse a conception of *thin economic liberty*. This chapter seeks to demonstrate that this whole

¹³⁸ Gerald Gaus, "The Idea and Ideal of Capitalism," in *The Oxford Handbook of Business Ethics*, ed. George G. Brenkert and Tom L. Beauchamp (Oxford: Oxford UP, 2010), also <http://www.gaus.biz/Gaus-Capitalism.pdf>, 3.

¹³⁹ Gaus, "The Idea and Ideal of Capitalism," 6.

range of views about economic liberty is reasonable. Reasonable pluralism admits of deep and foundational disagreement on this important set of justice-related issues. Thus, liberalism does not resolve our fundamental disagreement in at least one crucial sphere of justice.

3. External Critique: Luck Egalitarianism vs. Self-ownership

Liberals (in the broadest sense of the term), from John Locke through Rawls and Nozick, are united in their commitment to (some version of) the following two normative principles:

- The principle of public justification: a coercive policy is justified if and only if every reasonable citizen consents to it (by accepting the reasons offered on its behalf).
- The fact of reasonable pluralism: reasonable people are expected to disagree deeply and indefinitely about matters of philosophy, morality, and religion.

An important feature of the principle of public justification is that it is *coercion* that requires special justification, while *non-coercion* (or “liberty”) is the assumed baseline that itself needs no justification.¹⁴⁰ This can be called the “presumption in favor of liberty”: liberty is the norm, while state coercion requires special justification (the “consent of the people”). No coercion (of any kind) against persons or their property is

¹⁴⁰ This presumption in favor of liberty goes back (at least) to John Locke, who argues, “the natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of Nature as his rule” (*Second Treatise of Government*, ed. C.B. Macpherson [Indianapolis: Hackett, 1980], section 21). Thomas Hobbes refers to the “blameless liberty” we enjoy in the absence of compelling justification to restrict it (*The Elements of Law, Natural and Politic* [London: Simpkin, Marshall, and Co., 1889], 71). More recently, Joel Feinberg describes this presumption as “a standing presumption against all proposals to criminalize conduct” (*Rights, Justice, and the Bounds of Liberty* [Princeton: Princeton UP, 1980], 36). Similar descriptions of the presumption in favor of liberty are found in the writings of all social contract thinkers, classical liberals, and political liberals.

legitimate in the absence of sufficient justification. If a certain coercive policy is unable to achieve sufficient agreement, then there is a return to the *status quo ante* of non-coercion.

Many of the debates within the liberal tradition concern the general question: which coercive policies can be justified to a pluralistic citizenry? One of the most heated debates within the liberal tradition is defining the state's legitimate role in *protecting* property and *redistributing* property. For libertarians and classical liberals, the state should be limited to protecting private property rights and, perhaps, providing public goods (goods that are under-provided by the market but which are in the interests of all, e.g. national defense and highways).¹⁴¹ For left-liberals and liberal socialists, the state should tax, regulate, and redistribute property so as to guarantee a relatively equal distribution of resources to all. One of the core disagreements between the two camps concerns the problem: “What is the default baseline for property rights?” In other words, in the absence of agreement about the issue, what is the default situation with regard to property rights, economic liberty, and the distribution of wealth? How one answers this question has significant consequences.

Libertarians assume that a welfare state committed to enforcing and maintaining economic egalitarianism is unjustified, because undoubtedly some citizens reasonably object to certain redistributive measures. These people object to the use of state coercion to tax some citizens in order to transfer wealth to others. Thus, it is claimed, policies of redistribution are defeated, and state-imposed economic egalitarianism is illegitimate.

¹⁴¹ Of course, some libertarians reject the state altogether. See Rothbard, *For a New Liberty*; and Huemer, *The Problem of Political Authority*. For a recent discussion of the important issue of the public justification of the provision of public goods, see Jonathan Anomaly, “Public Goods and Government Action,” *Politics, Philosophy & Economics* 14, no. 2 (2015).

For libertarians, the default baseline for property rights is the emergent patterns of inequality that arise through voluntary transactions.

Left-liberals assume that severe economic inequality is unjustified because such a state of affairs would be rejected by all *appropriately situated* deliberators – namely, by those who are situated in the original position behind the veil of ignorance (or some similar device that enforces impartial reasoning). That is, if people do not know their place in society (they are ignorant of their place of birth, their IQ, their talents, etc.), they will surely play it safe and opt for an roughly egalitarian distribution of wealth (knowing that they may end up in the least-advantaged group). *For left-liberals, the default baseline for property rights is a strictly equal distribution of wealth.*

The deep disagreements about economic justice between libertarians and left-liberals are thus the result of more fundamental philosophical disagreements. The libertarian assumes that actual citizens (with full knowledge of their identity and situation) have a right to approve or reject proposals regarding economic justice on the basis of their moral intuitions and self-interest, while the left-liberal assumes that only hypothetical citizens (with no knowledge of their place in society) have a right to approve or reject proposals regarding matters of economic justice on the basis of a delineated set of political values. What lies at the heart of this difference in approach? The difference has to do with a complicated debate about *desert* and *entitlement* that takes place between *luck egalitarian liberals* and *self-ownership liberals*. I will summarize both positions (through Rawls and Nozick) before drawing some implications.

3.1. The Luck Egalitarian Thesis

In *A Theory of Justice*, Rawls develops an argument for luck egalitarianism that can be reconstructed into five steps:

- 1. No one *earns* their “natural assets,” which includes: the family into which they are born, their IQ, their looks, their natural talents, their character, their level of motivation, their work ethic, etc. One’s stock of natural assets is a matter of *luck*.
- 2. No one *deserves* any of the advantages that come from unearned good luck, and no one *deserves* any of the disadvantages that come from unearned bad luck.
- 3. No one *deserves* any of the advantages (including but not limited to the economic advantages) that derive from their natural assets.
- 4. No one has a legitimate *ownership claim* to their natural assets (and the economic assets that flow from them).
- 5. *One’s political community as a whole* has a legitimate ownership claim on one’s natural assets (and the economic assets that flow from them).

Claims (1)-(3) are relatively uncontroversial. No one goes out and earns the right to be born into a middle class family, or the right to have a high IQ. These are not earned, and thus are not deserved.¹⁴² Claims (4) and (5) are much more controversial. But there does seem to be some loose connection between (1)-(3) and (4)-(5). If I do not earn (and thus deserve) my natural assets, then why should I have a special claim to them and the advantages that flow from them? If natural assets are randomly distributed across a population through the lottery of birth, and thus my stock of natural assets is merely a

¹⁴² Rawls considers this to be a widespread and common intuition: “It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases” (*A Theory of Justice*, 104).

matter of luck, then perhaps we should view the total stock of natural assets (and the economic assets it produces) as a *common asset*.¹⁴³

Thus, (1)-(5) produces a powerful philosophical defense of economic egalitarianism. Much of our personal wealth flows from our individual stock of natural assets. Natural assets are what enable people to make money through interacting with others. In the absence of egalitarian redistribution, differences in natural assets would correlate strongly with differences in economic success. Those who get lucky in the natural lottery (enjoying a desirable bundle of natural assets) will on average do much better economically than those who are not so lucky. This outcome is deemed unjust by the luck egalitarian, who insists that these inequalities must be corrected by the state in the name of economic justice. Those who are unlucky thus have a partial ownership claim on the wealth of those who are lucky. The totality of natural assets in a society is something akin to “*mana from heaven*”¹⁴⁴ – a gift from above, to all of us, to which no one in particular has a special claim.

This assumption in favor of equal distribution (with deviation from strict equality requiring justification) is embodied in Rawls’ famous “*difference principle*”: “The *difference principle* represents, in effect, an agreement to *regard the distribution of natural talents as a common asset* and to share in the benefits of this distribution whatever it turns out to be.”¹⁴⁵ Equality is thus the baseline. Inequality (that is, any

¹⁴³ I focus here on Rawls, but there are many other defenders of luck egalitarianism. See G.A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99, no. 4 (1989); G.A. Cohen, *Why Not Socialism?* (Princeton: Princeton UP, 2009); Richard Arneson, “Luck Egalitarianism and Prioritarianism,” *Ethics* 110, no. 2 (2000); and Ronald Dworkin, “Equality, Luck and Hierarchy,” *Philosophy & Public Affairs* 31, no. 2 (Spring 2003).

¹⁴⁴ This analogy between valuable economic goods and “*mana from heaven*” is developed and criticized in Nozick, *Anarchy, State, and Utopia*, 198.

¹⁴⁵ Rawls, *A Theory of Justice*, 101; my italics.

deviations from equality) requires justification. If it is possible to move from a state of equal shares to a state of unequal shares in which everyone, even the least well off, has more shares, then the move is justified.¹⁴⁶ But this inequality is only permitted because everyone benefits from it. As Rawls explains,

Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help the less fortunate as well. No one deserves his greater natural capacity nor merits a more favorable starting place in society.¹⁴⁷

As Nozick accurately describes Rawls' position, “everyone has some entitlement or claim on the totality of natural assets (viewed as a pool), with no one having differential

¹⁴⁶ G.A. Cohen famously argues that Rawls is mistaken to bend his conception of justice around the incentive-following self-interest of people. For Cohen, the difference principle does not embody the nature of justice, but instead represents a mere “rule of regulation” for non-ideal conditions. Ideally, people would voluntarily develop their talents for the sake of others without economic incentives motivating them to do so. See G.A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard UP, 2008), chapter 4. The point is incidental to the discussion here – both Rawls and Cohen are luck egalitarians, and they are both committed to the idea that individuals are not privately entitled to their natural assets and the economic assets that flow from them. For an interesting critique of Cohen's position, see Jason Brennan, *Why Not Capitalism?* (New York: Routledge, 2014), and James Otteston, *The End of Socialism* (New York: Cambridge UP, 2014). For a compelling critique of Cohen's critique of Rawls (and for a defense of prioritarianism against egalitarianism), see Steven Wall, “Rescuing Justice from Equality,” *Social Philosophy and Policy* 29, no. 1 (January 2012); also Luca Ferrero, “The Difference Principle: Incentives or Equality?”, accessed 8 November 2015, <https://pantherfile.uwm.edu/ferrero/www/pubs/ferrero-difference-principle.pdf>.

¹⁴⁷ Rawls, *A Theory of Justice*, 101-2.

claims.”¹⁴⁸ While this might run counter to some of our intuitions about desert, Rawls insists that it will be found most reasonable upon reflection.¹⁴⁹

Recall the core liberal commitments: liberty is the baseline, coercion requires justification. Given points (4) and (5), taxing away wealth from the lucky and redistributing it to the unlucky *is not a form of coercion that stands in need of special justification since the lucky do not have legitimate ownership claims to the wealth that flows from their natural assets in the first place*. Coercive policies designed to guarantee egalitarian distributions of wealth are not in need of special justification, because economic egalitarianism is assumed to be the baseline – *deviation from which requires special justification*.¹⁵⁰ This is the basic argument for luck egalitarianism, and it underpins the views of most Rawlsian political liberals on questions of economic justice.

However, I will argue, these assumptions are not universally shared by all reasonable people. Furthermore, there are alternative reasonable assumptions that lead to radically different conceptions of economic justice. To show this, I now turn to examine the *self-ownership thesis*.

¹⁴⁸ Nozick, *Anarchy, State, and Utopia*, 228.

¹⁴⁹ Rawls recognizes, “There is a natural inclination to object that those better situated deserve their greater advantages whether or not they are to the benefit of others” (*A Theory of Justice*, 103). However, Rawls is convinced that this “natural inclination” is defeated by reflecting on our other considered convictions regarding racial and gender equality. If someone should not be privileged because of the color of their skin, why should they be privileged because of something equally arbitrary – their unearned natural assets? For a defense of the meritocratic ideal contra Rawls, see Bell, “On Meritocracy and Equality.”

¹⁵⁰ For an insightful critique of the luck egalitarian position, see Susan Hurley, *Justice, Luck, and Knowledge* (Cambridge, MA: Harvard UP, 2003). She develops the following claim: “Equalities can be just as much a matter of luck as inequalities. The fact that people are not responsible for a *difference* does not entail that they *are* responsible for *nondifference*. There is no more a priori reason to assume that equalities are not a matter of luck than there is to assume that differences are not a matter of luck; people may not be responsible for either” (151-152). For a well-known critique of the luck egalitarian position coming from another angle, see Elizabeth Anderson, “What is the Point of Equality?” *Ethics* 109, no. 2 (January 1999).

3.2. The Self-ownership Thesis

In *Anarchy, State, and Utopia*, Nozick develops an argument that cuts to the very core of Rawls' conception of economic justice. Returning to the five step argument for luck egalitarianism, Nozick argues that (4)-(5) do not obviously and necessarily follow from (1)-(3). Nozick agrees that, indeed, I do not *earn* my stock of natural assets, and thus, in some metaphysical sense, I do not *deserve* it. It is mostly a matter of luck what particular stock of natural assets that I come to enjoy. However, Nozick inquires, how does this uncontroversial observation lead to the view that my stock of natural assets is a *common asset owned by the entire political community*? If I do not have a special ownership claim to my natural assets, then on what basis is that ownership claim transferred to the other members of my political community? I may not have earned my natural assets, but certainly the other members of my political community did not earn them either.¹⁵¹ As Sandel nicely summarizes Nozick's argument,

¹⁵¹ I focus here on Nozick, but there are other defenders of the self-ownership thesis. See Eric Mack, "Self-ownership and the Right of Property," *The Monist* 73, no. 4 (October 1990); Murray Rothbard, *The Ethics of Liberty* (New York: NYU Press, 2003); and Ayn Rand, *The Virtue of Selfishness* (New York: Signet, 1961). The self-ownership thesis is often associated with either the Kantian moral tradition or the natural rights tradition. The natural rights tradition, in turn, has been associated with religious Medieval moral philosophy as well as secular Aristotelian moral philosophy. There are also some recent attempts to situate natural rights (and the natural right to private property) in the field of evolutionary biology and psychology – see John Hasnas, "Toward a Theory of Empirical Natural Rights," *Social Philosophy and Policy* 22, no. 1 (January 2005); and Will Wilkinson, "Capitalism and Human Nature," *Cato Policy Report* 27, no. 1 (January/February 2005). Wilkinson, for example, argues, "Property rights are prefigured in nature. Evolutionary psychology can help us to understand that property rights are not created simply by strokes of the legislator's pen" (13). For an internal critique of the self-ownership thesis which tries to reconstruct libertarian property rights on a different foundation, see Jan Narveson, "Property and Rights," *Social Philosophy and Policy* 27, no. 1 (January 2010). Some of the most influential critics of self-ownership and its connection with a libertarian theory of justice are G.A. Cohen, *Self-Ownership, Freedom, and Equality* (New York, Cambridge UP, 2005); Carol Pateman, "Self-Ownership and Property in the Person," *The Journal of Political Philosophy* 10, no 1 (2002); Peter Singer, "The Right to be Rich or Poor," *The New York Review of Books* (6 March 1975); Cheyney Ryan, "Yours, Mine, and Ours: Property Rights and Individual Liberty," *Ethics* 87, no. 2 (January 1977); and Attracta Ingram, *A Political Theory of Rights* (New York: Oxford UP, 1994).

To show that individuals, as individuals, do not deserve or possess “their” assets is not necessarily to show that society as a whole *does* deserve or possess them. Simply because the attributes accidentally located in me are not *my* assets, why must it follow, as Rawls seems to think, that they are common assets, rather than nobody's assets? If they cannot properly be said to belong to me, why assume automatically that they belong to the community? Is their location in the *community's* province any less accidental, any less arbitrary from a moral point of view?¹⁵²

This line of questioning exposes the hidden and undefended assumption in Rawls' argument that my lack of entitlement over my natural assets and subsequent economic assets automatically transfers such entitlement to my political community.

Thus, Nozick draws a different conclusion about the nature of economic justice than Rawls does. From points (1)-(3), Rawls posits an undefended *presumption in favor of collective ownership* of natural assets, which in turn justifies the egalitarian difference principle. For Nozick, while I did not earn my natural assets, I also did not steal them from anyone else (nor commit any other clear moral violations to acquire them). Thus, why not let natural assets lie where they fall? Nozick insists, “Whether or not peoples' natural assets are arbitrary from a moral point of view, they are entitled to them, and to what flows from them.”¹⁵³ This presumption in favor of self-ownership of natural assets does capture some of our deepest intuitions. Indeed, I do stand in a unique relationship with my natural assets that other members of my political community do not: they resides

¹⁵² Sandel, *Liberalism and the Limits of Justice*, 96.

¹⁵³ Sandel, *Liberalism and the Limits of Justice*, 98.

in my person, they are *part of me*. This feels somehow morally significant. Nozick tries to draw on these moral intuitions in his critique of Rawls:

People will differ in how they view regarding natural talents as a common asset. Some will complain, echoing Rawls against utilitarianism, that this “does not take seriously the distinction between persons”; and they will wonder whether any reconstruction of Kant that treats people's abilities and talents as resources for others can be adequate. [Rawls writes in *A Theory of Justice*,] “The two principle of justice ... rule out even the tendency to regard men as means to one another's welfare.” Only if one presses *very* hard on the distinction between men and their talents, assets, abilities and special traits.¹⁵⁴

Nozick insists that I do not relate to my natural assets as a detached bundle of goods, equivalent to other such bundles residing in other people. No, I have a special connection with my own natural assets, regardless of the obvious fact that I did not ultimately earn them all. For Rawls' argument to undermine self-ownership, Rawls must rely on a conception of an *essential self* as entirely detachable from its *inessential attributes*.¹⁵⁵

This particular version of the Kantian view of the self, for Nozick, runs counter to our

¹⁵⁴ Nozick, *Anarchy, State, and Utopia*, 228.

¹⁵⁵ Nozick argues that Rawls' unencumbered self is an affront to our usual notions of human dignity: “This line of argument can succeed in blocking the introduction of a person's autonomous choices and activities (and their results) only by attributing *everything* noteworthy about the person completely to certain sorts of 'external' factors. So denigrating a person's autonomy and prime responsibility for his action is a risky line to take for a theory that otherwise wishes to buttress the dignity and self-respect of autonomous beings; especially for a theory that founds so much (including a theory of the good) upon a person's choices. One doubts that the unexalted picture of human beings Rawls' theory presupposes and rests upon can be made to fit together with the view of human dignity it is designed to lead to and embody” (*Anarchy, State, and Utopia*, 214). On this point, also see David Schmidtz, *Elements of Justice* (New York: Cambridge UP, 2006), part 2.

more commonsense notion of ourselves as essentially “thick with particular traits.”¹⁵⁶ As Sandel puts it, “On Rawls' theory of the person, the self, strictly speaking, *has nothing*, nothing at least in the strong, constitutive sense necessary to desert.”¹⁵⁷ As Sandel points out, this Kantian view of the unencumbered and non-deserving self is closely analogous to the “early Christian notion of property, in which man had what he had as the guardian of assets belonging truly to God.”¹⁵⁸ But unless this controversial Kantian conception of the self is accepted, Rawls' argument against self-ownership is unsatisfying.

So, while Nozick agrees with points (1)-(3), he disagrees with points (4)-(5), and in their place he posits a *presumption in favor of individual ownership of natural assets*. He writes: “It is not true that a person earns Y (a right to keep a painting he’s made, praise for writing *A Theory of Justice*, and so on) only if he’s earned (or otherwise *deserves*) whatever he used (including natural assets) in the process of earning Y.”¹⁵⁹ Instead, “Some of the things he uses he just may *have*, not illegitimately. It needn’t be that the foundations underlying desert are themselves deserved, *all the way down*.”¹⁶⁰ I *have* my natural assets, *not illegitimately*; therefore I ought to have ownership claims over them. For these reasons, Nozick rejects Rawls’ original position and veil of ignorance, since they require us to view the distribution of natural assets as a common asset, not as already attached to particular people who each have individualized entitlements to them. Nozick wonders, “Do the people in the original position ever

¹⁵⁶ Nozick, *Anarchy, State, and Utopia*, 228.

¹⁵⁷ Sandel, *Liberalism and the Limits of Justice*, 85.

¹⁵⁸ Sandel, *Liberalism and the Limits of Justice*, 97.

¹⁵⁹ Nozick, *Anarchy, State, and Utopia*, 225.

¹⁶⁰ Nozick, *Anarchy, State, and Utopia*, 225.

wonder whether *they* have the *right* to decide how everything is to be divided up?”¹⁶¹

Nozick's assumptions undercut the legitimacy of a difference principle designed to “regulate” and “redistribute” the natural and economic assets of the community.¹⁶²

The self-ownership thesis has radical political implications. Natural assets are distributed randomly throughout any given political community, and even though no one fully deserves what they get, they should nonetheless be presumptive self-owners of their natural assets and the advantages that flow from them. If I own my natural assets, I have a strong ownership claim over the wealth that I derive from them. If I own my labor, it makes sense to assume that I own the fruits of my labor.¹⁶³ Coercive egalitarian

¹⁶¹ Nozick, *Anarchy, State, and Utopia*, 199n.

¹⁶² Some critics of libertarianism argue that property rights are purely conventional, as they are themselves products of state power, and therefore taxation is logically prior to property rights. See Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York: Oxford UP, 2002). They use this claim to argue that no citizen has an ownership claim on their pre-tax incomes, and thus the state can legitimately structure property rights and economic distributions according to an egalitarian conception of economic justice. This argument misses the Lockean point that although property rights are insecure in the state of nature (and thus the need for a state to protect them), those rights are nonetheless pre-political and, in some sense, natural. So pointing out that states are needed to protect these rights does not necessarily show that property rights can be designed in whatever way the state sees fit. See Gaus, *The Order of Public Reason*, 510n.

¹⁶³ Nozick recognizes certain limits and constraints on ownership claims on the external world, especially in his discussion of the “Lockean Priviso” (*Anarchy, State, and Utopia*, 178-182). Furthermore, it is possible to radicalize the intuitions behind the Lockean Priviso and combine *private* self-ownership with *collective* world-ownership. That is, one can hold to the self-ownership thesis but reject strong property rights in the external world. This strange (yet coherent) position has been developed by a small group of recent “left-libertarians,” who I will not engage with at length here. For a clear summary of this position, see Michael Otsuka, *Libertarianism without Inequality* (New York: Oxford UP, 2003). A number of critics argue that combining private self-ownership with collective world-ownership is incoherent or otherwise unconvincing. For an overview of the debate, see *Left-Libertarianism and Its Critics: The Contemporary Debate*, ed. Peter Vallentyne and Hillel Steiner (New York: Palgrave, 2000). For a response to the main critics of left-libertarianism, see Peter Vallentyne, Hillel Steiner, and Michael Otsuka, “Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried,” *Philosophy & Public Affairs* 33, no. 2 (2005). An early defender of some of the core commitments of the left-libertarian view was John Stuart Mill, who writes, “When the ‘sacredness of property’ is talked of, it should always be remembered, that any such sacredness does not belong in the same degree to landed property. No man made the land. It is the original inheritance of the whole species. Its appropriation is wholly a question of general expediency. When private property in land is not expedient, it is unjust. It is no hardship to any one to be excluded from what others have produced: they were not bound to produce it for his use, and he loses nothing by not sharing in what otherwise would not have existed at all. But it is some hardship to be born into the world and to find all nature's gifts previously engrossed, and no place left for the new-comer” (*Principles of Political Economy with some of their Applications to Social Philosophy*, ed. William J. Ashley [London: Longmans, Green and Co.,

redistribution can be reasonably rejected, and assuming that some members of the political community object to coercive redistribution, those policies will be defeated. Thus, for Nozick, equality is not the default baseline. The emergent inequalities in economic assets that flow from the unequal distribution of natural assets is the baseline from which deviations must be justified.¹⁶⁴ As Nozick concludes, “If people have X, and their having X (whether or not they deserve to have it) does not violate anyone else's (Lockean) right or entitlement to X, and Y flows from (arises out of, as so on) X by a process that does not itself violate anyone's (Lockean) rights or entitlements, then the person is entitled to Y.”¹⁶⁵ In other words, the self-ownership thesis justifies (or at least goes a long way towards justifying) a libertarian view of property rights and the state.

The political implications of this debate are quite serious. If the self-ownership thesis is accepted, then it is still the case (for most self-ownership liberals) that social institutions need to be collectively designed, but the choice situation is importantly different. Namely, for the self-ownership liberal, when bargaining about justice, each

1909], II.2.26). The policy implications of this view were later developed by Henry George, who proposed a very large single-tax on the unimproved value of land; see Henry George, *Progress and Poverty* (New York: Robert Schalkenbach Foundation, 1940). For a compelling critique of Georgism, see Bryan Caplan and Zachary Gochenour, “A Search-Theoretic Critique of Georgism,” 14 February 2012, accessed 28 January 2015, http://econfaculty.gmu.edu/bcaplan/critique_of_george.pdf.

¹⁶⁴ Some critics deny even the conceptual coherence of such a baseline. In *The Myth of Ownership: Taxes and Justice*, Thomas Nagel and Liam Murphy argue that markets and property rights are conceptually dependent upon the enforcement of the state. This is a dubious claim for a number of reasons. First, the existence of sophisticated global black markets (which thrive not only *without* state support but more importantly *despite* state disapproval) suggests that markets and property rights are at least feasible without states. Also, numerous libertarian and anarchist theorists suggest that functioning markets and private property rights could be secured by private security firms. I cannot resolve these issues here, but I note them in order to show that the Nozickean baseline is at least not conceptually incoherent.

¹⁶⁵ Nozick, *Anarchy, State, and Utopia*, 225. Nozick also notes, “Since things come into being already held (or with agreements already made about how they are to be held), there is no need to search for some pattern for unheld holdings to fit ... The situation is not an appropriate one for wondering, 'After all, what is to become of these things; what are we to do with them.' In the non-manna-from-heaven world in which things have to be made or produced or transformed by people, there is no separate process of distribution for a theory of distribution to be a theory” (*Anarchy, State, and Utopia*, 219).

individual is permitted to know their stock of natural assets, and bargain accordingly. This contrasts with the luck egalitarian thesis, wherein those who bargain about justice are stripped of such knowledge. What does this mean? To simplify a bit: for the luck egalitarian liberal, the “unlucky” get a veto over the level of economic inequality that society permits, while for the self-ownership liberal, the “lucky” get a veto over the level of redistribution that society authorizes. This is why luck egalitarian liberalism leads logically to something close to Rawls' difference principle, whereby the level of economic inequality is that which optimizes the well-being of the least well-off.¹⁶⁶ And conversely, this is why self-ownership liberalism leads to either a minimal state lacking redistribution altogether, or a classical liberal state that provides minimal forms of social insurance (as would benefit all members of society, all of whom are subject to forms of bad luck within the course any person's lifetime).¹⁶⁷

Thus, it is important to ask whether one of these views (luck egalitarianism or self-ownership) is uniquely reasonable, with the other view being unreasonable. Absent this, the debate about economic justice will be foundationally deep and yet rationally undecidable.

¹⁶⁶ As mentioned in footnote 146, there is a debate about how exactly the luck egalitarian thesis cashes out in terms of a conception of justice and institutional design. Rawls cashes it out in terms of the difference principle, while G.A. Cohen cashes it out in terms of a more radical and uncompromising egalitarianism. One could go even further than Cohen, and cash out the luck egalitarian thesis in terms of an equalization not only of wealth, but also of the distribution of pleasant and unpleasant work, a position defended in Michael Albert, *Parecon: Life After Capitalism* (London: Verso, 2003). Albert refers to this institutional arrangement as “balanced job complexes” (*Life After Capitalism*, part 2). I am unclear which of these positions best captures the implications of the luck egalitarian thesis, but addressing the question is unnecessary for the discussion in this chapter.

¹⁶⁷ This classical liberal state with minimal redistribution is defended, for example, in Buchanan and Tullock, *The Calculus of Consent*, chapter 13; and Friedrich A. Hayek, *The Road to Serfdom* (London: Routledge Classics, 2001). Also see Andreas Bergh, “Yes, There Are Hayekian Welfare States (At Least in Theory),” *Econ Journal Watch* 12, no. 1 (January 2015).

3.3. The Rational Undecidability of Entitlement

I turn to the question about whether either of the views presented above are uniquely reasonable. To start, I present two thought experiments which highlight the relevant intuitions underlying each position. First, imagine a group of four friends at a restaurant. The restaurant is closing, and an employee comes out and gives the group a full pizza that would have been thrown away. There are four slices of pizza and four friends. The principle of distribution here is clear and uncontroversial. Because no one has a special ownership claim to the pizza (it was given to the whole group), the assumption is equal distribution. Each person gets one slice. The only legitimate deviations from equality are agreed-upon, Pareto-improving side deals. For example, perhaps someone in the group does not like the particular kind of pizza, so they offer to give it to someone else, perhaps for free, perhaps in exchange for something else. All that matters is that all deviations from equality require the consent of the relevant parties. In cases like this, equal distribution is seen to be the obvious and fair default.

Now, instead, let us suppose that the group of four friends is walking down the street and suddenly one of them spots a twenty-dollar bill, and picks it up. This person did not earn the money, but just randomly came across it. Should the friend go into the nearest store, break up the twenty-dollar bill into four five-dollar bills, and give five dollars to each friend, thus dividing up the money evenly? This is not the obvious response. When someone finds a twenty dollar bill on the sidewalk, we usually recognize that even though the lucky friend did not earn the money, neither did the others, so we usually let the luck lie where it falls. The lucky friend keeps the whole twenty-dollar bill.

So one must ask: is my relationship to my unearned natural assets better illustrated by the pizza example, or the twenty-dollar bill example?

It is not entirely clear. In the same way that Rawls relies upon a controversial Kantian view of the self and ownership, Nozick relies upon a controversial Lockean view of the self and ownership. While Rawls offers a view of the self as separable from all of its attributes, Nozick offers a view of the self as possessing inviolable rights that cannot be overridden. Neither view is universally shared, as both are somewhat appealing and yet controversial. The self-ownership thesis might be intuitive in certain cases and situations, but it is counter-intuitive in other ways. Thomas Nagel notes,

Nozick's intuition is that each person is entitled to his talents and abilities, and to whatever he can make, get, or buy with his own efforts, with the help of others, or with plain luck. He is entitled to keep it or do anything he wants with it, and whomever he gives it to is thereby equally entitled to it. Moreover, anyone is entitled to whatever he ends up with as a result of the indefinite repetition of this process, over however many generations. I assume that most readers of Nozick's book will find no echo of this intuition in themselves, and will feel instead that they can develop no opinion on the universal principles of entitlement, acquisition and transfer of property, or indeed whether there are any such universal principles, without considering the significance of such principles in their universal application ... Nozick's moral intuitions seem wrong.¹⁶⁸

¹⁶⁸ Thomas Nagel, "Libertarianism without Foundations," *The Yale Law Journal* 85, no. 1 (November 1975): 141.

Nagel is surely wrong that the readers of Nozick will “find no echo” of Nozick's intuitions in themselves, but he is right that Nozick seems to fail to capture *all* of the relevant intuitions of *all* of his readers. Richard Arneson points out that Nozick seems to offer a false dichotomy, when he assumes that “individuals cannot be deemed to have no self-ownership, so they must have full self-ownership.”¹⁶⁹ Arneson rejects this framing: “I deny the assumption that no middle-of-the-road position could correctly reflect the balance of opposed moral reasons.”¹⁷⁰ Arneson is right to point out that Nozick is not capturing the full range of moral intuitions of all reasonable people, but he is wrong in suggesting that Nozick fails to articulate the moral intuitions of some reasonable people.¹⁷¹ Nozick's Lockean libertarianism is a reasonable view – but it is not the only reasonable view. Neither the Kantian nor Lockean conception of the self and ownership

¹⁶⁹ Richard Arneson, “Side Constraints, Lockean Individual Rights, and the Moral Basis of Libertarianism,” 25. Furthermore, “The argument against Nozick's conception of Lockean moral rights has to be that it massively offends deep-seated moral convictions that further critical reflection only entrenches and that some available rival moral view does better on this score” (“Side Constraints, Rights, and Libertarianism,” 25).

¹⁷⁰ Richard Arneson, “Side Constraints, Rights, and Libertarianism,” in *The Cambridge Companion to Nozick's Anarchy, State, and Utopia* (New York: Cambridge UP, 2011), 25. Arneson argues that Nozick selectively pumps the reader's intuitions in order to bias the self-ownership thesis. For another example of a philosopher arguably selectively intuition pumping in favor of self-ownership, see Huemer, *The Problem of Political Authority*. For other related critiques of Nozick's Lockean libertarianism, see G.A. Cohen, *Self-ownership, Freedom, and Equality* (New York: Cambridge UP, 1995); and Freeman, “Illiberal Libertarians.” For Nozick's own critique of his libertarian views articulated in *Anarchy, State, and Utopia*, see “The Zigzag of Politics” in Robert Nozick, *The Examined Life* (New York: Simon & Schuster, 1989). For an account of a Lockean view of self-ownership combined with economic egalitarianism, see Otsuka, *Libertarianism without Inequality*.

¹⁷¹ For a helpful look at the actual views of Americans on matters of distributive justice, see David Miller, “Distributive Justice: What the People Think,” *Ethics* 102, no. 3 (April 1992). How these actual views should play into normative political philosophy is another matter. While political liberals often invoke “our public political culture” as a source of common values, a cursory look at the legal and judicial history of the United States will reveal a long series of debates about property rights and property distributions that remain entirely unresolved, most prominently in the debates surrounding the “Lockner Era” and the New Deal. See Cass Sunstein, “Lochner's Legacy,” *Columbia Law Review* 87, no. 5 (June 1987); and Matthew Lindsay, “In Search Of 'Laissez-Faire Constitutionalism,’” *Harvard Law Review Forum* 123, no. 5 (March 2010).

capture the full scope of the intuitions of all reasonable people about these matters.¹⁷²

While both conceptions are reasonable, they are both reasonably rejectable.

This debate about desert and entitlement can be illuminated by a set of distinctions that Sandel develops. In *Liberalism and the Limits of Justice*, Sandel distinguishes between three responses to this issue of ownership and natural assets.

- a. Guardianship model (defended by Rawls): I am the guardian of the set of natural assets that I bear, which is owned by another subject on whose behalf I cultivate it. There is a presumption in favor of regarding the distribution of natural assets as a common asset.
- b. Ownership model (defended by Nozick): I have extensive (maybe exclusive) rights with respect to my natural assets. There is a presumption in favor of letting natural assets lie where they fall.
- c. Repository model: I am a repository for natural assets that no one has an ownership claim over (neither myself nor anyone else).¹⁷³

¹⁷² John Kekes sees this kind of disagreement as a symptom of deeper problems with ideal theory as such: “The problem with this approach is that ideal theorists are led by their political predilections—I do not say prejudices—to choose one (or perhaps a small number) of the many goods we value, and then ascribe overriding importance to it (or to them). Then they make the justification of the right to private property depend on the supposedly overriding good(s). Ronald Dworkin does this with equality, John Rawls with justice, Robert Nozick with rights, Friedrich Hayek with liberty, and there are, of course, others as well” (“The Right To Private Property: A Justification,” *Social Philosophy and Policy* 27, no. 1 [2010]: 1-2). Kekes thus rejects these “ideal-theorizing approaches” as hopelessly “vitiated by arbitrariness” (2). His alternative: “I will start, then, with where we are, with the plurality of political goods we value. The right to private property is one among them. I am assuming that this right is conventional, conditional, and defeasible: conventional, because it is defined by conventions; conditional, because it depends on changing conditions; and defeasible, because it may conflict with other political goods we value and such conflicts may be reasonably resolved in a particular context in favor of a political good other than the right to private property. I am assuming further that just as there is a plurality of political goods, there is a plurality of reasonable political principles, theories, and ideals. This plurality is quite extensive. It is also nonhierarchical, because the political goods, principles, theories, and ideals can be and often are ranked in a plurality of reasonable ways.” (3). This alternative to ideal theorizing has many similarities with the view defended by Nozick in “The Zigzag of Politics,” discussed at length in section 5.2 of this chapter.

¹⁷³ Sandel, *Liberalism and the Limits of Justice*, 96-97.

Given the arbitrariness of the distribution of natural assets, Rawls wants to assume social ownership while Nozick wants to assume private ownership. However, as Sandel points out, *neither of these conclusions logically follows from points (1)-(3)*. If I do not earn and thus do not deserve my natural assets, and neither do any members of my political community, then it is unclear how *anyone*, myself *or* my political community, secures a legitimate ownership claim over anything. Both options seem equally arbitrary. The argument that individuals do not deserve their natural assets does “not necessarily install a social [entitlement].”¹⁷⁴ I did not earn my natural assets, but neither did anyone else. Who owns it and the wealth that flows from it? It is unclear that this question has a fully satisfying answer. Instead, points (1)-(3) logically lead to the “Repository model” – no one has a clear ownership claim over any natural assets. Sandel concludes, “From the standpoint of desert, there would seem to be no grounds on which to choose between letting the assets lie where they fall, and trying to distribute them in some other way.”¹⁷⁵ How, then, can we “overcome the apparent moral stand-off created by the presumed absence of desert?”¹⁷⁶

Sandel goes on to argue that if we accept the communitarian conception of the self, according to which community and sociality is *constitutive* of the self, then Rawls' presumption in favor of collective ownership of natural assets is justified.¹⁷⁷ However, Sandel's response is not convincing because it misconstrues the relationship between ontology and politics for both Rawls and Nozick. Rawls and Nozick are not grounding

¹⁷⁴ Sandel, *Liberalism and the Limits of Justice*, 101.

¹⁷⁵ Sandel, *Liberalism and the Limits of Justice*, 98.

¹⁷⁶ Sandel, *Liberalism and the Limits of Justice*, 99.

¹⁷⁷ Sandel, *Liberalism and the Limits of Justice*, 150.

their principles of justice in a theory of human nature or an ontology of the self. As Rawls would later put it, a liberal theory of justice should be “political not metaphysical.”¹⁷⁸ Neither Rawls' egalitarianism nor Nozick's libertarianism rest upon an ontology of the self,¹⁷⁹ but instead both are trying to capture certain sets of our deeply held moral intuitions. The problem with both attempts is the same: our intuitions on matters of economic justice are widely divergent. Different people have different intuitions, and some (perhaps many) people have internally inconsistent intuitions about these matters. It is unlikely that philosophical reflection will bring our moral intuitions into harmony (either within or between individuals).

Even in the absence of shared intuitions (or “considered convictions”¹⁸⁰), we need to make decisions about economic issues. For all liberals, when we deliberate about coercive policies, we must have a baseline to which we default in the absence of consent. But, as I have shown, this baseline is itself controversial for issues of economic justice. We disagree about what counts as coercion-in-need-of-justification. We not only debate about economic policies, but we have *meta* debates about which state of affairs should be resorted to in the absence of agreement about economic policies. Indeed, the deep disagreements that animate our concrete debates follow us up into our meta debates. Andrew Lister summarizes the dilemma: “there are different ways to describe the set of possible policies, different ways to measure coercion, and so different ways to specify the

¹⁷⁸ See Rawls, “Justice as Fairness.”

¹⁷⁹ Nozick explicitly rejects the move from the communitarian view of the self to communitarian policies: “So the fact that we partially are 'social products' in that we benefit from current patterns and forms created by the multitudinous actions of a long string of long-forgotten people, forms which include institutions, ways of doing things, and language (whose social nature may involve our current use depending upon Wittgensteinian matching of the speech of others), does not create in us a general floating debt which the current society can collect and use as it will” (*Anarchy, State, and Utopia*, 95).

¹⁸⁰ Rawls, *Political Liberalism*, 8.

noncoercive default that obtains in the absence of conclusive justification.”¹⁸¹ As a result, “no matter what we do, there will be reasonable objections to what is reasonably taken to be coercion.”¹⁸² As Fred D’Agostino argues in his book *Free Public Reason*, the very concept of “public justification” is itself subject to reasonable pluralism, which poses a serious challenge to the whole project of reaching consensus about matters of basic justice.¹⁸³ Recognizing and accepting this point leads to a distressing conclusion: debates about justice, especially regarding issues of property rights and economic distributions, are not amenable to rational adjudication. There are a wide plurality of reasonable views, each of which offers coherent and persuasive arguments, each of which is also subject to reasonable rejection by its opponents. Our disagreements are deep, and they are not resolved by moving up to meta-level debates about how our disagreements should be defused.

4. Internal Critique: High Liberalism vs. Classical Liberalism

The political liberalism of Rawls and his followers is thus vulnerable to reasonable external critique from self-ownership liberals like Nozick. However, external critiques are always the least forceful and impressive form of critique, because external critics invoke premises that their adversaries simply reject. Rawls (reasonably) disagrees with Nozick’s (reasonable) opening premise that individuals are entitled to their unearned

¹⁸¹ Andrew Lister, “Public Justification and the Limits of State Action,” *Politics Philosophy Economics* 9, no. 2 (May 2010): 152. For further discussion of this issue of whether or not the aggregated results of market transactions represent a *prime facie* legitimate default or baseline, see Fabienne Peter, “Choice, Consent, and the Legitimacy of Market Transactions,” *Economics and Philosophy* 20, no. 1 (April 2004).

¹⁸² Lister, “Public Justification and the Limits of State Action,” 152.

¹⁸³ D’Agostino, *Free Public Reason*, chapter 4.

natural and economic assets, thus Rawls is free to ignore the rest of Nozick's argument. Additionally, then, in this section I present a more ambitious argument to the effect that the political liberalism of Rawls and his followers is vulnerable to reasonable *internal* critique from other political liberals who broadly share Rawls' premises (the principle of public justification and the fact of reasonable pluralism), but who arrive at very different conclusions about economic liberty and justice. This will further undermine the optimistic assumption of political liberalism that reasonable people will agree about the basic contours of justice.

I will reconstruct and analyze the debate within political liberalism between high liberals and classical liberals. The debate between high liberals (like Rawls, Freeman, and Nagel) and classical liberals (like Tomasi, Gaus, and Brennan¹⁸⁴) over the nature and importance of economic liberty can be broken into two separate arguments. The first argument concerns the nature of “moral personhood,” and whether or not economic activity has anything to do with enabling the pursuit of the good life. High liberals argue that economic liberties are significantly less important than civil and political liberties in developing our moral personality, and this serves as their justification for downgrading the economic liberties to “non-basic” liberties. Classical liberals argue that economic liberties are just as important as civil and political liberties in developing our moral

¹⁸⁴ Some of these classical liberal-inclined political liberals occasionally call themselves “neoclassical liberals,” but I find it an unhelpful term (and most classical liberal political liberals do not use it), so I stick with the usual term “classical liberalism” (although I retain the term in Appendix B). For a basic overview of this new pro-market brand of political liberalism, see Jason Brennan and John Tomasi, “Classical Liberalism,” in *Oxford Handbook of Political Philosophy*, ed. David Estlund (Oxford: Oxford UP, 2012). They summarize, “Neoclassical liberals seek to provide a philosophically rigorous account of the traditional classical liberalism platform: thick economic liberty for all, limited government, a range of basic social service programs funded by taxation, and a foundational concern for the material well-being of the poor. Neoclassical liberals embrace social justice, seeing it as a standard that enables them to capture and clarify the moral ideals that have long undergirded classical liberalism” (116). Two founding texts of this new branch of political liberalism are John Tomasi's *Free Market Fairness* (Princeton: Princeton UP, 2012); and Gaus' *The Order of Public Reason*, both discussed at length below.

personality, from which they insist that economic liberties be considered “basic” liberties. Both sides invoke controversial premises in their arguments (in addition to the agreed-upon basic premises of political liberalism), thus rendering both positions reasonable yet also reasonably rejectable.

The second argument between high liberals and classical liberals concerns the relationship between economic liberty and political liberty. High liberals argue that strong property rights and free markets are bound to lead to economic inequality, which in turn is bound to lead to political corruption and domination. Classical liberals, on the other hand, argue that high liberals are wrong about the correlation between economic liberty and political domination, and draw on empirical work to demonstrate this. Leaving this empirical debate aside, classical liberals further argue that economic liberty should be privileged at least as highly as political liberty because economic liberty devolves decision making (whereas political decision making is centralized), which is the proper response to reasonable pluralism about economic justice. I will argue that this solution, although compelling in many ways, is itself reasonably rejectable. I conclude that the basic premises of political liberalism (the principle of public justification and the fact of reasonable pluralism) can yield a wide range of positions regarding economic justice.

4.1. High Liberalism: The Moral Personality Argument

Rawls’ theory of justice (referred to as “justice as fairness”) is divided into the two principles of justice, with the first principle (which protects the “basic liberties”) lexically prior to the second principle (which guarantees equality). While it is the second

principle of justice, with its difference principle, that has generated a great deal of controversy and criticism, my interest here concerns primarily how Rawls chooses to define and characterize the first principle. It is *here* that the controversy really starts, because Rawls chooses to include only a *thin set of economic liberties* in the first principle (the freedom to choose one's occupation and the right to hold personal non-productive property), thus leaving the remaining content of economic liberty (downgraded to “non-basic”) to be filled out in accordance with the distributive requirements of the second principle of justice. This “remaining content” includes very important economic activities, such as whether people have the right to own productive property (capital assets), what they are able to do with such property, and the terms under which people are allowed to buy and sell labor. It is because of this original choice to include only a thin set of economic liberties in the first principle that the second principle has been so controversial.

Why did Rawls make this choice to include only a thin set of economic liberties in the first principle? To answer this question, we need to first answer a prior question: how does Rawls decide what should be included in the first principle? That is, what is the criterion for determining which liberties should be basic liberties entrenched in the first principle and which liberties should be non-basic liberties to be filled in by the second principle? For Rawls, basic liberties are those liberties that are required for the development and exercise of the two *moral powers*: (1) the capacity for a sense of justice (or, the capacity for social cooperation) and (2) the capacity for a conception of the good (or, the capacity for practical reason). This reflects Rawls' Kantian strategy of abstracting away from actual persons with their divergent desires, preferences, and life plans, in

order to discover those characteristics that we all share. These two moral powers are assumed to be fundamental to all citizens, and thus protecting them is assumed to command agreement even in a pluralistic society.

This Kantian conception of the person is central to Rawls' account of the basic liberties. Freeman argues that Rawls' "ideal of the person and a person's essential good grounds his principle of equal basic liberties and provides the standards for specifying which liberties are basic and have priority over other social values."¹⁸⁵ Samuel Arnold refers to the moral powers as the "filter" for the first principle: "Liberty L is a basic liberty if and only if L is necessary for the adequate development and/or exercise of either a) the first moral power, the sense of justice or b) the second moral power, the capacity for a conception of the good."¹⁸⁶ As Arnold additionally points out, the job of the basic liberties vis-à-vis our moral personality is rather limited. He explains,

Basic liberties are not charged with *maximizing* moral personality—as if the goal were to produce moral sages, or rugged, self-authoring Millian individualists. Rather, the role of the basic liberties is to enable people to deploy their two moral powers adequately and fully in what Rawls calls "the two fundamental cases": first, judging the justice of the basic structure and of social policy; second, devising, revising, and following a conception of the good. So long as people can accomplish these rather

¹⁸⁵ Samuel Freeman, "Capitalism in the Classical and High Liberal Traditions," in *Liberalism and Capitalism*, ed. Ellen Frankel Paul, Fred D. Miller, and Jeffrey Paul (Cambridge: Cambridge UP, 2012), 54.

¹⁸⁶ Samuel Arnold, "High Liberalism, Market Democracy, and Economic Liberty," accessed 8 January 2014, http://politicalscience.stanford.edu/sites/default/files/workshop-materials/pt_arnold.pdf, 11.

humble tasks, they possess moral personality to the required minimal degree.¹⁸⁷

If the basic liberties were charged with *maximizing* our moral personality, this would surely be too controversial to gain adherence in an overlapping consensus in a pluralistic society (because it would constitute a “comprehensive” liberal doctrine). Instead, the basic liberties are charged with enabling the sufficient development and exercise of our moral powers. It is important for citizens to have the capacity for social cooperation such that the political regime under which they live can earn the *genuine consent* of its citizens. Because of the principle of public justification, citizens need to have the capability to freely and voluntarily accept the principles of justice to which they are subject, and the basic liberties are required to secure and guarantee this capability. Additionally, the basic liberties are charged with enabling the sufficient development and exercise of our capacity for practical reason such that citizens can freely pursue their own good in their own way (whatever that conception of the good happens to be).

Those liberties that are included in the first principle are considered *basic liberties*. This means that they can only be regulated for the sake of maintaining other basic liberties, not for the sake of any other social goals (such as the distributional requirements of the second principle). As Freeman puts it, basic liberties “are both fundamental and inalienable.”¹⁸⁸ He elaborates, “To say certain rights or liberties are fundamental means they have absolute priority over other political values; they cannot be sacrificed or weighed off against non-basic rights or other political values in ordinary

¹⁸⁷ Arnold, “High Liberalism, Market Democracy, and Economic Liberty,” 11.

¹⁸⁸ Freeman, “Illiberal Libertarians,” 109.

political procedures.”¹⁸⁹ The basic liberties, then, “are to be infringed upon neither for the sake of satisfying the preferences of democratic majorities, nor to improve economic efficiency, nor to achieve perfectionist values of cultural excellence.”¹⁹⁰ The basic liberties are thought to be worthy of constitutional guarantees, and are permitted to be overridden only in exceptional circumstances. Thus, the choice about which liberties to count as basic has great significance.

It is clear why Rawls includes a thick set of civil and political liberties in the first principle of justice. A robust regime of civil liberties is required in order to form, revise, and pursue a personal conception of the good. Without having the freedom to think, speak, and associate freely, people would be unable to adequately devise and pursue their own conceptions of the good. Similarly, a robust regime of political liberties is required for the development and exercise of a conception of justice. Without having the right to vote and run for office, people would have neither the incentive nor the ability to adequately judge, criticize, or alter the basic structure of their society. Without robust civil and political liberties, citizens would not have the basic tools required to genuinely consent to their political regime and its principles of justice.

On the other hand, a regime of robust economic liberties, Rawls argues, is *not* required for the development and exercise of either of the two moral powers. Instead, all that is required (as far as economic liberties go) is the right to hold personal non-productive property and the freedom to choose one's own occupation. A political regime that did not recognize the right to hold personal non-productive property, or that dictated particular occupations for its citizens, would consequently be impeding the citizens'

¹⁸⁹ Freeman, “Illiberal Libertarians,” 109.

¹⁹⁰ Freeman, “Illiberal Libertarians,” 109.

pursuit of their own conception of the good. As Rawls puts it, the justification of these thin economic liberties is “to allow a sufficient material basis for *personal independence* and a sense of *self-respect*, both of which are essential for the adequate development and exercise of the moral powers.”¹⁹¹ Having these rights and being able to exercise them “is one of the *social bases of self-respect*. Thus this right is a general right: a right all citizens have in virtue of their fundamental interests.”¹⁹²

All other economic liberties (besides the right to hold personal non-productive property and the freedom to choose one's own occupation) are deemed “non-basic,” in the sense that they can be restricted or regulated for the sake of the other social goals.¹⁹³ As Gaus puts it, for Rawls and other high liberals the issue of private property in productive assets “is simply an instrumental question that has no intrinsic relevance to justice.”¹⁹⁴ Rawls explicitly rejects the possibility that a more robust set of economic liberties might serve our fundamental interests. He rejects the libertarian idea that the right to unlimited acquisition or the right to unlimited bequest should be considered basic. But he further rejects the classical liberal idea that the right to own productive property should be considered basic. Rawls argues,

¹⁹¹ John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge: Belknap, 2001), 114; my italics.

¹⁹² Rawls, *Justice as Fairness*, 114; my italics.

¹⁹³ The two regime types that Rawls picks out as fulfilling justice as fairness are “liberal democratic socialism” and “property-owning democracy.” Private property in productive assets is not legally permitted under liberal democratic socialism. Private property in productive assets is permitted, but heavily regulated, in a property-owning democracy: “While property in productive assets is permitted, that right is not a basic right, but subject to the requirement that, in existing conditions, it is the most effective way to meet the principles of justice” (John Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman [Cambridge, MA: Harvard UP, 2008], 321).

¹⁹⁴ Gaus, *The Order of Public Reason*, 398.

Two wider conceptions of the right of property as a basic liberty are to be avoided. One conception extends this right to include certain rights of acquisition and bequest, as well as the right to own means of production and natural resources. On the other conception, the right of property includes the equal right to participate in the control of means of production and natural resources, which are to be socially owned. These wider conceptions are not used because *they cannot, I think, be accounted for as necessary for the development and exercise of the moral powers*. The merits of these and other conceptions of the right of property are decided at later stages when much more information about society's circumstances and historical traditions is available.¹⁹⁵

So *what can be owned* and *what one can do with what one owns* are largely questions to be decided according to the second principle of justice (that is, they are decided in light of the goal of realizing the difference principle and the fair equality of opportunity).¹⁹⁶

¹⁹⁵ Rawls, *Political Liberalism*, 298; my italics.

¹⁹⁶ Rawls' normative commitments themselves do not strictly dictate either a capitalist or socialist economic system, or private or public ownership of the means of production – this choice is decided based on how each of these systems happens to fulfill the principles of justice (especially the difference principle). In *A Theory of Justice*, Rawls insists that his account of justice “leaves open the question whether its principles are best realized by some form of property-owning democracy or by a liberal socialist regime” (xv; also see 242). However, in *Justice as Fairness: A Restatement*, Rawls argues that capitalism, even if corrected by a welfare state, is incapable of realizing his conception of justice (136-138). In a letter to Philippe Van Parijs (which Van Parijs refers to as Rawls' “most openly 'anti-capitalist' text”) about *The Law of Peoples* and the European Union, Rawls writes, “The large open market including all of Europe is the aim of the large banks and the capitalist business class whose main goal is simply larger profit. The idea of economic growth, with no specific end in sight, fits this class perfectly. If they speak about distribution, it is most always in terms of trickle down. The long-term result of this—which we already have in the United States—is a civil society awash in a meaningless consumerism of some kind. I can't believe that is what you want. So you see that I am not happy about globalization as the banks and business class are pushing it. I accept Mill's idea of the stationary state as described by him in Bk. IV, Ch. 6 of his *Principles of Political Economy* (1848)... I am under no illusion that its time will ever come—certainly not soon—but it is possible, and hence it has a place in what I call the idea of realistic utopia” (“Three Letters on *The Law of Peoples* and the European Union,” *Revue de philosophie économique* 7 [2003], accessed 19 March 2013, https://www.ucl.ac.uk/european-institute/docs/VanParijs_Rawls3Letters.pdf). It seems fair to say that Rawls' thoughts on capitalism evolved over the course of his career, and he became increasingly convinced that capitalism of any kind

So civil and political liberties are deemed basic liberties, but economic liberties are deemed non-basic. This *economic exceptionalism* (as John Tomasi terms the downgrading of economic liberties below civil and political liberties¹⁹⁷) is not new with Rawls. It appears at the beginning of the split between classical liberalism and high liberalism. At root, the high liberal vision does not recognize economic liberties (and economic activities generally) as basic to a flourishing human life. John Maynard Keynes (a high liberal economist if there ever was one) yearned for a future when economic liberties could be discarded in favor of higher activities and pleasures: “Thus for the first time since his creation man will be faced with his real, his permanent problem—how to use his freedom from pressing economic cares, how to occupy his leisure, which science and compound interest have won for him, to live wisely and agreeably and well.”¹⁹⁸ For Keynes, all those attitudes, values, and practices that are “tremendously useful in promoting the accumulation of capital,” we will one day (he hopes) “be free, at last, to discard.”¹⁹⁹ As Tomasi notes, high liberals are fundamentally

is incompatible with justice. Many have argued that Rawls' normative commitments as developed in *A Theory of Justice* do, in fact, require a stance against capitalism – see, for example, Barry Clark and Herbert Gintis, “Rawlsian Justice and Economic Systems,” *Philosophy & Public Affairs* 7, no. 4 (Summer 1978); and Gerald Doppelt, “Rawls' System of Justice: A Critique from the Left,” *Noûs* 15, no. 3 (September 1981).

¹⁹⁷ Tomasi, *Free Market Fairness*.

¹⁹⁸ John Maynard Keynes, “Economic Possibilities for our Grandchildren,” 1930, accessed November 8 2012, <http://www.econ.yale.edu/smith/econ116a/keynes1.pdf>.

¹⁹⁹ Keynes, “Economic Possibilities for our Grandchildren.” This vision lines up with Marxist thought according to which the end of economic necessity is the beginning of freedom: “For as soon as the distribution of labor comes into being, each man has a particular, exclusive sphere of activity, which is forced upon him and from which he cannot escape. He is a hunter, a fisherman, a herdsman, or a critical critic, and must remain so if he does not want to lose his means of livelihood; while in communist society, where nobody has one exclusive sphere of activity but each can become accomplished in any branch he wishes, society regulates the general production and thus makes it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner, just as I have a mind, without ever becoming hunter, fisherman, herdsman or critic. This fixation of social activity, this consolidation of what we ourselves produce into an objective power above us, growing out of our control, thwarting our expectations, bringing to naught our calculations, is one of the chief factors in historical development

“skeptical that independent economic activity would be a highly valued part of a just society.”²⁰⁰ But what justifies this skepticism on the part of high liberals? I have already started to develop Rawls’ answer to this question: economic activity is not regarded as a core part of our moral personhood; economic activity is not regarded as a direct expression of our two moral powers. This statement requires more elaboration.

A longstanding critique of libertarianism and classical liberalism leveled by left-liberals and liberal socialists is that by privileging economic liberty so highly, libertarians and classical liberals ignore the material preconditions that are required for citizens to enjoy liberty in the first place. If what we care about is the capacity of citizens to exercise their liberty in coordination with their peers as moral equals, then we cannot ignore issues of inequality, deprivation, and political domination. If we entrench *absolute* economic liberties as basic liberties (thus adhering to a more-or-less *maximally extensive feasible property rights regime* along the two axes that Gaus lays out above), then we are unable to use state power to correct processes that might undermine the ability of citizens to adequately develop and exercise their two moral powers. Taking economic liberty to its extreme, in the case of certain forms of libertarianism, the minimal state might be obligated to enforce voluntary slave contracts made between desperately poor citizens and their wealthier peers.²⁰¹

up till now” (Karl Marx and Friedrich Engels, “Private Property and Communism,” *The German Ideology*, ed. Christopher John Arthur [New York: International Publishers, 1970]).

²⁰⁰ Tomasi, *Free Market Fairness*, 181. Also see John Tomasi, “Democratic Legitimacy and Economic Liberty,” *Social Philosophy and Policy* 29, no. 1 (2012).

²⁰¹ For this reason, Freeman argues that libertarianism is not a form of liberalism at all, but more akin to feudalism. See Freeman, “Illiberal Libertarians.” On this point, also see Mike Konczal, “We Already Tried Libertarianism - It Was Called Feudalism,” 11 June 2013, accessed 17 November 2014, <http://www.nextnewdeal.net/rortybomb/we-already-tried-libertarianism-it-was-called-feudalism>. Nozick briefly mentions the possibility that voluntary slave contracts would be enforceable in his libertarian minimal state in *Anarchy, State, and Utopia*, 331. For a libertarian critique of the legitimacy of voluntary slave contracts, see Rothbard, *The Ethics of Liberty*, especially the chapter “Property Rights

For high liberals, a commitment to absolute economic liberty would leave us unable to correct for processes that erode just background conditions over time, which fundamentally undermines the high liberal ideals of the person and society. Freeman summarizes, “instituting the economic liberties as basic liberties would undermine the ability of many free and equal persons to achieve economic independence and enjoy income and wealth adequate to their leading a wide range of reasonable plans of life.”²⁰² Instituting thick economic liberties as basic would seemingly tie our hands politically, making unjust (or at least building high obstacles in the way of) many strategies that actually existing welfare state capitalist regimes use to combat inequality, deprivation, and political domination, such as tax-and-transfer programs (e.g. welfare programs), state-run health care programs (e.g. Medicare), and strong state support for unionization (e.g. the National Labor Relations Act). The libertarian ideal could lead, reports Freeman, to “conditions in which a small minority might monopolize the means of production while large numbers of people are either destitute and unemployed, or have lost economic independence since they have no alternative to a wage relationship with those who own and control the means of production.”²⁰³

These conditions must be avoided for high liberals, and doing so very well may require regulations and restrictions of economic liberty. As Arnold argues, “The effect of state interference on self-authorship is complex; *local restrictions* of self-authorship may lead to *global gains* in self-authorship. That is: by removing specific options from people’s choice sets, state interference potentially enlarges (and improves) their choice

and the Theory of Contracts.”

²⁰² Samuel Freeman, *Rawls* (London: Routledge, 2007), 58.

²⁰³ Freeman, *Rawls*, 58.

sets, all things considered.”²⁰⁴ Arnold offers the example of state-mandated retirement savings programs. A program in which the state requires its citizens to save some portion of their income in a retirement savings account is an infringement upon their economic liberty to use their income as they see fit. Absolute economic liberty would include allowing citizens to consume their income early in their life and saving little of it for their retirement, if they so chose.²⁰⁵ If a regime of thick economic liberty invalidated the legitimacy of a state-mandated retirement savings program and the result was that elderly citizens found themselves impoverished and thus lacking the preconditions for autonomy (and the social bases of self respect) in their old age, then high liberals would deem the responsible economic liberties as non-basic and in need of regulation. Again, this follows from high liberalism because the basic liberties are those that serve Rawls’ ideal of the person as having two moral powers. A thick set of economic liberties might enable a situation in which, over time, the material conditions necessary for the autonomy of all citizens are undermined. Arnold criticizes the classical liberal position because it is “wrong to think that thick economic liberty is an essential precondition for maximizing self-authorship.”²⁰⁶ On the contrary, “thick economic liberty ties the state’s hands and prevents it from interfering with people’s options in ways that would, all things considered, yield richer, more satisfactory option sets for these same people.”²⁰⁷

²⁰⁴ Arnold, “High Liberalism, Market Democracy, and Economic Liberty,” 33.

²⁰⁵ As contemporary behavioral economics demonstrates, left to their own devices, most people would make such irrational choices. See Cass Sunstein and Richard Thaler, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New York: Penguin, 2009).

²⁰⁶ Arnold, “High Liberalism, Market Democracy, and Economic Liberty,” 33.

²⁰⁷ Arnold, “High Liberalism, Market Democracy, and Economic Liberty,” 33.

Thus, high liberals argue that economic liberty is not an important component to the development of the two moral powers. Further, they argue that strong economic liberties would undermine the requisite material conditions for the development of the two moral powers. While this argument was taken as decisive in the Rawlsian tradition of political liberalism for decades, it is now under attack by political liberals who endorse classical liberal institutions. These classical liberals argue for a different conception of the moral powers which recognizes the importance of thick economic liberty, leading to a very different conception of economic justice. It is to this classical liberal strand of political liberalism that we now turn.

4.2. Classical Liberalism: The Moral Personality Argument

Tomasi and Nickel argue that Rawls fails to grasp the importance of economic liberty for the development and exercise of the moral powers. Again, the two moral powers are the capacity for a sense of justice (that is, the ability to accept and live by fair terms of social cooperation with one's fellow citizens), and the ability to form, revise, and pursue a personal conception of the good. These two moral powers reflect three "higher-order interests," which are: (1) developing and exercising the capacity for a sense of justice, (2) developing and exercising the capacity to form, revise, and pursue a conception of the good, and (3) protecting and advancing one's conception of the good (allowing for changes of mind) over one's complete life. In the Rawlsian system, we move from the two moral powers to the three higher-order interests to the list of social primary goods (which are bargained for in the original position), the latter of which are supposed to protect the moral powers and their higher-order interests. For Tomasi and

Nickel, Rawls fails to recognize the connection between the third higher-order interest and economic liberty. As Nickel argues, “the third higher-order interest, the interest in protecting and advancing one’s determinate conception of the good, is among other things an interest in production, an interest in changing or rearranging the world so that it will contain more goods or better conform to one’s life plan.”²⁰⁸ In order to fully equip citizens with the capacity to pursue their third higher-order interest, citizens should be guaranteed *thick but not absolute* economic liberty.

The ideal, then, is to allow for some range of economic liberty as basic that is more robust than Rawls is willing to allow, but less robust than that defended by Nozick. Tomasi refers to this range as the “range of self-authorship.”²⁰⁹ So, for example, for some people owning a business is a deeply significant part of their lives, and is connected up to their conception of the good in certain important ways.²¹⁰ Gaus echoes this commitment to re-claiming the importance economic activity for our moral development:

Entrepreneurship is itself a form of human flourishing (in some ways, a thought more akin to Marx than to Rawls). Start-ups, innovation, risk taking, organizing groups to solve problems and implement new ideas – all these are not simply ways to produce the stuff to be distributed

²⁰⁸ Nickel, “Economic Liberties,” 167.

²⁰⁹ “Responsible self-authorship” is Tomasi’s term for the moral power and higher-order interests associated with pursuing one’s conception of the good.

²¹⁰ Importantly, economic activity has not always been recognized as contributing to a meaningful life. In earlier eras, economic activity was seen as vulgar and sinful, to be avoided if possible. Deirdre McCloskey chronicles the “Bourgeois Revaluation” which preceded the Industrial Revolution, which featured a reevaluation of the roles and meaning of the worker, trader, entrepreneur, and middleman: “After about 1700 in Britain, however, as earlier in Holland, the vulgarities of the economy and of money and of dealing, with their unsettling creativity, came gradually to be talked about as noncorrupting. They began to be seen in theory as worthy of a certain respect, as not being hopelessly vulgar or sinful or underhanded or lower-caste. In a word, they became dignified” (*Bourgeois Dignity: Why Economics Can’t Explain the Modern World* [Chicago: U Chicago Press, 2010], 22). Also see Joyce Appleby, *The Relentless Revolution: A History of Capitalism* (New York: W.W. Norton & Company, 2010).

according to “economic justice”: they are basic to the evaluative standards of some Members of the Public. To exclude all these personal ideals about what is worth doing in life on the grounds that by adopting a socialist system we have the purported best means to arrive at an abstract theory of justice unacceptably constrains the ability of many to lead lives in which their fundamental values hold sway over some parts of their life.²¹¹

Thus, these classical liberals argue that for Rawlsian-style reasons, the right to own productive property should be recognized as a basic liberty.

However, the right to unlimited accumulation, or the right to unlimited bequest, are not necessary for the development or revision of a conception of the good, and thus should not be recognized as basic constitutionally guaranteed liberties. Tomasi notes, “Economic liberties have a range of applications, and some parts of that range may be more essentially linked to self-authorship than other parts.”²¹² Those economic liberties that are essentially linked to self-authorship should be basic, while those that are not so linked should be understood as non-basic. Political and economic institutions must aim to secure the capacity for self-authorship, and this range will “set principled limits on the redistributory ambitions of the state, while defining a threshold below which no class of citizens should fall.”²¹³ In contrast to Rawls' *egalitarianism* (and other Rawlsians' *prioritarianism*), Tomasi defends *sufficientarianism* – according to which the state is

²¹¹ Gaus, *The Order of Public Reason*, 379. In a footnote, Gaus mentions an investor in the “Impossible Project” (a firm seeking to bring Polaroid film back into production) who tells the founder, “I have looked all your team in the eye and none of them is in here for the money. They are in here to make it happen” (*The Order of Public Reason*, 379n).

²¹² Tomasi, *Free Market Fairness*, 91.

²¹³ Tomasi, *Free Market Fairness*, 94.

required by justice to provide a sufficient basic minimum for all citizens, such that all are capable of developing, revising, and acting upon a conception of the good. But the state is not required (or even permitted) to use coercion to achieve and maintain economic equality.²¹⁴

In Tomasi's estimation, a political regime that recognizes as basic *thick but not absolute* economic liberties would still be able to legitimately regulate certain aspects of economic activity in ways that resonate with the considered convictions of many people in modern liberal democracies. For example, economic liberty could be regulated in order to (1) prevent workers from being exploited, (2) protect consumers from fraud, (3) protect third parties from negative externalities (e.g. from pollution), and (4) maintain competitive markets (i.e. anti-monopoly laws). So the "range of self-authorship" puts an upper and lower boundary on state action vis-à-vis the economic lives of its citizens. A state that allows too much economic liberty as basic (and thus unjustly restrains its own activity) might leave a class of citizens suffering from poverty, lacking opportunities for education and employment, etc. A state that allows too little economic liberty as basic (and thus unjustly overreaches in its own activity) might impose taxes and regulations so high as to impinge upon the self-authorship of its citizens as expressed through their economic activity.

²¹⁴ For further defense of sufficientarianism, see Harry Frankfurt, "Equality as a Moral Ideal," *Ethics* 98, no. 1 (October 1987); Harry Frankfurt, "Equality and Respect" *Social Research* 64 (1997); Harry Frankfurt, "The Moral Irrelevance of Equality," *Public Affairs Quarterly* 14 (2000); Liam Shields, "The Prospects for Sufficientarianism," *Utilitas* 24, no. 1 (March 2012); Dale Dorsey, "Toward a Theory of the Basic Minimum," *Politics Philosophy Economics* 7, no. 4 (November 2008); Roger Crisp, "Equality, Priority, and Compassion," *Ethics* 113 (July 2003); Roger Crisp, "Egalitarianism and Compassion," *Ethics* 114 (2004); Stephen Nathanson, "Equality, Sufficiency, Decency: Three Criteria Of Economic Justice," in *Ethical Issues for the Twenty-First Century*, ed. F. Adams (Charlottesville: Philosophy Documentation Center, 2005). For two well-know critiques of sufficientarianism, see Paula Casal, "Why Sufficiency Is Not Enough," *Ethics* 117, no. 2 (January 2007); and Larry Temkin, "Egalitarianism Defended," *Ethics* 113 (2003).

Tomasi thus tries to turn Rawls' arguments against him in an attempt to argue that a thick set of economic liberties ought to be considered basic. Rawls argues that the freedom of occupational choice is required for the development of the moral powers, because freedom of occupation allows one to pursue one's conception of the good most freely. For Tomasi, thick economic liberty related to work is justified on similar grounds: "the freedom to sell, trade, and donate one's labor looks equally essential for the same reasons."²¹⁵ Thus, Tomasi's favored regime types would likely have no minimum wage, minimal workplace regulation, and a prohibition on union security agreements (i.e. they would have right-to-work laws). For both Tomasi and Rawls, *if* this lack of economic regulation and this abundance of economic liberty led to autonomy-undermining conditions, *then* these liberties (on the part of the worker and employer) would not count as basic. Tomasi is confident that these labor freedoms (or lack of labor regulations) will lead to greater autonomy (or self-authorship) for all,²¹⁶ while Rawls and Freeman are doubtful. This debate concerns empirical issues and should thus be left to the economists.

²¹⁵ Tomasi, *Free Market Fairness*, 77.

²¹⁶ A number of other critics similarly try to argue that Rawls' normative framework should lead us to endorse capitalist and libertarian institutions by playing up the economic benefits (short- and especially long-term) to the least advantaged group from capitalism and voluntary charity. Daniel Shapiro argues, "Egalitarianism does not mandate state redistribution of income and wealth. Indeed, from an egalitarian perspective, voluntary methods of aiding the involuntarily disadvantaged are at least as good as, and possibly superior to, state redistribution" ("Egalitarianism And Welfare-State Redistribution," *Philosophy and Social Policy* 19, no 1 [2002]: 1). Also see Daniel Shapiro, *Is the Welfare State Justified?* (New York: Cambridge University Press, 2007). Jason Brennan likewise notes, "Further empirical investigation may show us that the solution is to abandon some of Rawls' favored institutions even if we should keep his theory of justice" ("Rawls' Paradox," *Constitutional Political Economy* 18 [2007]: 298). Finally, Tyler Cowen provocatively argues, "In general, the evidence indicates that current recipients of welfare benefit from the transfers... Nonetheless, the welfare state appears to harm the interests of future generations and foreign citizens, and in this regard it does not help the poor more generally" ("Does The Welfare State Help The Poor?" *Social Philosophy and Policy* 19, no. 1 [January 2002]: 36).

Secondly, Rawls argues that the right to own personal (nonproductive) property is required for the development of the moral powers, because it allows for independence and the social bases of self-respect. For Tomasi, the same arguments justify the right to own forms of productive property (e.g. saving in the form of stocks and bonds) – that is, they allow for independence and self-authorship.²¹⁷ Indeed, for Tomasi, “Permitting citizens to hoard cash, while denying them the right to purchase stocks or other securities, would not be a significant concession to the freedom owed to such citizens.”²¹⁸ Tomasi continues,

A right to private ownership of productive property provides individuals with the right to affirm and to seek to participate in any of a wide variety of ownership configurations, including joint and collective forms of ownership. Individuals with that right can select a life plan that includes their owning their own business, working in a business owned by others, joining with other workers in cooperative (democratically controlled) firms, and any of myriad intermediate forms. Without that right, citizens are vulnerable to having others use state power to impose some ownership configuration upon them. I claim that all citizens have a powers-protecting interest in determining for themselves the form of productive ownership relation to which they aspire.²¹⁹

²¹⁷ John Kekes likewise argues, “The importance of private property is that it enables us to control how we live. A good society must be committed to the protection of the right to private property, because a society is made good by protecting the conditions on which the well-being of its members depends. Moreover, I am supposing that having control of one’s life is one of these conditions. Private property, according to this view, is an indispensable means of control” (“The Right To Private Property: A Justification,” 5).

²¹⁸ Tomasi, *Free Market Fairness*, 78.

²¹⁹ John Tomasi, “Reply to Samuel Freeman: Thick Economic Liberty,” 18 June 2012, accessed 9 July 2012, <http://bleedingheartlibertarians.com/2012/06/reply-to-samuel-freeman/>. See Freeman’s critique

Independence and autonomy demand not just legal ownership in private non-productive property, but also, for Tomasi, legal ownership in private productive property.²²⁰

There have been two main objections leveled against Tomasi's vision of classical liberalism. One objection is that even thick economic liberties can lead to situations in which certain people lose the capacity to exercise liberty in any meaningful way. Nickel states the concern: "Although economic liberties are good for the liberty and autonomy of those who end up having money and property, perhaps these liberties are not good for the overall liberty and autonomy of those who end up having little money and property."²²¹ In response to this concern, it is important to remember the differences between classical liberals (who argue for *thick but not absolute* economic liberty as basic) and libertarians (who argue for *absolute* economic liberty as basic). The classical liberal state may be a limited state, but it remains an active state, guaranteeing a basic minimum for all citizens.

Nickel offers a list of possible responses to this first objection: (1) regimes that defend thick economic liberty are generally good for the poor, (2) classical liberalism contains a requirement for a decent minimum, (3) classical liberalism contains a boundary at the top, so that accumulations of wealth are relatively contained (and are not bequeathed in their entirety to the next generation), (4) thick economic liberty actually helps protect other important liberties (such as civil and political liberties), (5) thick

of Tomasi's position in "Can Economic Liberties be Basic Liberties?", 13 June 2012, accessed 20 June 2012, <http://bleedingheartlibertarians.com/2012/06/can-economic-liberties-be-basic-liberties/>.

²²⁰ For a similar argument about how economic liberty enables freedom and helps prevent domination from a republican perspective, see Robert S. Taylor, "Market Freedom as Anti-Power," *American Political Science Review* 7, no. 3 (August 2013). In *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000), Hernando de Soto makes the compelling case that the right to own productive property has been unjustly denied to many of the world's poor who live outside the legal framework of property rights, thus denying them the opportunity for economic mobility. For one of the more memorable graphic visualizations of de Soto's point from the book, see Appendix D.

²²¹ Nickel, "Economic Liberties," 167.

economic liberty is consistent with measures to guarantee the fair value of political liberty (e.g. public financing of election campaigns), (6) a strong principle of equality of opportunity and free public education which helps weaken the connection between class origin and achievement, (7) even with thick economic liberty, tax-and-transfer programs can help guarantee distributive justice, and (8) classical liberalism endorses policies to help the unemployed and return them to employment. This response seems like an adequate defense against the first objection.

A second objection to Tomasi's position is more challenging. Arnold argues that Tomasi's moral personality argument relies upon a "deeply implausible empirical hypothesis" about the effects of economic liberty on our moral development and experience.²²² Arnold makes the following case:

Different aspects of economic liberty matter differently to moral personality. Some economic liberties are absolutely crucial to the development and exercise of moral personality. Others are less crucial. Still others aren't crucial at all. I submit that the thick economic liberties of working and owning defended by Tomasi fall into this "not crucial" category. They lack what Rawls calls "significance": they are not essential preconditions for the development and exercise of the two moral powers.²²³

So while Tomasi may be right that the exercise of *some* economic liberty is required for the development of moral personality, this claim does not get him to his preferred classical liberal regime type – it takes us no further than one of Rawls' own preferred

²²² Arnold, "High Liberalism, Market Democracy, and Economic Liberty," 15.

²²³ Arnold, "High Liberalism, Market Democracy, and Economic Liberty," 18.

regime types, the property-owning democracy. As O'Neill and Williamson argue in their review of *Free Market Fairness*, "If [Tomasi] simply means that a just society should accept and promote the basic right of individuals to control productive property, such as a small business, then high liberals can agree. Protection of a general right to operate a small business is consistent with a Rawlsian property-owning democracy."²²⁴ In the property-owning democracy, individuals can legally own productive resources, but the state is permitted to heavily regulate and continually redistribute access to the ownership of productive assets to ensure that most citizens have access to them.

O'Neill and Williamson further argue that Tomasi does not make a crucial distinction between the moral powers of the entrepreneur and those of the worker. Perhaps we want to allow the entrepreneur the right to own (some) productive property, but we also need to have an activist state that regulates and disperses capital so that more people can enjoy the experience of entrepreneurship. Without this activist state, some class of people may never get to enjoy the benefits of entrepreneurship, but instead might spend their lives taking orders from bosses. For O'Neill and Williamson, Tomasi's arguments about the moral powers speak more on behalf of the property-owning democracy than the small government classical liberal regime that Tomasi advocates.²²⁵

O'Neill and Williamson write, "Tomasi is right that a just society should permit the private control of productive capital, but his further claim that this should lead us to

²²⁴ Martin O'Neill and Thad Williamson, "Free Market Fairness: Is There a Moral Case for Free Markets?", *Boston Review* (November/December 2012), accessed 19 December 2012, <http://www.bostonreview.net/books-ideas/free-market-fairness>.

²²⁵ While Tomasi might be right about the ennobling effects of entrepreneurship, he does not seem to give equal consideration to the effects of non-entrepreneurial (and especially physically and mentally stultifying) work. So one might object that Tomasi's preferred classical liberal institutions, which include policies that enable fluid labor markets (and discourage strong labor unions), would not secure proper dignity for workers in the workplace. For a discussion of workplace justice, see Samuel Arnold, "The Difference Principle at Work," *The Journal of Political Philosophy* 20, no. 1 (2012); and Richard Arneson, "Meaningful Work and Market Socialism," *Ethics* 97, no. 3 (April 1987).

embrace deregulated capitalism is wrong. The moral goods of exercising freedom through market activities would be more widely realized under a regime of Rawlsian property-owning democracy than under the sort of minimally regulated capitalism that Tomasi celebrates.”²²⁶

Arnold nicely illustrates the weakness of Tomasi’s account by asking us to consider the following scenario:

Think of a country that lacks the thick economic liberties favored by market democracy – say, Norway or France. If Tomasi’s claim is correct, then the vast majority of citizens in such thick-economic-liberty-infringing countries should find it difficult, even impossible, to develop the moral capacities required to meaningfully evaluate their social and political institutions. A Norwegian can say “after deep reflection, I consent to be governed by the Norwegian state” but his words are just wind; they pack no normative punch, no legitimating force. This is, I submit, an obviously absurd result. Yet it really does follow from Tomasi’s argument. We have hit upon a *reductio ad absurdum* of the first market democratic argument for counting thick economic liberties as basic liberties.²²⁷

For Arnold, it may be the case that limited property rights are required for the pursuit of some reasonable conceptions of the good, but this does not justify maximally extensive feasible property rights or anything close to it. An argument about the importance of property for project-pursuit plays right into Rawls’ argument for the property-owning

²²⁶ O’Neill and Williamson, “Free Market Fairness.”

²²⁷ Arnold, “High Liberalism, Market Democracy, and Economic Liberty,” 16.

democracy,²²⁸ which allows for the private ownership of productive property, but uses political force to redistribute and disperse productive property as widely as possible.²²⁹ In other words, Tomasi's deontological arguments (concerning the conditions for "self-authorship") seem to be in tension with his consequentialist arguments (about what institutions are required to achieve just economic distributions).

Arnold convincingly makes the point that it is unwise to place too much normative burden on (empirically or philosophically) controversial or indeterminate notions like "responsible self-authorship." The problem is that in a pluralistic society people will have different interpretations about what belongs inside and outside the "range of self-authorship" that Tomasi describes, and thus what we really need is a non-sectarian method for deciding this question. It is unlikely that unanimity can be reached on these kinds of issues.²³⁰ However, this argument cuts both ways.²³¹ Both Rawls and Tomasi find themselves needing to invoke controversial conceptions of human flourishing and the moral powers in order to arrive at their divergent conceptions of

²²⁸ For a helpful collection of essays on Rawls' idea of the property-owning democracy, see Martin O'Neill and Thad Williamson, *Property-Owning Democracy: Rawls and Beyond* (Malden, MA: Blackwell, 2012). For an argument for a similar, "mixed-property," regime, see Richard Krouse and Michael McPherson, "A 'Mixed'-Property Regime: Equality and Liberty in a Market Economy," *Ethics* 97, no. 1 (October 1986).

²²⁹ Gaus voices a similar skepticism about such arguments: "The crucial task for the agency justification is to move from a general argument that some property is necessary for agency to a defense of *maximally extensive* property rights. The agency argument has an easier time than self-ownership accounts in showing that our rights of ownership should approximate full property rights (our first dimension of capitalist property rights): agency requires that one be able to control parts of the world as part of one's projects, and full capitalist property maximizes control. But can it also be shown that the agency justification leads to the desirability of maximal property rights over the other dimension — the things over which one can have property? This looks more dubious" ("The Idea and Ideal of Capitalism," 8).

²³⁰ It is telling that there are zero mentions of "pluralism" or "reasonable pluralism" in the index of Tomasi's book *Free Market Fairness*.

²³¹ A number of recent articles make this same point: Tomasi's critique of Rawls is helpful not because it offers a fully satisfying alternative to Rawls' project, but because it highlights the weaknesses of Rawls' project. See Arnold, "High Liberalism, Market Democracy, and Economic Liberty"; and Jeppe von Platz, "Are Economic Liberties Basic Rights?", *Politics Philosophy Economics* 13, no. 1 (2014); and the symposium for *Free Market Fairness* at the *Bleeding Heart Libertarians* website.

economic justice. Citizens can reasonably disagree with Tomasi's interpretation of what counts as within the "range of self-authorship," as they also can with Rawls' interpretation. Therefore, if either Tomasi's preferred capitalist democratic regime or Rawls' preferred property-owning democratic regime were enforced on the basis of either particular interpretation about the moral powers, some subset of the citizens would experience the regime as oppressive. Surely these matters admit of great (and reasonable) interpretive disagreement.²³² In a slightly different context, Gaus argues, "the aim is not to build all of [a theory of justice] into the very meaning of what it means to treat another as free and equal – as if all of morality was really a sort of conceptual analysis of the idea of 'treating another as a free and equal moral person.'"²³³ Indeed, neither Tomasi's right-leaning sufficientarianism nor Rawls' left-leaning egalitarianism springs directly out of the basic premises of political liberalism, despite both of their attempts to make it seem so.

4.3. High Liberalism vs. Classical Liberalism: Economic Liberty and Political Liberty

There is an additional and separate argument that Freeman and others make against entrenching thick economic liberties as basic. The argument is quite straightforward. As I have mentioned, for high liberalism the basic liberties include the civil and political liberties. The political liberties, however, have a special status in the

²³² In his review of Rawls' *A Theory of Justice*, James Buchanan states, "I should accept the hypothesis that a socio-political-economic structure embodying the difference principle meets widely-accepted criteria of 'fairness.' But I should not be prepared to elevate this principle into the ideal position accorded it by Rawls. There may be many other distributional rules that qualify within the acceptable set, classified only by the minimal criteria for 'fairness' and 'goodness'" ("Rawls on Justice as Fairness," *Public Choice* 13 [September 1972]: 125).

²³³ Gaus, *The Order of Public Reason*, 20.

first principle of justice for high liberalism. Not only must political liberties be guaranteed, but also the *fair value* of political liberties must be maintained. That is, political liberties must not be merely *formally* enjoyed, but *actually and effectively* exercised by all citizens on an equal basis. All citizens should be able to wield a roughly equal amount of political power. This privileging of the political liberties is unique to high liberalism within the liberal tradition (although it unites high liberals with participatory democrats). Furthermore, this privileging of the political liberties helps further justify the downgrading of the economic liberties within high liberalism.²³⁴

The commitment to the fair value of political liberty makes high liberals especially concerned with economic inequality, since economic inequality can have the downstream consequence of political inequality and even political domination.²³⁵ Importantly, the difference principle itself theoretically allows for any amount of economic inequality – its only mandate is to secure Pareto-optimality over time. It is the commitment to guaranteeing the fair value of political liberty that leads high liberals to be especially concerned with economic inequality itself (even economic inequality that might be permissible in the eyes of the difference principle). As Freeman explains, the problem with classical liberalism and welfare-state capitalism is that “no effort is made to limit the inequalities of wealth and economic influence that undermine the fair value of the political liberties.”²³⁶ Without these trends toward economic and political inequality

²³⁴ Tomasi notes, “High liberalism has its roots in the Millian idea that economic liberties are less important to the moral development of individuals than their personal or political liberties” (*Free Market Fairness*, 60).

²³⁵ For a similar argument, see Thomas Christiano, “The Uneasy Relationship between Democracy and Capital,” *Social Philosophy and Policy* 27, no. 1 (January 2010). Also see Joseph Stiglitz, *The Price of Inequality: How Today's Divided Society Endangers our Future* (New York: W.W. Norton & Co., 2013).

²³⁶ Freeman, *Rawls*, 225.

being continually corrected, “the wealthy and corporate interests effectively lobby and influence politicians and other government officials to enact legislation primarily benefiting the more advantaged. They largely control the political agenda and use it to further their economic interests.”²³⁷ The protection of thick economic liberties would undermine the state’s ability to counteract these problems.²³⁸

The classical liberals do not find this line of argument entirely compelling. Gaus accuses high liberals of arguing about the supposedly malevolent effects of economic liberty on political equality without sufficient empirical evidence. Indeed, Gaus suggests that high liberals have the facts against them: countries with strong private property rights and thick economic liberty tend to score better on measures of civil and political liberties. Drawing on data from the Fraser Institute's *Economic Freedom of the World: 2008 Annual Report*,²³⁹ Gaus argues that “the protection of economic liberty and private property is associated with states that do a better job institutionalizing effective political rights (as well as civil rights),”²⁴⁰ concluding that there is “little ground for accepting a

²³⁷ Freeman, *Rawls*, 225.

²³⁸ This topic – the relationship between economic liberty and political liberty – has important implications for the contested issue of campaign financing, which has become a major public concern in the United States with the 2010 Supreme Court case *Citizens United vs. Federal Elections Commission*. A problem with adding robust economic liberty to the basic liberties of the first principle is that it creates more conditions in which basic liberties can clash with one another. Again, basic liberties can only be regulated for the sake of maintaining other basic liberties, but what happens when basic liberties collide directly (as in the case of political speech, where there is a clash between the economic liberty to use one’s own resources in one’s own way and the fair value of political liberty)?

²³⁹ James D. Gwartney, Robert Lawson, and Seth Norton, *Economic Freedom of the World: 2008 Annual Report*, accessed 12 December 2012, <http://www.freetheworld.com/2008/EconomicFreedomoftheWorld2008.pdf>. For two helpful charts displaying the correlation between economic liberty and civil and political liberty in this study, see Appendix E.

²⁴⁰ Gaus, *The Order of Public Reason*, 515. For other recent accounts that document the close connection between economic liberty and political freedom, see Daron Acemoglu and James Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (New York: Crown Business, 2012); and Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Penguin, 2011).

strong relation between income inequality and lesser value of political rights.’’²⁴¹ Of course, however, Gaus' presentation and interpretation of the empirical data is contested by various high liberals. I cannot sort out the complex empirical arguments here, as they should be decided instead by economists and social scientists.

However, this empirical argument from Gaus opens up a different but related argument that the classical liberals develop in their defense of thick economic liberty. Namely, they argue that economic liberties are important because they are a better tool than political participation for dealing with social conflict. Gaus, like many other classical liberals, believes that economic liberty helps secure social cooperation because it allows for a plurality of values to be acted upon in separate private domains, whereas political decision making requires everyone to abide by the same decisions. That is, economic activity is *decentralized* decision making, while political activity is *centralized* decision making. In a sense, then, economic liberty and private property are said to follow in the liberal strategy of privatization discussed in chapter II. Classical liberals, like Gaus, favor robust economic liberties because they are (so the argument goes) well-suited to the conditions of pluralism. I will now explore and evaluate this response, and reveal its shortcomings.

²⁴¹ Gaus, *The Order of Public Reason*, 517. Gaus goes through the empirical data in more detail in pp. 511-21. Gaus' position is articulated in a similar way in Milton Friedman's *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), in the opening chapter entitled, "The Relation between Economic Freedom and Political Freedom." Friedman writes, "Viewed as a means to the end of political freedom, economic arrangements are essential because of the effect which they have on the concentration or the deconcentration of power. A major thesis of the new liberal [that is, the classical liberal] is that the kind of economic organization that provides economic freedom directly, namely, organization of economic activities through a largely free market and private enterprise, in short through competitive capitalism, is also a necessary though not a sufficient condition for political freedom. The central reason why this is true is because such a form of economic organization separates economic power from political power and in this way enables the one to be an offset to the other. *Historical evidence speaks with a single voice on the relation between political and economic freedom. I cannot think of a single example at any time or any place where there was a large measure of political freedom without there also being something comparable to a private enterprise market form of economic organization for the bulk of economic activity*" (9; my italics).

4.4. Economic Liberty as a Decentralization Strategy

For Gaus, when we deliberate about justice in the context of deep pluralism, we must ask ourselves the question, “what devices can we employ to achieve some sort of agreed-upon social ordering or outcome when we are faced with irresolvable differences in the individual ordering of values?”²⁴² There are two opposing kinds of responses to this question found within the broad liberal tradition. The first response privileges what Benjamin Constant refers to as the “rights of the ancients,” which consists of an “active and constant participation in collective power.”²⁴³ It is a “centralizing response” that advocates “enlarging the scope of democratic decision making based on widespread public deliberation aimed at consensus.”²⁴⁴ Constant describes the ancient conception of liberty: “The share that in antiquity everyone held in national sovereignty was by no means an abstract presumption as it is in our own day. The will of each individual had real influence: the exercise of this will was a vivid and repeated pleasure.”²⁴⁵ *Political liberty* is the most cherished dimension of liberty for the ancients (as it is, in some ways, for high liberals).

²⁴² Gaus, *The Order of Public Reason*, 372.

²⁴³ Benjamin Constant, “On the Liberty of the Ancients Compared with that of the Moderns,” 1816, accessed 19 March 2013, <http://www.uark.edu/depts/comminfo/cambridge/ancients.html>). Constant further elaborates on the rights of the ancients: “The [ancient conception of liberty] consisted in exercising collectively, but directly, several parts of the complete sovereignty; in deliberating, in the public square, over war and peace; in forming alliances with foreign governments; in voting laws, in pronouncing judgments; in examining the accounts, the acts, the stewardship of the magistrates; in calling them to appear in front of the assembled people, in accusing, condemning or absolving them. But if this was what the ancients called liberty, they admitted as compatible with this collective freedom the complete subjection of the individual to the authority of the community. You find among them almost none of the enjoyments we have just seen form part of the liberty of the moderns. All private actions were submitted to a severe surveillance. No importance was given to individual independence, neither in relation to opinions, nor to labor, nor, above all, to religion. The right to choose one’s own religious affiliation, a right that we regard as one of the most precious, would have seemed to the ancients a crime and a sacrilege” (“On the Liberty of the Ancients Compared with that of the Moderns).

²⁴⁴ Gaus, *The Order of Public Reason*, 387.

²⁴⁵ Constant, “On the Liberty of the Ancients Compared with that of the Moderns.”

On this view, we should rely primarily upon democratic deliberation to overcome the differences generated by pluralism. The implicit assumption here, Gaus points out, is that our differences and disagreements are merely *on the surface*, and that deliberation will erase them, or at least reduce them sufficiently enough to authorize legitimate and authoritative social morality through collective decision making. Gaus explains his concern with this method:

The attempt to emulate in practice a romantic image of the past [the Athenian polis] can only lead to authoritarianism and oppression. Deliberative democracy supposes that our differences in evaluative standards are, as it were, only on the surface. Once we reason together and talk things through, deliberative democrats hold that our value orderings will be transformed; the range of disagreement will so radically narrow that the problems of social commensuration will become fairly insignificant, if not vanish altogether ... Once we accept that our disagreements are widespread and deep – that the range of possible value orderings is essentially unlimited – democratic procedures simply are not up to the task of collective commensuration.²⁴⁶

For Gaus, then, the publicly deliberating Members of the Public, in the context of deep pluralism, will reject this centralizing response of the deliberative democrats.²⁴⁷ Because

²⁴⁶ Gaus, *The Order of Public Reason*, 388.

²⁴⁷ Gaus' indictment of deliberative democracy mirrors Constant's indictment of Rousseau: "by transposing into our modern age an extent of social power, of collective sovereignty, which belonged to other centuries, this sublime genius, animated by the purest love of liberty, has nevertheless furnished deadly pretexts for more than one kind of tyranny" ("On the Liberty of the Ancients Compared with that of the Moderns").

it underestimates the depth of our disagreement, it will tend to “lead to authoritarianism and oppression,” which is not in the interest of any Member of the Public.²⁴⁸

There is another way to respond to the condition of pluralism, and it privileges what Constant calls the “rights of the moderns,” which consist in “peaceful enjoyment and private independence.”²⁴⁹ While the ancients privileged political liberty above all else, the moderns – while recognizing the importance of political liberty – most highly prize civil and economic liberty: “The exercise of political rights, therefore, offers us but a part of the pleasures that the ancients found in it, while at the same time the progress of civilization, the commercial tendency of the age, the communication amongst peoples,

²⁴⁸ Nozick makes a similar point. He argues (echoing public choice theory) that the more that decisions are centralized through the political process, the more incentive there is for powerful economic actors to try to capture the state for their own benefit. He argues, “Economically well-off persons desire greater political power, in a nonminimal state, because they can sue this power to give themselves differential economic benefits. Where a locus of such power exists, it is not surprising that people attempt to use it for their own ends. The illegitimate use of a state by economic interests for their own ends is based upon a preexisting illegitimate power of the state to enrich some persons at the expense of others. Eliminate that illegitimate power of giving differential economic benefits and you eliminate or drastically restrict the motive for wanting political influence. True, some persons will thirst for political power, finding intrinsic satisfaction in dominating others. The minimal state best reduces the chances of such takeover or manipulation of the state by persons desiring power or economic benefits, especially if combined with a reasonably alert citizenry, since it is the minimally desirable target for such takeover or manipulation. Nothing much is to be gained by doing so; and the cost to the citizens if it occurs is minimized. To strengthen the state and extend the range of its functions as a way of preventing it from being used by some portions of the populace makes it a more valuable prize and a more alluring target for corrupting by anyone able to offer an officeholder something desirable; it is, to put it gently, a poor strategy” (*Anarchy, State, and Utopia* 272). This turns the high liberal argument for privileging political liberty on its head. Rawls argues that the existence of economic inequality triggers the need for a more interventionist state. Nozick argues that the the existence of economic inequality is why an interventionist state is a terrible idea, since we have good reason to believe that it will be captured by powerful economic actors.

²⁴⁹ Constant further elaborates on the rights of the moderns: “For each of them it is the right to be subjected only to the laws, and to be neither arrested, detained, put to death, or maltreated in any way by the arbitrary will of one or more individuals. It is the right of everyone to express his opinion, choose a profession and practice it, to dispose of property, and even to abuse it; to come and go without permission, and without having to account for his motives or undertakings. It is everyone's right to associate with other individuals, either to discuss their interests, or to profess the religion that he and his associates prefer, or even simply to occupy their days or hours in a way that is most compatible with his inclinations or whims. Finally it is everyone's right to exercise some influence on the administration of the government, either by electing all or particular officials, or through representations, petitions, demands to which the authorities are more or less compelled to pay heed” (“On the Liberty of the Ancients Compared with that of the Moderns”). Notice that the liberties of the moderns do include political liberties, but they are not central.

have infinitely multiplied and varied the means of personal happiness.”²⁵⁰ This modern response devolves authority to individual members of society as private actors, allowing them to form private associations in which they can act upon their particular values with like-minded peers. The decentralizing response thus allows for decisions to be resolved via private decision making, through private associations in civil society and the market.

The decentralizing response is basically a choice to “agree to disagree.” When confronted with disagreement, both parties disengage from the dispute, and each accepts that the other will continue to act and believe in her own ways in the private sphere in exchange for the freedom to do the same. For the moderns, the pinnacle of human freedom is the freedom to believe, speak, act, and interact in the context of freely chosen private associations. On the other hand, the centralizing response is basically a choice to lock ourselves into a room until a single choice is made. When confronted with disagreement, both parties commit themselves to arriving at a joint decision about the dispute, through agreement if possible, through a vote if necessary. The moderns want to minimize these kinds of centralized political transactions in favor of decentralized economic transactions.²⁵¹

²⁵⁰ Constant, “On the Liberty of the Ancients Compared with that of the Moderns.”

²⁵¹ Milton Friedman has a nice quip about these two strategies for dealing with disagreement. Democratic decision making requires “conformity without unanimity,” while private decision making permits “unanimity without conformity” (*Capitalism and Freedom*, 23). That is, democratic decisions are binding on all (society-wide conformity), even on those who disagree with the final vote (no society-wide unanimity). Private decisions do not require society-wide agreement – each is permitted to act on her own values in private associations (association-wide unanimity), while others are permitted the same freedom in their own private associations (no society-wide conformity). Some examples would be useful to illustrate the difference. For centuries in Europe, matters of religious observance were considered public matters requiring society-wide conformity. Religious dissent was punishable by law. After the Reformation and the Wars of Religion, it became clear that achieving and enforcing society-wide conformity would be too costly (and possibly unjust), and thus matters of religious observance were eventually deemed subject to private decision making. Freedom of conscience and worship was a decentralizing response to the problem of deep and persistent religious disagreement. On the other hand, early American history was characterized by a (kind of) decentralizing response regarding the issue of slavery. It was only with much struggle and agitation (and eventually a civil war) that the issue became a public matter requiring society-wide conformity. Indeed, in the twentieth century, progress on

The modern response lends itself well to an appreciation for the role of strong private property rights. With private property (and the liberty to use one's property relatively freely), power is divided into different jurisdictions, thus avoiding the need for the different jurisdictions to converge on more substantive agreement. For Gaus, "A regime of jurisdictional individual moral rights is thus a form of public justification – or perhaps it is better understood as a way to settle the problem of public justification in such a way that in the future it is no longer a collective problem."²⁵² And, furthermore, according to Gaus, "private property rights are quintessentially jurisdictional. To own property is to have a sphere in which one's evaluative standards have great authority for others."²⁵³ With a political regime that respects private property and the economic liberty to use it freely, society can avoid certain kinds of debilitating disagreement and strife. For these reasons, the classical liberal position rejects high liberals' privileging of the political liberties above the economic liberties.²⁵⁴ If our political community contains a

civil rights for African-Americans was resisted in the South by appeals to the quasi-decentralizing response of "states' rights." Thus, we often see issues migrate across the liberal public/private split (at the moment, issues of health care are becoming more public and less private, while issues of drug selling and consumption are becoming less public and more private). The decision about what belongs on either side of the split is a constant matter of political debate. While the modern response privileges a robust private sphere, it also recognizes the place for the public political sphere.

²⁵² Gaus, *The Order of Public Reason*, 373.

²⁵³ Gaus, *The Order of Public Reason*, 374. John Gray chimes a similar note: "The importance of several property for civil society is that it acts as an enabling device whereby rival and possibly incommensurable conceptions of the good may be implemented and realized without any recourse to any collective decision-procedure ... One may even say of civil society that it is a device for securing peace by reducing to a minimum the decisions on which recourse to collective choice – the political or public choice that is binding on all – is unavoidable" (John Gray, *Post-Enlightenment Liberalism* [London: Routledge, 1993], 314). The difference between Gray and Gaus is that Gray argues for private property rights because they help secure *stability* in the face of pluralism (the "Reformation" question), while Gaus goes further in arguing that private property rights can be justified to all Members of the Public, and thus help them secure *stability for the rights reasons* in the face of pluralism (the "Enlightenment" question). Gray is one of the most ardent defenders of "modus vivendi" liberalism; see Gray, *The Two Faces of Liberalism*.

²⁵⁴ Gaus and Tomasi argue that economic liberties should be valued as equally important as civil and political liberties (that is, they should all be equally "basic"), but some classical liberals argue that economic liberties should be privileged *above* political liberties. For the clearest example of this, see

wide diversity of values and preferences, and we want these values and preferences to be respected, then a method of “privatization” via economic liberty and property rights will be more stable and just than a method of “democratization” via political liberty. Gaus summarizes this view:

By dividing social life into different jurisdictions, in which each person’s values, ends, and goals hold sway, the mutual respect of these jurisdictions allows us to live together in partly cooperative, partly competitive, arrangements with a minimum of conflict about whose values are to hold sway where. This, indeed, is the quintessential liberal response to the fact that our aims and values so often differ, and indeed conflict: the social recognition of jurisdictions in which one’s ends hold sway, and one may act on the basis of one’s own values and interests. This is the sense in which property rights are the foundation of a social order among people

Jason Brennan, “Political Liberty: Who Needs It?”, *Social Philosophy and Policy* 29, no. 1 (January 2012). Brennan writes, “Politics provides a weak outlet for social construction in part because there are no niches. Democratic political decisions apply to all equally, and if one dislikes the outcomes, there is usually no escape. In trying to explain why the political liberties are valuable, [Thomas] Christiano ... uses the metaphor of ‘being at home.’ The political liberties are supposed to help us feel at home. But this is misleading. Our homes are niches. Most of us are at home in our homes because we may unilaterally shape our homes to reflect our preferences. Our homes are governed by principles we endorse. We do not have to deliberate in public and justify our furniture arrangements to others in society. Many of us can shape our work environments to a significant extent as well, at the very least by choosing where we work. And even if we do not feel completely at home in society, we can at least usually find niches within society where we do feel at home. But in politics, there are no real niches. I find the formulaic women’s movies on the Lifetime Channel bland and vapid, so I watch something else. I find marijuana criminalization and farm subsidies stupid and unjust, but there is no niche to accommodate me (or it is prohibitively expensive for me to relocate to that niche)” (“Economic Liberty,” 16). Also see Jason Brennan, *The Ethics of Voting* (Princeton: Princeton UP, 2011); and Jason Brennan, *Against Politics* (Princeton: Princeton UP, forthcoming). Of course, libertarians tend to be even more skeptical of political liberties than classical liberals. For a classic example of this skepticism, see Nozick’s critique of the democratic state in *Anarchy, State, and Utopia*, pp. 276-295, which includes the well-know “Tale of the Slave.” More recently, Caplan argues that political decision making is systematically biased and irrational in ways that economic decision making is not. See Caplan, *The Myth of the Rational Voter*. Also, Michael Huemer, “In Defense of Passivity,” *Studia Humana* 1, no. 2 (2012).

who fundamentally disagree in their aims and values, as opposed to a social order premised on the devotion of all to a collective project.²⁵⁵

A just liberal state will thus allow its citizens extensive rights over how they use and exchange their labor and property. For classical liberals, then, placing restrictions and conditions on the kinds of contracts that the state enforces, and placing regulations and limits on the kinds of activities allowable in the economic sphere, threaten to unjustly limit the range of pluralism that can be accommodated.

Importantly, for Gaus, a just private property equilibrium must be a “genuine moral equilibrium” as well.²⁵⁶ The property regime should not be experienced as oppressive by any class of society, and thus must track the reasonable interests of all citizens. Imagine a libertarian society that adopted Nozick’s historical entitlement theory of distributive justice, one that could genuinely demonstrate to its citizens that all current property holdings are derived from a history of just acquisitions and transfers. Nevertheless, an impoverished class of citizens could develop in this society over time (perhaps based on the permissible choices of certain members of the previous generations to consume, instead of invest and save and bequeath, their wealth). Members of this class would reasonably claim that the economic regime was not adequately tracking their reasonable interests relative to feasible alternative institutional arrangements. Members of this class, like all members of society, must be provided with accessible and satisfying reasons to respect the social rules under which they live. In this libertarian society, no such reasons would be acceptable to this impoverished class.

²⁵⁵ Gerald Gaus, “The Property Equilibrium in a Liberal Social Order (Or How to Correct Our Moral Vision),” in *Liberalism and Capitalism*, ed. Ellen Frankel Paul, Fred D. Miller, and Jeffrey Paul (Cambridge: Cambridge UP, 2011), 92.

²⁵⁶ Gaus, “The Property Equilibrium in a Liberal Social Order” 96.

For these reasons, Gaus (like Tomasi) rejects libertarianism in favor of the classical liberal vision: “Certainly, the classical liberal’s acceptable range must be based on recognition that there are many acceptable property practices, and that most (perhaps all) of these will include transfer payments.”²⁵⁷ Gaus continues, “Classical liberals are rightly impressed by market processes, and as citizens they appropriately urge employing them on a wide variety of fronts. But they must also recognize that these are typically controversial claims, based both on a certain weighing of a specific set of values and uncertain empirical evidence.”²⁵⁸ The classical liberal framework will thus allow room for forms of redistribution in addition to securing thick economic liberty. This is how Gaus blends the Rawlsian normative framework with Hayekian-type classical liberal economic institutions.²⁵⁹

4.5. The Contestability of the Decentralizing Response

But when Gaus commits himself to finding a “moral equilibrium,” he commits himself to finding and articulating some set of moral principles that are shared in

²⁵⁷ Gerald Gaus, “The Range of Justice (Or, How to Retrieve Liberal Sectual Tolerance),” 10 October 2012, accessed 25 October 2012, <http://www.cato-unbound.org/2011/10/10/gerald-gaus/range-justice-or-how-retrieve-liberal-sectual-tolerance>.

²⁵⁸ Gaus, “The Range of Justice.”

²⁵⁹ For a further elaboration of these views, also see Gerald Gaus and Loren Lomasky, “Are Property Rights Problematic?”, *The Monist* 73, no. 4 (October 1990). Others have written on the connections between Rawls’ high liberal normative framework and Hayek’s classical liberal institutions. See Robert Sugden, “Normative Judgments and Spontaneous Order: The Contractarian Elements in Hayek’s Thought,” *Constitutional Political Economy* 4, no. 3 (Fall 1993); Will Wilkinson, “Market Democracy and Dirty Ideal Theory,” 15 June 2012, accessed 8 August 2013, <http://bleedingheartlibertarians.com/2012/06/market-democracy-and-dirty-ideal-theory/>; Andrew Lister, “The ‘Mirage’ of Social Justice: Hayek Against (and For) Rawls,” *Critical Review* 25, no. 3-4 (2013). For a debate about the compatibility of Rawls and Hayek, see Arthur DiQuattro, “Rawls and Left Criticism,” *Political Theory* 11, no. 1 (February 1983); Lawrence Connin, “On DiQuattro, ‘Rawls and Left Criticism,’” *Political Theory* 13, no. 1 (February 1985); and Arthur DiQuattro, “Rawls versus Hayek,” *Political Theory* 14, no. 2 (May 1986). Also see Hayek’s own thoughts on his relationship to Rawls’ thought in the preface to F.A. Hayek’s *The Mirage of Social Justice*, vol. 2 of *Law, Legislation, and Liberty* (Chicago: University of Chicago Press, 1976).

common. I have tried to show that this common ground is lacking in the domain of economic justice. So while Gaus hopes that his decentralizing response is an acceptable response to pluralism, it seems clear that our deep pluralism of views about economic justice will undermine the acceptability of Gaus' decentralizing response. It is to this question to which I now turn: to what extent is Gaus' classical liberal vision a compelling internal critique of Rawls' high liberalism?

First, I will evaluate Gaus' assessment of the *centralizing response*. The centralizing response appeals to many people. Deliberative democrats view democratic decision making as the appropriate strategy for securing social cooperation in a great many social and economic domains. Many people are attracted to this more participatory paradigm according to which most (possibly all) human associations are to be organized through participatory democratic deliberation and decision making.²⁶⁰ What are some of the problems with this view?

The centralizing approach indeed can often underestimate the depth and persistence of disagreement. Deliberative democrats often assume that our beliefs are relatively malleable, and thus they assume that the process of deliberation can be reliably counted upon to convert our *ex ante* pluralism into *ex post* consensus. This assumption is not benign – it can have dangerous consequences. In those areas where our disagreement is deepest, and deliberation does not lead to consensus, then deliberation must end with a vote, after which the losing minority is forced to conform to the majority's decision. In these cases, perhaps the decentralizing response would have been most appropriate,

²⁶⁰ This sentiment is nicely captured by John Dewey's notion of "democracy as a way of life." See John Dewey, *The Public and its Problems* (Athens, OH: Ohio UP, 1927). For a well-known critique of Dewey's "democracy as a way of life," see Robert Talisse, "A Farewell to Deweyan Democracy," *Political Studies* 59, no. 3 (October 2011); and Robert Talisse, *A Pragmatist Philosophy of Democracy* (New York: Routledge, 2007). This issue is taken up in more detail in chapter V.

defusing the deep disagreement by allowing all parties to retreat to the private sphere where they would be free to act on their preferences undisturbed by the preferences of the majority. Using the jargon of public choice theory, centralizing responses can have high “external costs,” namely, costs imposed on the losing minority, and the higher these costs are, the more likely that people will insist on decentralizing solutions.²⁶¹

For these reasons, Gaus suggests that the problem of pluralism should lead us to be wary of the “liberty of the ancients,” and to instead be inclined to favor decentralizing responses. This argument is convincing in many ways. So what, then, are some of the concerns and problems with the decentralizing response? I can image two possible kinds of objections. On the one hand, some citizens in some cases may find the decentralizing response to be inherently morally objectionable. Take the example of the school choice movement in the United States, which offers a decentralizing response to our disagreements about education. For school choice advocates, all parents should be given a voucher that would allow them to choose the kind of school to send their children – public or private, secular or religious, etc. This would help us de-politicize the curriculum by allowing different schools to teach different things. Some schools can teach Howard Zinn’s *Peoples’ History of the United States*, while others can choose not to. Some schools can teach progressive sex education, while others can choose to advocate more traditional messages about sex and marriage. Some schools can include intelligent design in their science classes, while others can just teach Darwinian evolution. Everyone gets to choose a school for their child that mirrors their own values.

This classical liberal solution secures unanimity without conformity.²⁶²

²⁶¹ See Buchanan and Tullock, *The Calculus of Consent*, 44-46.

²⁶² This position is defended in Neal McCluskey, “Why We Fight: How Public Schools Cause Social Conflict,” *Policy Analysis* 587 (January 2007). McCluskey points out seven controversial topics that

However, many people find school choice to be objectionable, because internal to their own value systems is a commitment to the idea that all American children be educated with similar content so as to produce adult citizens with common values, prepared for responsible citizenship. The public-ness and society-wide conformity of the educational process is seen as inherently valuable. Many people are not content with the thought that, for example, their own child is being taught good Darwinian science while their neighbor is being taught (in a different school) what is often considered religious dogma disguised as science. Many people are not content with the thought, for example, that their child is being taught a certain kind of sex education while other children are not. For some people, it is important that *all* children are taught material that mirrors some common set of values. The fact that these values are contested and controversial is not sufficient to convince certain people of the merits of the decentralizing response.

Is the insistence on a centralizing response for education necessarily authoritarian and oppressive? I think not. Indeed, almost everyone would object to a *completely* decentralizing response to education. Imagine if some parents could choose to put their children in an all-white school, or one that taught explicitly white supremacist history. Even if there were no public funding going to these schools, most people would want the government to prohibit them. That is, many reasonable people demand a centralizing response vis-à-vis the issue of segregated schooling (namely, we want to coercively

could be defused by using school vouchers to let parents select schools for their children that better matched their values, which include: intelligent design, freedom of expression, book banning, multiculturalism, mandated integration vs. self-determination, sex education, homosexuality, and religion. He concludes, "Indeed schooling driven by choice is the *only* education system that is truly consonant with liberty because it lets individuals—rather than government—make their own educational choices. Imposing 'democracy' through government-run schooling, in contrast, is inherently authoritarian ... If public education were driven by free parental choice, it could escape the Balkanizing battles that plague our current system, because individual parents could choose schools that comport with their values, and there would be no need to fight over public schools for which they must pay, but only the most politically powerful can control" (15-16).

prohibit certain kinds of segregated schools). But some reasonable people want a decentralizing response vis-à-vis the curriculum content (among other things), while others do not. For those who do not, Gaus' proposal of "dividing social life into different jurisdictions" would not be deemed appropriate for issues related to education. And it seems clear that those who prefer centralizing responses are not necessarily unreasonable or authoritarian.²⁶³

Additionally, some people object to the decentralizing response because sometimes the long-term effects of decentralized decision making can eventually become a public concern. I now turn more directly to the issue of property rights. While many people agree that some economic liberty is important and agree that collectivist economic planning is undesirable (a position shared by high liberals and classical liberals alike), many people also have moral objections to the patterns of inequality that emerge over time in relatively free markets. Even if every particular transaction is just, the resultant inequalities may reasonably be deemed unjust by some citizens. For Nozick's historical entitlement theory of justice, of course, this objection is illegitimate – if all transactions are just at the micro level, then the distribution is therefore just at the macro level. For many reasonable people, however, it is not. The moral unacceptability of emergent large economic inequalities is deeply intuitive to some people. Gaus recognizes this, and is thus conflicted about the appropriateness of private property rights as a justified solution to the problem of pluralism. He reveals his ambivalence when he notes,

Certainly the history of twentieth century philosophy and, indeed, politics, reveals that the overwhelming majority of political philosophers,

²⁶³ For an extended and thoughtful discussion that explicitly brings Rawlsian political liberalism to bear on the issue of school choice, see Harry Brighouse, *School Choice and Social Justice* (New York: Oxford UP, 2000).

economists, and citizens have held that anything approaching a laissez-faire market system is unjustifiable to the disadvantaged. On the other hand, I think ... we have compelling grounds for concluding that rules of private property are essential for living together in a peaceful and mutually beneficial way. But there is a wide range of reasonable views about what those rules should be. The rules of property are both the source of a mutually beneficial social life, and a source of social and moral disagreement. Different property practices—different rules of the game—are endorsed by different reasonable persons.²⁶⁴

Thus, when they are deliberating about and selecting principles of economic justice, Gaus accepts that Members of the Public will consider the likely economic distributions corresponding to each proposed economic regime, and the least advantaged group will reasonably demand a distribution that treats them justly: “Many [Members of the Public] could not possibly evaluate and rank schemes of private ownership unless they know their distributive implications: for many members of the public these issues are tightly bound together.”²⁶⁵ In other words, for some people decentralized private decision making is not inherently problematic, but the long-term effects of this decentralized economic regime may be problematic, and these effects may at some point trigger the need for centralized democratic decision making (e.g. for redistributive policies to correct for inequality).²⁶⁶

²⁶⁴ Gerald Gaus, “On the ins and outs of public reason,” 18 October 2012, accessed 25 October 2012, <http://www.cato-unbound.org/2011/10/18/gerald-gaus/ins-outs-public-reason>.

²⁶⁵ Gerald Gaus, “Coercion, Ownership, and the Redistributive State,” *Social Philosophy and Policy* 27, no. 1 (January 2010): 20.

²⁶⁶ For an influential recent account documenting the data and trends of economic inequality, see Thomas Piketty, *Capital in the Twenty-First Century*, trans. Arthur Goldhammer (Cambridge, MA: Belknap

Gaus may be correct that a presumption in favor of decentralized private decision making is a desirable strategy for achieving stability in the midst of deep pluralism. Gaus is right to criticize the deliberative democrats who fetishize the process of democratic deliberation and who deem it to be the optimal strategy for securing social cooperation across all domains of social life. This totalizing democratic urge is indeed a recipe for sharpened conflict and unending instability, and it will likely be rejected by reasonable people for these reasons. If we are considering practical questions of political stability, clearly the decentralizing response is often superior. We all now see the wisdom in privatizing our religious views following the Reformation and the Wars of Religion. Very few people want to bring religious belief back under the umbrella of public democratic decision making. With religious belief, “(association-wide) unanimity without (society-wide) conformity” has been the clear route to stability. But this is an easy case. As Rawls correctly notes, liberty of conscience is one of our core considered convictions, and it commands a strong overlapping consensus in modern liberal democracies among religious and non-religious citizens alike. However, in many other cases, the legitimacy of the decentralizing response is reasonably contested. Internal to some reasonable peoples’ values is a concern with what other people do. Not many people feel inclined to use state power to impose their religious worldview on their fellow citizens. But many reasonable people do, in fact, feel inclined to impose their views about educational curriculum on their fellow citizens. Or their views about health care. Or their views about fairness when it comes to economic distributions.

Press, 2014). For an explication and critique of the political philosophy underlying Piketty's analysis, see Kevin Vallier's five posts on the *Bleeding Heart Libertarians* blog (“Thomas Piketty's Problematic Political Philosophy” Parts I-V: “Normative Arguments,” “Inequality and Social Stability,” “Inequality and the Common Utility,” “Inequality and Transparency,” and “The Democratic Control Argument.”). For a related discussion of the moral issues surrounding economic inequality, see Will Wilkinson, “Thinking Clearly about Economic Inequality,” *Policy Analysis* no. 640 (June 2009).

How we divide the public from the private (that is, which issues are decided through centralized political decision making and which issues are decided through decentralized private decision making) is a fundamental and unresolved debate within the liberal tradition. We disagree about when forced society-wide conformity is *legitimate*, and when it is *oppressive*. We not only disagree, but we disagree about the means by which to overcome unresolved disagreements. Decentralization is a widely agreed upon response to certain forms of pluralism (like religious pluralism), but for other issues (especially issues concerning economic liberty and economic equality), the privatization strategy must be recognized as nothing more than one partisan position among others.

As I have shown, the new classical liberal strand of political liberalism attempts to show that strong property rights and limited government can be a non-sectarian and reasonable solution the problem of pluralism, since this solution follows the broadly liberal strategy of devolving power and privatizing decisions in order to avoid the conflicts inherent in collective decision making in the context of deep pluralism. However, I have argued that this solution is, indeed, controversial, since it is actually one partisan position in the conflict (among others) and not an obviously correct solution to the conflict. It must be realized that thick economic liberty is a reasonable, although very controversial (and reasonably rejectable) position.

5. Nozick's Changing Views on Pluralism and Property

It is now worth returning to the work of Robert Nozick from a new angle. Nozick argues, in part 3 of *Anarchy, State, and Utopia*, that the privatization strategy is the only reasonable solution to pluralism, even in the case of economic justice. Strong private

property rights are deemed to be *uniquely* reasonable. However, Nozick later came to recognize this position as flawed, for reasons mirroring the thesis of this chapter: reasonable people disagree deeply about the nature of economic justice, and they furthermore reasonably disagree about how to resolve that disagreement. Nozick finally came to accept this pluralism-all-the-way-down in his later essay “The Zigzag of Politics,” which encompasses a number of important insights about the nature and consequences of deep pluralism. I will first lay out his argument for strong private property rights in *Anarchy, State, and Utopia* before going on to explain his turn-around in “The Zigzag of Politics.”

5.1. Pluralism and Property in *Anarchy, State, and Utopia*

In *Anarchy, State, and Utopia*, Nozick famously defends a libertarian theory of justice that contains three principles of justice: justice in *acquisition* (basically Lockean labor-mixing and the Lockean proviso), *transfer* (basically informed consent as a sufficient condition for just transfers), and *rectification* (the correction of past injustices).²⁶⁷ This theory of justice (called the “historical entitlement theory”) entails a minimal state that basically only serves as a monopolistic protection agency for a given territory. Nozick argues that this minimal state represented a utopia of sorts – or rather, a meta-utopia. He explains,

Utopia will consist of utopias, of many different and divergent communities in which people lead different kinds of lives under different institutions. Some kinds of communities will be more attractive to most than others; communities will wax and wane. People will leave some for

²⁶⁷ Nozick, *Anarchy, State, and Utopia*, 208.

others or spend their whole lives in one. Utopia is a framework for utopias, a place where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no one can *impose* his own utopian vision upon others. The utopian society is the society of utopianism ... [U]topia is meta-utopia: the environment in which utopian experiments may be tried out; the environment in which people are free to do their own thing; the environment which must, to a great extent, be realized first if more particular utopian visions are to be realized.²⁶⁸

In other words, a truly utopian society must be one that itself makes room for a large variety of private associations in which individuals are free to try to build and live out their own utopian aspirations, and in which people are permitted to freely enter and exit the communities of others. Only within the context of freely formed private associations can people try to create communities that fully realize and reflect their deepest ideals and interests. Private associations can aspire to utopia, while the state should only be a meta-utopian framework securing and protecting the freedom of association.²⁶⁹

Why should the state *not* aspire to embody utopia? Here Nozick concurs (in some sense at least) with Rawls: the fact of reasonable pluralism. People have such diverse ideals and interests that no large-scale state could ever do justice to them all, and if it

²⁶⁸ Nozick, *Anarchy, State, and Utopia*, 312.

²⁶⁹ This idea finds a loose parallel in Rawls, who insists that the well-ordered society is not a “community,” since the well-ordered society “has no final ends and aims in the way that persons or associations do” (*Political Liberalism*, 41). The state imposes no comprehensive conception of the good on its citizens, but only creates the conditions in which individuals (through private associations) develop and live out their own comprehensive set of values. The difference, of course, is that for Rawls, this requires that the state impose and maintain a particular conception of economic justice. For Nozick, on the other hand, the state takes no position in the debates about economic justice, and instead permits each community to embody whatever conception of economic justice it prefers.

tried to, it would inevitably be seen as oppressive. Nozick describes our situation of deep pluralism: “[P]eople are different. They differ in temperament, interests, intellectual ability, aspirations, natural bent, spiritual quests, and the kind of life they wish to lead. They diverge in the values they have and have different weightings of the values they share.”²⁷⁰ He offers as a trivial example, “They wish to live in different climates—some in mountains, plains, deserts, seashores, cities, towns.”²⁷¹ Thus, “There is no reason to think that there is *one* community which will serve as ideal for all people and much reason to think that there is not.”²⁷² He then illustrates his point in a memorable passage meant to highlight the deep diversity and pluralism of values between people:

Wittgenstein, Elizabeth Taylor, Bertrand Russell, Thomas Merton, Yogi Berra, Allen Ginsburg, Harry Wolfson, Thoreau, Casey Stengel, The Lubavitcher Rebbe, Picasso, Moses, Einstein, Hugh Heffner, Socrates, Henry Ford, Lenny Bruce, Baba Ram Dass, Gandhi, Sir Edmund Hillary, Raymond Lubitz, Buddha, Frank Sinatra, Columbus, Freud, Norman Mailer, Ayn Rand, Baron Rothschild, Ted Williams, Thomas Edison, H.L. Mencken, Thomas Jefferson, Ralph Ellison, Bobby Fischer, Emma Goldman, Peter Kropotkin, you, and your parents. Is there really *one* kind of life which is best for each of these people? Imagine all of them living in any utopia you’ve ever seen described in detail. Try to describe the society which would be best for all of these persons to live in.²⁷³

²⁷⁰ Nozick, *Anarchy, State, and Utopia*, 309-310.

²⁷¹ Nozick, *Anarchy, State, and Utopia*, 310.

²⁷² Nozick, *Anarchy, State, and Utopia*, 310.

²⁷³ Nozick, *Anarchy, State, and Utopia*, 310.

If the state tries to itself embody and impose utopia, it will inevitably have to privilege the ideals and interests of certain citizens over others (Rawls would call this “the fact of oppression”²⁷⁴). As Ralf Bader puts it, “Any institutional structure that is more extensive than the minimal state will fail to be neutral and will privilege certain views of utopia.”²⁷⁵

From here, though, Nozick draws an interesting conclusion. Since the fact of pluralism seems to clearly characterize our situation, and since the state choosing sides seems to clearly lead to oppression, Nozick argues that the state *must* content itself with being a limited, libertarian state. Thus, the ideal political arrangement consists in *one* political conception of justice regulating the practice of *many* conceptions of the good life. The assumption is that reasonable people will *agree* about justice (the libertarian historical entitlement view), while reasonable people will *disagree* about the good life (thus they will agree to devolve decisions about the good life to private associations). This is structurally similar to the position developed by Rawls in *A Theory of Justice*, where he argues that “justice as fairness” is the uniquely reasonable principle of justice for a society otherwise characterized by a pluralism of conceptions of the good life.²⁷⁶

How can Nozick claim that the libertarian conception of justice is uniquely preferable to alternative conceptions of justice? He argues that the libertarian political framework is, in the words of Bader, the “maximal institutional structure that is in principle compatible with the complete satisfaction of the maximal non-arbitrary set of

²⁷⁴ Rawls, *Political Liberalism*, 36-37.

²⁷⁵ Ralf Bader, “The Framework for Utopia,” in *The Cambridge Companion to Nozick's Anarchy, State, and Utopia* (New York: Cambridge UP, 2011), 267.

²⁷⁶ Indeed, this structure – agreement about justice, disagreement about the good – is common to a great deal of political philosophy in the post-Reformation West.

preferences that are in principle co-satisfiable.”²⁷⁷ To put it more simply, the libertarian minimal state is the only political structure that can accommodate all the diverse and conflicting conceptions of the good life that people might choose to pursue. How, then, does Nozick respond to the egalitarian socialist who would say something like the following: “But your minimal state does not actually accommodate my ideals. My ideals require a larger-than-minimal state that will constantly redistribute wealth so as to guarantee economic equality across society. I thus experience the minimal state as oppressive.” In response to this objection, Nozick needs to invoke some kind of distinction between “reasonable” and “unreasonable” persons/beliefs (to use Rawlsian terminology).

To this end, Nozick distinguishes between three kinds of ideals: existentialist, missionary, and imperialistic. He argues that existentialist and missionary ideals are reasonable, while imperialistic ideals are unreasonable. What do these terms mean? Existentialists are unconcerned about how others live, as long as the existentialists are permitted to live out their own ideals in the private sphere. They are indifferent toward the choices and beliefs of others. Because of this, they have no interest in enlisting state power to force their views on others. Missionaries, on the other hand, want everyone in society (perhaps everyone in the world) to share the missionaries’ particular ideals, but they are committed to spreading these ideals through nonviolent moral suasion. While they care intensely about the choices and beliefs of others, the missionaries refuse to resort to coercion in their activities. They will not, in other words, try to enlist state power to enforce their values. Imperialists, however, share with the missionaries a concern with the activities of others, but unlike the missionaries they are willing to use

²⁷⁷ Bader, “The Framework for Utopia,” 283.

coercion to impose their ideals upon others. However, this coercion is not permitted in a libertarian meta-utopia, since it involves the violation of Lockean rights. Imperialists are permitted to form their own private association and peacefully practice their ideals together, but they are not permitted to use force to spread their message. Bader notes, “it is perfectly acceptable for there to be an imperialistic community that has imperialistic ambitions but does not act upon them.”²⁷⁸ But this would clearly violate the very core of the imperialists’ worldview, which dictates that their ideals must be practiced by all, even if coercion is required to make it happen. Indeed, if the imperialists formed a community without resorting to imperialistic coercion, this would turn the imperialists into missionaries.

So Nozick recognizes that his libertarian meta-utopia will *not* accommodate the imperialists, but this does not bother him. The existentialists and missionaries are “reasonable” citizens, while the imperialists are “unreasonable.” And justice need not accommodate unreasonable demands. Given the libertarian theory of justice, the complaints and frustrations of the imperialists are not a mark against the justice of the minimal state. The minimal state is able to accommodate the most expansive set of conceptions of the good, as long as they are non-imperialistic. This set of non-imperialistic views to be accommodated can be thought of as “self-regarding first-order preferences,” and, as Bader puts it, “What makes the minimal state special is that its ideals are compatible with all self-regarding first-order preferences.”²⁷⁹ The minimal state allows everyone to live out their ideals, as long as those ideals do not require using

²⁷⁸ Bader, “The Framework for Utopia,” 269.

²⁷⁹ Bader, “The Framework for Utopia,” 270. This terminology is slightly confusing, since missionaries clearly are “other-regarding” in the sense that they care about the actions and beliefs of others and hope to convert them. But they are “self-regarding” in the sense that they are not willing to use force against any other people or communities in their missionary projects.

coercion on others. Again, the minimal state permits everyone to pursue their own conception of the good within the context of their private association. But, importantly, “other-regarding preferences and preferences regarding meta-associations are not always satisfied,” because the libertarian framework “allows people to choose their ideal association, but it does not allow them to choose their meta-association.”²⁸⁰ The other-regarding preferences of the imperialist are not accommodated since coercion is ruled out (although the peaceful other-regarding preferences of the missionary are of course accommodated). While non-libertarians are permitted to form their own socialist communes (with free exit rights for all members), they are not permitted to change the libertarian meta-utopian framework into a socialist state.

For Nozick, then, libertarianism is uniquely preferable to socialism because a libertarian state would permit the existence of voluntary socialist communities (with shared property, equal remuneration, and shared work) to exist within its borders, while a socialist state could not allow libertarian communities (with strong private property in capital assets and free exchange) to exist within its borders. Brennan echoes this point that there is an “essential asymmetry between the capitalist and the socialist visions of utopia,” namely, “Capitalists allow socialism, but socialists forbid capitalism. Capitalism permits people to own property individually, but is also permits them to own it collectively. In contrast, socialism forbids people from owning property individually, and only allows them to own it collectively.”²⁸¹ So while state socialism is ruled out as unjust, non-imperialistic (missionary or existentialist) voluntary socialism is perfectly acceptable.

²⁸⁰ Bader, “The Framework for Utopia,” 270.

²⁸¹ Brennan, *Why Not Capitalism?*, 95.

Nozick, however, recognizes why most socialists will find this proposal unacceptable: it is hard to build socialism on large scales without enlisting state coercion. Nozick argues that the Israeli kibbutzim provide a good example of what this “voluntary socialism” would look like in a libertarian meta-utopia.²⁸² He notes that the kibbutzim example does not bode well for voluntary socialism, since less than ten percent of Ashkenazi Jews choose to join a kibbutz (the rest preferring less socialistic alternatives). Nozick concludes from this example,

Surely this minority should everywhere be allowed to do this, joining together with other like-minded people to live according to their desires. (It is a virtue of a free system that it allows minority preferences to be satisfied, just as a free market caters *also* to minority tastes – for example, for recordings of Renaissance music or of chassidic songs.) Furthermore, this minority may try to persuade the rest of us of the superior virtues of their ideal. But that’s all. They may not force the rest of us to live that way. We can understand, though, why they might be tempted to do so. In that setting *most* conducive to the free acceptance of socialist ideals, with the most attractive and respected socialist communities and the most receptive population, only nine percent (as a *generous* estimate) would choose to live that way. The prospects, therefore, are dim for

²⁸² Another arguably real-world case of the Nozickian utopia is “charter cities,” which are cities within nations that operate according to their own legal rules and institutions, thus offering the citizens of those nations more choices (and exit options), and generating competition between cities to best fulfill the desires of their potential inhabitants. See Paul Roemer, “Why the World Needs Charter Cities,” *TED*, July 2009, accessed 10 March 2014, http://www.ted.com/talks/paul_romer?language=en.

interpersonal socialism's coming anywhere voluntarily. As Israel shows us, there won't be enough volunteers.²⁸³

Thus, Nozick recognizes that most socialists (and egalitarians generally) will reject the libertarian meta-utopia since it will prevent them from realizing their conception of justice. But Nozick, in *Anarchy, State, and Utopia*, does not recognize this objection as reasonable.²⁸⁴

Nozick's libertarian conception of justice can only be seen as uniquely reasonable if all imperialistic other-regarding preferences are deemed unreasonable. Bader summarizes, "a situation in which everyone's preferences are satisfied is in principle only possible if we restrict our focus to self-regarding first-order preferences, that is, preferences about the association of which one is a member."²⁸⁵ This requires, then, that "other-regarding preferences as well as preferences about meta-associations must be excluded since they are not in principle co-satisfiable, that is, these preferences are such

²⁸³ Robert Nozick, *Socratic Puzzles* (Cambridge, MA: Harvard UP, 1997), 279.

²⁸⁴ A similar point is made by Gaus, who considers the complaint "We cannot have what we value if the others act on what they value, since our option will be insufficiently popular, so we must inhibit people from going over to our competitors" (*The Order of Public Reason*, 380). Gaus discusses this in the context of the prevalence of hierarchical capitalist firms in capitalist societies. Certain egalitarians would like to abolish (or radically restructure) the firm as it exists today in capitalistic countries. However, firms develop hierarchically because, in utilizing the division of labor, specialization, and differentially priced positions, they are able to make huge efficiency gains that benefits each of the firm's workers (and consumers) relative to feasible institutional alternatives. (For the economic theory behind this position, see Ronald Coase, "The Nature of the Firm," *Economica* 4, no. 16. [November 1937]). For Gaus, the demands of the egalitarian "cannot be honored in a free society," since "they seek to inhibit competing ways of life in the name of a rationally controversial evaluative standard" (*The Order of Public Reason*, 380). This follows from a basic commitment: "people need not justify acting on their own evaluative standards; in contrast, projects and plans that can only succeed by limiting others from acting as they see fit require justification" (*The Order of Public Reason*, 381). In a recent article entitled "The Egalitarian Species," accessed 2 March 2013, <http://www.gaus.biz/EgalitarianSpecies.pdf>, Gaus seems more receptive to the egalitarian's protest, recognizing that our evolved moral sentiments of freedom, equality, and fairness "sit uneasily with the values on which the hierarchical firm rests" (29).

²⁸⁵ Bader, "The Framework for Utopia," 271.

that satisfaction of one of them precludes satisfaction of many others.”²⁸⁶ The libertarian meta-utopia is capable of accommodating all reasonable believers and beliefs – existentialist and missionary – but it frustrates, as Nozick thinks it should, those imperialists who would seek to use force to impose their ideals upon others. So utopian communities come and go, but the libertarian meta-utopia remains in place. Conceptions of the good are many and diverse, just as people are, but there is one and only one reasonable conception of justice. But this view, Nozick came to realize, is subject to many of the same problems of political liberalism that I have reviewed above.

5.2. Pluralism and Property in “The Zigzag of Politics”

Nozick’s politics changed (somewhat) throughout his life, and much has been written about this.²⁸⁷ What I will focus on here is the way in which Nozick’s “meta-politics” changed – that is, the way in which his views about the *nature of politics* changed. The minimal state of *Anarchy, State, and Utopia* does not have much room for “politics,” in the colloquial sense of exercising political power through democratic mechanisms. Indeed, it is not clear that Nozick’s libertarian meta-utopian minimal state features politics *at all*. In *Anarchy, State, and Utopia*, Nozick argues that democratic collective rule conflicts with strong libertarian rights, because democratic institutions basically make everyone a “part-owner of each other person,” while libertarian rights imply complete self-ownership.²⁸⁸ Democracy legitimizes the coercive imposition of

²⁸⁶ Bader, “The Framework for Utopia,” 271.

²⁸⁷ For a controversial and widely-read argument concerning Nozick's falling away from libertarianism, see Stephen Metcalf, “The Liberty Scam: Why even Robert Nozick, the Philosophical Father of Libertarianism, Gave up on the Movement he Inspired,” 20 June 2011, accessed 18 January 2013, http://www.slate.com/articles/arts/the_dilettante/2011/06/the_liberty_scam.html.

²⁸⁸ Nozick, *Anarchy, State, and Utopia*, 286.

policies upon dissenters, which is impermissible according to the libertarian theory of justice. In other words, in a democracy, a winning majority gets to push around the losing minority. In a libertarian minimal state, no one gets to push anybody around.

But in his later essay “The Zigzag of Politics” (in *The Examined Life*), Nozick takes a very different tack. In the opening paragraph of the article, Nozick criticizes some of the assumptions he made in *Anarchy, State, and Utopia*. He writes that *Anarchy, State, and Utopia*

neglected the symbolic importance of an official political concern with issues or problems, as a way of marking their importance or urgency, and hence of expressing, intensifying, channeling, encouraging, and validating our private actions and concerns toward them. Joint goals that the government ignores completely... tend to appear unworthy of our joint attention and hence to receive little. There are some things we choose to do together through government in solemn marking of our human solidarity, served by the fact that we do them together in this official fashion and often also by the content of the action itself.²⁸⁹

He goes on, “The complete absence of any symbolic public expression and marking of caring and solidarity would leave the rest of us bereft of a society validating human relatedness.”²⁹⁰ If we eliminated those things that we do jointly through the state, we might very well (for example) leave many people in desperately miserable situations, and “this would leave the rest of us ashamed at our society.”²⁹¹ The libertarian objector might

²⁸⁹ Nozick, *The Examined Life*, 287.

²⁹⁰ Nozick, *The Examined Life*, 289.

²⁹¹ Nozick, *The Examined Life*, 289.

urge us to stop identifying with this fictitious “society,” which would prevent us from feeling this sense of shame. But, for Nozick, this disavowal of our social identity is unthinkable: “This cost is too great.”²⁹²

There is much that could be said about these statements. But here I will focus on how Nozick’s comments in “The Zigzag of Politics” relate to his views about the libertarian meta-utopia in *Anarchy, State, and Utopia*. To put it simply, by the time Nozick writes “The Zigzag of Politics,” he had dropped his uncompromising opposition to “imperialism.” That is, Nozick came to believe that a just political system should not merely accommodate self-regarding first-order preferences, but it should also accommodate (some) other-regarding preferences as well as (some) preferences about the political structure itself. Bader inquires about “why [Nozick in *Anarchy, State, and Utopia*] privilege[s] the self-regarding preferences of non-imperialists over the other-regarding preferences of imperialists,” and suggests that in *Anarchy, State, and Utopia* Nozick simply thought that “their inclusion [the preferences of the imperialists] would contravene the co-satisfiability criterion.”²⁹³ That is, almost *all* self-regarding first-order preferences can be jointly satisfied in individualized private associations, whereas this is not always the case with other-regarding preferences and preferences about the political structure, which often clash in a zero-sum fashion. But in “The Zigzag of Politics,” Nozick definitively rejects this strict privileging of self-regarding first-order preferences: “There are many sides of ourselves that seek symbolic self-expression, and even if the personal side were to be given priority, there is no reason to grant it sole sway.”²⁹⁴

²⁹² Nozick, *The Examined Life*, 289.

²⁹³ Bader, “The Framework for Utopia,” 272.

²⁹⁴ Nozick, *The Examined Life*, 287.

So in “The Zigzag of Politics,” Nozick permits other-regarding preferences and preferences about the political structure to be part of politics. But the Nozick of *Anarchy, State, and Utopia* was right about one thing: if we want politics to accommodate these preferences, then we should expect some level of political turmoil to indefinitely characterize our political lives, since peoples' various views about political justice often clash in sharp ways. This larger set of preferences cannot all be satisfied at once. In “The Zigzag of Politics,” Nozick accepts this reality: “Let us suppose that there are multiple competing values that can be fostered, encouraged, and realized in the political realm ... Not all of these worthy goals can be pursued with full energy and means, and perhaps these goals are theoretically irreconcilable also, in that not all good things can be adjusted together into a harmonious package.”²⁹⁵ Clearly, once we let other-regarding preferences and preferences about the political structure into politics, things get messy.

²⁹⁵ Nozick, *The Examined Life*, 292. Nozick lists some of the “multiple competing values” that he has in mind: “liberty, equality for previously unequal groups, communal solidarity, individuality, self-reliance, compassion, cultural flowering, national power, aiding extremely disadvantaged groups, righting past wrongs, charting bold new goals (space exploration, conquering disease), mitigating economic inequalities, the fullest education for all, eliminating discrimination and racism, protecting the powerless, privacy and autonomy for its citizens, aid to foreign countries, etc.” (*The Examined Life*, 292). Rawls briefly criticized this kind of intuitionistic pluralism in *A Theory of Justice*: “Now there is nothing intrinsically irrational about this intuitionist doctrine. Indeed, it may be true. We cannot take for granted that there must be a complete derivation of our judgments of social justice from recognizably ethical principles. The intuitionist believes to the contrary that the complexity of the moral facts defies our efforts to give a full account of our judgments and necessitates a plurality of competing principles. He contends that attempts to go beyond these principles either reduce to triviality, as when it is said that social justice is to give every man his due, or else lead to falsehood and oversimplification, as when one settles everything by the principle of utility. The only way therefore to dispute intuitionism is to set forth the recognizably ethical criteria that account for the weights which, in our considered judgments, we think appropriate to give to the plurality of principles. A refutation of intuitionism consists in presenting the sort of constructive criteria that are said not to exist” (34-35). My argument in this and the previous chapter suggests that, when it comes to matters of economic justice (and possibly other domains of justice), Rawls failed to convincingly develop a “constructive criteria” that would help us weigh and prioritize competing values and claims. As Rawls recognizes, in the absence of such a criterion, we are forced into the kind of intuitionistic balancing of plural and competing values that Nozick defends in “The Zigzag of Politics.”

How, then, are we to choose from among this set of irreconcilable values and ideals which ones we want to strive for through “official joint action”?²⁹⁶ This is where the “zigzag” comes in. Almost every political philosopher invariably wants society to implement her preferred conception of justice (including her preferred conception of economic justice) – whether it be Rawls’ “justice as fairness” or Nozick’s “historical entitlement theory.” The *voters*, however, have other ideas. Nozick notes, “The electorate wants the zigzag. Sensible folk, they realize that *no* political position will adequately include all of the values and goals one wants pursued in the political realm, so these will have to take turns.”²⁹⁷ While the partisan political philosopher bemoans the zigzag, Nozick insists, “The voters know what they are doing.”²⁹⁸ As time goes on, problems change, policies are successful or not, preferences change, etc., and with these changes, new values, and new prioritizations of values, become appropriate.

Nozick describes the point of view of the electorate: “Goals and programs have been pursued for some time by the party in power, and the electorate comes to think that’s far enough, perhaps even too far.”²⁹⁹ When this time comes, “It’s now time to right the balance, to include other goals that have been, recently at least, neglected or given too low a priority, and it’s time to cut back on some of the newly instituted programs, to reform or curtail them.”³⁰⁰ Instead of holding up the “non-imperialists” as exemplars

²⁹⁶ Nozick, *The Examined Life*, 298.

²⁹⁷ Nozick, *The Examined Life*, 295.

²⁹⁸ Nozick, *The Examined Life*, 292. This respect for the voter expressed by Nozick here clashes with the skepticism many classical liberals have about voting in general. See Caplan, *The Myth of the Rational Voter*; and Somin, *Democracy and Political Ignorance*.

²⁹⁹ Nozick, *The Examined Life*, 294.

³⁰⁰ Nozick, *The Examined Life*, 294.

(like he did in *Anarchy, State, and Utopia*), Nozick now holds up the “unfanatical” and “modest” citizen:

we each should be unfanatical enough to admit that after *some* time it would be appropriate for society to shift to energetically pursuing goals other than the ones we currently most favor, and we should be modest enough to think that deciding when that time has come, and what the balance currently should be among worthy goals that cannot all be combined or pursued energetically together, is not something that should be decided by any one person alone, ourselves included.³⁰¹

Nozick concludes the essay memorably: “given a choice between permanently institutionalizing the particular content of any group of political principles thus far articulated... and the zigzag process of democratic politics, one where the electorate can have been presented with those same principles too among others, I’ll vote for the zigzag every time.”³⁰²

There is something profound in Nozick’s vote for the zigzag. It represents Nozick embracing an epistemic humility too often absent from political philosophy. The political philosopher often wants to be able to describe the nature of justice, after which her society can implement and institutionalize it (for an indefinite length of time). After all, once we figure out the nature of justice, why wouldn’t we implement it, once and for all? Nozick wanted to do this in *Anarchy, State, and Utopia*, and Rawls wanted to do this in *A Theory of Justice*. In both “justice as fairness” and the “historical entitlement theory,” there is a recognition that reasonable people disagree deeply and persistently about the

³⁰¹ Nozick, *The Examined Life*, 295.

³⁰² Nozick, *The Examined Life*, 296.

good life, but there is a resistance to the idea that reasonable people disagree deeply and persistently about justice itself. In “The Zigzag of Politics,” Nozick finally puts this dogma behind him.³⁰³ For Nozick, the political philosopher cannot resolve the tragic pluralism of values that persists among even reasonable people, and any attempt to do so is illegitimate and dangerous.³⁰⁴

³⁰³ In this turn away from dogmatism, Nozick aligns himself (in some ways) with the pragmatist philosopher William James. For James, the moral and political philosopher is not permitted to impose her favored set of values upon the moral confusion and pluralism of her community: “All one’s slumbering revolutionary instincts waken at the thought of any single moralist wielding such powers of life and death. Better chaos forever than an order based on any closet-philosopher’s rule” (“The Moral Philosopher and the Moral Life,” in *The Writings of William James*, ed. John J. McDermott [Chicago: University of Chicago Press, 1977], 623). I develop the insights of pragmatist political theory for these problems of political liberalism in chapter V. Loren Lomasky, paralleling Nozick, urges those with idiosyncratic views of justice to alter their political practice in light of reasonable pluralism. See Lomasky’s article, “Libertarianism as if (the other 99 Percent of) People Mattered,” *Social Philosophy and Policy* 15, no. 2 (Summer 1998).

³⁰⁴ Gerald Gaus also affirms the fact of deep pluralism about justice over against the typical political philosopher’s dream of resolving it. He insightfully (and humorously) notes, “In the last forty years, political philosophy has witnessed a plethora of visions of the just society—natural rights libertarianism, ‘left’ libertarianism, prioritarianism, sufficientarianism, egalitarianisms of a stunning variety, republicanism; theories of economic desert, welfare, need, and capabilities. And, of course, the old standby, utilitarianism. (We must not forget that many a hard-headed economist, insisting that he will have no truck with philosophical talk, proceeds to announce his allegiance to some form of social utility as the standard of justice.) Political philosophers self-identify with their sects (‘I’m an egalitarian.’ ‘Not me, I’m a libertarian.’ ‘Well, I’m a sufficientarian welfarist with prioritarian leanings!’) Each of the dizzying variety of philosophical sects presents itself as possessing the truth about the just political organization and tells its adherents that the other sects either are recommending injustice, are not truly liberal, or have committed a heresy in, say, advocating resource egalitarianism over welfare egalitarianism, or left-libertarianism over orthodox rights libertarianism. This understanding of political philosophy—as the theorist’s vision of the perfectly just society based upon her ‘intuitions’ or controversial ‘theory’ of justice—is facing a crisis of credibility. Perhaps the original hope was that the systematic use of human reason would lead enquirers and citizens to converge on the truth about ‘distributive justice’ or ‘the role of the state,’ but any impartial observer must conclude what should have been obvious all along: as in so many matters, the free use of human reason leads to sustained disagreement and a proliferation of sects. This is not a mere episode on the way to consensus and enlightenment, but ‘a permanent feature of the public culture of democracy.’ Such was the deep insight of the greatest political philosopher of the twentieth century, John Rawls. Because the use of our reason on these matters is inherently controversial, political philosophy must, as he tells us, apply the principle of toleration to philosophy itself. Liberalism’s founding insight was the recognition in the sixteenth and seventeenth centuries that controversial religious truths could not be the basis of coercive laws and public policies. The task is now to apply this insight to philosophizing about justice itself. This is an extraordinarily difficult lesson for many. Can it really be that I should not endeavor to ensure that my society conforms to my ‘knowledge’ of justice? (Compare: can it really be that my ‘knowledge’ of God’s will should not structure the social order?)” (“The Range of Justice”). As I have argued in this chapter, neither Rawls nor Gaus succeed entirely in this task of applying the principle of toleration to their own political philosophizing about justice. I argue in chapter V that William James recognized this obligation and has some important insights about how it might be done.

We often think that pluralism and disagreement about the good life is desirable because it allows for many experiments to take place, from which we can learn about which kinds of communities best enable flourishing and which ones do not. In “The Zigzag of Politics,” Nozick expands this insight to cover justice as well. Zigzagging vis-à-vis justice is important and beneficial because the world is complicated, the world changes a lot (and quickly), people care about many diverse values (not all of which are compatible), and people often care as much about their other-regarding preferences as they do their self-regarding ones. Debates about justice, like debates about the good life, generate deep – yet reasonable – disagreement. And justice, like the good, should be periodically revisited, rethought, and revised.

6. Conclusion: Property and Deep Pluralism

At the heart of political liberalism lies the optimistic assumption that reasonable people will agree about the basic contours of justice. In this chapter, I have tried to show that this assumption is unjustified, at least with regards to matters of economic justice. Rawls inspired a line of political liberal thought according to which reasonable individuals endorse certain political liberal premises and arrive at economic egalitarian conclusions. I began with an external critique of political liberalism. By exploring the core of the Rawls-Nozick debate, I have argued that reasonable individuals do not share the same premises when deliberating about economic justice. In fact, reasonable people can hold radically different views about the nature of entitlement and ownership, which lead to radically different conceptions of economic justice. I then moved on to an internal critique of political liberalism. By exploring the contemporary debates between

high liberals and classical liberals within the political liberal tradition, I have argued that even those who share roughly the same basic assumptions can arrive at very different conclusions about economic justice. In addition to the assumptions of public justification and reasonable pluralism, Rawlsians need to add additional and controversial commitments about moral personhood and rely upon controversial empirical assumptions about the effects of economic liberty on political equality in order to arrive at their egalitarian conclusions. Reasonable people, who either accept or reject the basic premises of political liberalism, cannot be expected to arrive at the same basic views about economic justice. This deeply troubles the political liberal project, which assumes the eventuality of rational consensus about all matters of basic justice.³⁰⁵

I have thus far argued at an ideal-theoretic level for the breakdown of a certain conception of liberal political theory. This chapter has assumed that discussions of justice take place in idealized moral and epistemic conditions, and I have argued that even in these pristine conditions, consensus is not guaranteed. In the next chapter I argue for this same conclusion at a non-ideal-theoretic level. In the next chapter, then, I analyze real-world (non-ideal) deliberation about economic issues, focusing specifically on that forum in which much of our deliberation takes place today: the Internet. I will argue that

³⁰⁵ And a further problem that has not been mentioned yet: these deep disagreements about justice at the national level will surely be more intense when it comes to matters of *global* justice. I have shown in this chapter that even within a single modern democratic society, unified by a shared political history and culture, the range of reasonable disagreement about economic justice is so large that an overlapping consensus is not especially likely. Given how much more pluralistic and diverse is the global community, what are responsible ways of crafting economic policy between countries, and how should multinational institutions be structured? These important problems are ones that I hope to tackle in future research. For some of the important voices in the debate about global justice, see John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard UP, 2001); Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, and Species Membership* (Cambridge, MA: Harvard UP, 2006); Charles R. Beitz, *Political Theory and International Relations* (Princeton: Princeton UP, 1979); Thomas Pogge, *Realizing Rawls* (Ithaca, NY: Cornell UP, 1989); Chandran Kukathas, "The Mirage of Global Justice," *Social Philosophy and Policy* 23, no. 1 (January 2006); and Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33, no. 2 (March 2005).

the Internet enables and fuels group polarization and political tribalism – that is, it creates conditions in which our foundational disagreements about economic justice are solidified and entrenched. In both the idealized deliberations of political philosophy and the non-idealized deliberations online, we are deeply and indefinitely divided about basic matters of justice. We have, I am claiming, both theoretical *and* empirical reasons to be skeptical about current iterations of political liberalism.

CHAPTER IV

NON-IDEAL DELIBERATION ABOUT ECONOMIC ISSUES

1. Introduction: From Idealized Deliberation to Realistic Deliberation

In the previous two chapters, I have explored some of the ways in which the political liberal tradition fails to adequately resolve our reasonable disagreements about economic and distributive justice. My central claim is that even if we restrict ourselves to idealized “reasonable” people – people who lack any obvious epistemic or moral deficiencies – deliberating in an idealized space of reasons (where the “unforced force of the better argument” always wins³⁰⁶), we are not guaranteed to secure a consensus about the principles of economic and distributive justice that should guide questions about property rights, taxation, redistribution, regulation, inequality, etc. This is because reasonable people can come to hold radically different views about these issues, in part because they can be committed to radically different premises (such as Robert Nozick’s “self-ownership thesis” or John Rawls’ “luck egalitarian thesis”), or basic agreed-upon concepts can be interpreted and interconnected in significantly different ways (as evidenced by the debate over the relationship between economic liberty and moral personhood that divides Samuel Freeman from John Tomasi, or the debate over the nature of liberty and coercion that divides Gerald Gaus from Andrew Lister). Even in ideal theory, then, where we restrict ourselves to idealized reasonable people, rational

³⁰⁶ This phrase is associated with Jürgen Habermas. He writes in the first chapter of *The Inclusion of the Other: Studies in Political Theory*, ed. Ciaran Cronin and Pablo de Greiff (Cambridge, MA: MIT Press, 1998): “the communicative structure of rational discourse can ensure that all relevant contributions are heard and that the unforced force of the better argument alone determines the ‘yes’ or ‘no’ responses of the participants” (37).

consensus is not a feasible goal on certain core matters of justice because of the wide plurality of reasonable views.

This chapter continues to explore the nature of our political disagreements about matters of economic and distributive justice, but through a different lens. I have been arguing that the range of reasonable pluralism is much wider and deeper than has generally been appreciated in political philosophy, leading to the unlikelihood of consensus about principles of economic and distributive justice between reasonable people. Here, then, I push this latter point further, by showing how much *more* difficult is the task of rational consensus about matters of basic justice (including but not limited to economic and distributive justice) when we move away from the idealized space of reasons populated by idealized reasonable people and into the actual, embodied, institutionalized spaces that structure our real-world reasoning and deliberation populated by non-idealized people encumbered by cognitive biases, specifically focusing, in this chapter, on the virtual spaces of the Internet.

This shift in focus from ideal theory to non-ideal theory can be motivated by two different philosophical reasons, beyond the fact that a more realistic and empirical investigation is interesting and insightful in its own right. The first point to mention is that the goal of public reason liberalism as developed and constructed in ideal theory does generate actual demands on actual voters and political participants here and now in the non-ideal world. For political liberals, individual citizens in the real world find themselves exercising politically-sanctioned coercion through their activities such as voting (that is, voting for particular policies or politicians who will exercise authority on their behalf) or by themselves participating in the political process (through lobbying or

themselves running for office). Since this behavior imposes new (or changes the structure of the) obligations and entitlement of other citizens, such behavior stands in need of public justification. In other words, actual individual citizens (here and now) are obligated to vote and politically participate on behalf of principles of justice which would be acceptable to other reasonable people.³⁰⁷ Since political liberalism issues in these epistemic and moral requirements for actual, ordinary, politically active people, it is worthwhile asking whether these requirements can realistically be expected to guide the actions of ordinary citizens. To what extent can we expect real people to deliberate about public matters in “reasonable” ways, freeing themselves sufficiently from the moral and epistemic deficiencies and cognitive biases that are so common?

On another level, there have been serious philosophical criticisms of ideal theory as such, and these critiques take the form of both external and internal critiques. Some external critics of political liberalism argue that ideal theory is unnecessary for the work of engaging in non-ideal real-world reform,³⁰⁸ while other critics argue that ideal theory functions as a pernicious rationalization of elements of the status quo,³⁰⁹ while still other critics argue that ideal theory is always already influenced by non-ideal assumptions, rendering it an incoherent category.³¹⁰ On the other hand, some internal critics of political

³⁰⁷ For an argument on the moral obligation of voters to only vote if they are adequately informed, see Brennan, *The Ethics of Voting*.

³⁰⁸ See especially Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard UP, 2009); but also William Galson, “Realism in Political Theory,” *European Journal of Political Theory*, 9, no. 4 (2010); Miller, *Justice for Earthlings*; David Schmidtz, “Idealism and Solipsism,” in *Oxford Handbook of Distributive Justice*, ed. Serena Olsaretti (New York: Oxford UP, forthcoming); Andrew Sabl, *Hume’s Politics* (Princeton: Princeton UP, 2012); and Judith Shklar, *Faces of Injustice* (New Haven: Yale UP, 1990).

³⁰⁹ See Charles Mills, “‘Ideal Theory’ as Ideology,” *Hypatia* 20, no. 3 (August 2005); and Onora O’Neill, “Abstraction, Idealization, and Ideology in Ethics,” *Royal Institute of Philosophy Lecture Series 22* (September 1987).

³¹⁰ See Jacob Levy, “There’s No Such Things as Ideal Theory,” 3 April 2014, accessed 2 June 2014, <http://ssrn.com/abstract=2420125>.

liberalism agree with the basic motivation for ideal theory, but disagree with the exact nature of idealization that takes place in most ideal theorizing. Gerald Gaus points out that the motivation for political liberalism is to work out a conception of justice to which all people can consent, thus ensuring that no one feels oppressed by being ruled by a government guided by principles that they reject. But if the conception of justice is deemed acceptable only by highly idealized, almost unrecognizable phantoms behind the veil of ignorance, then many *actual* people might view the conception of justice as worthy of rejection. That is, the motivation for political liberalism (that we live under principles of justice that we all affirm) seems to be in tension with the commitments of ideal theory (that we live under principles of justice selected by the handful of arguably “reasonable” people). Because of this problematic tension, Gaus argues against extreme and controversial idealization and for a “significant but realistic level of idealization.”³¹¹ For Gaus, this ensures that the worst moral and epistemic views have no say in the deliberation about justice, while also ensuring that those populating the space of reasons in ideal theory have a close connection to real people populating our actual society. This less-idealized form of political philosophy requires us to have some sense of what we can *reasonably expect*, morally and epistemically, from ordinary citizens, which requires an investigation into how people actually and usually deliberate and discuss matters of justice.

³¹¹ Gaus, *The Order of Public Reasons*, 276. Gaus elaborates, “The philosophical tradition appealing to full rationality commences analysis with a highly idealized state, which is seen as providing guidance for real agents. If we conclude that this is ultimately a futile exercise, we might work the other way around: begin with real agents and then see what degree of idealization of their reasoning makes sense” (244). In opposition to this “full rationality,” Gaus defends “real rationality,” which “takes human cognitive limitations as central to understanding what a rational agent will believe and do” (244). Also see Gerald Gaus' forthcoming book, *The Tyranny of the Ideal* (Princeton: Princeton UP, forthcoming).

Each of these various concerns with and critiques of traditional ideal theory asks contemporary political philosophers to pay more attention to the actual ongoing practices of deliberation in their societies. This should lead us to inquire into the nature of our current institutions and practices of political deliberation, and into the extent to which they are facilitating, or hindering, the production of reasonable citizens and publicly justified views and beliefs. When we start thinking about current institutions and practices of political deliberation, what is immediately clear is how rapidly these institutions and practices are changing with the advent of the Internet and other new media of digital communication. Instead of Walter Cronkite and the town square, we now share information and interact on Facebook, blogs, and comment sections. In the twenty-first century, political philosophers who wish to reflect on democratic deliberation and debate cannot ignore the role of the Internet in facilitating, structuring, and transforming the ways in which democratic deliberation and debate take place. Furthermore, as the world becomes increasingly globalized and interconnected, democratic politics will begin to transcend the bounds of the nation-state, and this emerging global democracy will be enabled, in part, by the new forms of digital communication and community that the Internet makes possible. This is echoed by Nancy Fraser when she argues that we are transitioning from a “national communications infrastructure” to a “deterritorialized cyberspace.”³¹²

But while the Internet is clearly changing the nature of democratic deliberation, not enough political philosophers have reflected on the promises and perils of our Internet-mediated deliberations about justice. For these reasons, this chapter will address

³¹² Nancy Fraser, “Transnationalizing the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World,” *Transnationalizing the Public Sphere*, ed. Kate Nash (Malden, MA: Polity Press, 2014): 26. Also see Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia UP, 2009).

the question: how does this new digital world alter or transform the way in which our political disagreements play out?

2. The Difficulties of Economic Justice: Moral Pluralism and Empirical Complexity

Instead of using the framework of ideal theory, in this chapter I turn toward the non-ideal world of actual political deliberation as it takes place between actual American citizens. While I mostly look at the nature of deliberation about justice in general, I believe that there are some particular features of economic justice which make this investigation especially important and relevant in the context of the discussions in previous chapters of this dissertation. What makes economic issues especially challenging is the extent to which they are characterized by both *moral pluralism* and *empirical complexity*. Unlike other not-directly-economic political disagreements (such as cultural issues like same-sex marriage or abortion), which are almost entirely debates over normative commitments (or, as we usually say, *values*), disagreements about economic issues, in addition to the complex normative debates, also involve complicated and subtle debates about empirical questions (or, as we usually say, *facts*), such that even experts frequently disagree about the desirability of any given economic policy. For example, evaluating the issue of abortion depends primarily on one's religious worldview, and requires comprehension of only the most basic empirical matters. Evaluating competing views about the merits of Keynesian stimulus, or competing views about monetary policy, requires some heavy-duty training in economics. Many people are capable of developing a coherent set of values, which means that most people are competent to pass judgment on value-heavy cultural issues. However, only the

exceptionally well-informed are capable of grasping the complex empirical issues underlying economic policies related to trade or healthcare.

This problem highlights the difficulty of developing truly justified political beliefs, especially as they relate to questions of economic justice and economic policy. This problem, I will show, is in many ways made worse by the ways in which the Internet has changed the ways we get informed and deliberate about political issues. First, though, I will expand upon the nature and depth of this difficulty with developing justified political beliefs on issues related to economics.

Many political disagreements in the United States are now viewed as, more or less, stalemates that are not likely to be resolved by further deliberation. The paradigmatic examples of stalemated political disagreements are often the “cultural” issues that have animated the “Culture War” in the United States, mostly revolving around issues such as abortion, gay marriage, and the role of religion in public life. What makes these disagreements so obviously intractable is that they are animated by disagreements, ultimately, about matters of religion and religious truth. These topics are so difficult because discussions about religion and religious truth are themselves so difficult, being questions that are arguably, by their very nature, beyond the scope of reason itself.³¹³

There are two important points to note about these cultural (and ultimately religious) disagreements, which will help distinguish them from the economic disagreements that are the focus of this dissertation. The first important difference

³¹³ Although the intractability of these cultural issues is commonly recognized, the depth of our disagreements on these issues is disputed within political science. See Morris Fiorina, Samuel Abrams, and Jeremy Pope. *Culture War? The Myth of a Polarized America*, 3rd ed. (London: Longman, 2010).

between the cultural issues and economic issues is how they are dealt with in the tradition of political liberalism. One of the key features of political liberalism in the shared reasons tradition is that public deliberation about matters of basic justice must take place within the framework of “public reason.” This entails the exclusion of non-public reasons from public deliberation about justice, and religious reasons are the paradigmatic case of non-shared reasons in conditions of pluralism.³¹⁴ Since religious reasons are clearly reasons that cannot be accepted by non-religious people as a justification for coercively imposed policies, their deployment in public deliberation is regarded as oppressive and illegitimate.³¹⁵ What is so striking, then, is that, from the point of view of shared reasons political liberalism, one side of the Culture War is straightforwardly unreasonable (namely, those religious citizens who hope to use religious reasons to justify and impose their views on abortion, gay marriage, etc.).

On the other hand, our wide-ranging disagreements about property rights often take place without resort to what are (obviously) non-public reasons (such as religious reasons). Indeed, chapter III aimed to show that even between reasonable people, none of whom are drawing on religious reasons, reasonable disagreements about economic justice can be vast and deep (anything from libertarianism [or even anarchism] through

³¹⁴ See John Rawls, “The Idea of Public Reason Revisited,” in *Political Liberalism*, expanded ed. (New York: Columbia UP, 1993). Rawls' inclusion of the “proviso” in his account of public reason (according to which deliberators may use private reasons as long as they follow them up with acceptable public reasons) does not change the fundamental exclusion of religious reasons from having their own justificatory force on matters of basic justice. For a critical discussion of Rawls' later views on public reason, see David Reidy, “Rawls's Wide View of Public Reason: Not Wide Enough,” *Res Publica* 6 (2000).

³¹⁵ This hostility toward the use of religious reasons in the public sphere is hotly debated even within the tradition of political liberalism. See Audi and Wolterstorff, *Religion in the Public Sphere*. Kevin Vallier argues that religious reasons should be allowed as “defensive” reasons, but not “offensive” reasons in deliberation about matters of basic justice. That is, religious reasons should be able to *defeat* proposed policies, but they should not be able to *justify* new policies. See Kevin Vallier, *Liberal Politics and Public Faith: Beyond Separation* (New York: Routledge, 2014).

socialism is deemed reasonable). These disagreements about economic justice are deep and persistent even in ideal circumstances, between idealized people, lacking any obvious moral or epistemic deficiencies. In other words, even if we assume away any false empirical beliefs, and even if we bracket away religious reasons, the wide range of reasonable pluralism about moral and philosophical commitments is enough to suggest that even indefinite and good faith deliberation will not result in consensus about matters of economic justice. This chapter, then, looks at our political disagreements about economic justice without the idealizing assumption of perfectly reasonable deliberators, and I will show why we should expect even *deeper* and more *persistent* disagreement in the real world as compared with the ideal one.

The next thing to say about the difference between disagreements over cultural and economic issues is that the usual list of cultural issues have everything to do with moral and philosophical disagreements, and very little to do with empirical disagreements. That is, those on opposite sides of debates about abortion or gay marriage are not primarily debating about the relevant empirical facts and consequences of the various policies at issue. For example, while debates about abortion do sometimes draw on scientific accounts about the timing and nature of fetal development and the emergence of sentience, these concerns are clearly secondary to questions about the metaphysics of personhood, theological and scriptural disputes, questions concerning our moral obligations to potential life, and questions about the relative moral and political priority of bodily autonomy against other concerns. One always has the sense that the outcome of empirical side-debates will have little to no effect on the views of those

engaged in the more central moral and philosophical debates. Thus, the core of these debates revolve around our religious and moral identities, not our empirical beliefs.

This contrasts sharply with questions about property rights and economic justice. When one considers the heated debates about these questions today, such as debates over health care legislation, Keynesian stimulus spending, welfare policies, and issues of taxation, regulation, and trade, it is immediately clear that these questions are clearly characterized by *both* moral pluralism *and* empirical complexity. This is why some serious and complicated debates about economic issues can take place between people who share the same values or moral concerns (e.g. perhaps both interlocutors agree about the goal of universal health insurance coverage, but disagree sharply about the most efficient policies to achieve this shared goal). Indeed, an important feature of economic debates is just how complicated they are on the empirical side. While the cultural issues demand only that each interlocutor have a considered and coherent set of moral commitments, these economic issues require well-developed moral commitments in addition to a high degree of competence on empirical matters of economics.³¹⁶

We can ask two questions about the competence of most voters on matters of economics: (1) Are they adequately competent? And, if not, (2) can we *expect* them to become adequately competent so as to justifiably vote and advocate and act on behalf of those views (and thus take part in coercively yet legitimately imposing their views on others)? Bryan Caplan demonstrates convincingly in his book *The Myth of the Rational Voter* that the voting public is systematically misinformed about basic economics (on the

³¹⁶ Ilya Somin echoes this point, noting that this set of economic issues, which requires both a high degree of “factual knowledge about public policies and their effects” as well as “a substantial degree of understanding of moral and philosophical arguments,” significantly “increases the knowledge burden that would be imposed on voters” – a burden, Somin thinks, that is far too unreasonable to impose on ordinary citizens (“Deliberative Democracy and Political Ignorance,” *Critical Review* 22, no. 2-3 [2010]: 254).

empirical side at least), in that the views of most voters systematically diverge from even areas of uncontroversial consensus in mainstream economics (e.g. the overall benefits of increasing international trade or liberalizing immigration policy).³¹⁷ If most voters are inclined to be misinformed about basic matters of economics, how likely is it that they will be qualified to weigh in on more complicated empirical debates, debates which divide even professional economists? We might call this “The Problem of Divided Experts.” Many of the heated questions of property and economics listed above divide even professional economists who specialize in these areas. One must wonder: when the experts are divided, how is it possible for non-experts to possibly evaluate or adjudicate such disagreements between the experts, given what we know about the epistemic limitations and cognitive biases of non-experts?³¹⁸ This is a serious problem for matters

³¹⁷ Caplan blames this problem of political ignorance on entrenched cognitive biases that are unlikely to be mitigated by any conceivable social policies, including reforms to education. His solution, then, is to replace most political solutions with market solutions, since the latter create better incentives for people to seek out and act on good information. For a similar argument, see Somin, “Deliberative Democracy and Political Ignorance,” and Somin, *Democracy and Political Ignorance*. For philosophical critiques of these kinds of arguments about political ignorance as a challenge to democratic ideals, see Gerald Gaus' critical review of *The Myth of the Rational Voter*, “Is the Public Incompetent?”, *Critical Review* 20, no. 3 (2008); and Robert Talisse, “Does Public Ignorance Defeat Deliberative Democracy?”, *Critical Review* 16, no. 4 (Fall 2004). Caplan argues that the economic biases featured in public opinion are systematically biased in one direction – they are not randomly distributed so as to balance each other out on net. This latter possibility (that economic biases cancel each other out on net) would hold out the hope that even with a rationally ignorant population, if the ignorance led to biased beliefs distributed roughly evenly on both sides of any given issue, then through the “miracle of aggregation,” good policies would emerge. For defenders of this view, see Wittman, *The Myth of Democratic Failure*; James Surowiecki, *The Wisdom of Crowds* (New York: Doubleday, 2004); Allan Drazen, *Political Economy in Macroeconomics* (Princeton: Princeton UP, 2000); Torsten Persson and Guido Tabellini, *Political Economics: Explaining Economic Policy* (Cambridge, MA: MIT Press, 2000); Dani Rodrik, “Understanding Economic Policy Reform,” *Journal of Economic Literature* 34, no.1 (1996); Benjamin Page and Robert Shapiro, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (Chicago: University of Chicago Press, 1992); and Gary Becker, “Toward a More General Theory of Regulation: Comment,” *Journal of Law and Economics* 19, no. 2 (1976). For Caplan's response to Wittman's claims, see Caplan, “From Friedman to Wittman: The Transformation of Chicago Political Economy,” *Econ Journal Watch* 2, no. 1 (April 2005).

³¹⁸ For a canonical overview about what we know about human cognitive biases, see Daniel Kahneman, *Thinking, Fast and Slow* (New York: Farrar, Straus, and Giroux, 2011).

of property and economics (while it seems to be almost absent from those debates that characterize the Culture War).

If political liberalism requires that individual citizens vote and advocate based on reasons that all others can accept, we should be deeply troubled by the fact that, for matters of justice related to property and economics, most citizens are obviously unable to achieve well-formed and justified beliefs on these matters. In the following section, I will be tentatively arguing that the problem of citizens systematically failing to form justified political beliefs is being intensified by the increasingly prominent role of the internet in the consumption of political commentary and in political deliberation. The challenges of moral pluralism and empirical complexity inherent in debates about economic justice are, in some important ways, worsened by the shift of our political lives and identities into the virtual spaces of the Internet.

3. Some Dangers of Online Deliberation: Moral Narrowing and Empirical

Simplifying

The Internet revolution has been felt in almost all areas of social, economic, and political life. One area that has been especially affected is the way that people communicate their political views, learn about political issues, and deliberate and debate about politics. Indeed, many American citizens now experience much of their political deliberation and participation online. As Michael Conover *et al* report, drawing on the Pew Internet and American Life Project, “six in ten U.S. internet users, nearly 44% of American adults, went online to get news or information about politics in 2008. Additionally, Americans are taking an active role in online political discourse, with 20%

of internet users contributing comments or questions about the political process to social networking sites, blogs or other online forum.”³¹⁹ This phenomenon is relatively new, and has invited a great deal of speculation about how the Internet might change the nature of politics, speculation about both the positive and negative effects of online political deliberation.

Much of the speculation about the Internet has been optimistic (occasionally bordering on the utopian), with talk about the “democratizing” effects of the Internet, and with hope that the Internet will enable a more diverse and decentralized and productive speech environment.³²⁰ One source of hope is that online deliberate can help overcome the limitations of offline face-to-face deliberation, including helping to facilitate a

³¹⁹ Michael Conover *et al.*, “Political Polarization on Twitter,” Center for Complex Networks and Systems Research, School of Informatics and Computing, Indiana University, 2011, accessed 4 May 2014, http://truthy.indiana.edu/site_media/pdfs/conover_icwsm2011_polarization.pdf, 1.

³²⁰ For Internet deliberation “optimists” (or quasi-optimists), see Howard Rheingold, *The Virtual Community: Homesteading on the Electronic Frontier* (Cambridge, MA: MIT Press, 1993); Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (New Haven: Yale University Press, 2006); Mark Poster “CyberDemocracy: Internet and the Public Sphere,” 1995, accessed 2 January 2012, <http://www.hnet.uci.edu/mposter/writings/democ.html>; John Perry Barlow, “A Declaration of the Independence of Cyberspace,” 1996, accessed 3 February 2014, <https://projects.eff.org/~barlow/Declaration-Final.html>; Mary Thorseth, “Worldwide Deliberation and Public Use of Reason Online”; Mary Thorseth, “Worldwide Deliberation and Public Use of Reason Online,” *Ethics and Information Technology* 8 (2006); Antje Gimmler, “Deliberative Democracy, the Public Sphere and the Internet,” *Philosophy and Social Criticism* 27, no. 4 (July 2001); Nicholas John Munn, “The New Political Blogosphere,” *Social Epistemology: A Journal of Knowledge, Culture, and Policy* 26, no. 1 (January 2012); and Deva Woodly, “New Competencies in Democratic Communication? Blogs, Agenda- Setting, and Political Participation,” *Public Choice* 134, no. 1 (2008). Rheingold was one of the earliest celebrators of the political implications of the Internet, describing the Internet as an “electronic agora” with “democratizing potential” (*The Virtual Community*, 298). Barlow prophesied, “We will create a civilization of the Mind in Cyberspace” (“A Declaration of the Independence of Cyberspace”). While some of the early optimism about the Internet had a libertarian streak, some of the more recent optimism has a leftist or even communist streak – see, for example, Femke Kaulingfreks and Ruud Kaulingfreks, “Open-Access Communism,” *Business Ethics: A European Review* 22, no. 4 (October 2013). One point that everyone (even the pessimists cited in footnote 325) agree about is the importance of Internet communication and deliberation for resisting authoritarian political regimes. For an expression of this latter point, see Larry Diamond, “Liberation Technology,” *Journal of Democracy* 21, no. 3 (July 2010).

reduction in “resources needed to aggregate citizens, [the] costs imposed on participants, [the] limited minority participation, and threats that silence underrepresented voices.”³²¹

This vision of a decentralized and democratic public sphere is vindicated by some notable instances in which Internet-based communities have succeeded as watchdogs of the mainstream media, exposing errors or highlighting stories missed by mainstream media outlets. Stuart Geiger recounts one of the “most frequently-mentioned events in the history of blogs” which illustrate this phenomenon, which took place in 2003. Republican Senate Majority Leader Trent Lott stated that the we “wouldn't have had all these problems over the years” if the segregationist politician Strom Thurmond had been elected in 1948. The comment was almost entirely ignored by mainstream media, but “bloggers picked up the story and kept generating outrage in the public sphere until mass media outlets had no choice but to report it about one week later,” and consequently “Lott was forced to resign shortly thereafter, and the episode was only the first of many self-proclaimed victories by the blogosphere over the mass media.”³²² Another oft-repeated contribution of the blogosphere was when bloggers quickly uncovering the inauthenticity of documents, presented by *60 Minutes* in 2004, concerning President Bush's Air National Guard service. One of the bloggers to uncover the hoax was Charles Johnson, who analogized the blogosphere to “open-source intelligence gathering,” and who said, “We've got a huge pool of highly motivated people who go out there and use the tools to

³²¹ Young Min Baek, Magdalena Wojcieszak, and Michael X. Delli Carpini. “Online versus face-to-face deliberation: Who? Why? What? With what effects?” *New Media & Society* 14, no. 3 (May 2012): 377.

³²² Stuart Geiger, “Does Habermas Understand the Internet? The Algorithmic Construction of the Blog/Public Sphere,” *Gnovis* 10, no. 1 (Fall 2009), accessed July 23 2014, <http://gnovisjournal.org/2009/12/22/does-habermas-understand-internet-algorithmic-construction-blogpublic-sphere/>. This event, and others, are recounted in Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin Press, 2004).

find stuff. We've got an army of citizen journalists out there.”³²³ These events support the vision of the Internet as enabling a network of citizen-journalists to hold truth to power.

However, other speculation of the political effects of the Internet has been more pessimistic. Pessimists point to some of the troubling implications of anonymous speech (namely how it might embolden hateful communities),³²⁴ the emergence of closed deliberative enclaves, and the possibility of deepening political polarization.³²⁵ Sarah Sobiera and Jeffrey Berry show how the Internet accelerates preexisting trends away from the moderating influences of mainstream media and toward a very new “political diet” among American citizens that contains a great deal of incivility and (what they call) “outrage politics.” This “newly diffuse delivery of political information coupled with

³²³ Howard Kurtz, “After Blogs Got Hits, CBS Got a Black Eye,” *Washington Post*, 20 September 2004, accessed 3 July 2014, <http://www.washingtonpost.com/wp-dyn/articles/A34153-2004Sep19.html>.

³²⁴ The phenomenon of “cyber-bullying” illustrates one of the many serious problems accompanying the rise of the Internet. See Ilene Berson, Michael Berson, and John Ferron, “Emerging Risks of Violence in the Digital Age: Lessons for Educators from an Online Study of Adolescent Girls in the United States,” *Journal of School Violence* 1, vol. 2 (2005). However, while anonymous Internet speech enables incivility and unaccountability, as Poster points out it also means that “acts of discourse are not limited to one-way address and not constrained by the gender and ethnic traces inscribed in face-to-face communications” (“CyberDemocracy” 211). So, as one would expect from a complex new technology, the Internet can be both empowering and disempowering to members of victimized and vulnerable groups (especially racial and sexual minorities).

³²⁵ For Internet deliberation “pessimists” (or quasi-pessimists), see Cass Sunstein, *Republic.com 2.0* (Princeton: Princeton UP, 2007); Matthew Hindman, *The Myth of Digital Democracy* (Princeton: Princeton UP, 2009); Natalie Jomini Stroud, *Niche News: The Politics of News Choice* (New York: Oxford UP, 2011); Eli Parisner, *The Filter Bubble: What the Internet is Hiding from You* (New York: Penguin Press, 2011); Zhang Qianshan, “The Internet's Negative Impact on the Development of Democracy,” *Contemporary Chinese Thought* 35, no. 2 (Winter 2003-2004); Richard Posner, “Bad News,” *The New York Times*, 31 July 2005, accessed 12 April 2014, <http://www.nytimes.com/2005/07/31/books/review/31POSNER.html?pagewanted=all>; Alving Goldman, “The Social Epistemology of Blogging,” in *Information Technology and Moral Philosophy*, ed. Jeroen van den Hoven and John Weckert (New York: Cambridge UP, 2008); and Jürgen Habermas, “Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research,” *Communication Theory* 16, no. 4 (2006). Another cause of pessimism concerns the “digital divide,” as well as the effects of media concentration. For an overview of these concerns, see Barney Warf, “Oligopolization of Global Media and Telecommunications and Its Implications for Democracy,” *Ethics, Place And Environment* 10, no. 1 (March 2007).

trends in audience data suggests that our political diet is increasingly composed of unvetted news and unedited opinion.”³²⁶ Furthermore, this injection of incivility and outrage into our political culture has serious negative effects on political institutions: “incivility in politics undermines faith in government and discourages political participation.”³²⁷ Their findings “suggest that exposure to uncivil political discourse in the media erodes political trust, engenders more negative assessments of political institutions and actors, decreases the perceived legitimacy of political figures, and triggers increased emotional response.”³²⁸ The pessimists point to these disturbing trends and patterns of online behavior and online news consumption to make arguments about the dangers of online deliberation for democratic institutions and ideals.

These competing speculations are hard to evaluate, since social scientific research on the topic is only in its earliest stages.³²⁹ As more research comes in, more confident conclusions can be drawn. In the following section, then, I will point out some of the most conspicuous changes to our political environment in light of the Internet revolution, but both the findings and implications are tentative. I will explore some of the important effects of the displacement of “general-interest intermediaries” characteristic of traditional news media and the concomitant rise of the “deliberative enclaves” characteristic of the Internet. Again, these discussions are necessarily tentative, and the phenomena of Internet deliberation is one that is far too complicated for anyone to be

³²⁶ Sarah Sobiera and Jeffrey Berry, “From Incivility to Outrage: Political Discourse in Blogs, Talk Radio, and Cable News,” *Political Communication* 28 (2011), 21.

³²⁷ Sobiera and Berry, “From Incivility to Outrage,” 23.

³²⁸ Sobiera and Berry, “From Incivility to Outrage,” 23.

³²⁹ Seong-Jae Min echoes a sentiment expressed by many who study this issue: “the effects of online deliberation remain unclear to date” (“Online vs. Face-to-Face Deliberation: Effects on Civic Engagement,” *Journal of Computer-Mediated Communication* 12 [2007]: 1369).

either straightforwardly “for” or “against,” or unqualifiedly “optimistic” or “pessimistic.” Furthermore, the new age of online communication is here to stay (and no doubt deepen and change in unpredictable ways in the future). In any case, many of the problems identified by the Internet pessimists may not have clear solutions. As Sunstein rightly notes, even in the absence of clear solutions, it is worthwhile to understand the problems we face.³³⁰

The main problems of interest here are the extent to which online deliberation results in (what we might call) *moral narrowing* and *empirical simplifying*. As discussed above, two important features of our debates about economic and distributive justice are moral pluralism and empirical complexity. As a result, we should be concerned about the extent to which online deliberation enables or hinders participants from appreciating the full range of moral pluralism and empirical complexity that characterizes these important issues of justice. The main argument that I will make is that the epistemically-closed communities of deliberation that too often arise on the Internet have as one negative effect a tendency for all sides to downplay the moral pluralism and empirical complexity of economic issues. Thus, the Internet can help create communities of people who are like-minded not only in their values, but also in their empirical assumptions about the world, however uninformed or flawed these assumptions may be. To this end, I turn to look at some of the findings and reflections about how the Internet effects the formation of political beliefs and the nature of political deliberation.

³³⁰ Sunstein writes, “For purposes of obtaining understanding, few things are more important than to separate the question of whether there is a problem from whether anything should be done about it. Dangers that cannot be alleviated continue to be dangers. They do not go away if or because we cannot, now or ever, think of decent solutions. It is much easier to think clearly when we appreciate this fact” (*Republic.com 2.0*, 98).

4. What We Know about Online Deliberation

The Internet, first and foremost, enables the *personalized filtering* of news consumption to a degree unheard of in the past. With an overwhelming amount of Internet sites and blogs to choose from, and every possible viewpoint represented, everyone can consume exactly, and only, what they choose to consume. Sunstein presents our situation: “Technology has greatly increased people's ability to ‘filter’ what they want to read, see, and hear. With the aid of the Internet, you are able to design your own newspapers and magazines. You can choose your own programming, with movies, game shows, sports, shopping, and news of your choice. You mix and match.”³³¹ The result: “You need not come across topics and views that you have not sought out. Without any difficulty, you are able to see exactly what you want to see, no more and no less. You can easily find out what ‘people like you’ tend to like and dislike. You avoid what they dislike. You take a close look at what they like.”³³² While people have always been filtering their news consumption to some extent, the Internet allows people to filter with incredible new power. More than ever before, everyone with Internet access is able to live in “a communications universe of their own choosing.”³³³ This new power clearly has (and going forward will continue to have) profound consequences for the formation of political views and the nature of political deliberation. Here, then, I will note a few of the main features and main findings related to how the Internet is transforming our politics.

³³¹ Sunstein, *Republic.com 2.0*, 1.

³³² Sunstein, *Republic.com 2.0*, 1.

³³³ Sunstein, *Republic.com 2.0*, 3.

The first important consequence of the Internet revolution and of personalized filtering is the rise of online “deliberative enclaves” and the relative downfall of offline “general-interest intermediaries” (and, to some significant extent, their online presences).³³⁴ General-interest intermediaries are those deliberative forums that have in the past (and to some extent still do) attract the attention of a large number of citizens, such as the major newspapers or news networks. For Sunstein, general-interest intermediaries are important because they provide “something like a common framework for social experience,” which is not provided by the proliferation of online deliberative enclaves.³³⁵ Oftentimes the value of the general-interest intermediary is precisely its ability to provide a common framework for social experience. Thus, a particular general-interest intermediary in some sense gains in value the more people it attracts – a phenomenon that economists call “network externalities.” Furthermore, while general-interest intermediaries oftentimes provide the reader with “accidentally-acquired” information (which can help broaden the perspective of the reader), blogs and other

³³⁴ In addition to the fact that deliberative enclaves better satisfy the preferences of most users compared to general-interest intermediaries, it should also be noted that an important cause of this shift can be explained by the fact that free Internet commentary can often free-ride on the paid journalism featured in the mainstream media. Richard Posner summarizes the problem: “How can the conventional news media hope to compete? Especially when the competition is not entirely fair. The bloggers are parasitical on the conventional media. They copy the news and opinion generated by the conventional media, often at considerable expense, without picking up any of the tab. The degree of parasitism is striking in the case of those blogs that provide their readers with links to newspaper articles. The links enable the audience to read the articles without buying the newspaper. The legitimate gripe of the conventional media is not that bloggers undermine the overall accuracy of news reporting, but that they are free riders who may in the long run undermine the ability of the conventional media to finance the very reporting on which bloggers depend” (“Bad News”). This economic problem is very serious and worthy of discussion, but is beyond the scope of this chapter.

³³⁵ Sunstein, *Republic.com 2.0*, 48. Those that lament the decline of “general-interest intermediaries” spend little time focusing on the systemic biases and limitations of most actually existing institutions of mainstream mass media. For a well-known radical critique of mainstream media institutions, see Noam Chomsky and Edward Herman, *Manufacturing Consent: The Political Economy of the Mass Media* (New York: Pantheon Books, 1988).

deliberative enclave typically provide “sought-for” information (which tends to reinforce preexisting beliefs).³³⁶

The online world of perfect filtering allows individuals to eliminate, to a large extent, any contact with “accidentally-acquired” information at all. By selecting which blogs to read and which sites to visit individuals are able to read and see only what they want to read and see. And this largely is what people are doing. People are migrating away from the general-interest intermediaries and joining deliberative enclaves that better match their identities and preferences. This mass migration into deliberative enclaves is largely a product of personal choice, since most people are generally averse to having their points of view seriously challenged, and instead prefer to insulate themselves in self-reassuring social and epistemic communities.³³⁷ Within these deliberative enclaves,

³³⁶ Lawrence, Sides, and Farrell, “Self-Segregation or Deliberation?” 5. Jürgen Habermas shares Sunstein's concern about the rise of deliberative enclaves and their effect on democratic politics. He has not written extensively about the topic (which is why I only mention his views in a footnote), but his brief comments on the issue have generated an entire cottage industry of commentary. Here is Habermas' most oft-cited comment on the issue: “The Internet has certainly reactivated the grassroots of an egalitarian public of writers and readers. However, computer-mediated communication in the web can claim unequivocal democratic merits only for a special context: It can undermine the censorship of authoritarian regimes that try to control and repress public opinion. In the context of liberal regimes, the rise of millions of fragmented chat rooms across the world tend instead to lead to the fragmentation of large but politically focused mass audiences into a huge number of isolated issue publics” (“Political Communication in Media Society,” 423). For a critique of Habermas' views on the nature and effects of Internet deliberation (using Habermas' own views about communication and democracy in order to critique him), see Geiger, “Does Habermas Understand the Internet?” For a related discussion of how the Internet might be conceptualized as a Habermasian public sphere, see Lincoln Dahlberg, “The Habermasian Public Sphere Encounters Cyber-Reality,” *The Public* 8, no. 3 (2001); Douglas Kellner, “Habermas, the Public Sphere, and Democracy: A Critical Intervention,” in *Perspectives on Habermas*, ed. Lewis Hahn (Chicago: Open Court Press, 2000); Michael Froomkin, “Habermas@discourse.net: Toward a Critical Theory of Cyberspace,” *Harvard Law Review* 116, no. 3 (January 2003); and Axel Bruns, “Habermas and/against the Internet,” *Snurblog*, 18 February 2007, accessed 8 March 2014, <http://snurb.info/node/621>.

³³⁷ Sunstein, *Republic.com 2.0*, 51. Importantly, though, the rise of deliberative enclaves and the narrowing of exposure to other views is also encouraged by the design of many of the major search engines, which customize searches to fit the assumed preferences of the individual user (sometimes called “recommender systems”). This phenomenon is documented in Pariser's important book *The Filter Bubble*. This kind of filtering tends to reinforce the preferences of the user, by only showing information that aligns with the user's past search and purchase histories. This kind of filtering is used on Amazon.com, which may contribute to very politically polarized purchasing behavior (see Appendix F). However, Yochai Benkler offers a more optimistic assessment. He notes the ways in which filtering can be beneficial in creating what he calls a “networked public sphere”: “Filtering, accreditation,

what we see is a “form of deliberation that occurs within more or less insulated groups, in which like-minded people speak mostly to one another.”³³⁸

This is an important development. The underlying trend that is being observed is ultimately a better matching up of “supply” and “demand” – that is, people can find news and commentary and community that more closely mirrors their preferences. Richard Posner observes, “the increase in competition in the news market that has been brought about by lower costs of communication (in the broadest sense) has resulted in more variety, more polarization, more sensationalism, more healthy skepticism and, in sum, a better matching of supply to demand.”³³⁹ But while the coordination of supply and demand is generally socially beneficial in other domains of our lives, Posner recognizes some of the downsides of this consumer-driven news model which characterizes contemporary online (and increasingly offline) news media: “increased competition has not produced a public more oriented toward public issues, more motivated and competent to engage in genuine self-government, because these are not the goods that most people are seeking from the news media.”³⁴⁰

In other words, the massive proliferation of deliberative enclaves gives people what they want much better than general-interest intermediaries can. The question then

synthesis, and salience are created through a system of peer review by information affinity groups, topical or interest based. These groups filter the observations and opinions of an enormous range of people, and transmit those that pass local peer review to broader groups and ultimately to the polity more broadly, without recourse to market-based points of control over the information flow. Intense interest and engagement by small groups that share common concerns, rather than lowest-common denominator interest in wide groups that are largely alienated from each other, is what draws attention to statements and makes them more visible. This makes the emerging networked public sphere more responsive to intensely held concerns of a much wider swath of the population than the mass media were capable of seeing, and creates a communications process that is more resistant to corruption by money” (Benkler, *The Wealth of Networks*, 242).

³³⁸ Sunstein, *Republic.com 2.0*, 77.

³³⁹ Posner, “Bad News.”

³⁴⁰ Posner, “Bad News.”

becomes: What do people want? Posner notes a commonsense, but false, assumption about what ordinary people want when they search out political information: “that people consume news and opinion in order to become well informed about public issues.”³⁴¹ If this idealistic assumption were true, and ordinary citizens regularly lived up to their civic responsibility to become adequately informed about important political issues, then “liberals would read conservative newspapers, and conservatives liberal newspapers, just as scientists test their hypotheses by confronting them with data that may refute them. But that is not how ordinary people (or, for that matter, scientists) approach political and social issues.”³⁴²

The behavior of most ordinary people does not match the democratic deliberative ideal. On the contrary. Posner describes the basic motivations that feed into our ideologically over-narrow news consumption:

The issues are too numerous, uncertain and complex, and the benefit to an individual of becoming well informed about them too slight, to invite sustained, disinterested attention. Moreover, people don't like being in a state of doubt, so they look for information that will support rather than undermine their existing beliefs. They're also uncomfortable seeing their beliefs challenged on issues that are bound up with their economic welfare, physical safety or religious and moral views.³⁴³

Thus, what people actually seek is “entertainment, confirmation, reinforcement, emotional satisfaction,” and that is what they get online, because “a competitive market

³⁴¹ Posner, “Bad News.”

³⁴² Posner, “Bad News.”

³⁴³ Posner, “Bad News.”

supplies, no more, no less.”³⁴⁴ As a result, the benefits of the “new voices and more choices” speech environment enabled by the Internet comes, partially, at the cost of fueling normal human cognitive biases and allowing for the development of epistemically-closed deliberative virtual communities.³⁴⁵ If we see the producers of news and commentary as essentially responding to consumer demand, and recognize that most citizens have a low consumer demand for “hard truths” and a high demand for comfortable and confirming narratives, we will not be surprised by the proliferation of these epistemically-closed online communities.³⁴⁶ This explains the widespread

³⁴⁴ Posner, “Bad News.” Commenting on the phenomenon of “voter irrationality,” Somin notes that to the extent that people do seek out political information, “any such effort is likely to be motivated by considerations other than the desire to become a ‘better’ voter. Some follow politics simply because they find it entertaining or because, like sports fans, they enjoy ‘rooting’ for their political ‘team’” (“Deliberative Democracy and Political Ignorance,” 263). Posner echoes the sports metaphor: “News coverage of a political campaign is oriented to a public that enjoys competitive sports, not to one that is civic-minded” (“Bad News”). Also see Bryan Caplan, “Voter Ignorance vs. Voter Irrationality,” *KYKLOS* 54 (2001).

³⁴⁵ In 2010, there was a debate on the blogosphere about the phenomenon of “epistemic closure” on the political right and left, kicked off by Julian Sanchez’s post, “Epistemic Closure, Technology, and the End of Distance,” 7 April 2010, accessed 27 March 2014, <http://www.juliansanchez.com/2010/04/07/epistemic-closure-technology-and-the-end-of-distance/>. One of the main questions discussed and debated was whether the problem of epistemic closure is more pervasive among conservatives or liberals. See Jonathan Chait, “The Great Epistemic Closure Debate,” *The New Republic*, 9 April 2010, accessed 2 September 2014, <http://www.newrepublic.com/blog/jonathan-chait/the-great-epistemic-closure-debate>; and Patricia Cohen, “Epistemic Closure? Those are Fighting Words,” *The New York Times*, 27 April 2010, accessed 2 September 2014, <http://www.nytimes.com/2010/04/28/books/28conserv.html>. Chait echoes one of the common points made in the discussion: “If technology is playing a role here, it’s probably allowing for a more totalistic alternative information cocoon. Conservatives always had access to conservative opinion, but the rise of cable and the Internet allowed them to create news sources that totally replaced, rather than merely supplemented, the mainstream media” (“The Great Epistemic Closure Debate”).

³⁴⁶ Although Posner points out that these epistemic problems are aggravated by the blogosphere, he also speculates, optimistically, that most readers discount the truth-value of claims on the blogosphere more so than the traditional media: “[M]ost people are sensible enough to distrust communications in an unfiltered medium. They know that anyone can create a blog at essentially zero cost, that most bloggers are uncredentialed amateurs, that bloggers don’t employ fact checkers and don’t have editors and that a blogger can hide behind a pseudonym. They know, in short, that until a blogger’s assertions are validated (as when the mainstream media acknowledge an error discovered by a blogger), there is no reason to repose confidence in what he says” (“Bad News”). There is some plausibility to this claim, but as Goldman convincingly points out, “This is unrealistically sanguine. People may vaguely know these things about blogs in general, but they may not be good at applying these precepts to the specific blogs that most appeal to them. Precisely because what these blogs assert often confirms their own prior views or prejudices, they may repose excessive trust in them” (“The Social Epistemology of Blogging,” 8).

phenomenon of “cyber-cascades” of misinformation that plagues these closed deliberative enclaves. Since so many people now inhabit these epistemically-enfeebled online communities and thus are not exposed to serious and constructive engagement with other views and arguments, false stories are able to circulate unchecked, to the detriment of democratic deliberation.³⁴⁷

This tendency of individuals to consume news and commentary so as to satisfy preexisting views and biases is borne out in the available data. Eric Lawrence, John Sides, and Henry Farrell analyzed the behavior of political blog readers, and their results clearly point to the emergence of closed deliberative enclaves: “About 94% of political blog readers consume only blogs from one side of the ideological spectrum. The remaining 6% read blogs from both sides. Few blog readers habitually seek out blogs from the other side of the ideological spectrum.”³⁴⁸ That is, in confirmation of Posner's assumptions about what people want to read, Lawrence, Sides, and Farrell conclude that blog readers overwhelmingly “read political blogs that provide ideological comfort.”³⁴⁹ Lawrence, Sides, and Farrell refer to this pervasive phenomenon as “homophily,” which they define as “the tendency to associate with others who are similar to them.”³⁵⁰

³⁴⁷ See Sunstein, *Republic.com 2.0*, chapter 3, where he documents a number of the more well-known and damaging “cyber-cascades” of recent years.

³⁴⁸ Eric Lawrence, John Sides, and Henry Farrell, “Self-Segregation or Deliberation? Blog Readership, Participation, and Polarization in American Politics” (Department of Political Science, George Washington University, 10 March 2009), accessed 18 July 2014, <http://themonkeycage.org/blogpaper.pdf>, 11.

³⁴⁹ Lawrence, Sides, and Farrell, “Self-Segregation or Deliberation?”, 12.

³⁵⁰ Lawrence, Sides, and Farrell, “Self-Segregation or Deliberation?”, 12. The fact that these deliberative enclaves tend to be highly partisan can also be partially explained as a product of economic forces. Posner writes, “But suppose cost conditions change, enabling a newspaper to break even with many fewer readers than before. Now the liberal newspaper has to worry that any temporizing of its message in an effort to attract moderates may cause it to lose its most liberal readers to a new, more liberal newspaper; for with small-scale entry into the market now economical, the incumbents no longer have a secure base. So the liberal newspaper will tend to become even more liberal and, by the same process, the conservative newspaper more conservative ... The current tendency to political polarization in news

The phenomenon of closed deliberative enclaves can also be illustrated by looking at patterns of *linking* on political blogs and websites. Lada Adamic and Natalie Glance studied patterns of online behavior during the 2004 United States presidential election, and concluded, “In our study we witnessed a divided blogosphere: liberals and conservatives linking primarily within their separate communities, with far fewer cross-links exchanged between them. This division extended into their discussions, with liberal and conservative blogs focusing on different news articles, topics, and political figures.”³⁵¹ Lawrence, Sides, and Farrell show that political bloggers are “much more likely to link to bloggers sharing their ideological orientation than to bloggers on the other side of the political spectrum.”³⁵² Similar patterns of homophily exist on other social network sites, such as Twitter, which has become an important tool for political communication. Michael Conover *et al* document the pattern of political polarization on Twitter, where “the retweet network exhibits a highly modular structure, segregating users into two homogeneous communities corresponding to the political left and right.”³⁵³ In an important confirmation of Sunstein's view of general-interest intermediaries,

reporting is thus a consequence of changes not in underlying political opinions but in costs, specifically the falling costs of new entrants. The rise of the conservative Fox News Channel caused CNN to shift to the left. CNN was going to lose many of its conservative viewers to Fox anyway, so it made sense to increase its appeal to its remaining viewers by catering more assiduously to their political preferences” (“Bad News”).

³⁵¹ Lada Adamic and Natalie Glance, “The Political Blogosphere and the 2004 U.S. Election: Divided They Blog,” *Proceedings of the 3rd international workshop on Link discovery* (March 2005), 14.

³⁵² Lawrence, Sides, and Farrell, “Self-Segregation or Deliberation?”, 12. For a visualization of patterns of partisan and cross-partisan linking on political blogs, see Appendix G.

³⁵³ Michael Conover et al., “Political Polarization on Twitter,” Center for Complex Networks and Systems Research, School of Informatics and Computing, Indiana University, 2011, accessed 4 May 2014, http://truthy.indiana.edu/site_media/pdfs/conover_icwsm2011_polarization.pdf, 1. Importantly, though, while the retweet network is highly polarized, the “mention network” (where users are connected if they are mentioned in someone else's post) is not: “In contrast, we find that the mention network does not exhibit this kind of political segregation, resulting in users being exposed to individuals and information they would not have been likely to choose in advance” (“Political Polarization on Twitter,” 1).

Adamic and Glance show that websites representing mainstream media outlets (cnn.com, washingtonpost.com, news.google.com, and nytimes.com) have a far higher degree of cross-ideological linking than any of the popular blogs and websites that we might think of as deliberative enclaves (such as nationalreview.com or salon.com).³⁵⁴

As mentioned, though, the data on this topic are tentative and not altogether clear. Eszter Hargittai, Jason Gallo, and Matthew Kane analyzed trends of political activity online, and they show a more mixed picture. They first note, “As expected, it is certainly the case that conservatives are more likely to connect to conservatives and liberals to liberal blogs.”³⁵⁵ Importantly, though, they did observe a meaningful amount of “cross-ideological linkages.”³⁵⁶ They explain, “During the three weeks in our data set, we document over 50 links from conservatives to liberals and over 70 links from liberals to conservatives. Put in another way, 12% of all outbound links from conservatives are sent to liberal blogs while 16% of all outbound links from liberals point to conservative blogs.”³⁵⁷ Furthermore, when they analyzed these cross-ideological links, they discovered that “while many of the links are based on straw-man arguments, bloggers across the political spectrum also address each others’ writing substantively, both in agreement and disagreement.”³⁵⁸ They conclude that while the Internet does enable a

³⁵⁴ Adamic and Glance, “The Political Blogosphere and the 2004 U.S. Election,” 14. See Appendix H for a visualization of this comparison.

³⁵⁵ Eszter Hargittai, Jason Gallo, and Matthew Kane, “Cross-ideological discussions among conservative and liberal bloggers,” *Public Choice* 134 (2008): 78.

³⁵⁶ Hargittai, Gallo, and Kane, “Cross-ideological discussions among conservative and liberal bloggers,” 78.

³⁵⁷ Hargittai, Gallo, and Kane, “Cross-ideological discussions among conservative and liberal bloggers,” 78.

³⁵⁸ Hargittai, Gallo, and Kane, “Cross-ideological discussions among conservative and liberal bloggers,” 67.

high degree of “insularity,” it does not exhibit the kind of “complete isolation” that the Internet pessimists fear.³⁵⁹

Finally, some studies compare the effects of online deliberation with face-to-face deliberation, and the data are somewhat disconcerting. Sunstein points to data that suggests that online deliberation – more so than face-to-face deliberation – encourages the phenomenon of “group polarization,” in which “after deliberation, people are likely to move toward a more extreme point in the direction to which the group's members were originally inclined.”³⁶⁰ This phenomenon of online deliberation resulting in further entrenchment is even more pronounced when the topics of discussion are wrapped up in the deliberators' personal identities: “Group polarization will significantly increase if people think of themselves, antecedently or otherwise, as part of a group having a shared identity and a degree of solidarity.”³⁶¹ Young Min Baek, Magdalena Wojcieszak, and Michael X. Delli Carpini compare face-to-face deliberation with online deliberation and conclude: “Relative to face-to-face deliberation, online deliberation ... generates more negative emotions, and is less likely to result in consensus and political action.”³⁶²

However, not all the data support this pessimistic view.³⁶³

³⁵⁹ Hargittai, Gallo, and Kane, “Cross-ideological discussions among conservative and liberal bloggers,” 78.

³⁶⁰ Sunstein, *Republic.com 2.0*, 60.

³⁶¹ Sunstein, *Republic.com 2.0*, 67.

³⁶² Baek, Wojcieszak, and Carpini, “Online versus face-to-face deliberation,” 363.

³⁶³ See Matthew Gentzkow and Jesse M. Shapiro, “Ideological Segregation Online and Offline,” *Chicago Booth and NBER*, 18 March 2011, accessed 23 September 2014, https://econresearch.uchicago.edu/sites/econresearch.uchicago.edu/files/echo_chambers.pdf. They write, “We find that ideological segregation of online news consumption is low in absolute terms, higher than the segregation of most offline news consumption, and significantly lower than the segregation of face-to-face interactions with neighbors, co-workers, or family members. We find no evidence that the Internet is becoming more segregated over time” (1). Marcus Prior notes, “Measurement problems hold back research on partisan selective exposure and its consequences. Ideologically one-sided news exposure may be largely confined to a small, but highly involved and

In any case, we should not overlook the obvious benefits of the Internet in our political lives, even if most people do congregate in deliberative enclaves and do not deliberately seek out and constructively engage opposing ideas and arguments.³⁶⁴ On the positive side, these new deliberative enclaves empower people with ideologies or identifies generally not well represented in the mainstream media to come together across great distances and deliberate together in important ways. Of course, these groups may include progressive activists as well as dangerous extremists (or even terrorists). In any event, though, the sheer number of deliberative enclaves (especially compared with the much smaller number of general-interest intermediaries, which are only able to serve their function if there is a small number of them) certainly creates a vast diversity of communities within which a great diversity of ideas can be developed and discussed.

The best way to conceptualize this phenomenon is with the distinction between “first-order” diversity and “second-order” diversity. As Sunstein notes, the Internet-enabled phenomenon of the proliferation of deliberative enclaves helps increase “second-order” diversity even as it threatens to weaken “first-order” diversity. Second-order diversity refers to the increased number of distinct viewpoints and opinions that prevail across society. As he puts it, this is “the kind of diversity that comes when society consists of many institutions and groups, some of which have little in the way of internal

influential, segment of the population. There is no firm evidence that partisan media are making ordinary Americans more partisan” (“Media and Political Polarization, *Annual Review of Political Science* 16 [2013]: 101).

³⁶⁴ Although this chapter has focused on the epistemic effects of online deliberation, we should not forget all of the non-epistemic (but still political) benefits of online deliberation. Goldman lists three of these non-epistemic benefits: “One good is that 12 million people write rather than stare passively at a screen. Another good is that people are allowed to blow off steam. Still another good is that it enables the authorities to keep tabs on potential troublemakers” (“The Social Epistemology of Blogging,” 5). Many other such non-epistemic (both political and non-political) benefits could be listed.

diversity.”³⁶⁵ Deliberative enclaves allow for the emergence of a great many distinct (although sometimes eccentric or extremist) political communities and identities that formerly would not have been able to coalesce. However, if these deliberative enclaves do not foster constructive debate and discussion with members of *other* deliberative enclaves, then although there might be a large and heterogeneous diversity of different communities (an increase in “second-order” diversity), the members of each deliberative enclave will tend to be relatively more close-minded and homogeneous (a decline in “first-order” diversity). This trade-off between “first-order” and “second-order” diversity as deliberative enclaves come increasingly to displace general-interest intermediaries is complicated. Adding up the individual and social costs and benefits of this new situation is far beyond the reach of this chapter.

This discussion has brought up issues that have long concerned defenders of the democratic ideal. Namely, if individuals have little incentive to develop justified political beliefs, and many opportunities to shut themselves off from other perspectives and arguments, then how is genuine democratic debate – a key pillar of democratic legitimacy – going to occur? This problem, put more generally, is referred to as the “problem of political ignorance,” or “rational ignorance,” and it stands as a serious challenge, in non-ideal theory, to the democratic ideal of rational self-government. The worry about the problem of rational political ignorance is highlighted in many discussions of online deliberation, but it is helpful to discuss it on its own. I turn to this topic now.

³⁶⁵ Sunstein, *Republic.com 2.0*, 73.

5. The Deliberative Ideal and the Challenge of Rational Ignorance

The early and tentative evidence of online deliberation suggests that the new, fragmented, filtered, and personalized speech environment of the Internet is encouraging political polarization and allowing participants to shut themselves off into deliberative enclaves where they are seldom exposed to the viewpoints of others. While this phenomenon is correlated with greater levels of political participation, it is also correlated with greater levels of political polarization and partisanship. Of course some participants use the Internet to explore a wide variety of ideological viewpoints, but the research from Lawrence, Sides, and Farrell suggests that most participants use the Internet to close themselves off from other viewpoints. This phenomenon might be thought to exacerbate an already troubling problem endemic to modern democracies: the problem of rational political ignorance.

Survey data suggests that most American voters lack even basic knowledge about the political system under which they live, and lack even basic knowledge about economics. This is problematic for a number of reasons. One important concern, from the point of view of political liberalism and democratic theory, is that voters are each partial authors of coercively enforced political policies that are imposed on everyone, even those who voted for different policies and politicians. If those citizens who are (partially) responsible for enacting coercive policies on others are doing so on the basis of beliefs which are morally or epistemically deficient (in serious ways), then those citizens are responsible for *oppression*. That is, they are responsible for coercively imposing policies on others who have very good reasons to reject those policies. The phenomenon of rational ignorance is a structural problem in all large modern democracies, and,

according to much of the data, it is being exacerbated by the Internet revolution and the network of epistemically-closed deliberative enclaves that it has spawned. It is worth thinking about the nature of this problem and how we might respond to it.

Robert Talisse summarizes what he dubs the “Public Ignorance Objection” to deliberative democracy (and to the democratic ideal more generally) as follows: “(1) Deliberative democracy, in whatever form, expects citizens to be highly informed about basic political facts and emerging data related to complex policy questions. (2) Citizens are in fact highly ignorant of even the most basic political facts. (3) Therefore, deliberative democracy is 'both unrealistic and, as a result, potentially dangerous.’”³⁶⁶ According to the critics of deliberative democracy, individual citizens, recognizing (at some level) that their individual votes will make no difference to policy outcomes, lack strong incentives to develop justified political beliefs. They are *rationaly* ignorant, in that their ignorance is a rational response to the incentive structure they face in terms of the costs and benefits of acquiring (and maintaining over time) justified political beliefs.

In response to this problem, many defenders of the ideal of deliberative democracy urge better civic education in schools. Talisse notes that, in the face of facts about the level of political ignorance in society, the deliberative democrat will respond that “a high degree of belief ignorance indicates the extent to which fundamental democratic institutions, such as the media and education system, are failing.”³⁶⁷

However, the problem of political ignorance is more challenging than this typical

³⁶⁶ Talisse, “Does Public Ignorance Defeat Deliberative Democracy?” 457; the latter part of the quotation is quoting from Ilya Somin, “Richard Posner’s Democratic Pragmatism and the Problem of Public Ignorance,” *Critical Review* 16, no. 1 (2004): 8.

³⁶⁷ Talisse, “Does Public Ignorance Defeat Deliberative Democracy?” 459. There are, of course, many other critiques of deliberative democracy. For a critique of deliberative democracy that praises the role of online deliberation, see Jereon van den Hoven, “E-democracy, E-Contestation and the Monitorial Citizen,” *Ethics and Information Technology* 7 (2005).

response seems to recognize. Many of those who are worried about the problem of political ignorance suggest that the modern state, with all of its activities and responsibilities (from monetary policy to regulatory policy to foreign policy) is so vast and complicated that it is *unreasonable* to demand that ordinary citizens become sufficiently competent enough to be responsible political participants. Somin argues, “Even if voters were significantly better informed and more rational than most are today, the vast size and complexity of modern government would prevent them from acquiring enough knowledge and sophistication to deliberate over more than a small fraction of the full range of issues currently decided by government.”³⁶⁸ Issues related to economics and property are characterized by an especially high level of empirical complexity, which makes the political ignorance problem even more difficult. How can we expect citizens who filter and personalize their media consumption and inhabit epistemically-closed deliberative enclaves to be competent enough about complicated issues of economics to act politically (through voting, activism, political office-holding, etc.) in a way that is sufficiently responsible and justifiable to their fellow citizens?

We are left asking a difficult question: how much can we reasonably expect of ordinary citizens, each of whom realizes that her own views, votes, and contributions will most certainly make little to no positive difference in political outcomes? Somin argues, “The rationality of political ignorance helps explain why ignorance has been so remarkably persistent over time, despite major increases in education levels and the availability of information. Although the supply of political information has increased, the demand has not.”³⁶⁹ From this Somin concludes, “This situation undercuts claims that

³⁶⁸ Somin, “Deliberative Democracy and Political Ignorance,” 254.

³⁶⁹ Somin, “Deliberative Democracy and Political Ignorance,” 259-260.

voter knowledge could increase to the levels demanded by deliberative democracy if only the media and other institutions provided more and better information.”³⁷⁰ For those worried about the problem of political ignorance, then, the true problem lies in the fact that political ignorance is not a phenomenon ultimately produced by insufficient schooling, nor is it merely induced in the populace by manipulative corporate and state interests – although this phenomenon does, of course occur (but it seems to be parasitic off this underlying rational ignorance) – but rather such ignorance is entirely rational for each individual.³⁷¹

The demand by deliberative democrats that the majority of citizens must be sufficiently informed about political issues needs to be more fully spelled out. How burdensome is this demand? What is the appropriate level of competence required in order to be epistemically responsible in one's political activities? It is unclear what the appropriate level is, and thus how burdensome the demand should be. But, as discussed above, the issues surrounding matters of economics and property are especially complicated on the empirical side, and they thus pose a serious challenge to the deliberative democratic ideal of a citizenry capable of competently evaluating issues from across the full range of justice. Furthermore, this problem seems to be exacerbated by the Internet revolution. What, if anything, can be done about it?

³⁷⁰ Somin, “Deliberative Democracy and Political Ignorance,” 259-260.

³⁷¹ Discussions of the “production” of ignorance now sometimes go under the moniker of “agnotology,” and this is an important topic. However, the discussion here focuses on the challenge of rational ignorance, which would persist even in a society free from the manipulative production of ignorance by powerful interests. For well-known discussions of the problem of produced ignorance, see David Michaels, *Doubt is Their Product: How Industry's Assault on Science Threatens Your Health* (London: Oxford UP, 2008); Chris Mooney, *The Republican War on Science* (New York: Basic Books, 2005); Naomi Oreskes and Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (New York: Bloomsbury Press, 2010); also see the anthology *Agnotology: The Making and Unmaking of Ignorance*, ed. Robert Proctor and Londa Schiebinger (Palo Alto: Stanford UP, 2008).

6. Conclusion: Citizens vs. Consumers (and the Return of Foundational Disagreement)

Sunstein recognizes and appreciates the seriousness of the problem of political ignorance. Most individual citizens are faced with incentives *against* becoming truly politically competent. After all, no individual citizens will ever change the outcome of an election with her vote, and very few individual citizens will effect positive political change through activism or office holding.³⁷² Thus, for each individual citizen, the costs of serious and open-minded political education clearly outweigh the benefits. This leads individual citizens to rationally under-educate themselves about political matters, which ultimately results in worse political outcomes for everybody (since most other citizens likewise rationally choose to under-educate themselves). This is, Sunstein notes, a classic “prisoner’s dilemma” problem – what is rational on the individual level ends up being irrational in the aggregate. Individual choices to seek out a narrow range of news consumption and minimal ideological exposure produce “negative externalities” in the form of bad political outcomes (and the harm that accompanies them).

The classic response to negative externalities is some kind of state regulation, which Sunstein embraces as a feasible solution to the problem of political ignorance. Sunstein’s argument that we should regulate and more consciously design our speech and deliberative environments is rooted in a set of particular philosophical commitments – commitments which are, I will show, subject to foundational yet reasonable disagreement. Sunstein believes that since under-education about political matters produces negative externalities, we *as citizens* (through the state) should be permitted to

³⁷² Michael Huemer reminds us that, because of how complicated most political problems are, it is all too possible that any given well-meaning political reform will, at the end of the day, be a net *harm*. Huemer believes that this occurs more often than we realize, and he points out this possibility as a way to justify political inaction on deontological and utilitarian grounds. See Huemer, “In Defense of Passivity.”

regulate the activities of we *as consumers* (the choosers and consumers of political news and commentary). Sunstein writes, “Often citizens attempt to promote their highest aspirations through democratic institutions. If the result is to produce a communications market that is different from what individuals consumers would seek—if as citizens we produce a market, for example, that promotes exposure to serious issues and a range of shared experiences—freedom will be promoted, not undermined.”³⁷³ For Sunstein, one’s role as a democratic citizen takes precedence over one’s role as a private consumer, and for this reason, citizens are permitted to use democratic channels to impose constraints, regulations, nudges, etc., to their (and others’) behavior as consumers (both online and offline) when these consumer behaviors lead to negative externalities.³⁷⁴ Sunstein suggests a series of possible legislative solutions to some of the epistemic problems of online deliberation. For example, we might use of government subsidies “to assist high-quality efforts in nonprofit, nongovernmental spaces on the Internet” where constructive political deliberation is encouraged.³⁷⁵ We also might encourage policies of “mutual linking,” in which “providers of material with a certain point of view might also provide links to sites with a very different point of view” in exchange for those latter sites linking to the former sites.³⁷⁶ Sunstein even suggests, in an article co-authored by Adrian

³⁷³ Sunstein, *Republic.com 2.0*, 120.

³⁷⁴ Sunstein argues that one of the best forms of regulation is *nudging*, which he also calls “libertarian paternalism,” which is explained and defended in Sunstein and Thaler, *Nudge: Improving Decisions about Health, Wealth, and Happiness*; and Cass Sunstein, “The Ethics of Nudging” (20 November 2014), accessed 10 January 2015, <http://ssrn.com/abstract=2526341>.

³⁷⁵ Sunstein, *Republic.com 2.0*, 202.

³⁷⁶ Sunstein, *Republic.com 2.0*, 208. Recognizing how difficult this would be to enforce, Sunstein suggests that we encourage it as a voluntary practice. Also see Todd Davies and Reid Chandler, “Online Deliberation Design: Choices, Criteria, and Evidence” (Symbolic Systems Program, Stanford University, 31 August 2011), accessed 18 June 2014, <http://arxiv.org/ftp/arxiv/papers/1302/1302.5177.pdf>. Davies and Chandler discuss comparisons between different kinds of “online deliberation design” and how they effect the quality of deliberation. For a related discussion, see Sean Munson and Paul Resnick, “Presenting Diverse Political Opinions:

Vermeule, that the government should actively combat hateful, extremist, and conspiracy-oriented discussions that take place on the Internet, suggesting that “the best response consists in cognitive infiltration of extremist groups” by government agents.³⁷⁷ He goes on, “Government agents (and their allies) might enter chat rooms, online social networks, or even real-space groups and attempt to undermine percolating conspiracy theories by raising doubts about their factual premises, causal logic or implications for political action.”³⁷⁸ Sunstein sees this set of interventions as a response to normal human cognitive biases that, in certain environments, can have politically destructive effects. Regardless of the specifics of his policy recommendations, Sunstein's larger message is clear: citizens, through the government, can and should regulate and redesign their speech environments so as to ensure more productive dialogue and debate.

However, the fundamental commitment to the priority of the citizen over the consumer is a contested and contestable view within political philosophy. The range of control that a democratic majority can legitimately exercise over individual members of the political community is itself subject to a wide range of reasonable disagreement. As Sunstein is aware, the individual qua consumer is protected by a set of rights, like the freedom of speech embodied in the First Amendment, that limits the encroachment of democratic majorities (individuals qua citizens). How, then, do we evaluate Sunstein's proposal to permit citizens to regulate themselves and others as consumers in order to create a more fruitful speech environment (online as well as offline)?

How and How Much” (School of Information, University of Michigan, 2010), accessed 14 March 2014, <http://www.smunson.com/portfolio/projects/aggdiversity/PresentingDiversePoliticalOpinions-chi10.pdf>.

³⁷⁷ Cass Sunstein and Adrian Vermeule, “Conspiracy Theories” (University of Chicago Law School Law & Economics Research Paper Series Paper No. 387, 15 January 2008), accessed 4 January 2015, <http://ssrn.com/abstract=1084585>.

³⁷⁸ Sunstein and Vermeule, “Conspiracy Theories,” 22.

Sunstein frames the problem of political ignorance as a negative externalities problem. That is, my political ignorance (fueled by a fragmented speech environment) contributes to bad political outcomes (because I vote and act politically without sufficient knowledge), which ultimately harms others, who are subject to those bad policies. Thus, those others who are harmed have a right to regulate my behavior, so as to ensure that the harm I am able to inflict through the state is minimized. This framing of the problem does, indeed, help Sunstein justify the right of citizens to regulate consumers in these cases. But many of those worried about the problem of political ignorance have very different proposals for dealing with the problem. Sunstein's framing of the problem only makes sense in a political context whereby the state has undertaken such a wide variety of activities and responsibilities such that ordinary citizens are unable to properly educate themselves about all of the complexities of various relevant government policies.

In opposition to this line of argument, instead of calling for the regulation of the speech environment of consumers, Caplan and Somin argue for reducing the scope of overall government activity, thus reducing the complexity that citizens face, and thereby reducing the likelihood of citizens imposing harmful policies on their fellow citizens. These thinkers advocate transitioning many activities out of the democratic political sphere (populated by citizens with disincentives to educate themselves about the issues) and into the private economic sphere (populated by consumers with strong incentives to educate themselves about their choices).³⁷⁹ In the context of a more limited state, the

³⁷⁹ I have noted two responses to the problem of political ignorance: Sunstein's argument for the regulation and better design of the speech environment in addition to further education of ordinary citizens, and the Caplan/Somin argument for decreasing the scope of government activity to reduce the complexity faced by citizens and relying more on market solutions. There is a third, although less commonly defended, alternative solution to the problem of political ignorance: elite-driven democracy. Instead of either empowering ordinary citizens or shifting their decisions into the economic sphere, the proponents of elite-driven democracy argue that the important political decisions should be handed off to an elite class with minimal input from the epistemically deficient masses. While the argument from Caplan and

problem of political ignorance would be reduced, and the “negative externalities” of bad political outcomes would be diminished, because citizens would be more capable of educating themselves about the (now reduced number and complexity of) political issues, and they would furthermore have fewer opportunities to inflict their uneducated views on others in harmful ways (since the state is engaged in fewer activities).³⁸⁰ But, as Sustain would retort, these limitations on the power of the state also come with their own costs in that they prevent citizens from doing positive things with the use of state power,³⁸¹ and more generally these limitations overly constrict the rights of citizens to exercise their democratic rights to self-determination. Again, though, allowing citizens to do more things through the state makes the problem of political ignorance more extreme, and helps justify the regulation of the speech environment.

In the end, we confront two options in the face of the problem of political ignorance (a problem which preexists the Internet, but which seems to be further fueled by it). First, there is the Sunstein option of prioritizing the citizen over the consumer, which helps to justify a large government and a regulated speech environment. Second,

Somin assumes that elites are also encumbered by epistemic deficiencies (such as those elaborated by Hayek) and thus that the state should be small, the defenders of elite-driven democracy are not necessarily committed to a small state and market solutions. For a classic defense of elite-driven democracy, see Joseph Schumpeter, *Capitalism, Socialism, and Democracy* [New York: Harper & Row, 1950], chapter 22. For a more contemporary defense, see Richard Posner, *Law, Pragmatism, and Democracy* [Cambridge, MA: Harvard UP, 2003], chapters 4 and 5.

³⁸⁰ See Somin, “Political Ignorance and Deliberative Democracy,” 269f, where he discusses the “localist alternative” to deliberative democracy. Also see Mark Pennington, “Hayekian Political Economy and the Limits of Deliberative Democracy,” *Political Studies* 51, no. 4 (December 2003); and Caplan, *The Myth of the Rational Voter*, chapter 8.

³⁸¹ Somin concedes this point, “The deliberative advantages of private institutions are far from the only considerations that should be weighed in determining the proper size and scope of government. In many situations, they are also not the most important. For example, it is possible that some public goods, such as national defense, a large-scale legal system, and pollution control over wide geographic areas can be provided only by government. In such cases, the deliberative shortcomings of government might be an acceptable price to pay for the provision of essential services that the private sector is unlikely to produce on its own” (“Political Ignorance and Deliberative Democracy,” 274).

there is the Caplan/Somin option of prioritizing the consumer over the citizen, which helps to justify a limited government and a more unregulated speech environment. Ultimately, this debate comes down to fundamental philosophical disagreements about rights vs. welfare, liberty vs. equality, private vs. public, etc. These disagreements are deep and seemingly intractable, and, as I have tried to argue in the previous two chapters, we should not expect even idealized reasonable people to come to an agreement on them, let alone actual citizens who are encumbered with the full array of normal epistemic deficiencies and cognitive biases.

The concerns I have expressed about the effects of the Internet on non-ideal deliberation further intensify the problem. The debate between Sunstein and Caplan/Somin concerns clashing fundamental philosophical values, as well as extremely complicated empirical issues about the connection between speech regulation and political outcomes as well as the connection between the power of the state and the extent of political ignorance. As I have shown, online deliberation is not well suited to deal with the challenge of moral pluralism and empirical complexity. So with this debate we confront foundational disagreement (a problem for ideal deliberation) as well as the challenge of moral pluralism and empirical complexity (a problem for non-ideal deliberation, especially as it takes place online).

In this case, Sunstein and Caplan/Somin disagree deeply about the nature of freedom and coercion. Here is how Sunstein defines the kind of freedom that the state should actively protect: “freedom properly understood consists not simply in the satisfaction of whatever preferences people have, but also in the chance to have preferences and beliefs formed under decent conditions—in the ability to have

preferences formed after exposure to a sufficient amount of information and also to an appropriately wide and diverse range of options.”³⁸² This represents a prioritization of the citizen over the consumer because freedom is defined as *freedom over one's conditions*, not merely freedom of choice within one's conditions. That is, prioritizing the citizen reflects a commitment to freedom as control over the conditions which give rise to one's choice set, while the prioritization of the consumer reflects a commitment to freedom as freedom to choose within a given choice set. How could someone reasonably reject Sunstein's conception of freedom? Well, one feature of the conditions under which my choice set emerges is *the choices of other people*, so the right to control my conditions is necessarily also a right to have a say in the choices of other people. What justifies this, and what are the limits to it? What about the possibility that my interference with the choices of others (even when those choices modify my choice set) is a violation of their rights, and thus unjust?

Nozick reflects on the argument that “people have a right to a say in the decisions that importantly affect their lives.”³⁸³ He develops a provocative thought experiment that illustrates his point (and serves as a nice critique of Sunstein's position):

If four men propose marriage to a woman, her decision about whom, if any of them, to marry importantly affects each of the lives of those four persons, her own life, and the lives of any other persons wishing to marry one of these four men, and so on. Would anyone propose, even limiting

³⁸² Sunstein, *Republic.com 2.0*, 45. And while Sunstein might be right that freedom properly understood requires adequate conditions for its expression, it is possible that the coupling of a large government with the regulated speech environment that he advocates will result in more harm than good – harm from bad policies generated by persistent political ignorance, as well as harm to those whose speech is regulated.

³⁸³ Nozick, *Anarchy, State, and Utopia*, 268.

the group to include only the primary parties, that all five persons vote to decide whom she shall marry? She has a right to decide what to do, and there is no right the other four have to a say in the decisions which importantly affect their lives that is being ignored here. They have no right to a say in *that decision*.³⁸⁴

This passage is a *reductio ad absurdum* of the argument (defended by Sunstein and many others) that people have a right to determine the conditions under which they make choices. Nozick points out that such a right is apt to run up against a certain liberal conception of individual rights against interference.³⁸⁵ This is not to say that Nozick/Caplan/Somin are right and Sunstein is wrong about the nature of freedom and coercion. It is only to point out that such a debate reflects a deep yet reasonable disagreement about matters of basic justice. Neither Nozick nor Sunstein should assume that his position is uniquely reasonable (and thus is an appropriate and satisfying public justification for principles of justice). In debates about the proper response to our troubled online speech environment, we are again brought face-to-face with foundational yet reasonable disagreements.

³⁸⁴ Nozick, *Anarchy, State, and Utopia*, 269. If this thought experiment fails to adequately tap into your libertarian intuitions, Nozick offers another: “Suppose you own a station wagon or a bus and lend it to a group of people for a year while you are out of the country. During this year these people become quite dependent on your vehicle, integrating it into their lives. When at the end of the year you return, as you said you would, and ask for your bus back, these people say that your decision once more to use the bus yourself importantly affects their lives, and so they have a right to a say in determining what is to become of the bus. Surely this claim is without merit” (*Anarchy, State, and Utopia*, 269).

³⁸⁵ From a different tradition of political thought, Chantal Mouffe reflects on the ideals of liberalism and democracy, and points out “the ultimate contradictory nature of the two logics” (*The Democratic Paradox*, 45). While liberalism embodies a commitment to universal individual rights (especially against state coercion), democracy embodies a particular collective right for a certain “people” to rule themselves (through state power). This “constitutive paradox” at the heart of “liberal democracy” is reflected in debates between libertarians and classical liberals on the one hand and left-liberals and participatory democrats on the other (Mouffe, *The Democratic Paradox*, 45).

In this chapter, as well as the previous two chapters, I have discussed many reasons why we should not expect a rational consensus around problems of economic and distributive justice. These questions are characterized by such a high degree of moral pluralism and epistemic complexity that rational consensus is not forthcoming in either ideal theory or non-ideal deliberation. We are faced with a set of entrenched philosophical disagreements. Having identified this problem, which has been unappreciated in much of political philosophy, in the next chapter I develop some ideas about how we might better orient ourselves toward these problems. In doing so, I draw on the tradition of American pragmatism, which is especially interested in real-world problem solving. While I offer no grand philosophical solutions to these problems, I do propose some (hopefully) fruitful and constructive ways of dealing with them in both theory and practice.

CHAPTER V

DEEP PLURALISM AND PRAGMATIST POLITICS

1. Introduction: From Political Liberalism to Pragmatism

In this chapter, I bring the American pragmatist philosophical tradition to bear on some central problems that I have identified in the tradition of political liberalism. Political liberals assume that our disagreements about justice are constrained by a shared set of political values, but I have argued that our reasonable disagreements about justice are sometimes radically deep – as is the case with regard to matters of economic justice – and political philosophy must be responsive to this fact. The recognition of these shortcomings of political liberalism is now taking hold among a number of different camps within contemporary political philosophy. Similar lines of critique have been developed by so-called realists (like Raymond Geuss³⁸⁶ and Bernard Williams³⁸⁷), by *modus vivendi* liberals (like John Gray³⁸⁸ and David McCabe³⁸⁹), by agonist democrats (like Chantal Mouffe³⁹⁰ and Bonnie Honig³⁹¹), and even by some working within (but pushing against the boundaries of) the framework of political liberalism (like Gerald

³⁸⁶ See Raymond Geuss, *Philosophy and Real Politics* (Princeton: Princeton UP, 2008).

³⁸⁷ See Bernard Williams, *In the Beginning was the Deed: Realism and Moralism in Political Argument* (Princeton: Princeton UP, 2005).

³⁸⁸ See Gray, *The Two Faces of Liberalism*.

³⁸⁹ See David McCabe, *Modus Vivendi Liberalism* (New York: Cambridge UP, 2010).

³⁹⁰ See Mouffe, *The Democratic Paradox*.

³⁹¹ See Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, NY: Cornell UP, 1993).

Gaus³⁹²).³⁹³ Indeed, it is not an overstatement to say that the political liberalism first articulated and defended by John Rawls in *Political Liberalism* is now in crisis.

Many of these compelling critics of political liberalism, however, have struggled to articulate a positive response to this crisis. Perhaps the nature of these criticisms forecloses the possibility of a detailed alternative. If we maintain a commitment to consensus as a pillar of political legitimacy (which I believe we should), but we also recognize that reasonable people are unlikely to agree upon either a single principle or a bounded set of similar principles of justice on some important matters (like property rights and economic justice), then it is entirely unclear what kind of positive political project is possible. Thus, these critics tend to gesture vaguely towards the necessity of political agonism (but what does that look like?), or the benefits of achieving stability (but how do we achieve it?), or the hope that we might coordinate on a sub-optimal but acceptable socio-political Nash equilibrium (but how do we do that, and what if we cannot?).

While our condition of deep pluralism might foreclose the possibility of rational consensus for all matters of justice, it is worth thinking through how we might best orient ourselves to our especially deep and persistent disagreements, and to reflect on the role that political philosophy might play in this context. To address this, in this chapter I turn to a philosophical tradition not yet addressed in this dissertation, and which is not often brought into discussions about the problems of analytic political philosophy: American pragmatism. Does pragmatism offer strategies for helping us navigate not merely Rawls' constrained and hypothetical "reasonable pluralism," but instead our more familiar and

³⁹² See Gaus, *The Order of Public Reason*; and Gaus, *The Tyranny of the Ideal*.

³⁹³ For a helpful overview of this emerging critique of political liberalism, see Galston, "Realism in Political Theory."

unruly “deep pluralism”?³⁹⁴ Indeed, one would think so, given pragmatism’s overriding commitment to dealing constructively with actually existing problems and conditions, and its skepticism toward philosophical abstractions that take us away from and overly simplify our situation. In this chapter, then, I look through some of the major strands of pragmatism for possible responses to the crisis of political liberalism.

The tradition of American pragmatism is long and rich, featuring a number of important thinkers, many of whom made important contributions to political theory and political philosophy. Like all traditions, it is unified by a family resemblance of commitments, but nonetheless features important debates within itself over some of its core ideas. In this chapter, I will focus on the ideas of John Dewey, Charles Sanders Peirce, and William James, with a brief discussion of Richard Rorty.³⁹⁵ By examining each of these key figures in the tradition, I tease apart different strands of pragmatist thought, some of which are helpful for dealing with the problems that I have identified in earlier chapters, some of which are not.

I first explore whether Dewey's contributions to democratic theory offer an adequate response to deep pluralism. I start with Dewey because he is seemingly the best candidate for thinking through problems of democratic deliberation and pluralism, since he dedicated so much of his writing to the theory and practice of democratic politics. For many philosophers, pragmatist political philosophy *just is* Dewey's democratic theory.

³⁹⁴ The distinction between “reasonable pluralism” and “deep pluralism” is made by Colin Koopman in, among other places, his “Review of Ferguson Kennan's *William James: Politics in the Pluriverse*,” *William James Studies* 4 (2009).

³⁹⁵ Many other American pragmatists made important contributions to political philosophy, and even to questions of pluralism, such as Jane Addams, Mary Parket Follett, and, more recently, Cornel West. For a discussion of the many figures in the American philosophical tradition who discussed questions of pluralism and justice (and related matters), see Scott Pratt and Erin McKenna, *American Philosophy: From Wounded Knee to the Present* (New York: Bloomsbury Publishing, 2015).

However, I will argue that the Deweyan account does not help deal with the problems I have identified, since its key idea of “growth” is a controversial standard that excludes moral non-naturalists from democratic deliberation, and also because the Deweyan faith in deliberation to bring about consensus is unfounded in the context of deep pluralism. Dewey may be helpful for thinking through other political problems, such as democratic participation, but he does not help us deal with the problems generated by deep pluralism.

I then briefly turn to the recent articulation of democratic theory as inspired by the work of Peirce. This is another seemingly likely starting point for thinking through problems of democratic deliberation and pluralism, given recent contributions to Peircean deliberative theory by Cheryl Misak and Robert Talisse.³⁹⁶ However, while there are important insights in this tradition, I will argue that it does not help deal with the problems that I have identified and that I am concerned to address in this dissertation. The “epistemic perfectionism” of Peircean democracy does not get around the problems generated by deep yet reasonable moral pluralism (identified in chapters II and III). Even if all deliberators were free from epistemic deficiencies (such as those explored in chapter IV), they might nonetheless be reasonably committed to radically different premises (such as Robert Nozick's “self-ownership thesis” or John Rawls' “luck egalitarian thesis”), or they might reasonably interpret shared political values in significantly different ways (featured in the debate over the relationship between economic liberty and moral personhood that divides Samuel Freeman from John Tomasi, or in the debate over the nature of liberty and coercion that divides Gerald Gaus from Andrew Lister). Even in ideal theory, then, where we restrict ourselves to epistemically idealized reasonable

³⁹⁶ Cheryl Misak, *Truth, Politics, Morality: Pragmatism and Deliberation* (Routledge: London, 2000); Robert Talisse, *A Pragmatist Philosophy of Democracy* (New York: Routledge, 2007).

people, rational consensus is not a feasible goal on certain core matters of justice because of the wide plurality of reasonable views.

I then propose that James offers a more promising (perhaps because more humble) response to the fractures of contemporary liberal political philosophy, and I develop an account of what a Jamesian political philosophy would look like, also borrowing elements from Rorty's political thought. James argues that, in the face of deep yet reasonable pluralism, the political philosopher should attempt to create new ideals and values that might appeal to both sides of a conflict – enabling the creation of consensus where it was not previously possible. This practice, which I refer to as *Jamesian moral entrepreneurship*, is on display by James himself in his article “The Moral Equivalent of War,” which will be analyzed below. This is a difficult task without any guarantee of success, but it offers the best way for the political philosopher to respond to our deeply pluralistic world. I also discuss additional possible contributions by the pragmatist political philosopher, including *Rortyan moral entrepreneurship*, *moral explication*, and *Jamesian partisanship*. This section aims to provide suggestions about how political philosophy might be constructively reoriented in contexts of deep yet reasonable disagreement, which I have shown characterize some of our most pressing political problems today.

I want to clarify the scope and aim of this chapter up front to avoid misunderstandings. The turn (advocated in this chapter) from idealism to realism, from ideal theory to non-ideal problem-solving, from political liberalism to pragmatism, is not meant to convert all political liberals to pragmatists, or to function as a knock-down argument against idealistic and moralistic modes of doing political philosophy. My goal

is much more humble. I aim simply to offer a set of tools that may be helpful in thinking through what seem to be intractable deadlocks that have emerged within contemporary political liberalism itself. Pragmatism is not offered as a wholesale replacement political philosophy to political liberalism, but as a particular response to a particular set of problems that are unresolved and possibly irresolvable within the political liberal paradigm. Moralistic political philosophies (like political liberalism) are not *wrong* – they are just *unproductive* in those contexts where we disagree deeply and persistently about the relevant moral values. The tools of political liberalism are powerful, and political liberals have helped to make explicit and systematize many of our deepest intuitions about justice. It is possible that continued work within the political liberal paradigm (such as the work being done by philosophers like Gerald Gaus) will prove fruitful in some of these difficult debates. But, given what I have shown in the opening chapters of this dissertation, I am skeptical that progress within the political liberal paradigm is forthcoming on some of these deadlocked issues, since it is clear that even adherents of political liberalism are capable of working up arguments that lead to sharply opposing conclusions.

Political liberalism emerged as an attempt to help us forge a consensus about justice in conditions of reasonable pluralism. For many onlookers, political liberalism has failed in important ways to live up to this promise, and the tradition of political liberalism now features a level of disagreement between political liberals that simply mirrors the disagreements we have in the real world of politics. Political liberalism (and moralistic political philosophy more generally) is in crisis, and those of us who are frustrated by it are looking elsewhere for alternative tools and ideas. I hope, in this

chapter, to make the case that Jamesian pragmatism is one possibly fruitful strategy (but undoubtedly not the only fruitful strategy) for dealing with some of the problems that political liberalism has proved itself unable to adequately handle. Before making this positive case, I will first explain what my proposed view is *not*, by explaining some of the problems and shortcomings of some other major pragmatist thinkers.

2. Deweyan Democracy and the Ideal of Growth

Dewey wrote on a wide array of topics, but through them all can be found the unifying concepts of “democracy” and “growth,” which are also deeply interconnected with each other.³⁹⁷ Drawing on Robert Talisse's 2001 essay “A Farewell to Deweyan Democracy,” I will discuss two areas of concern in Dewey's political philosophy: Dewey's problematic notion of “growth” (which I will discuss in this section), and Dewey's problematic attachment to deliberative democracy (which I will discuss in the next section).

The first of Dewey's commitments to be explored is his commitment that the democratic state should both cultivate and reflect the democratic character and ethos of the citizenry. Dewey insists that democracy is not about having the state serve as a neutral umpire vis-à-vis the interactions of citizens, nor is it about merely aggregating and fulfilling the preferences of citizens, but its goal is “the all around growth of every

³⁹⁷ The concept of growth in Dewey is rich and complex. The literature on how the notion of growth fits into Dewey's ethics and politics is vast. For some of the more important commentary, see Melvin Rogers, *The Undiscovered Dewey: Religion, Morality, and the Ethos of Democracy* (New York: Columbia UP, 2009); Judith Green, *Deep Democracy: Community, Diversity, and Transformation* (Lanham: Rowman & Littlefield, 1999); Judith Green, *Pragmatism and Social Hope: Deepening Democracy in Global Contexts* (New York: Columbia University Press, 2008); Gregory Fernando Pappas, *John Dewey's Ethics: Democracy as Experience* (Bloomington, IN: Indiana UP, 2008); Eric MacGilvray, *Reconstructing Public Reason* (Cambridge, MA: Harvard UP, 2004); and Matthew Festenstein, *Pragmatism and Political Theory: From Dewey to Rorty* (Chicago: University of Chicago Press, 1997).

member of society.”³⁹⁸ Democratic individuals must be created, and political institutions must play a role in that process. Dewey routinely links his idea of democracy to the ideas of education and growth, since democratic institutions “are not means for obtaining something for individuals. They are means of *creating* individuals.”³⁹⁹ The justification for democracy, then, is its ability to facilitate growth. Growth provides the “criterion,”⁴⁰⁰ “standard”⁴⁰¹ or “supreme test”⁴⁰² for democracy. This justification is sufficient because, for Dewey, “growth itself is the only moral ‘end.’”⁴⁰³ Because democracy is a method for furthering the growth of its citizens, Talisse writes, “Deweyans hold that to show that some public policy *P* is the best among available options for promoting growth is to provide a conclusive reason for enacting *P*.”⁴⁰⁴ The value of growth thus serves as the common currency for public deliberation.

The problem with this view of democracy is that it does not respect citizens whose ideals conflict with Dewey’s moral ideal of growth. As Talisse puts it, “the Deweyan democratic ideal can be reasonably rejected; one can reject growth as an ideal yet not revoke one’s fitness for citizenship in a democratic society.”⁴⁰⁵ For Talisse, Dewey’s notion of growth is not “political,” in Rawls’ sense that it might serve as the

³⁹⁸ John Dewey, *The Collected Works of John Dewey: The Middle Works* (vol. 12), ed. J. A. Boydston (Carbondale, IL: Southern Illinois UP, 1982), 186.

³⁹⁹ Dewey, *The Collected Works of John Dewey: The Middle Works* (vol. 12), 191; emphasis in original.

⁴⁰⁰ John Dewey, *The Collected Works of John Dewey: The Middle Works* (vol. 5), ed. J. A. Boydston (Carbondale, IL: Southern Illinois UP, 1978), 431.

⁴⁰¹ John Dewey, *The Collected Works of John Dewey: The Middle Works* (vol. 9), ed. J. A. Boydston (Carbondale, IL: Southern Illinois UP, 1980), 89.

⁴⁰² John Dewey, *The Collected Works of John Dewey: The Middle Works* (vol. 12), 186.

⁴⁰³ John Dewey, *The Collected Works of John Dewey: The Middle Works* (vol. 12), 181.

⁴⁰⁴ Talisse, “A Farewell to Deweyan Democracy,” 514.

⁴⁰⁵ Talisse, “A Farewell to Deweyan Democracy,” 515.

basis of an overlapping consensus between reasonable people, but it is rather a “comprehensive” view of morality and politics.⁴⁰⁶ Accordingly, the use of growth as a criterion for policy could be reasonably rejected (or “vetoed”) by citizens whose ideals conflict with the imperative of growth. This line of critique is devastating to Deweyan democracy if it is found to be convincing. At this point, then, we must ask the obvious question: which citizens, exactly, would find growth to be an unacceptable criterion? Could reasonable people really reject growth as the ultimate ideal? Who would not want to “grow” in Dewey’s sense?

First, let us examine more clearly what Dewey means by growth. For Dewey, to grow is to be open to the transformative effects of experience. To grow is to recognize that one’s moral and political values are merely summaries of past experience, and thus they should be alterable if so required by changing conditions. Indeed, the person who recognizes this feature of her moral and political values will be eager to *experiment* with different values in order to solve newly emergent problems when faced with changed conditions. This account of growth is closely related to Dewey’s discussions of “habits,” where he writes about how habits are formed and how they can be reformed and transformed as conditions change. The goal, then, should be for one’s habits to remain

⁴⁰⁶ In David Rondel, “Deweyan Democracy Defended,” *Southwest Philosophy Review* 28, no.1 (2012), Rondel argues that Dewey did not intend his totalizing conception of democracy to be imposed coercively through the state, but rather that it was meant to merely embody an ethical ideal. As Rondel put it, Deweyan democracy is “aspirational not coercive” (201). If this is the proper reading of Dewey, then it is possible that my Talissean critique of Dewey simply misses the mark. But if this is so, then this admission comes at a cost – Dewey has no contribution to make to questions of justice (see Robert Talisse’s response to Rondel, “Reply to Rondel,” *Southwest Philosophy Review* 28, no. 2 [2012]). If Rondel’s reading is correct, then my basic argument in this section stands – Dewey is of little help when trying to work out problems of basic justice in the context of deep yet reasonable pluralism. From a slightly different angle, Phil Mayo defends Dewey as advocating a “thin” and thereby “political” conception of the good instead of a “thick” and thereby “comprehensive” conception of the good, thus sidestepping Talisse’s critique of Dewey (see Phil Mayo, “At What Price Pluralism?: A Reply to Robert Talisse” [paper presented at the annual meeting of the Society for the Advancement of American Philosophy, New York, March 2012]). If this reading of Dewey is correct, then again it is not clear what Dewey has to say about navigating deep pluralism.

flexible and open to new experience, always capable of transformation to meet new problems.⁴⁰⁷ This all seems reasonable as a way to approach life and its problems. Importantly, however, Dewey does not seem to merely prescribe growth as a personal ideal (a private conception of the good life), but instead he insists upon it as a political ideal (a public conception of justice).

A constant theme in Dewey's moral and political writings is the need to apply the scientific method to the moral and political domains so as to facilitate growth. For Dewey, one of the major obstacles to achieving growth is the age-old *quest for certainty*, whereby people look for fixed and unchanging values, leaving these people unable to intelligently deal with new conditions. The Deweyan democrat must therefore relinquish the debilitating urge to "find something so fixed and certain as to provide a secure refuge."⁴⁰⁸ When we relinquish the drive for fixity and certainty, we will see the moral realm as continuous with the other domains of inquiry. For Dewey, the collapse of the traditional opposition between the unchanging "moral" domain and the ever-changing "physical" domain is a feature of the recent trends toward "secularization," and our goal (as a culture) should be the "genuine universalization of the method – and spirit – of science as inquiry."⁴⁰⁹ The Deweyan democrat will thus "subject the 'morals' underlying old institutional customs to scientific inquiry and criticism."⁴¹⁰ Dewey embraces the radicalism of his proposal, as he recognizes that extending the application of scientific

⁴⁰⁷ For Dewey's most focused discussion of habits, see *Human Nature and Conduct* (New York: Henry Holt and Company, 1922). For a contemporary defense and extension of the ethical import of these Deweyan insights, see Mark Johnson, *Morality for Humans: Ethical Understanding from the Perspective of Cognitive Science* (Chicago: University of Chicago Press, 2014); and Philip Kitcher, *The Ethical Project* (Cambridge, MA: Harvard UP, 2011).

⁴⁰⁸ John Dewey, *Reconstruction in Philosophy* (Boston: Beacon Press, 1967), vii.

⁴⁰⁹ Dewey, *Reconstruction in Philosophy*, xxxiii.

⁴¹⁰ Dewey, *Reconstruction in Philosophy*, xxiii.

inquiry into the moral domain would result in “a new moral order.”⁴¹¹ Genuine democracy, then, requires that we “carry over into any inquiry into human and moral subjects the kind of method (the method of observation, theory as hypothesis, and experimental test) by which understanding of physical nature has been brought to its present pitch.”⁴¹²

Which citizens, exactly, would find growth to be an unacceptable criterion? Well, most generally, certain moral non-naturalists will reject the idea that growth is the only genuine moral end. Included in this class of citizens will be most religious believers, but also many secular citizens as well. For moral non-naturalists, our moral and political values are not merely summaries of past experience. For these citizens, their values do not have normative force over them because they have been helpful in resolving problems in the past. These values are not subject to empirical falsification. They are rooted in some other source – perhaps revelation, reason, intuition, or tradition. For the non-naturalist, the moral domain cannot be subjected to “experimentation” in the same way that the physical domain is. Fundamental moral values (for the non-naturalist) cannot be tinkered with in a lab, and morality should not be approached with the attitude of an experimenter. Talisse summarizes the problem: “the idea that we must resolve our social problems by appeal to ‘cooperative social experimentation’ would be rejected by those who reject naturalism in moral philosophy. On some reasonable views, experimentation and scientific method are wholly irrelevant to a range of questions of social policy,” which include important issues of justice such as “the permissibility of capital punishment or progressive taxation,” which “are questions about what is required

⁴¹¹ Dewey, *Reconstruction in Philosophy*, xxxix.

⁴¹² Dewey, *Reconstruction in Philosophy*, ix.

by justice, and justice is not something that can be examined empirically, but must be investigated conceptually or in some other non-empirical way.”⁴¹³ Thus, Talisse concludes, “many reasonable people will strongly reject any appeal to experimentation when it comes to fundamental matters of justice.”⁴¹⁴

Is Talisse right that among those who reject naturalism, and hence Deweyan “growth,” are a number of reasonable people whose views we must take seriously? It seems clear that Dewey’s growth-centered democratic ideal will be deemed unacceptable by more than the religious fundamentalist – included in this group will be many reasonable secularists. Let us take an example. Many non-dogmatic religious believers, and many secularists as well, believe in the moral and political ideal of pacifism. For these citizens, the ideal of pacifism is not subject to empirical falsification (in any straightforward sense). For them, all human life has inherent dignity that cannot be violated. This conviction, again, might come from a variety of sources, including revelation, reason, or intuition. For some pacifists, no conceivable event in the world could overturn their commitment, including a military enemy as depraved as the Nazis. Is this view unreasonable? So unreasonable that it merits exclusion from democratic deliberation?⁴¹⁵ Dewey’s commitment to growth furthermore seems to exclude

⁴¹³ Talisse, “A Farewell to Deweyan Democracy,” 518.

⁴¹⁴ Talisse, “A Farewell to Deweyan Democracy,” 518.

⁴¹⁵ Again, a background textual question here is whether or not Dewey’s discussion of deliberation is aimed at consensus about *justice*, or about something else. I am assuming that it is, but this is contested by commentators like David Rondel in his article “Deweyan Democracy Defended.” I discuss in footnote 405 why this textual dispute does not effect the basic argument in this section. Further, it is not clear in Dewey’s texts what exactly he has in mind. Rondel concedes, “Admittedly, Dewey could sometimes be vague about what a (real-world) commitment to his democratic ideal ultimately amounted to, about the kinds of laws, policies, and institutions that it required. He had strikingly little of a precise nature to say, moreover, about the circumstances under which political coercion is legitimate” (“Deweyan Democracy Defended,” 200). The concern that Dewey could “sometimes be vague” is undoubtedly true. This is unfortunate for Dewey, especially since so much of analytic political philosophy today is concerned with just that - “the circumstances under which political coercion is legitimate.”

conservative citizens who, Jonathan Haidt argues, draw on the moral foundation of “authority/subversion” and “sanctity/degradation,” both of which build in constraints against falsification and experimentation for certain core values (or “sacred” values). Thus Dewey, like the political liberals, needs to explain why he is justified in excluding some of the values of conservatives citizens from deliberations about justice, and why those conservative citizens should feel bound to the outcome of deliberations to which they have not been fully welcomed.

There are many citizens today who adhere to moral non-naturalism vis-à-vis matters of basic justice whom it would seem unwarranted to exclude. Many people hold non-naturalist views about abortion, in the sense that no further “experimentation” would be capable of dislodging the views of reasonable members on either side. For many pro-lifers and pro-choicers, empirical issues about the timing and extent of “fetal pain” are beside the point (as would be the results of any other empirical experimentation) – the point of contention is rather a metaphysical one about personhood and autonomy. Or consider the case of animal rights. Certainly part of the issue involves empirical questions about animals' cognitive complexity and sentience. But the normative questions about rights, welfare, obligations, etc., are not so clearly open to experimentation. For some advocates of animal rights, experimentation with the normative concerns is entirely beside the point.⁴¹⁶ For a final example, consider that debates about property often hinge on intuitions and beliefs about entitlement and fairness that are not necessarily open to experimentation. Ultimately, it is clear that non-naturalists can be reasonable citizens, and these citizens will experience Deweyan

⁴¹⁶ For a discussion of the depth of reasonable disagreement about issues of animal ethics and politics, see Alan Reynolds, “Animal Ethics and Politics Beyond the Social Contract,” *Les Ateliers de l'éthique/The Ethics Forum* 10, no. 1 (2015).

democracy as oppressive, since it does not respect ideals that are not subject to its demands for scientific inquiry. This concern is serious, and provides a good reason to bid Deweyan democracy farewell. Deweyan growth does not accommodate deep pluralism.

3. Deweyan Democracy and the Ideal of Deliberation

Talisce identifies one of the core commitments of Deweyan democracy as the *Transformative Thesis*. Deweyan deliberative democracy would have us identify a common problem, undergo a process of deliberation (or “inquiry”), within which the *ex ante* disagreements can be transformed into an *ex post* consensus.⁴¹⁷ For Dewey, conflicting claims are discussed “out into the open” where “they can be discussed and judged in the light of more inclusive interests.”⁴¹⁸ This process allows for the emergence of “values prized in common.”⁴¹⁹ As Talisce puts it, political deliberation results in “transformed or revised preferences and enlarged social perspectives,” and lets citizens “engage in social processes of applying collective intelligence to shared problems and, in so doing, they grow.”⁴²⁰

⁴¹⁷ A number of deliberative democratic theorists have taken up Dewey's work. See Noelle McAfee, *Democracy and the Political Unconscious* (New York: Columbia UP, 2008); Zach Vanderveen, “John Dewey's Experimental Politics: Inquiry and Legitimacy,” *Transactions of the Charles S. Peirce Society* 47, no. 2 (2011); *Philosophical Pragmatism and International Relations: Essays for a Bold New World*, ed. Shane Ralston (Lanham, MD: Lexington Books, 2013); James Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven, CT: Yale UP, 1991); James Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (New York: Oxford UP, 2009); and John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (New York: Oxford UP, 2000).

⁴¹⁸ John Dewey, *The Collected Works of John Dewey: The Later Works* (vol. 11), ed. J. A. Boydston (Carbondale, IL: Southern Illinois UP, 1987), 56.

⁴¹⁹ John Dewey, *The Collected Works of John Dewey: The Later Works* (vol. 13), ed. J. A. Boydston (Carbondale, IL: Southern Illinois UP, 1988), 71; John Dewey, *The Collected Works of John Dewey: The Later Works* (vol. 2), ed. J. A. Boydston (Carbondale, IL: Southern Illinois UP, 1984), 328.

⁴²⁰ Talisce, “A Farewell to Deweyan Democracy,” 511.

What is the problem with this model of politics? First, it assumes a malleability of beliefs that is unwarranted. Second, it assumes a shallowness of disagreement that is unwarranted. These assumptions are related, but let us examine each in turn before drawing some conclusions about the flaws of Deweyan democracy.

On the first point, Dewey seems to assume that our moral and political beliefs become malleable and changeable in the context of deliberation, permitting the achievement of consensus. Dewey in some ways anticipated this core commitment of more recent deliberative democracy theorists. Dewey holds that all ideals and values are summaries of past experience, and that they are formed intersubjectively through experience with others. Dewey's assumption seems to be that since one's beliefs are *formed* intersubjectively through experience, then they can be *transformed* intersubjectively through experience – most notably through the experience of democratic deliberation. This conclusion does not follow.

People do obviously acquire their views through contingent experiences in social contexts. But once people become attached to their ideals, they often hold onto them passionately – whether it be a religious belief or a secular commitment. In other words, the contingency that marks the formation of our beliefs does not require the epistemically responsible believer to hold them any less strongly.⁴²¹ It is certainly possible that one can be fully cognizant of the contingency that marks the development of one's beliefs without those beliefs being at all malleable in the context of deliberation. Our ideals sometimes become deeply interwoven into our identities, such that relinquishing them would seem

⁴²¹ Melvin Rogers seems to want to draw such an inference, arguing, “We must not assume that our starting points exist at the level of phenomenological fact, untouched by the contingency that is part of its development” (“Dewey, Pluralism, and Democracy: A Response to Robert Talisse,” *Transactions of the Charles S. Peirce Society* 45, no. 1 [Winter 2009]: 78). For a similar argument, see Alison Kadlec, *Dewey's Critical Pragmatism* (Lanham, MA: Lexington Books, 2007).

tantamount to becoming a different person.⁴²² Now, radical transformation of ideals and identities does invariably occur at punctuated and unpredictable points in our lives, but we should not expect it to frequently occur in the course of democratic deliberation.⁴²³

This leads to Dewey's second assumption: that deliberation in the right conditions is capable of converting pluralism into consensus. Deliberation is assumed to help foreground the "values prized in common" and bring about an "enlarged social perspective" such that disagreements can be overcome. This view of deliberation shares with political liberalism the assumption that beneath our seemingly deep disagreement is a common core of values that can be uncovered or perhaps created by deliberation. This optimistic view cannot be assumed, especially in cases of foundational disagreement, where interlocutors do not share a common normative framework, such as Dewey's

⁴²² Jonathan Haidt documents how our moral, political, and religious views are rooted in our basic dispositions, attitudes, and personality traits, such as openness to experience, fear of the unknown, respect for authority, etc. Even though these traits are produced through a complicated mixture of nature and nurture, it is unclear how changeable (or transformable) they are once they are formed (or how we might go about changing them even if they are changeable). In any case, Haidt makes clear that reasoned deliberation is generally an unsuccessful strategy for changing the deeply held beliefs of others. See Haidt, *The Righteous Mind*, part 2. For a discussion of the possibility that political preferences are largely influenced by one's genes, see John Alford, Carolyn Funk, and John Hibbing, "Are Political Orientations Genetically Transmitted?," *American Political Science Review* 99, no. 2 (May, 2005); and James Fowler and Christopher Dawes, "In Defense of Genopolitics," *American Political Science Review* 107, no. 2 (May 2013). For a discussion of how one's philosophical commitments are rooted in one's temperament, from the pragmatist tradition, see William James, "The Present Dilemma in Philosophy," in *The Writings of William James*, ed. John J. McDermott (Chicago: University of Chicago Press, 1977), where he defends the claim, "The history of philosophy is to a great extent that of a certain clash of human temperaments" (363). According to James, each person "trusts his temperament," and "wanting a universe that suits it, he believes in any representation of the universe that does suit it" (364). In "The Types of Philosophic Thinking," in *The Writings of William James*, ed. John J. McDermott (Chicago: University of Chicago Press, 1977), James similarly notes, "A philosophy is the expression of a man's intimate character, and all definitions of the universe are but the deliberately adopted reactions of human character upon it" (489). All of these arguments undercut the Deweyan confidence that democratic deliberation is likely to transform conflicting beliefs and forge consensus.

⁴²³ These are largely empirical questions, which are discussed and debated within the literature on deliberative democracy. Some theorists are optimistic about the likelihood of transformation-towards-consensus occurring in the process of well-structured deliberation. See Fishkin, *Democracy and Deliberation*; Fishkin, *When the People Speak*; and Dryzek, *Deliberative Democracy and Beyond*. Others are more pessimistic about the likelihood of this transformation occurring through deliberation. See Somin, *Democracy and Political Ignorance*; and Cass Sunstein, "Deliberating Groups vs. Prediction Markets (or Hayek's Challenge to Habermas)," *Episteme: A Journal of Social Epistemology* 3, no. 3 (2006).

ethical naturalism. There do not always exist “values prized in common,” and in many cases there exists a clash of incommensurable values.

In reference to the critique developed in the prior section, we can anticipate the difficulties experienced in a deliberation between a moral naturalist and a moral non-naturalist about matters of basic justice. In some ways, this deliberation would have a hard time getting off the ground, because the naturalist and non-naturalist do not agree on a basic framework with which to understand and solve the problem. They very well may not even agree about the nature of the problem (or even that there is a problem). Dewey does not anticipate these difficulties, because he seems unwilling to countenance the reasonableness of non-naturalistic views. When disagreements are foundational, democratic deliberation often only sharpens the contrasting views and leads to further entrenchment. Since we live in a political culture divided by foundational disagreements about justice, we (as political philosophers) should not *assume* that all ideals and values are malleable in the context of deliberation, such that transformation is a likely outcome (even though deliberation does, at times, result in such transformation).⁴²⁴

⁴²⁴ Samuel Bagg identifies Dewey as a “realist” (in the way that this term is understood in contemporary political philosophy), and argues that Deweyan realism provides us with tools to navigate and overcome foundational disagreements about justice by encouraging us to stop arguing about first principles and instead discuss how different proposals will predictably affect future practice. He writes, “If we focus instead on our divergent views of the particular options – our predictions – then we need not turn immediately to such foundational tensions. During the process of predictive theory construction, political theorists debate the consequences of various concrete options within a specific situation of judgment” (“Realism in a Deweyan Key: Political Theory as Prediction,” unpublished, 14). While Bagg is right that discussions of predictions of particular policies might allow us to temporarily ignore “such foundational tensions,” he does not convincingly explain how these tensions will *remain* ignored. It seems obvious that when we start debating the relative merits of the different proposals (coupled with their predictions), we will find ourselves sooner or later (probably sooner) drawing on those controversial values that led us into the disagreement in the first place. Bagg, then, commits the opposite error that Rawls does. Rawls hopes to start with our political disagreement and abstract away to more general and shared principles (which is supposed to help us navigate those original disagreements in some way), while Bagg wants to start with our political disagreements and dig down into empirical prediction far enough that we forget about the principles that divided us. Both are attempting to bracket and evade that which must be confronted head-on. Again paralleling the political liberals, Bagg expresses what is clearly a kind of faith in the eventuality of consensus: “Inevitably, however, there will come a point in situations of judgment when, after we have brought all of our

In sum, the political philosopher should not *assume* that beliefs are inherently malleable, and should not *assume* that disagreements are shallow. It is sometimes the case that deliberation does lead people to change their views and move toward consensus. While these experiences of transformative consensus-formation should not be *foreclosed* by the political philosopher, they should certainly not be *assumed*. To assume the malleability of beliefs and the shallowness of disagreement is to fail, like Rawls, to take seriously the pervasiveness of foundational disagreements that we experience vis-à-vis matters of basic justice.

Furthermore, a theory of democracy that relies on these assumptions can lead the theorist to draw some problematic conclusions. If democratic deliberation really is capable of transforming our *ex ante* divergent ideals into *ex post* consensus, then one would be tempted to think that democratic deliberation ought to be the decision-procedure in as many institutions and practices as possible. Indeed, one might even be tempted to advocate *democracy as a way of life*, just as Dewey does.⁴²⁵ For Dewey, democratization must push beyond political institutions to encompass all human

heuristics to bear on the problem, we will still disagree with one another. Then we face a choice. How ought we pursue this disagreement? How can we, as political theorists, use our expertise in collaboration with democratic citizens to move forward in these situations of judgment? Perhaps it will still be productive to return to thought experiments and intuition pumps; to appeal once again to ever more basic moral intuitions. I suspect, and have argued in this paper, that it will be far better for us to set this discourse aside in favor of one that projects our historical and social inquiry into the future, building a cumulative knowledge base about the most important choices we face. That, at least, is my prediction” (22). With this concluding “prediction” we see the analogue of the “liberal faith” criticized in chapter II – what I might call the “pragmatist faith” (usually dubbed “hope” in the pragmatist tradition). And we should be wary of the pragmatist faith in the same way (and for many of the same reasons) that we should be wary of the liberal faith.

⁴²⁵ Dewey insists that “we realize in thought and act that democracy is a *personal* way of individual life,” one that “signifies the possession and continual use of certain attitudes, forming personal character and determining desires and purpose in all the relations of life” (John Dewey, *The Collected Works of John Dewey: The Later Works* [vol. 14], ed. J. A. Boydston [Carbondale, IL: Southern Illinois UP, 1988], 226; my italics). This essay, “Creative Democracy—The Task Before Us,” is the clearest expression of Dewey's commitment that democracy should be thought of primarily as a way of life, not primarily as an institutional framework.

associations. This might be a desirable goal *if* democratic deliberation regularly generated action-guiding consensus. However, Dewey's assumptions about the nature of disagreement and deliberation can be dangerous if they lead us to utilize the democratic decision-procedure in areas and dimensions of our lives where it will likely result in oppression.

Gaus helps bring the core of the problem into view: “in the end, deliberative democrats acknowledge, we must cut off discussion and take a vote, but then the majority is subjugating others to its judgment in the name of public reason—reason which is not shared by the dissenting minority.”⁴²⁶ Here we come face to face with the dark underside of participatory democracy. Gaus condemns the overly optimistic view of deliberation shared by the participatory democrats that Dewey is associated with as likely to lead to “authoritarianism and oppression.”⁴²⁷ To repeat an important quotation cited above, Gaus writes,

Deliberative democracy supposes that our differences in evaluative standards are, as it were, only on the surface. Once we reason together and talk things through, deliberative democrats hold that our value orderings will be transformed; the range of disagreement will so radically narrow that the problems of social commensuration will become fairly insignificant, if not vanish altogether ... Once we accept that our disagreements are widespread and deep – that the range of possible value

⁴²⁶ Gaus, “On Justifying the Moral Rights of the Moderns,” 118.

⁴²⁷ Gaus, *The Order of Public Reason*, 388.

orderings is essentially unlimited – democratic procedures simply are not up to the task of collective commensuration.⁴²⁸

For Gaus, the alternative to the democratization of all social activity is the establishment of private jurisdictional rights (such as free speech, free association, and private property) that allow for divergent ideals to flourish in different jurisdictions.⁴²⁹

Just like there are market failures, there are systematic failures of democracy that should make us appreciate the need for limits to democratic control. While participatory democrats point out that there are tensions between collective, political decision-making and decentralized, market-based decision-making, Gaus reminds us that the political decision-procedure is not always automatically preferable. There are some domains of life where we are all best served by the interplay of voters, politicians, and lobbyists, and others where we are all best served by the interplay of consumers, employers, and workers (with minimal interference by the voter-politician-lobbyist triad). The goal should not be the indefinite “democratization” of social and economic life (so much

⁴²⁸ Gaus, *The Order of Public Reason*, 388.

⁴²⁹ Caplan develops a similar worry, in his criticism of what he calls “democratic fundamentalism” (*The Myth of the Rational Voter*, chapter 8). Caplan warns that the political/democratic decision-procedure has predictable and systematic flaws that are not as dramatic in the private market-based decision procedure. Ultimately, the problem (as Caplan sees it) is that democratic decisions do not generate quick negative feedback signals when they have harmful effects – which marks one of the advantages that markets have over politics. Citizens advocate and vote with an eye toward promoting “seen” consequences, and are not directly punished for the “unseen” costs (e.g. protectionism, whereby trade barriers have the seen benefits of protecting some present jobs, but have unseen costs to all present and future consumers and many present and future workers). On the other hand, in a competitive market (with all externalities internalized), all participants internalize all benefits and costs (both seen and unseen), and adjust actions accordingly, leading to more optimal results. For some issues, the ballot box is preferable to the marketplace, but not always. Sunstein offers a similar critique in his article, “Deliberating Groups vs. Prediction Markets.” Caplan offers his critique of democratic institutions in the context of a further argument in favor of market institutions, but for present purposes I focus only on the negative argument, leaving to the side his defense of market institutions as a better alternative.

touted in the work of Dewey⁴³⁰ and others⁴³¹), but should instead be government and markets operating side-by-side in their separate (but sometimes overlapping) domains. We should seek to carefully balance the domains of the *democratic public* and the *private market* – and not permit the former to overwhelm the latter. For all of the aforementioned reasons, I join Talisse in bidding Deweyan democracy farewell.

4. The Limits of Peircian Democratic Theory

Talisse uses his critique of Dewey as a setup for an account of democratic deliberation drawn from the pragmatism of Peirce.⁴³² This Peircean democratic theory represents an important contemporary strand of pragmatist political philosophy, which I will only briefly address here. When thinking through the problems of deep pluralism, I

⁴³⁰ By not recognizing the dangers of indefinite democratization, Dewey commits himself to a problematic presumption in favor of collective decision making, and this translates into a commitment to socialist ownership and planning. Dewey's views on socialism come out most forcefully in *Individualism: Old and New* (Amherst, NY: Prometheus Books, 1999). Dewey insists that liberals must be "prepared to go further and socialize the forces of production, now at hand" (91). This is because liberal goals of equality and freedom can only be realized, Dewey thinks, by some significant degree of economic planning through the state. We must "see that socialized economy is the means of free individual development as the end" (90). Only a socialized, planned economy is capable of realizing Dewey's political hopes. He imagines, "The problem of social control of industry and the use of governmental agencies for constructive social ends will become the avowed center of political struggle" (113). He presents the "hopeful soul" as imagining "a permanent Economic Council" that "shall take upon itself a planned coordination of industrial development" (117). This goal demands "a real application of the engineering mind to social life in its economic phase" (117). That is, economic planning is possible if only we turn the "engineering mind" onto the task of engineering a just economy. These claims bring quickly to mind Hayek's powerful critiques of the socialist view that economic forces can be studied and manipulated just like physical forces. See Hayek's "The Use of Knowledge in Society."

⁴³¹ See, Robert Westbrook, *John Dewey and American Democracy* (Ithaca, NY: Cornell UP, 1991); Terry Hoy, *The Political Philosophy of John Dewey: Toward a Constructive Renewal* (Westport, CT: Praeger, 1998); and Kenneth Stikkers, "Dewey, Economic Democracy, and the Mondragon Cooperatives," *European Journal of Pragmatism and American Philosophy* 3, no. 2 (2011).

⁴³² Talisse's project of developing an account of deliberative democracy through Peirce is also undertaken by Cheryl Misak in her book *Truth, Politics, Morality: Pragmatism and Deliberation*. Talisse's "Peircean" influence comes mostly from Peirce's article "The Fixation of Belief," in *Classic American Philosophers*, 2nd ed., ed. Max Fisch (New York: Fordham UP, 1996).

argue that we should bid farewell to both Deweyan democracy as well as Talisse's preferred Peircean alternative.

As I have reviewed, Talisse argues that Deweyan democracy relies upon Dewey's controversial naturalistic metaphysics and his controversial ethical ideal of growth. Since both of these views are subject to reasonable pluralism (and are thus reasonably rejectable), they cannot serve as the justification for policy related to matters of basic justice without being oppressive. The only way to get around this problem is to begin with *thin* norms and values (that are acceptable to all reasonable people) and then work up a *thick(er)* conception of justice.⁴³³ The problem that we face is that reasonable people disagree on any number of issues concerning metaphysics, religion, and morality. Which thin norms and values are sufficiently agreed-upon such that they can help generate an overlapping consensus around principles of justice? Talisse turns to Peirce to argue that although we disagree about *moral norms* (as I have shown in different ways throughout this dissertation), all reasonable people agree about basic *epistemic norms*. As Talisse puts it, “whereas there is a fact of reasonable pluralism concerning moral comprehensive doctrines, there is no corresponding pluralism with regard to our most basic epistemic commitments.”⁴³⁴

The reason for this has to do with the very nature of holding a belief. If I am committed to my belief being true, then I am also committed to the assumption that this belief is answerable to “the challenges of reason, evidence, and argument.”⁴³⁵ Even those

⁴³³ I argue in chapter II that this Rawlsian thin-to-thick strategy is unlikely to succeed in conditions of deep yet reasonable pluralism without the philosopher smuggling in controversial premises.

⁴³⁴ Talisse, *A Pragmatist Philosophy of Democracy*, 55.

⁴³⁵ Talisse, *A Pragmatist Philosophy of Democracy*, 61. Cheryl Misak articulates a similar point: “A belief, in order to be a belief, is such that it is responsive to reasons and evidence. That is a very part of what it is to have a belief – a *constitutive norm* of beliefs is that a belief is something that one holds for

who disagree about particular issues agree about the basic distinction between *good* and *bad* ways to hold and defend a belief. It is this basic and uncontroversial epistemic norm – the shared commitment to rational answerability – that is to be worked up to justify democratic norms and institutions that secure free and open discussion. Talisse states the political upshot of his Peircean epistemic commitments as he sees them:

... there are social and political requirements for proper inquiry: Inquirers need access to forums in which inquiry can be engaged; they need to be able to appeal to reliable sources of information and news; they need access to processes by which they can hold their representatives, and their government more generally, accountable; they need the freedom to engage controversial ideas and to speak, write, and express themselves freely. In short, *proper inquiry can be practiced only within a democratic political order.*⁴³⁶

In other words, the basic, thin, and uncontroversial norms of good belief-holding and reason-giving entail democratic institutions. With this argument, Talisse hopes to give a firm philosophical foundation to democracy.

Talisse's Peircean philosophy of democracy is appealing in many ways, but it does not help us address the problems of deep pluralism. That is, even if we assume that all deliberators are following good epistemic norms, there is still no reason to assume that a consensus about matters of basic justice will emerge. Although good Peircean

reasons" ("Making Disagreement Matter," *Journal of Speculative Philosophy* 18, no. 1 [2004]; 12; cited in Talisse, *A Pragmatist Philosophy of Democracy*, 62; italics in original). Misak again: "Wanting to get the truth is something which cuts across whatever divides us from others ... we are indeed hard pressed to find opponents in our moral and political lives who do not assert or believe or claim that their position is true, or best, or that which ought to be enforced" (*Truth, Politics, Morality*, 104; cited in Talisse, *A Pragmatist Philosophy of Democracy*, 68).

⁴³⁶ Talisse, *A Pragmatist Philosophy of Democracy*, 66; my italics.

deliberation may achieve convergence at the hypothetical end of inquiry for questions related to empirical disputes (such as those found in the natural sciences or positive economics), there can be no analogous assumption when it comes to questions related to normative issues. To put it bluntly: the Rawls/Nozick debate (or the Tomasi/Freeman debate or the Gaus/Lister debate) will *not* be settled by imposing epistemic norms on the debate, since the interlocutors are all already following such norms. *Normative* disagreement persists in even the most idealized *epistemic* conditions. And it is this wide-ranging disagreement about normative issues that so troubles the political liberal project.

Furthermore, Talisse is offering a defense of democracy, not a theory of justice. For some democratic theorists, this is all that is needed, since it is assumed that the principles of justice are to be worked out through democratic institutions. This is partly unproblematic, but also partly contestable. For liberals, democratic choices are constrained by a background set of individual rights that cannot be infringed, even if the majority would badly like to do so. So while a theory of democracy helps us see the importance of open democratic discussion, it does not itself spell out all the rights-based limitations on democratic political authority.⁴³⁷ Those limitations need to be spelled out by a theory of justice. Thus, Talisse's theory of democracy, while interesting and important in many ways, is tangential to our concerns here.

⁴³⁷ This concern is what motivates Nozick's critiques of democracy in chapter 9 of *Anarchy, State, and Utopia*. For Nozick, the existence of strong individual rights calls into question the very legitimacy of democratic authority, the latter of which Nozick describes as a situation where "People are no longer under the thumb of *one* another. Instead almost everybody is deciding about them, and they are deciding about almost everybody," and thus "each person owns exactly one share in each right over every other person, including himself ... [everyone is] a part-owner of each other person" (286-286). Also see Nozick's "Tale of the Slave," pp. 290-292. So on this view, even if free and open discussion about justice is a good, there is a further question about which conceptions of justice are permissible and which are impermissible even when selected by a democratic majority.

5. Jamesian Pluralism and the Goal of Accommodation

Political philosophers today must accept not merely the *fact of reasonable pluralism*, but rather the *fact of deep pluralism* – in which our reasonable disagreements about justice are often foundational. To get a better sense of how we might orient ourselves to this problem, I propose that we turn to a third pragmatist, William James. I will show that James, unlike Dewey and Peirce, is keenly attuned to the problems of deep pluralism, and has some important insights about how the political philosopher should operate in such a context.

James is not often referenced in discussions of political philosophy. But in more recent years there has been a welcome increase of interest in James' writings as they might relate to questions in political philosophy.⁴³⁸ Indeed, James himself wrote rather

⁴³⁸ There is a growing body of literature in political philosophy that draws on the work of James. For example, see George Cotkin, *William James, Public Philosopher* (Baltimore: Johns Hopkins University Press, 1990); Joshua Miller, *Democratic Temperament: The Legacy of William James* (Lawrence, KS: University Press of Kansas, 1997); Kennan Ferguson, *William James: Politics in the Pluriverse* (Lanham, MD: Rowman and Littlefield, 2007); William Connolly, *Pluralism* (Durham, NC: Duke UP, 2005); Jonathan McKenzie, "Pragmatism, Pluralism, Politics: William James's Tragic Sense of Life," *Theory & Event*. Vol. 12, no. 1 (2009), Project Muse, accessed 28 March 2014; Alexander Livingston, "Excited Subjects: William James and the Politics of Radical Empiricism," *Theory & Event* 15, no. 4 (2012), Project Muse, accessed 2 January 2013; Alexander Livingston, *Damn Great Empires! The Anarchist Vision of William James* (forthcoming); Colin Koopman, "William James's Politics of Personal Freedom," *The Journal of Speculative Philosophy* 19, no. 2 (2005); Deborah Coon, "One Moment in the World's Salvation': Anarchism and the Radicalization of William James," *The Journal of American History* 83, no. 1 (1996); Deborah Coon, *Courtship with Anarchy: The Socio-Political Foundations of William James's Pragmatism* (Cambridge, MA: Harvard UP, 1988); Andrew Smith, "William James and the Politics of Moral Conflict," *Transactions of the Charles S. Peirce Society* 40, no 1 (2004); Richard Flathman, *Pluralism and Liberal Democracy* (Baltimore: Johns Hopkins UP, 2005); Carol Hay, "Consonances between Liberalism and Pragmatism," *Transactions Of The Charles S. Peirce Society* 48, no. 2 (2012); William Caspary, "Agonism, Meliorism, and Conflict Resolution in William James's Political Theory" (presented at the annual meeting of the Society for the Advancement of American Philosophy, Denver, CO, March 2014); David Rondel, "William James on Equality and the Sacredness of Individuality" (unpublished); and James Kloppenberg, "Pragmatism: An Old Name for Some New Ways of Thinking?" *The Journal of American History* 83, no. 1 (June 1996). Trying to develop a political philosophy from the work of James is not such a straightforward task. While broadly liberal and democratic themes are present throughout James' work, Livingston highlights the anarchistic features of James' thought (*Damn Great Empires!*), Goldman reminds us that James' work was enthusiastically embraced by fascists of his day ("Another Side of William James: On Radical Approaches to a 'Liberal' Philosopher," *William James Studies* 8 [2012]), Goldberg argues that James was himself a proto-fascist (*Liberal Fascism: The Secret History of the American Left, from Mussolini to the Politics of Meaning* [New York: Broadway Books, 2007]), and James himself often wrote positively about socialism ("The Moral Equivalent of War," in *The Writings of William James*, ed. John

little about politics. He was an active participant in the Anti-Imperialist League, and wrote short philosophically-oriented pieces about contemporary issues such as “The Moral Equivalent of War,” but James did not write about political theory in a sustained way.⁴³⁹ Thus, I turn to James not so much to mine him for his particular political viewpoints, but rather to explore and develop his metaphilosophical commentary about the role of the philosopher in the face of deep pluralism, a topic about which James was very interested, and which is directly relevant to the problems identified and discussed in this dissertation. I will focus my attention on two of James' articles in particular, “The Moral Philosopher and the Moral Life” and “The Moral Equivalent of War.”

Among the major pragmatists, James is arguably most attuned to the problems posed by deep value pluralism. Early in “The Moral Philosopher and the Moral Life,” James states clearly the problem that we face: “in spite of the presence of a large number of ideals in which human beings agree, there are a mass of others about which no general consensus obtains.”⁴⁴⁰ In other words, we look out and see foundational disagreements all over the place – disagreements that take place because of the clash of incommensurable values, where clashing adversaries do not stand on a sufficiently thick “common ground” that would be required to overcome the impasse. This is precisely the problem that I have been dealing with in this dissertation, and this is precisely the problem that the tradition of political liberalism has failed to adequately address. James, I believe, will be a better guide to this terrain.

J. McDermott [Chicago: University of Chicago Press, 1977]).

⁴³⁹ Because of this, Cornel West is able to write, with some plausibility, “In regard to politics, James has nothing profound or even provocative to say” (*The American Evasion of Philosophy* [Madison: University of Wisconsin Press, 1989] 60).

⁴⁴⁰ James, “The Moral Philosopher and the Moral Life,” 619.

While James was writing about the role of the *moral* philosopher (in “The Moral Philosopher and the Moral Life”), his insights can be fruitfully applied to the *political* philosopher as well. In other words, it is helpful to read James’ “The Moral Philosopher and the Moral Life” as a piece also about the *political philosopher and the political life*. I want to explore some undeveloped insights from James’ essay for the pragmatist political philosopher. I will first try to distill these insights into three commitments: (1) the political philosopher must be a committed non-partisan vis-à-vis the main controversies of her day; (2) the political philosopher must accept actual demands (by actual persons) as *prima facie* legitimate; and (3) the presumption of the political philosopher must be to *accommodate* existing demands, not *transform* them. After developing these ideas, I will show how they help provide a useful *philosophical* response to deep pluralism concerning matters of justice.

1. The moral and political philosopher finds herself in the midst of conflict and disagreement, and she must decide how to constructively navigate it. James is vividly aware of the natural and immediate temptation to elevate one’s own ideals to the status of the *truest or most reasonable* ideals in relation to all contenders. James insists that this temptation must be resisted by the philosopher. In the face of contending ideals, James writes, “the entire undertaking of the philosopher obliges him to seek an impartial test,” although selecting or constructing such an impartial test is quite difficult, for “how can he pick out the person [or test] save by an act in which his own sympathies and

prepossessions are implied?”⁴⁴¹ That is, how can the moral philosopher pick out an impartial criterion that is not merely a reflection of her own private preferences?

If the philosopher's criterion is nothing more than a reflection of her preferences (in the sense that the criterion favors her own preferred conception of justice), then nothing constructive is being offered to our moral conflict – the philosopher is merely acting as a partisan and taking sides in the conflict. To be clear, this side-taking partisanship is perfectly fine for the politician or political activist (indeed, partisan side-taking is the very stuff of politics), but it is distinct from the role of the Jamesian *philosopher*. These roles should not be confused, since philosophy at its best should help us deal constructively with ambiguous moral disagreement, not merely choose a side and declare it to be the truth.

In sum, *qua* philosophers, we must not “simply proclaim our own ideals as the lawgiving ones.”⁴⁴² The worst transgression for the Jamesian philosopher is to be a side-taking partisan *under the guise of being an impartial philosopher*. This advocacy-disguised-as-philosophy is especially troubling, since it dresses up the philosopher's personal preferences in the powerful language of *truth* and *reason*. This temptation is so dangerous because this is so natural, and we (philosophers) so often do it without realizing it, and even do it while explicitly trying to avoid it. Our own values are almost always felt to be uniquely true and reasonable because of the natural attachment we all have to our own ideals. But the philosopher cannot be allowed to legislate her own ideals upon everyone else (indeed, even philosophers recognize the unacceptability of this when the philosopher doing the legislating is *someone else*). James writes, “All one's

⁴⁴¹ James, “The Moral Philosopher and the Moral Life,” 620.

⁴⁴² James, “The Moral Philosopher and the Moral Life,” 620.

slumbering revolutionary instincts waken at the thought of any single moralist wielding such powers of life and death. Better chaos forever than an order based on any closet-philosopher's rule, even though he were the most enlightened possible member of the tribe."⁴⁴³ Deep pluralism must be respected, even if doing so entails tolerating some level of chaos.⁴⁴⁴ Philosophers should not try to "substitute the content of their clean-shaven systems for that exuberant mass of goods with which all human nature is in travail, and groaning to bring to the light of day."⁴⁴⁵ We must find a way of respecting and accommodating this "exuberant mass of goods" which is featured so vividly in our contemporary moral and political discourse.

2. The moral and political philosopher must not privilege her own ideals over those of her competitors because all competing ideals have, on James' account, *prima facie* legitimacy. For James, moral obligation can only ever be grounded in the actual demands or claims of one's peers. He argues, "*without a claim actually made by some concrete person there can be no obligation,*" and "*there is some obligation whenever there is a*

⁴⁴³ James, "The Moral Philosopher and the Moral Life," 623.

⁴⁴⁴ Rawls exemplifies someone totally unwilling to tolerate any of this Jamesian chaos. For example, Rawls explains how the processes of idealization and abstraction associated with constructing the original position (the particulars of which have generated much controversy) are motivated by the need to ensure a "definite" and "unanimous" consensus on the principles of justice, and by the need to remove any elements that might generate principles that are "vague" or "complicated": "The restrictions on particular information in the original position are, then, of fundamental importance. Without them we would not be able to work out any definite theory of justice at all. We would have to be content with the vague formula stating that justice is what would be agreed to without being able to say much, if anything, about the substance of the agreement itself ... The veil of ignorance makes possible a unanimous choice of a particular conception of justice. Without these limitations on knowledge the bargaining problem of the original position would be hopelessly complicated" (*A Theory of Justice*, 121). The Jamesian should be very wary of this insistence that we must *necessarily* arrive at a determinate conception of justice that could be expected to generate a rational consensus. Instead of continuing to abstract away from our "non-shared" and "unreasonable" values in search of some reasonable core of shared values, we should be open to situations of irresolvable antagonism.

⁴⁴⁵ James, "The Moral Philosopher and the Moral Life," 622-23.

*claim.*⁴⁴⁶ The Jamesian philosopher, to borrow a quotation from David Miller, must “treat pre-theoretical judgments of justice as somewhat akin to the raw data that might serve to ground a scientific theory.”⁴⁴⁷ Actual demands by actual people are the starting place for the Jamesian philosopher, and the ideal goal is to create conditions or propose new ideals such that as many of the actual demands as possible can be co-satisfied. *All* demands are *prime facie* legitimate: “the demand may be anything under the sun.”⁴⁴⁸

This importantly diverges from political liberalism. For the political liberal, the normative starting place is the set of values and beliefs of a hypothetical “reasonable” deliberator who is morally and epistemologically idealized. Even if no actual person in our actual society holds such idealized values or beliefs, what matters is that they *would* hold them if they were more reasonable. James is, in some sense then, a political realist (as this position has come to be known in contemporary political philosophy), and this is a promising strategy for the problems we are concerned about here. For James, grant *prime facie* normative authority to all demands. Now, some actual demands will no doubt need to be overridden or constrained, but not because they are deemed “unreasonable” by the dictates of some political philosopher. Instead, certain demands will need to be excluded because our social world is limited and all ideals cannot be fully accommodated, and because other actual people are making *counter-demands*. These overridden demands can be viewed as “unreasonable” only after the fact of being overridden by counter-demands, not because they fail to match up to some *a priori*

⁴⁴⁶ James, “The Moral Philosopher and the Moral Life,” 617.

⁴⁴⁷ Miller, *Justice for Earthlings*, 30.

⁴⁴⁸ James, “The Moral Philosopher and the Moral Life,” 621.

philosophical criterion of reasonableness. For James, then, while some ideals will need to be excluded from consideration, full accommodation is the goal.⁴⁴⁹

3. James' prescription for the moral and political philosopher, then, is simple, and more or less follows from the commitments discussed above: "satisfy at all times *as many demands as we can*."⁴⁵⁰ James acknowledges that in a perfectly ideal world all demands would be fulfilled at each and every moment. But we do not live in such a world. Unfortunately, our world is a tragic world, where almost inevitably not all ideals can be accommodated and jointly realized. Nonetheless, the goal is maximal inclusion, and the means to achieving this goal is for the Jamesian philosopher to try to develop new ideals that might gain a following by the members of opposing sides to some seemingly intractable disagreement. What exactly this process looks like will be discussed in more detail below when I discuss "The Moral Equivalent of War."

⁴⁴⁹ Some claims are so clearly abhorrent that it may seem bizarre to consider them as obligation-generating at all, even *prime facie*. But, of course, just because a claim is made does not mean that it should be respected in all cases, since other counter-claims can overrule it. They are only *prime facie* legitimate, so they are capable of being overridden and justifiably constrained. Thus, a Jamesian politics of "wide accommodation," discussed in more detail below, will strive to accommodate as many views as possible, which will surely mean that most explicitly exclusionary views (e.g. those motivated by racism or sexism) will not be respected because of the many counter-claims that will emerge from those who do or would suffer under the rule of those exclusionary views. Some pragmatists disagree with this, and hope to reconstruct objective moral values that will enable us to criticize certain views as objectively wrong (regardless of intersubjective agreement). Carol Hay, for example, writes, "I argue that pragmatists interested in social justice ought to be committed to certain objective, transcultural ethical ideals. In particular, I argue that we need an objective moral account of what counts as harm and flourishing for human beings. This objective account of human harm and flourishing need not be problematic to pragmatists, I argue, because it can and should be rooted in certain very basic or fundamental commonalities of human experience. Furthermore, I argue that proponents of this objective account can and should retain pragmatists' commitment to epistemic fallibilism, which calls for an attitude of humility with respect to the possibility of our actually knowing what these ethical standards are with any certainty" ("Justice and Objectivity for Pragmatists: Cosmopolitanism in the Work of Martha Nussbaum and Jane Addams," *The Pluralist* 7, no. 3 [Fall 2012]: 86). My response to this kind of claim is that taking seriously a commitment to "epistemic fallibilism" makes the language of "objectivity" mostly inappropriate and unhelpful. For more on this general set of topics, see Ruth Anna Putnam, "William James and Moral Objectivity," *William James Studies* 1 (2006).

⁴⁵⁰ James, "The Moral Philosopher and the Moral Life," 623.

One anticipated objection should be addressed at this point about the three commitments outlined above. One possible concern about James' position in "The Moral Philosopher and the Moral Life" is that an attitude of accommodation towards the entire set of currently existing ideals represents a form of status quo bias and conservatism. This concern has some merit. For James, the philosopher should attempt to propose solutions to problems in such a way that all (or almost all) relevant parties are satisfied with the outcome. If all (or almost all) people agree with the proposal, its correctness is not a function of some controversial ideal, but is simply a matter of agreement. James Buchanan (from the very different tradition of public choice theory) defends a position quite similar to that of James, and nicely explains this concern:

[O]ur task is really . . . that of trying to find, locate, invent, schemes that can command unanimous or quasi-unanimous consent and propose them. Since persons disagree on so much, these schemes may be a very limited set, and this may suggest to you that few changes are possible. Hence, the status quo is defended indirectly. The status quo has no propriety at all save for its existence and it is all that exists. The point I always emphasize is that we start from here not from somewhere else.⁴⁵¹

Buchanan's recognition of the possibly troubling status quo bias in his methodology mirrors James' recognition that the political philosopher must, in some sense, be a "conservative."⁴⁵² For James, it is only "every now and then" that "some one is born with

⁴⁵¹ James M. Buchanan, in Buchanan and Warren J. Samuels, "On Some Fundamental Issues in Political Economy: An Exchange of Correspondence," *Journal of Economic Issues* 9, no. 1 (March 1975): 27n.

⁴⁵² For a discussion (and defense) of the affinities between conservatism and pragmatism, see Seth Vannatta, "Pragmatic Conservatism: A Defense," *Humanitas* 25, no. 1-2 (2012); and his forthcoming book, *Conservatism and Pragmatism: Intersections in Normative Methodology*. Unsurprisingly, many philosophers are critical of the affinity between pragmatism and conservatism. Jonathan Culler offers a typical such argument (directed here mainly at Rorty, but the argument echoes arguments directed at the

the right to be original.”⁴⁵³ The motivation for this Jamesian conservatism is not to discourage moral innovation, but it is merely a recognition that true moral revolutions are extremely difficult, and require a special and uncommon convergence between an innovative philosopher and a widely shared dissatisfaction with current practices and an openness to something new among those parties to a disagreement.⁴⁵⁴ Barring these exceptional cases, the political philosopher should recognize that her values have no privileged place in the conversation. Her values simply take their place alongside all the others, all equally imbued with a *prime facie* legitimacy.

James' defense of his political philosophical conservatism includes pointing out the unpleasantness of the alternative: the political philosopher as authoritarian legislator. Indeed, it is James' democratic, egalitarian, and anti-elitist commitments that lead him to

classical pragmatists as well): “the humanities must make their way between, on the one hand, a traditional, foundationalist conception of their task and, on the other, the so-called ‘new pragmatism’ to which some critics of foundationalism have retreated. If philosophy is not a foundationalist discipline, argues Richard Rorty, then it is simply engaged in a conversation; it tells stories, which succeed simply by their success. Since there is no standard or reference point outside the system of one’s beliefs to appeal to, critical arguments and theoretical reflections can have no purchase on these beliefs or the practices informed by them. Ironically, then, the claim that philosophers and theoreticians tell stories, which originates as a critique of ideology... becomes a way of protecting a dominant ideology and its professionally successful practitioners from the scrutiny of argument, by deeming that critique can have no leverage against ordinary beliefs, and that theoretical arguments have no consequences. This pragmatism, whose complacency seems altogether appropriate to the Age of Reagan, subsists only by a theoretical argument of the kind it in principle opposes, as an ahistorical ‘preformism’: what one does must be based on one’s beliefs, but since there are no foundations outside the system of one’s beliefs, the only thing that could logically make one change a belief is something one already believes” (*Framing the Sign: Criticism and Its Institutions* [Oklahoma City: University of Oklahoma Press, 1988] 55; quoted in Richard Rorty, “Feminism and Pragmatism,” *Philosophical Papers vol. 3: Truth and Progress* [New York: Cambridge UP, 1998]: 212, 23n). I address this concern, to some extent, below.

⁴⁵³ James, “The Moral Philosopher and the Moral Life,” 625.

⁴⁵⁴ Rorty expresses a similar sentiment about the difficulty and contingency of successful moral and political revolutions: “The difference between genius and fantasy is not the difference between impresses which lock on to something universal, some antecedent reality out there in the world or deep within the self, and whose which do not. Rather, it is the difference between idiosyncrasies which just happen to catch on with other people – happen because of the contingencies of some historical situation, some particular need which a given community happens to have at a given time” (*Contingency, Irony, and Solidarity*, 37).

place the philosopher on par with everyone else.⁴⁵⁵ It is important, then, to distinguish between *political philosophical conservatism* (which requires the political philosopher to work towards accommodating the actual demands of actual people as they exist within the status quo) and *political conservatism* (which is the doctrine that the status quo is presumptively justified by reference to tradition). Remember, the Jamesian political philosopher aims to accommodate the demands not only of those enjoying their place in the status quo, but also (and especially) those who are *suffering* under the status quo – indeed, their demands are entirely on par with everyone else.⁴⁵⁶ Thus, James' political

⁴⁵⁵ Compare James' anti-elitist condemnation of the arrogance of the philosopher with the following passage from Adam Smith: “The man of system . . . is apt to be very wise in his own conceit; and is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it. He goes on to establish it completely and in all its parts, without any regard either to the great interests, or to the strong prejudices which may oppose it. He seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board. He does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might choose to impress upon it. If those two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably, and the society must be at all times in the highest degree of disorder.” He continues, “Some general, and even systematical, idea of the perfection of policy and law, may no doubt be necessary for directing the views of the statesman. But to insist upon establishing, and upon establishing all at once, and in spite of all opposition, every thing which that idea may seem to require, must often be the highest degree of arrogance. It is to erect his own judgment into the supreme standard of right and wrong. It is to fancy himself the only wise and worthy man in the commonwealth, and that his fellow-citizens should accommodate themselves to him and not he to them” (*The Theory of Moral Sentiments* [New York: Penguin, 2010], 140).

⁴⁵⁶ James insists that we train ourselves to be vigilant in uncovering the ways in which we are blinded to the “personal poetry” of people different from ourselves (“On a Certain Blindness in Human Beings,” in *The Writings of William James*, ed. John J. McDermott [Chicago: University of Chicago Press, 1977], 634). This will help the political philosopher be aware of the voices of those suffering under the imperfect institutions of the status quo. James lists the progressive movement toward the accommodation of more and more demands: “Following this path, society has shaken itself into one sort of relative equilibrium after another by a series of social discoveries quite analogous to those of science. Polyandry and polygamy and slavery, private warfare and liberty to kill, judicial torture and arbitrary royal power have slowly succumbed to actually aroused complaints; and though some one's ideals are unquestionably the worse off for each improvement, yet a vastly greater total number of them find shelter in our civilized society than in the older savage ways” (“The Moral Philosopher and the Moral Life,” 623).

philosophical conservatism is unlikely to consistently (or often) support political conservatism.

6. The Goal of Politics: Accommodation or Transformation?

These three themes from “The Moral Philosopher and the Moral Life” help highlight some of the important differences between James and Dewey. The Jamesian philosopher is not equipped with a criterion like Deweyan “growth” that would give clear guidance in navigating and resolving disagreement, and she does not assume that the conflicting ideals will be *transformed* by deliberation such that consensus is achieved. While transformation is always possible, and oftentimes highly desirable, James is committed in the first place to the *accommodation* of diverse ideals. The fundamental contrast between Dewey and James might be best grasped by highlighting the distinction between transformation and accommodation. Deweyan politics is about the transformation and reworking of each individual’s values and beliefs, and thus justice entails the growth of all individuals. Indeed, this vision makes Dewey a “perfectionist” about justice – that is, justice requires the cultivation of the good of each citizen (their “flourishing” or “growth”).⁴⁵⁷ On the other hand, Jamesian politics is about the maximal inclusion of divergent values and beliefs, and thus justice entails the non-optimal and contestable compromise that accommodates (for some finite stretch of time) as many

⁴⁵⁷ Talisse notes, “Deweyan democracy rejects the neutralism of contemporary democratic theory and adopts a kind of perfectionism. To be clear, the perfectionism I attribute to Dewey is not the view that there is a fixed and static human nature to be perfected; rather it is the view that political institutions should aim to foster within citizens the attitudes and habits requisite for human flourishing” (“A Farewell to Deweyan Democracy,” 511). On this point, also see Matthew Festenstein, “Pragmatism and Liberalism: Interpreting Dewey’s Political Philosophy,” *Res Publica* 1, no 2 (1995); and Michael Eldridge, *Transforming Experience: Dewey's Cultural Instrumentalism* (Nashville: Vanderbilt UP, 1998). For a comprehensive argument about why we should reject perfectionism for questions of justice, see Quong, *Liberalism without Perfection*. For a contemporary defense of perfectionism, see Joseph Raz, *The Morality of Freedom* (New York: Oxford UP, 1986).

ideals as possible in our current social world. This vision makes James a pluralist, and not a perfectionist, about justice. A political philosophy committed to accommodation (without assuming transformation) will be generally amenable to the politics of *modus vivendi* (not political liberalism) and to an agonistic style of politics (not rational deliberativism). To further draw out the difference between Dewey and James (on this point and more generally), I find it helpful to work with the distinction gestured at above between a *politics of transformation* and a *politics of accommodation*.

Consider this distinction at a more general level. Models of political deliberation and conceptions of justice need to balance two things: the need for consensus, and the value of diversity. We face an immediate problem: while consensus is the goal, respecting diversity sets constraints and impediments to achieving that goal. If we accept *all* conceptions of the good and of justice as deserving of inclusion, then we will surely fail to achieve consensus, at least in conditions of even moderate pluralism (which hold in virtually all modern societies). The disagreements will be far too vast to permit consensus. We look around our society and see, for example, religious fundamentalists (who believe that the state should enforce the values of a particular religious tradition) and secularists (who believe that the state should enforce no religious values and should base its actions on strictly non-religious reasons). We see racists (who believe that the state should privilege a particular racial group) and antiracists (who believe that the state should treat all citizens as equals). On the face of it, no consensus is forthcoming between the religious fundamentalist and the secularist, the racist and the antiracist – their views are directly in contradiction. Accommodating one would require not accommodating the other. If we are going to reach consensus (and thus achieve

legitimate authority), we need to constrain the range of views that are “taken seriously” – that is, we need to constrain the range of views that are taken into consideration when working out a conception of justice.⁴⁵⁸

The Rawlsian shorthand for the range-of-views-worth-taking-seriously is “reasonable pluralism.” Regarding the cases I mentioned, the religious fundamentalist and the racist are clearly going to be deemed “unreasonable” by near-universal consensus (even if we are unable to give a convincing non-circular account of “unreasonableness” – this term can be understood in a more straightforwardly emotivist way to simply mean “people we *really* don’t like”).⁴⁵⁹ Once we exclude these clearly unreasonable views from the deliberative picture (leaving us with the secularists and antiracists, among others), achieving consensus is much more likely. But this exclusionary move is not just made on *practical grounds*—namely, that it happens to make consensus *easier*. It is made on *moral grounds*—that is, if we fashion an account of justice that is

⁴⁵⁸ The conviction that consensus is the foundation of political legitimacy is a cornerstone of liberal political thought, and is simply taken for granted here. For a discussion of how and why consensus came to play this role, see chapter II.

⁴⁵⁹ Chantal Mouffe provides a nice real-world illustration of the point that even pluralistic liberals need to exclude certain views: “Let me give you an example of this: a few years ago during the Rushdie affair in Britain there was a small but vocal group of fundamentalist Muslims who argued that in the name of pluralism they should be given the right to kill Rushdie legally. They were saying to the British state, ‘This is what our religion tells us to do, and if you are really pluralist, if you want to recognize all our differences, you should allow us to kill Rushdie and not go to jail.’ I remember that some liberals were in fact quite worried about this argument. They were saying, ‘They do have a point. If we are pluralists, we should take those demands into account.’ Of course, the British state did not allow them to do it, so the state was accused by those fundamentalist Muslims of not being liberal pluralists but liberal fundamentalists. They were saying, ‘The values that you impose are the values of liberalism; you are not really pluralists.’ Of course, in a sense they were right, but I think there is no way to escape this. If you want a pluralist society in which there is going to be the possibility for people to express a form of dissensus, then you need to create some kind of consensus on the value of pluralism, of pluralism as an axiological principle. This means that certain people who want to establish a theocratic kind of society are not going to be able to; their voice is not going to be accepted. So in order to have a pluralist society, you cannot have total pluralism because total pluralism would mean that the enemies of pluralism are going to be able to destroy the basis of that society” (interview with Chantal Mouffe in Lynn Worsham and Gary A Olson, “Rethinking Political Community: Chantal Mouffe’s Liberal Socialism,” *Jacoline Journal* 19, no. 2 [1999]: 174-175; accessed 2 January 2015, <http://www.jaconlinejournal.com/archives/vol19.2/worsham-rethinking.pdf>.)

enthusiastically embraced by the racist, it is very likely that we will have a bad account of justice.⁴⁶⁰

The case of the racist and religious fundamentalist is relatively easy: most of us feel quite comfortable excluding them and their views from deliberations about justice. Part of our concern is that such views cannot even be framed in universalistic terms – they are straightforwardly arguing for the privileging of one group over all others, an argument that is certain to be unconvincing to all of those other groups who would be subordinated (and who would be motivated to make counter-claims). However, if these *obviously* bad views (and others that are similarly bad) are the *only* ones that are excluded, then we may still be incapable of achieving consensus. There will remain wide-ranging disagreements between a wide range of views, none of which is quite so *obviously* wrong. Let us say that once we exclude (only) the obviously bad views, we have “wide reasonable pluralism.” The disagreements that take place within the scope of wide reasonable pluralism, disagreements (for example) between non-fundamentalist (yet still) religious citizens and atheists, libertarians and socialists, cultural traditionalists and feminists, etc., will still be hopelessly deep. So, given this wide range of views, how is consensus possible?

There are two possible strategies for dealing with this condition of wide reasonable pluralism: accommodate all these views even if it means that our public agreement is thin (that is, privilege pluralism), or *exclude more views* (starting with the

⁴⁶⁰ Critics of actually-existing practices of liberal tolerance accuse such practices of effectively doing just this: accommodating unjust institutions and practices, and foreclosing the possibility of radical transformation. See Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton UP, 2006); and her debate with Rainer Forst in *The Power of Tolerance: A Debate*, ed. Luca Di Blasi and Christoph Holzhey (New York: Columbia UP, 2014). One of the earlier and most well-known critiques of liberal tolerance along these lines is Herbert Marcuse, “Repressive Tolerance,” *A Critique of Pure Tolerance* (Boston: Beacon Press, 1965).

ones that, although not *obviously* bad, seem at least *somewhat* bad) so that we can achieve deeper agreement (that is, use a more exclusionary notion of “reasonableness”). Many political liberals, for example, think that we can reasonably exclude libertarians and pro-lifers from deliberation.⁴⁶¹ These views (libertarianism and pro-life) are not *obviously* bad in the same way that religious fundamentalism and racism are (although some may disagree), but they are still deemed unreasonable by many political liberals, who view them as at least *somewhat* bad (or *bad enough*). Many political liberals thus insist that we exclude them (and other similarly “bad enough” groups and views) from deliberation. Let us call the scope of this smaller set of views “narrow reasonable pluralism.”

The aforementioned options – privileging pluralism or privileging (a narrowed version of) reasonableness – represent different ways of approaching the basic goal of political deliberation (the goal of reaching consensus while respecting pluralism). But both options present us with problems. The more we care about respecting and accommodating the fullest range of reasonable pluralism, the more we fall prey to *status quo bias*. That is, we may be bending justice around *too many* ideals and values (some of which are arguably unreasonable), thus possibly diluting and corrupting justice (assuming any kind of agreement can be reached at all). On the other hand, the more views we exclude from deliberation, the more people there will be in society who will view the

⁴⁶¹ Rawls suggests, in a now-infamous footnote in *Political Liberalism*, that it is unreasonable to support prohibitions on abortion in the first trimester of pregnancy. He writes, “Now I believe any reasonable balance of these three values [the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens] will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester” (243n32-244n32). For an overview of the controversy surrounding this passage, see Henrik Friberg-Fernros, “Abortion and the Limits of Political Liberalism,” *Public Reason* 2, no. 1 (2010). Rawls also argues in *Political Liberalism* that libertarianism is not a member of the reasonable “family of liberal conceptions of justice” (262). For an elaborate defense of this latter point, see Freeman, “Illiberal Libertarians.” I argue against this latter feature of political liberalism in chapter III.

resulting principles of justice as oppressive (because their ideals are not reflected in the principles of justice). To put the point another way, the more ideals we exclude, the more that the principles of justice lose *motivational salience* (that is, the less that excluded citizens are motivated to act on those principles, and the more that they are motivated to violate them), thus risking political instability.⁴⁶² The more one cares about motivational salience, the more one is a *political realist*. The more one downplays motivational salience when constructing a theory of justice (excluding more views and narrowing the set of reasonable disagreement), the more one is a *political moralist*. Both horns of the dilemma lead us toward different sets of concerns and problems.

So again, should we attempt to accommodate the widest possible range of reasonable pluralism, or should we exclude more views so as to narrow the range of reasonable pluralism and make consensus easier to achieve? Should justice accommodate wide reasonable pluralism and be more politically realist, or should justice accommodate narrow reasonable pluralism and be more politically moralistic? These two strategies identify different ways of conceiving of the role and purpose of political philosophy, which I will now further explore in the next section. After sketching this typology, I will be in a good position to state more clearly the advantages of the Jamesian metaphilosophy that I am advocating.

6.1. Liberalism as Wide Accommodation

One strand of liberalism hopes to accommodate a great many points of view (with very few restrictions – only the obvious cases of, e.g., the religious fundamentalist and racist). For these liberals, justice should accommodate *wide reasonable pluralism*.

⁴⁶² This point is developed in D'Agostino, *Free Public Reason*; especially 84f.

Accommodation here means that the content of justice is pulled from the overlapping consensus of the actually existing widely reasonable moral commitments of the citizens of a particular political community. These liberals accept that public consensus will be thin, sometimes extraordinarily thin, because of the large number of admissible points of view to be accommodated. Indeed, this consensus may be so thin that justice (or, more likely, particular domains of justice) will remain a matter of foundational disagreement. This latter possibility would trigger the need for a *modus vivendi*, according to which we search for some form of authority that creates a stable balance of forces in the absence of an overlapping consensus. This version of liberalism is strongly realist and arguably suffers from an objectionable status quo bias, because it accepts the reasonableness of a wide variety of views about justice, even some that might strike other citizens as unjust or oppressive (such as, perhaps, traditional religious communities that celebrate patriarchal family structures). This form of liberalism is defended in the works of William James and John Gray.

6.2. Liberalism as Constrained Accommodation

This strand of liberalism hopes to accommodate a more restricted set of views than the above-mentioned position. Justice, on this view, should accommodate *narrow reasonable pluralism*. Accommodation here means that the content of justice should be able to gain the approval of actually existing narrowly reasonable citizens of a particular political community. These liberals are comfortable excluding views that are not *obviously* bad, but are arguably *somewhat* bad. As discussed above, Rawls excludes libertarians and pro-lifers from deliberation because they are deemed unreasonable, but it

is not immediately clear what makes this move legitimate and not simply sectarian. Rawls argues that libertarians and pro-lifers fail to make arguments that contain a reasonable balancing of reasonable political values – but it is precisely these political values (and their proper balancing) that are being contested in debates about economic justice and abortion. The seeming circularity and sectarian-ness of the definition of “reasonableness” employed here by Rawls and other political liberals is unsatisfying to many. Instead of a *modus vivendi*, this position aims for a robust overlapping consensus of reasonable views around a determinate conception of justice (or bounded set of conceptions). This form of liberalism is defended in the works of John Rawls, Samuel Freeman, and Jonathan Quong.

6.3. Liberalism as Transformation

This form of liberalism views pluralism (either deep or reasonable) as a starting-point, but *not a mere fact to be accommodated*. This view is often defended by those who identify with “deliberative democracy” (although, importantly, some deliberative democrats are more pluralistic and accommodationist than these defenders of transformationism). Since each person’s commitments are intersubjectively *formed*, the hope is that intersubjective deliberation is capable of *reforming/transforming* these commitments into some kind of new consensus. The content of justice should reflect what people would consent to *after* having their views transformed (and fused into consensus) by properly structured deliberation. The chief concern here is that these thinkers tend to have over-optimistic views about the process of deliberation and the

likelihood of consensus being reached. This form of liberalism is defended in the works of John Dewey and Jürgen Habermas.

By distinguishing the projects and contributions of James, Rawls, and Dewey in this way, we can more clearly see the underlying philosophical differences between their approaches, and thus better understand the strengths and weaknesses of each approach. As I have argued, Rawls' commitment to accommodating narrow reasonable pluralism relies on a circular and sectarian notion of "reasonableness," making his theory of justice highly controversial. Dewey's commitment to growth is unacceptably exclusionary towards many reasonable moral non-naturalists. Furthermore, Dewey's commitment to deliberation as the primary decision-procedure for adjudicating disagreement is overly optimistic about the prospects for consensus, which in turn forecloses the possibility of relying instead on non-deliberative private and market solutions. It is James who offers the more useful and appealing tools for thinking through our condition of deep pluralism, even with the acknowledged concerns about his approach. I have thus far outlined some of the lessons that political philosophers can draw from James' "The Moral Philosopher and the Moral Life," but more needs to be said about what exactly this looks like and how it can be applied to the problems generated by deep pluralism about justice. In what follows, then, I add further detail to this positive conception of political philosophy – a pragmatist political philosophy that takes seriously the constraints that deep pluralism ought to impose on the work of the political philosopher.

7. Towards a Jamesian Political Philosophy

Plato argued that philosophers have such unique insight into the nature of justice that they, and only they, have the ability to properly rule the *polis*.⁴⁶³ This hubristic image of the political philosopher has been moderated somewhat in modern and contemporary political philosophy, but the core conviction persists that the political philosopher has unique insight into the nature of justice. Even the social contract thinkers, and their political liberal offspring, all of whom insist that justice is a matter of deliberation and consensus, feel compelled to engage in controversial moral idealization to ensure that the deliberators are “reasonable.” This process of idealization often results in the political philosopher making controversial moral judgments, masked under the neutral-sounding language of “reason,” or supposedly pulled from “our considered convictions” or “our political traditions.” Alas, it now seems clear that reason does not speak in one voice about matters of morality and justice, and “our” considered convictions and political traditions are much more heterogeneous and pluralistic and dynamic the closer we look at them. Thus, the history of political philosophy (up to the present day) is full of political partisanship masked in non-partisan and neutral language. In this dissertation, I have attempted to show that many of the main strands of contemporary political philosophy are plagued by this problem. The philosophy of James can help illuminate some of the features of a more realist, more honest, and more constructive form of political philosophy.

Here, then, I will bring together and describe some of the basic features of a Jamesian political philosophy. First, and most obviously, the Jamesian political

⁴⁶³ The most famous argument of behalf of philosophical elitism being, of course, Plato's defense of the rule of “philosopher-kings” in Book V of *The Republic*, trans. R.E. Allen (New Haven: Yale UP, 2006).

philosopher should accept that there exists *foundational* disagreements about justice in modern democratic societies that are also *reasonable* disagreements. In these contexts, appeals to reason, reasonableness, and truth are often not constructive.⁴⁶⁴ This is because foundational disagreements (such as those between the reasonable libertarian and the reasonable leftist over questions of economic justice) are situations in which the interlocutors simply do not share the relevant premises or values, and thus the resulting disagreements cannot be resolved through reasoned deliberation alone. Reason alone cannot adjudicate these disputes, which is why they seem so hopelessly intractable.

Indeed, oftentimes debates about the proper decision-procedure for adjudicating these foundational disagreements are subject to their own deep disagreements. The centralizing response of modern liberals and leftists (which requires that we all deliberate about controversial issues and then vote for a policy to which we will all be subjected), and the decentralizing response of libertarians and classical liberals (which insists that we devolve controversial issues to the private sphere so that everyone can make a separate choice that best aligns with her values and preferences), are both controversial

⁴⁶⁴ As discussed above, “reasonableness” can legitimately be invoked to exclude views with clear moral or epistemic flaws (e.g. the racist or the climate change denier); that is, those views that should not be accommodated even in my conception of “wide reasonable pluralism.” Importantly, James has us view especially abhorrent claims not failing some *a priori* criterion of “reasonable,” but as instead *overridden by other counter-claims* (e.g. counter-claims made by those who would be oppressed by sexist policies). We can, then, reconstruct the term “unreasonable” along Jamesian lines, as those views which are overridden by counter-claims (and we can reconstruct the term “reasonable” as those views that are not so overridden). Some agonist philosophers, however, want to go further and dispose of the term “reasonable” altogether. Mouffe writes, “But who decides what is and what is not ‘reasonable’? In politics the very distinction between ‘reasonable’ and ‘unreasonable’ is already the drawing of a frontier; it has a political character and is always the expression of a given hegemony” (*The Return of the Political*, 142-143). I claim that it makes sense to retain the version of reasonableness reconstructed along Jamesian lines, which meshes with James’ insistence that some views need to be overridden for the sake of permitting the expression of other views. In any case, the Jamesian political philosopher should never invoke “reasonableness” as a tool with which to sanctify her partisan views in the context of foundational disagreement – a move all too common in contemporary political philosophy.

proposals.⁴⁶⁵ While they both purport to be neutral decision-procedures acceptable to all reasonable people, they both would bias the result of the procedure in their own favor. In the case of economic justice, a centralizing response enables the possibility of a sweeping redistribution of property, while the decentralizing response secures the likelihood of an inegalitarian distribution of property. And both procedures are justified by a set of premises that are highly controversial and reasonably rejectable. The centralizing response assumes that economic liberties are not basic liberties, and thus that private property rights are (relative to basic liberties) easily overrideable. One such argument for this position is luck egalitarianism, which holds that no one deserves their holdings, therefore no one has pre-political entitlements to them. The decentralizing response assumes that economic liberties are basic liberties, and thus that property rights are not easily overrideable. One such argument for this position is the self-ownership thesis, which holds that regardless of desert, people are entitled to all the holdings that they acquire without violating the Lockean rights of others. This kind of foundational

⁴⁶⁵ Arguably James himself is tempted by this classical liberal response to deep pluralism in “On a Certain Blindness in Human Beings,” when he writes, “It [a recognition of deep pluralism] absolutely forbids us to be forward in pronouncing on the meaninglessness of forms of existence other than our own; and it commands us to tolerate, respect, and indulge those whom we see harmlessly interested and happy in their own ways, however unintelligible these may be to us. Hands off: neither the whole of truth nor the whole of good is revealed to any single observer, although each observer gains a partial superiority of insight from the peculiar position in which he stands. Even prisons and sick-rooms have their special revelations. It is enough to ask of each of us that he should be faithful to his own opportunities and make the most of his own blessings, without presuming to regulate the rest of the vast field” (644-645). The injunction of “hands off” reflects the core classical liberal commitment to the presumption in favor of liberty. However, in “The Moral Philosopher and the Moral Life,” James insists that *all* claims generate obligations, including claims that make demands on others. The egalitarian who demands a more equal distribution of wealth is making a “hands on” claim – namely, a claim on the (supposedly) unjustly held property of others. In “The Moral Philosopher and the Moral Life,” James’ argument implies that the claims of the egalitarian ought to be seen as *prime facie* on par with the claims of the classical liberal. Thus, Jamesian political philosophy (as distilled from “The Moral Philosopher and the Moral Life”) does not “tilt” in one direction or the other as it does for Gerald Gaus, who claims that political liberalism has a “classical tilt” - that is, a bias in favor of classical liberal principles and institutions and against egalitarian and socialist ones. See Gaus, “Coercion, Ownership, and the Redistributive State”; and Gaus, *The Order of Public Reason*. For a critique of Gaus’ insistence on political liberalism’s “classical tilt,” see Lister, “Public Justification and the Limits of State Action.”

disagreement (about both principles and procedures) is simply not open to rational adjudication.

Second, and relatedly, the Jamesian political philosopher should do away with the assumption of the eventuality of rational consensus about matters of basic justice. So much of political philosophy, past and present, is characterized by a conviction that consensus is guaranteed, as long as we are all reasonable and are deliberating in the right setting. This assumption is unjustified. As I have demonstrated in chapter III, on the important questions of economic justice, there is no reason to assume that consensus is possible, even among reasonable interlocutors. Many other domains of justice are likely also subject to this kind of foundational disagreement. Reasonable people can be committed to radically different values, assumptions, and premises on a whole range of important questions of justice.

Not only is the assumption of the eventuality of rational consensus unjustified, but it has prevented political philosophers from addressing a host of important political questions surrounding how we might best navigate conditions of deep pluralism where consensus is not forthcoming. Political philosophers have traditionally viewed *modus vivendi* arrangements as second-best compromises to be overcome by more harmonious arrangements secured by complete moral consensus. Most political philosophers spend all of their time describing the nature of their hoped-for harmonious overlapping consensus, and almost no time describing how to construct a desirable *modus vivendi* or how to incrementally nudge existing *modus vivendi* arrangements toward an overlapping consensus.⁴⁶⁶ Furthermore, why assume that a world characterized by shared values is a

⁴⁶⁶ Rawls notes the transition between the *modus vivendi* following the Reformation and the overlapping consensus of constitutionally guaranteed freedom of conscience and religious toleration, but he only vaguely speculates about how and why the transition came about. First, “the principle of toleration came about as a *modus vivendi* following the Reformation: at first reluctantly, but nevertheless as

morally better world than a world characterized by a deep pluralism of values? In the same way that political liberals assume that a deep pluralism about the good life is a fact to be accepted and accommodated (not just prudentially but for moral reasons), we should now be open to a much wider pluralism about both the good life *and justice*, one to be accommodated and not necessarily overcome, even if doing so confounds attempts to achieve consensus about hard and important questions of justice.

Third, and more positively, the Jamesian political philosopher should reclaim the project of a “non-partisan political philosophy” from political liberals (who have generally failed to be truly non-partisan in their political philosophizing), while recognizing its limits. Instead of using political philosophy to subtly take sides in debates about justice, the Jamesian political philosopher should engage in the task of creatively suggesting new ideals (hitherto nonexistent) that might help overcome or improve such debates.⁴⁶⁷ We can think of this task as *non-partisan moral entrepreneurship*. These new ideals, James insists, must be *more inclusive* than the old ideals, if they are to adequately defuse and overcome the political disagreement. In a memorable line, James writes,

providing the only workable alternative to endless and destructive civil strife” (*Political Liberalism*, 159). Then, “It is possible for citizens first to appreciate the good those principles [liberty of conscience and freedom of thought] accomplish both for themselves and those they care for, as well as society at large, and then to affirm them on this basis. Should an incompatibility later be recognized between the principles of justice and their wider doctrines, then they might very well adjust or revise their doctrines rather than reject those principles” (*Political Liberalism*, 160). Finally, “Perhaps the doctrine of free faith developed because it is difficult, if not impossible, to believe in the damnation of those with whom we have, with trust and confidence, long and fruitfully cooperated in maintaining a just society” (*Political Liberalism*, xxv). Rawls is here merely speculating (“it is possible,” “might very well,” “perhaps”), and he is otherwise entirely philosophically uninterested in the topic. In my view, studying this (and other) successful transition(s) between *modus vivendi* arrangements and achievements of overlapping consensus is of philosophical interest because it may help us deal constructively with the current (and future) foundational disagreements that generate social strife and stand in the way of an overlapping consensus.

⁴⁶⁷ This strategy of moral inventiveness is similar to Rorty's argument that sometimes the “logical space may need to be expanded before justice can be envisaged, much less done,” so moral and political philosophers should work to “extend logical space” by “providing a new language” (“Feminism and Pragmatism,” *Philosophical Papers vol. 3: Truth and Progress* [New York: Cambridge UP, 1998]: 204). Rorty rightly cites feminism as a paradigmatic case of this moral entrepreneurship.

“*Invent some manner* of realizing your own ideals which will also satisfy the alien demands,—that and that only is the path of peace!”⁴⁶⁸ This vision remains quite abstract and unclear. So what, concretely, does this look like?

For a demonstration of the power and limits of this Jamesian political philosophy, we can turn to James himself – namely, the arguments that he develops in his essay “The Moral Equivalent of War.” James is here confronting a debate about justice that we, today, are all too familiar with: the waging of war. In the article, James proposes the ideal of a war “against *Nature*” (a war for the *benefit*, not *destruction*, of humanity) which might capture the imaginations of both pacifists and war hawks, thus dissolving the political conflict about war by bringing both sides together over a newly created ideal.⁴⁶⁹ Before James proposed his newly invented ideal, war hawks wanted war, and pacifists wanted no war – a seemingly intractable disagreement. As a partisan, James sides with the pacifists. But as a political philosopher, James develops and offers up a new third ideal, the war against Nature, which might satisfy both sides and resolve the stand-off.

What James is able to do is detect an unappreciated point of convergence beneath the passionate disagreement between war hawks and pacifists, namely, a mutual yearning for *energetic collective action* fueled by the “martial virtues.”⁴⁷⁰ James thus offers up a new ideal that taps into this shared desire and re-channels it into a new kind of activity.

⁴⁶⁸ James, “The Moral Philosopher and the Moral Life,” 623. Again, James writes that the philosopher “must vote always for the richer universe, for the good which seems most organizable, most fit to enter into complex combinations, most apt to be a member of a more inclusive whole” (626). Colin Koopman gestures toward this pragmatist-inspired orientation of political philosophy when he writes: “We will need to offer concepts that help us make sense of where we have come from, who we are, and what we may yet do. Philosophy in such a key may not always deliver judgments, but it may yet deliver explanations and understandings” (“Good Questions and Bad Answers in Talisse’s *A Pragmatist Philosophy of Democracy*,” *Transactions of the Charles S. Peirce Society* 45. no. 1 [Winter 2009]: 63).

⁴⁶⁹ James, “The Moral Equivalent of War,” 669.

⁴⁷⁰ James, “The Moral Equivalent of War,” 668.

He argues that “instead of military conscription” we should have “a conscription of the whole youthful population to form for a certain number of years a part of the army enlisted against *Nature*.”⁴⁷¹ That is, James hopes to exploit the *gap* between what the war hawks are *really* committed to (the exercise of the martial virtues) and what the war hawks *claim* to be committed to (the waging of military war). This gap is politically meaningful insofar as it enables the possibility of such people being receptive to *new* ideals that *better* satisfy their real commitments.⁴⁷²

This strategy of Jamesian ideal creation seems perfectly suited to the context of deep and persistent political disagreement. It offers to create (the possibility for) consensus where consensus previously seemed impossible. Instead of *assuming* consensus, like political liberalism does, it works to *create* consensus.⁴⁷³ It represents a kind of creative *moral entrepreneurship* that operates within the network of ideals and values that actual people hold while pushing, incrementally but meaningfully, beyond

⁴⁷¹ James, “The Moral Equivalent of War,” 669.

⁴⁷² Even Rawls appreciates that “a certain looseness in our comprehensive views, as well as their not being fully comprehensive, may be particularly significant” (*Political Liberalism*, 159). Rawls similarly notes that all comprehensive doctrines contain “lots of slippage” which may enable views to shift and modify in productive ways (*Political Liberalism*, 160). Rawls does not expound on how, exactly, this looseness and these slippages might be exploited by the political philosopher.

⁴⁷³ This activity of creative invention marks an important distinction between Rawlsian political liberalism and Jamesian pragmatist political philosophy. Only occasionally does Rawls explicitly recognize that constructive political philosophy requires something like *creativity* and *inventiveness* in the face of deep disagreement about justice. For example, Rawls writes, “The public political culture may be of two minds at a very deep level. Indeed, this must be so with such an enduring controversy as that concerning the most appropriate understanding of liberty and equality. This suggests that if we are to succeed in finding a basis for public agreement, we must find a way of organizing familiar ideas and principles into a conception of political justice that expresses those ideas and principles *in a somewhat different way than before*” (*Political Liberalism*, 9; my italics). This process of creatively re-weaving and re-presenting our ideals in *new* and *different* ways is unfortunately not at all theorized in Rawls’ work, even though he is, to some extent, doing just this. It seems, perhaps, that Rawls and James are both being creative and inventive but at different registers. Rawls wants to create a theory that will help us assess the relative merits of competing ideals, while James wants to create and propose entirely new ideals. Thus, the difference between Rawlsian political liberalism and Jamesian pragmatist political philosophy seems to concern the exact nature and place of creativity in political philosophy. This point deserves further reflection. I am indebted to Cheyney Ryan for helping to clarify this point.

them. In this way, Jamesian accommodationism steers between the recognized political philosophical sins of blind conservatism and unhinged radicalism.

James' moral entrepreneurship in "The Moral Equivalent of War" is a useful example of what a more engaged and pragmatist political philosophy might look like, but it also clearly shows the limits of such an enterprise. James' proposed ideal did help inspire the creation of national service organizations (such as the Civilian Conservation Corp of the Depression era), and in that way it partially succeeded. But, importantly, it did not entirely succeed in turning war hawks against war. Why not? Because war hawks can be and often are inspired to advocate for war on the basis of other ideals than the cultivation of the "martial virtues" which James hoped to re-channel into his war against Nature. For example, defenders of war were (and continue to be) also inspired by a desire to defend and export the democratic ideal abroad, by a moral commitment to humanitarian intervention, by a desire for imperial expansion, and much more (although, admittedly, the independent goal of stirring up the martial virtues certainly held powerful sway in the era of Theodore Roosevelt).

To be successful, the invented ideal of the Jamesian political philosopher must *genuinely* satisfy the underlying values, goals, and desires of the conflicting parties even while re-channeling them into a new and more inclusive ideal. The temptation is for the Jamesian political philosopher to *oversimplify* and *homogenize* the values, goals, and desires of the contending parties so as to illuminate supposed points of commonality where none may exist. We should not deceive ourselves into thinking that what the war hawks *really* want is just the exercise of the martial virtues. Such an assumption makes the job of the political philosopher too easy, and ultimately it does not take sufficiently

seriously the depth of our disagreements. In many political disagreements the contending parties are animated by a complex network of genuinely opposing and incommensurable (conscious and unconscious) values, goals, and desires, such that no invented third ideal is likely to be compelling to both parties. And since Jamesian political philosophy is accommodationist, not transformationist, the invented third ideal must genuinely accommodate the existing set of values, goals, and desires featured in society, and not simply expect the full-scale transformation of these values, goals, and desires in the direction of consensus.

Returning to the topic addressed in chapter III, one might wonder what kind of Jamesian ideal might be created to resolve the impasse between Nozick and Rawls, or between Gaus and Freeman. Unfortunately, I have no such ideal worked out, and I am unsure at the moment what such an ideal would look like. In *Free Market Fairness*, John Tomasi makes it his explicit goal to work out a conception of justice that pulls together Rawls and Hayek, social justice and free markets. This attempt at reconciling competing views of economic justice is much appreciated, given that the topic has become so bitterly polarizing within both American political culture and the discipline of political philosophy. However, the Tomasian hope for a compelling Rawls/Hayek synthesis which ushers in a consensus on matters of economic justice seems completely over-optimistic. As I have shown in chapter III, Tomasi draws on assumptions and values that are clearly controversial and reasonably rejectable by partisans of both Rawls and Hayek.⁴⁷⁴ It

⁴⁷⁴ In addition to what has been cited and discussed in chapter III, one gets a sense of how partisans of Nozick and Hayek might object to Tomasi's proposal by reading the contributors to the symposium on the lead essay by Tomasi (co-authored with Matt Zwolinski) "A Bleeding Heart History of Libertarianism," *Cato Unbound* Symposium: "Where Next?: The Past, Present, and Future of Classical Liberalism" (April 2012), accessed 5 October 2014, <http://www.cato-unbound.org/issues/april-2012/where-next-past-present-future-classical-liberalism>. And one also gets a sense of how partisans of Rawls and Cohen might object to Tomasi's proposal by reading the contributors to the symposium on *Free Market Fairness* in *Critical Review* 24, no. 3-4 (2014).

seems clear to me that Tomasi failed to find a true core of shared convictions between the competing parties to the dispute over economic justice, despite his best attempt, because perhaps no such minimal point of convergence exists. Because of this, Tomasi's elaborated account of economic justice failed to convince many of those he hoped to convince. Instead, he has proposed just another controversial conception of economic justice to compete with the Nozickean, Hayekian, Gaussian, Rawlsian, Cohenite, etc., conceptions of economic justice. Tomasi's new account of justice is an appreciated contribution, but since it ultimately just adds another distinct option to the menu of possibilities for conceptions of economic justice, it is a contribution which *intensifies* our disagreement about justice; it does not *resolve* it.⁴⁷⁵

In those cases of deep disagreement about justice where the Jamesian option of ideal creation seems fruitless, there is another strategy or orientation that might be constructive. If the Jamesian political philosopher is unable to find *any* points of

⁴⁷⁵ Another contemporary attempt to break through our polarized political impasse is represented by the “nudge” theorists who articulate a policy program based on “libertarian paternalism.” These thinkers propose policies that, given well documented human cognitive biases, tinker with the “choice architecture” (such as default rules) for various decisions (especially those related to investing and health) so as to nudge boundedly rational choosers to make better choices. These policies aim to be both libertarian (by not restricting choice – being “choice-preserving”) and paternalistic (by increasing the welfare of people, especially some of those most vulnerable to welfare-harming choices), thus drawing on some of the commitments of both right and left. Cass Sunstein and Richard Thaler, the two most prominent nudge theorists, explicitly highlight the possibility of nudge policies gaining a bipartisan consensus. They write, “With respect to government, we hope that the general approach might serve as a viable middle ground in our unnecessarily polarized society. The twentieth century was pervaded by a great deal of artificial talk about the possibility of a ‘Third Way.’ We are hopeful that libertarian paternalism offers a real Third Way—one that can break through some of the least tractable debates in contemporary democracies” (*Nudge*, 255). Again, however, it seems clear to me that while libertarian paternalism offers some important insights into human decision making and some helpful policy suggestions, it seems unlikely that, as a whole, the libertarian paternalist program will overcome our foundational disagreements about justice. Daniel Hausman and Brynn Welch, at the end of a compelling critique of libertarian paternalism, argue that Sunstein and Thaler’s insistence that libertarian paternalism can serve as bipartisan middle ground is “implausible.” They explain, “[Sunstein and Thaler’s] major policy proposals—school choice, cap and trade markets to limit pollution, and privatizing marriage and limiting legal recognition to domestic partnerships open to gays and lesbians—have little connection to libertarian paternalism or nudges, and they are hardly middle ground. There are many insights in *Nudge* for the nitty-gritty business of designing policies, but no path toward reconciling disagreements concerning major issues” (“Debate: To Nudge or Not to Nudge,” *The Journal of Political Philosophy* 18, no. 1 [March 2010]: 136).

convergence between the contending parties, and thus there is no hope of winning over the partisans of both sides by tapping into their shared core of values, goals, and desires, then one might attempt to *work on and modify* the values, goals, and desires of one or both sides of some particular debate. This task is most likely to succeed if its methodology is non-philosophical,⁴⁷⁶ in the vein of Rorty's advocacy of literature, poetry, and journalism taking over the task of social progress from the philosophers.⁴⁷⁷ Perhaps, that is, one should shift her energies away from philosophically debating the Nozickeans and towards writing literature about the difficulties of the lives of low-wage workers (such as Upton Sinclair's *The Jungle*, or, most recently, Barbara Ehrenreich's *Nickel and Dimed: On (Not) Getting by in America*). Then, instead of being compelled to accommodate reasonable Nozickean intuitions, we could simply do away with them, thus giving ourselves the easier job of accommodating a smaller and more homogeneous (and less libertarian) range of intuitions about justice. (And, of course, partisans of Nozick or Hayek might similarly shift their attention away from philosophical argumentation with Rawlsians and Cohenites and toward more journalistic or imaginative and literary forms of persuasion, perhaps in the form of Hayek's *The Road to Serfdom* or Amity Shlaes' *The*

⁴⁷⁶ Although it is not necessarily the case that the philosopher is unhelpful here. One is quickly reminded of how many people (myself included) found their moral intuitions changed after reading Peter Singer's *Animal Liberation* (New York: HarperCollins, 1975), one of those rare works of philosophy capable of changing not only minds but also hearts.

⁴⁷⁷ Rorty argues that the task of transforming our moral intuitions so as to enlarge our moral communities “is a task not for theory but for genres such as ethnography, the journalist's report, the comic book, the docudrama, and, especially, the novel ... [T]he novel, the movie, and the TV program have, gradually but steadily, replaced the sermon and the treatise as the principle vehicles of moral change and progress” (*Contingency, Irony, and Solidarity*, xvi). For a fuller account of what this process looks like for Rorty, see Christopher Voparil, *Richard Rorty: Politics and Vision* (Lanham, MA: Rowman & Littlefield, 2006), especially chapter 3, “The Politics of the Novel: Rorty on Democracy, Irony, and Moral Education.” James largely shares Rorty's view on this. James writes, “His books upon ethics, therefore, so far as they truly touch the moral life, must more and more ally themselves with a literature which is confessedly tentative and suggestive rather than dogmatic,—I mean with novels and dramas of the deeper sort, with sermons, with books on statecraft and philanthropy and social and economic reform” (“The Moral Philosopher and the Moral Life,” 626).

Forgotten Man: A New History of the Great Depression). For another example, if James' "Moral Equivalent of War" does not convince the war hawks to give up on war (maybe because they care about exporting democracy in addition to the martial virtues), then perhaps energy should be shifted toward writing books like Kurt Vonnegut's *Slaughterhouse-Five* or Joseph Heller's *Catch-22*, or to making movies like *Full Metal Jacket*, which dramatize and make vivid the costs of war incurred by those who fight them.

Alternatively, but in the same vein, we might attempt to modify competing sets of "imperialist" claims (in Nozick's sense of those demands that insist upon the state-backed imposition of positive duties on others) into "existential" or "missionary" claims (in Nozick's sense of those demands that are either entirely private or limit themselves to non-coercive moral suasion to convince others to voluntarily self-impose new positive duties).⁴⁷⁸ This modification would defuse the conflict by turning a hostile political disagreement about justice into a debate within civil society about the best private conception of the good.

While no doubt society-wide shifts in moral intuitions do happen (one immediately thinks of the seismic shift in attitudes about homosexuality in the United States over the past decade), they are extremely difficult to consciously engineer, and their success is mostly unpredictable. The best one can do on this front is to produce and make public various forms of intuition-targeting materials (literary, artistic, etc.), and hope for (to paraphrase Rorty) an "accidental coincidence" between one's non-shared

⁴⁷⁸ See section 5.1. for a further discussion of the meaning of these terms and how they fit into Nozick's conception of justice. The conversion of imperialist claims into the status of missionary or existential claims seems to be the goal of, e.g., political movements associated with gay rights and pro-choice (summarized in the slogans "If you don't like gay marriage / abortion, then don't get one!"). In other words, the goal is to convert the claims (of social conservatives) upon public institutions (i.e. the law surrounding marriage or reproductive choice) into private ideals concerning the good life.

convictions about justice and a broadly shared dissatisfaction among the public with the prevailing conception of justice.⁴⁷⁹ We can think of this Rortyan moral entrepreneurship as, sometimes, preceding and preparing the conditions for successful Jamesian moral entrepreneurship. That is, Rortyan intuition-targeting might help to *loosen up* problematic and exclusionary moral intuitions (e.g. making war hawks skeptical about the value of waging war by highlighting the costs to those who fight them). When these intuitions are weakened, then the Jamesian is more likely to be successful in winning over competing sides to new ideals. Thus, while the Rortyan loosens moral intuitions, the Jamesian channels them into new (and hopefully more inclusive) ideals.

But there is, of course, no guarantee that the Jamesian and Rortyan strategies of moral entrepreneurship will succeed at all. In the vision of political philosophy defended in this chapter, consensus, transformation, the social uptake of new ideals, etc., is *never guaranteed*. Many people are committed to their moral and political ideals firmly and unflinchingly, and there is sometimes nothing that political philosophers or novelists can do about it. In those cases, then, where it becomes clear that the task of inventing a more inclusive third ideal is not feasible for a certain moral or political disagreement (and where it is clear that the prevailing intuitions cannot be easily modified), the political philosopher can be constructive by setting aside the task of *moral entrepreneurship* and instead taking up the task of *moral explication*. The goal of moral explication is simply to make explicit and systematic the full range of entailments and implications of holding certain views and values. Moral explication will be framed in the following kinds of ways: “If you hold these values, then here are some (unappreciated or unexplored) implications for justice”; “Here are some (unappreciated or unexplored) reasons to

⁴⁷⁹ Rorty, *Contingency, Irony, and Solidarity*, 37.

cherish these values”; “Here are the some (unappreciated or unexplored) undesirable characteristics of other competing values.” And since the moral explicator has given up on converting or transforming the values or intuitions of her opponents, the audience for the moral explicator is (to paraphrase a political term) *moral independents*. That is, the audience is those people who remain to some extent undecided in the political conflict, and are unaware of the full range of implications and entailments of each side's values and positions. The moral explicator can provide this crucial knowledge, which may ultimately tip the scale of the conflict by converting *independents* into *partisans*. This is an important task because there are many people who do not have clearly established views on every moral and political issue, and many of those people are not entirely aware of how their basic moral intuitions and values might be further developed to inform their views on certain controversial issues (in perhaps surprising ways).

We could, in fact, helpfully read many contemporary political philosophers through the frame of moral explication. For example, Rawls could be fruitfully understood as saying “*If* you are committed to the luck egalitarian thesis, *then* here are some perhaps surprising implications for how you might conceive of justice,” while Nozick could be fruitfully understood as saying “*If* you are committed to the self-ownership thesis, *then* here are some perhaps surprising implications for how you might conceive of justice” – both of which are helpful contributions to an otherwise confused and unclear political debate.⁴⁸⁰ Too often in our public debates about matters of basic

⁴⁸⁰ This point suggests that Rawls and Nozick are, in fact, doing moral explication in their philosophical work. No doubt this is partly true: Rawls is explicating a certain set of moral intuitions that many people share, while Nozick is explicating a different set of moral intuitions that many other people share. Arguably, most great Western political philosophy since John Stuart Mill has been at least partly an explication of the moral intuitions and values that took hold in Europe after the Reformation and the Enlightenment. In every great work of political philosophy, there is clearly a *combination* of moral entrepreneurship and moral explication. Oftentimes, however, political philosophers deceptively describe their moral entrepreneurship *as* moral explication (“All I am doing is making clear what you

justice, partisans do not make clear the set of values and commitments that they are drawing on for justification, nor do they make clear the implications of these values and commitments for other questions of justice (oftentimes, partisans are not cognizant about these issues themselves). So the goal of moral explication is to identify moral and political values and their implications and entailments, and the political philosopher is well-suited for such a task.

Ultimately, at the end of the day the non-partisan political philosopher steps outside of her role *qua* political philosopher and is invited to assume the *partisan stance*. While James insists that the moral and political philosopher remain committed to the ideal of non-partisanship, he is interested in the activity of the partisan and the activist as well. While James asks the political philosopher to “invent” new ideals, James also urges the partisan to always “vote” for the more inclusive ideal. He writes, “There is but one unconditional commandment, which is that we should seek incessantly, with fear and trembling, so to vote and to act as to bring about the very largest total universe of good which we can see.”⁴⁸¹

It is worth reflecting on the metaphor of “voting.” First, the idea of voting for ideals meshes with James' anti-elitist commitments in the essay – namely, that the philosopher has a vote, but so does everyone else. Thus, the philosopher's vote is not authoritative or special, but merely worthy of equal weight and consideration vis-a-vis all other votes. Second, voting is an activity that happens within a fixed choice set. One is choosing from an array of preexisting options. So when the Jamesian partisan is forced

already believe”). In truth, great political philosophers like Rawls and Nozick are tapping into (and making more explicit) some set of widely shared moral intuitions while also trying to merge them with other more controversial moral intuitions and extend them to newly proposed ideas. Thus, both moral explication and moral entrepreneurship are intermixed in many works of political philosophy.

⁴⁸¹ James, “The Moral Philosopher and the Moral Life,” 625-626.

to take sides in a sedimented disagreement, she is a partisan for *inclusivity* (namely, for the values of democratic inclusion and liberal freedom – although how the values of liberal democracy are interpreted, and how we measure “inclusivity,” are all unclear and up for reasonable debate⁴⁸²).⁴⁸³ So we might think of “voting” as a first-order partisan stance in favor of inclusion, while “inventing” is a second-order detached stance that seeks to create new ideals capable of generating agreement between previously disagreeing parties. It is the latter task that James is most interested in, and it is the task that, if successful, results not in one side beating the other side (which is the usual outcome of first-order partisan strife), but in the overcoming and elimination of the disagreement itself (with both sides coming together over a newly invented and proposed ideal).

⁴⁸² Scott Aikin and Robert Talisse rightly point out how James' commitment to pluralism frustrates his call to always vote for the “more inclusive order” since certain ideals can only be realized by suppressing other ideals – which side to vote for then? They write, “certain kinds of ideals are such that to hold them is necessarily to judge certain other ideals to be immoral and thus unworthy of realization. Not all moral conflict is due to an overall lack of resources or a general inability to accommodate everyone. Some conflict is due to the fact that some moral commitments involve a rejection of other moral commitments” (“Three Problems for Jamesian Ethics,” *William James Studies* 6 [2011], accessed 12 April 2014, williamjamesstudies.org/6.1/ta.pdf, 8). This kind of zero-sum conflict, which may not permit the possibility of a more inclusive third ideal, or which may make it seem unclear what would count as more inclusive, seems especially likely in the context of foundational disagreements about matters of justice (some of which I have discussed in previous chapters). Alas, “inclusivity” should be categorized along with many of the other master-concepts of Western politics (“liberty,” “equality,” “dignity,” “rights,” etc.) as unhelpfully thin and essentially contested. Which is to say, these concepts cannot be deployed on their own in political arguments, since they are too abstract and devoid of content. Instead, they need to be concretely interpreted and filled in by a series of further concepts which are themselves more controversial and partisan.

⁴⁸³ It is always important to remember that any partisan stance, no matter how “correct” it might seem at the time, might very well be viewed by future generations as morally “incorrect.” Even the most well-intentioned and well-informed people are liable to make serious misjudgments that are roundly condemned by most people at some point in the future. Rorty seems to have a clearer sense of this point than James. In his important essay “Honest Mistakes,” Rorty argues against “the idea that any honest and intelligent man will [necessarily] adopt positions of which future historians will approve,” citing the many morally and epistemically upstanding intellectuals who took stances in the Cold War that, in retrospect, seem deeply misguided (*Philosophical Papers vol. 4: Philosophy as Cultural Politics* [New York: Cambridge UP, 2007]: 57). This is not, of course, a reason (or excuse) to be apolitical, but it is a reason to be humble and fallibilistic about one's partisan views, and to be on guard against the all-too-human tendency to demonize one's opponents and dismiss their views.

This second-order, non-partisan task of ideal-creation is difficult and limited. The Jamesian political philosopher cannot always save the day, at least not on our worst days. This is important to acknowledge. In conditions of deep pluralism, I have shown that the political liberal tradition simply has nothing to offer us. The political liberal philosopher sees the existence of foundational disagreements about justice and, incapable of accepting the existence of deep yet reasonable disagreements about justice, simply proclaims one side as the winner (the “reasonable” side). But this is not a helpful intervention – in our foundational disagreements about justice, what is most “reasonable” is often precisely what is in question. The political liberal is rightly seen as an unhelpful partisan by those who disagree with her particular views and her narrow definition of “reasonableness.” The Jamesian political philosopher, on the other hand, avoids the deficiencies of the political liberal philosopher while being able to offer some modest tools and suggestions for ways to helpfully intervene in such conditions. But, again, perhaps the day cannot be saved. Sometimes we are simply locked into a hopelessly polarized situation with no possibility of resolution, no matter how much additional deliberation might take place, no matter how much Jamesian (and Rortyan) intervention is undertaken. The Jamesian, at least, is able to recognize that these *tragic* situations are simply part of the human experience, and she is thereby saved from the illusion of a tragedy-free political life.⁴⁸⁴ This is an invaluable insight for political philosophy.

⁴⁸⁴ For a helpful discussion of the role of the tragic in James' thinking, see William Gavin, *William James in Focus: Willing to Believe* (Indianapolis: Indiana UP, 2013); Smith, “William James and the Politics of Moral Conflict”; and McKenzie, “Pragmatism, Pluralism, Politics.” Also see Sidney Hook, “Pragmatism and the Tragic Sense of Life,” *Proceedings and Addresses of the American Philosophical Association* 33 (1959-1960).

8. Conclusion

To sum up: in the midst of deep pluralism, then, the political philosopher has three legitimate and constructive *roles* (and one legitimate and constructive *attitude*). The first two roles reflect varieties of *moral entrepreneurship*, while the third role deals with *moral explication*. First, the political philosopher can attempt to create more inclusive ideals which may be able to generate consensus and defuse strife. This is a difficult task, and the success of one's efforts are never guaranteed. Second, the political philosopher (or non-philosopher) can devote herself to more imaginative arguments and narratives that look more like literature, journalism, televisual media, etc., in attempting to target and loosen existing moral intuitions. This task can help make the successful uptake of newly proposed ideals more likely. Third, in conditions where moral entrepreneurship is unlikely to succeed (where the views and intuitions of partisans are thoroughly entrenched), the political philosopher can engage in *moral explication* aimed at informing moral independents of the implications and entailments of the various values and ideals at play. When political philosophy fails (which, on my account, it often will), then the Jamesian partisan will side with and advocate for the more inclusive ideals. Finally, the political philosopher shares with James an attitude that embodies a tragic vision of politics – a recognition and acceptance of the impossibility of a politics without loss, agonism, and failure. This attitude protects the philosopher from the illusion that there *must*, somehow, always be a consensus about justice to be won from the pluralistic world in which we live. We are afforded no such guarantees, and it is important to be reconciled to this truth.

The failures of political liberalism reveal clearly the nature of our problem today: people have foundational yet reasonable disagreements about justice, and political philosophy must be responsive to this fact. Much of mainstream political philosophy, inspired by the consensus-oriented Rawlsian-Habermasian tradition, has failed to give satisfying answers or even helpful suggestions for how we might productively overcome or live with the persistence of such foundational disagreements. Pragmatism has much to offer here, and I have argued that we should look to the insights of Jamesian pragmatism in particular for guidance. While there has recently been a growing scholarship concerned with developing political insights out of Jamesian pragmatism, I believe that James' pragmatism can also make important contributions to the problems that have been identified within mainstream political philosophy, especially political liberalism. Much more can and needs to be said about the details of a Jamesian political philosophy, but I hope that I have sketched out some of its main goals and tasks (as well as some of its main limitations). This vision of a Jamesian pragmatist political philosophy should provide a compelling philosophical program for the many of us who are frustrated with political liberalism and looking for alternatives.

CHAPTER VI

CONCLUSION

One of the important contributions of this dissertation is to describe, in detail, how reasonable people are likely to disagree deeply and indefinitely about principles of economic justice – principles which should guide our choices about significant political questions, such as those concerning taxation, redistribution, regulation of business and property rights, the nature of the property rights regime, labor market laws and regulations, the legal regime for intellectual property, etc. Citizens of the United States today are likely to find this claim, at first glance, somewhat banal. Living in a remarkably polarized society, everyone is aware of the intractability of our political disagreements, including those disagreements about matters of economic justice.

However, most Americans view this polarization in a particular and problematic way. That is, most Americans view political polarization as a symptom of one of our political tribes being in some important way *unreasonable*. The tribes of left and right view each other with deep (and growing) suspicion, seeing each other increasingly less as Adversaries and increasingly more as Enemies.⁴⁸⁵ Ignorance and bad intentions are

⁴⁸⁵ The helpful distinction between Adversaries and Enemies is developed by, among other philosophers, Chantal Mouffe. For Mouffe, Adversaries are political opponents who share a commitment to the broad goals of democratic institutions and liberal freedom, but who disagree deeply about how these goals are to be achieved and how these values are to be interpreted. Adversaries are “legitimate enemies,” who disagree about fundamental issues while maintaining a level of mutual respect and civic friendship and a mutual respect for basic rules of open debate and democratic process. Enemies are those who are not to be argued with, but those to be beaten and marginalized from political life. For Mouffe, agonistic politics requires “distinguishing between the categories of 'antagonism' (relations between enemies) and 'agonism' (relations between adversaries) and envisaging a sort of 'conflictual consensus' providing a common symbolic space among opponents who are considered 'legitimate enemies.' Contrary to the dialogic approach, the democratic debate is conceived as a real confrontation. Adversaries do fight—even fiercely—but according to a shared set of rules, and their positions, despite being ultimately irreconcilable, are accepted as legitimate perspectives” (*On the Political* [New York: Routledge, 2005] 52). The clash of Enemies should be understood through the “Jacobin model in which you want to destroy the other in order to establish your point of view and then not allow the other the possibility of coming back democratically. That's the struggle among enemies—the complete destruction of the

imputed to the opposing tribe,⁴⁸⁶ and each side comforts itself with the thought that if politics were stripped of unreasonable influences emanating from the other tribe (the capture of politics by Big Business, Big Labor, Big Money, Liberal Elites, Conservative Know-Nothings, etc), then divisiveness would be left behind and consensus would emerge.

This faith in the eventuality of rational consensus has been challenged in this dissertation on two fronts. First, I have argued that even in idealized deliberative circumstances, reasonable people are able to disagree deeply about matters of economic

other” (Worsham and Olson, “Rethinking Political Community,” 180-181).

⁴⁸⁶ There is reason to think that this mutual suspicion is dangerously on the rise. Cass Sunstein refers to this kind of political antagonism as “partyism,” and he reports that we have reason to believe that partyism “now exceeds racial prejudice” (“Partyism' Now Trumps Racism,” *Bloomberg View*, 22 September 2014, accessed 8 January 2015, <http://www.bloombergview.com/articles/2014-09-22/partyism-now-trumps-racism>). For example, Sunstein reports, “In 1960, 5 percent of Republicans and 4 percent of Democrats said that they would feel 'displeased' if their son or daughter married outside their political party. By 2010, those numbers had reached 49 percent and 33 percent. Republicans have been found to like Democrats less than they like people on welfare or gays and lesbians. Democrats dislike Republicans more than they dislike big business” (Sunstein, “Partyism' Now Trumps Racism”). Sunstein also discusses a study where the researchers “asked more than 1,000 people to look at the resumes of several high-school seniors and say which ones should be awarded a scholarship. Some of these resumes contained racial cues (‘president of the African American Student Association’) while others had political ones (‘president of the Young Republicans’). Race mattered. African-American participants preferred the African-American candidates 73 percent to 27 percent. Whites showed a modest preference for African-American candidates, as well, though by a significantly smaller margin. But partisanship made a much bigger difference. Both Democrats and Republicans selected their in-party candidate about 80 percent of the time. Even when a candidate from the opposing party had better credentials, most people chose the candidate from their own party. With respect to race, in contrast, merit prevailed” (“Partyism' Now Trumps Racism”). This reflects a serious failure within contemporary political culture for partisans to appreciate the reasonableness of their opponents, and it highlights the willingness of partisans to increasingly view Adversaries as Enemies. Also see Cass Sunstein, “Partyism,” University of Chicago Legal Forum (14 December 2014), accessed 12 January 2015, <http://ssrn.com/abstract=2536084>. David Brooks comments, “Politics is obviously a passionate activity, in which moral values clash. Debates over Obamacare, charter schools or whether the United States should intervene in Syria stir serious disagreement. But these studies are measuring something different. People’s essential worth is being measured by a political label: whether they should be hired, married, trusted or discriminated against. The broad social phenomenon is that as personal life is being de-moralized, political life is being hyper-moralized. People are less judgmental about different lifestyles, but they are more judgmental about policy labels” (“Partyism is Wrong,” *The New York Times* (27 October 2014), accessed 10 January 2015, http://www.nytimes.com/2014/10/28/opinion/david-brooks-why-partyism-is-wrong.html?_r=0). It is also deeply troubling that professional economists (who we would hope to be somewhat immune from the more irrational forms of tribalism) are becoming more politically polarized – see Scott Sumner, “Ideological Differences in Economics: Why Is the Left-Right Divide Widening?,” *Econ Journal Watch* 12, no. 1 (January 2015).

justice, either by starting from different premises, or by starting with shared premises but developing them into different conclusions because of different interpretations of core concepts. This is a significant point, as it clashes head-on with the Rawlsian-Habermasian mainstream of political philosophy and with the tribalistic impulses of many American citizens. There is a further problem, however. The *reasonableness* of these deep disagreements about justice is not sufficiently appreciated by most people because of the ways in which we conduct much of our real-world political deliberation today, including the particular influences of the Internet. The network of epistemically-closed deliberative enclaves that has emerged on the Internet has made it increasingly difficult for many people to recognize and fully appreciate the reasonableness of their political opponents, a difficulty which fuels political tribalism and encourages us to see our political Adversaries as political Enemies. This is a troubling development in American political life.

What is to be done about it? How is this particular problem to be solved? This is the kind of question that philosophers are expected to have very good answers to. My answers will surely not satisfy everyone. I do not know if there are any solutions to the problem of deep yet reasonable disagreements about economic justice. We very well might be stuck in this particular political rut for a long time, and there might not be an easy way to get out of it. One thing of which I am convinced is that political philosophers do us no good by simply taking sides in these debates and cheerleading for their political tribe by insisting that it is most “reasonable.” If they care to help, they should take their cue from William James and dig deeply into the crevices and corners of our disagreements, and search for hitherto unappreciated nodes of convergence that might

be made explicit and developed into new ideals or values that might help push us forward. I have not worked out a Jamesian ideal that might help us overcome the particular disagreements we have about economic justice. My sense is that this is a deep rut that we are likely to be in for a while. But I hope that I have sketched out what a helpful contribution to this problem might look like.

I will conclude by reflecting on the general question of how we (citizens and philosophers) might think about politics if, despite the troubling interaction of our normal cognitive biases with the structures of Internet deliberation, we recognized that our non-shared views about justice (especially economic justice) are not uniquely reasonable, but merely one set of views within a much larger set of reasonable views. That is, what if we recognized and took seriously the fact that many of our political Adversaries (and even some of our perceived Enemies) are not in fact unreasonable, but actually just committed to different, though reasonable, assumptions and premises? What if one were to realize this while also holding to the somewhat commonsense conviction (articulated by political liberals) that it is impermissible to coercively impose one's views about justice upon others who reasonably object? While political liberalism has generally asked liberal citizens to take those beliefs that generate foundational disagreement and transform them from *public demands about justice* into *private ideals about the good life*, this privatization strategy only works for a certain subset of disagreements, paradigmatically those disagreements about religious truth. Beliefs about economic justice are structurally different than religious beliefs – they are *inherently* public demands upon public institutions and shared practices. If one wants to demand of the socialist that she must privatize her beliefs about economic justice (thus imposing a private burden on her to

philanthropically give away her wealth so as to approximate her preferred egalitarian distribution, or to start a commune ordered along socialistic lines), then one is actually already taking sides in the debate about economic justice in favor of libertarianism, and socialists are sure to reasonably object. So if the privatization strategy does not work in this case, what are we to do?

The problem, as it has been described, lacks any clear solution. If the goal is consensus about justice, but we recognize a wide range of intractable pluralism about matters of justice, then the goal cannot be achieved. Two pseudo-solutions suggest themselves: (1) drop the goal of consensus, or (2) drop the respect for pluralism (or at least restrict and narrow the range of reasonable pluralism). The former pseudo-solution is advocated by some defenders of *modus vivendi* liberalism and agonistic democracy. The latter pseudo-solution is advocated by some liberal perfectionists, communitarians, and misguided political liberals. I call these pseudo-solutions because I am convinced that we have very good reasons to cherish both consensus and pluralism – namely, a strict regulative ideal of full consensus (about principles, procedures, or constitutional essentials, etc.), and as wide a range of reasonable pluralism as we can countenance. While the preceding chapters might give one the impression of a thoroughgoing critique and rejection of liberalism *in toto*, I do not see this as the conclusion of my project. The tradition of liberalism remains valuable not as a static set of answers to political questions, but instead it remains valuable as a set of debates in which we still find ourselves enmeshed. The ideals of consensus and pluralism remain our ideals, even as we endlessly debate how these ideals are to be worked out for us here and now.

While we all know (for the most part) what consensus looks like, we do not have a good sense of what “reasonableness” (and “reasonable pluralism”) looks like. Drawing the boundary around the reasonable cannot be done *a priori*. It is unclear and quite controversial who and what exactly count as reasonable. I have not attempted to clearly define the necessary and sufficient conditions for what counts as a reasonable political belief in this dissertation because I am convinced that such a task is misguided. But the very fact that we have (seemingly reasonable) disagreements about where to draw the boundaries between the reasonable and the unreasonable (which we might call “meta-pluralism” - the phenomenon of reasonable pluralism about the nature of reasonable pluralism) should push us in the direction of being as inclusive as we can (so as to avoid coercing and oppressing citizens and communities that some other group of citizens has deemed unreasonable). The messiness of the boundaries of the reasonable should not, however, convince us that we can go it alone without any conception of the reasonable. Virtually all of us recognize the utter undesirability of bending our shared conception of justice around the extremely hateful and ignorant views that are sadly all too common in our country and world today. Ultimately, I urge political philosophers to stick with the ideals of consensus, pluralism, and reasonableness (reconstructed along Jamesian lines as those views that are not overridden by counter-claims), even if this set of ideals presents frustrating and perhaps intractable problems when we try to actually work out the details of principles of justice.

So I ask again: how might we think about politics given the conclusions of this dissertation? How do the socialist and libertarian (and everyone in between) engage each other in political debate, if they cannot plausibly bracket their non-shared values about

economic justice without bracketing the conversation altogether? How do the socialist and libertarian relate to the coercive state apparatus if they share the basic intuition prohibiting the imposition of any views on reasonable objectors? Well, I certainly cannot be saying that they should sit out of politics because they cannot convince their opponents of their views. They must be allowed to advocate for, and (if they win out in the democratic arena) impose their views upon others, even though others will have loud and reasonable objections. When we have deep yet reasonable disagreements about justice, we are forced into agonistic politics. We need to mutually recognize the right of each other to violate the basic political liberal commitment against coercively imposing views over reasonable objections. This mutual agreement is hopefully one between Adversaries, not Enemies. That is, hopefully the mutual agreement is one where we agree to abide by the results of the democratic struggle when we lose, even as we keep preparing for the next political battle.

But there is an element of hope even here in the agonistic democratic framework. The principle of political non-violence is not absolute. While we hope that foundational disagreements about justice can be dealt with through non-violent agonistic political debate and struggle within existing democratic institutions, there are undoubtedly cases where violent resistance is justified. The problem, of course, is that in non-ideal conditions, different people (holding different conceptions of justice) will have different opinions about when violent resistance is justified (e.g. under capitalist institutions, the libertarian will see fewer injustices than the socialist, and thus the libertarian will see a much higher threshold for the justification of political violence). In the same way that the line between the reasonable and the unreasonable is deeply contested, the line between

justified and unjustified political violence is deeply contested. Were African-Americans justified in resorting to occasional violence during the Jim Crow era? What about now, under the “New Jim Crow” of racially-imbalanced mass incarceration?⁴⁸⁷ What about the string of bombings in the early 1970s by the Weather Underground motivated in large part by a resistance to the Vietnam War, which many people then and now view as an unjust war? For the pro-lifer who sees abortion as murder, when political deliberation fails, should violence be directed toward property or persons in an attempt to disrupt what is seen to be a regime of mass slaughter?⁴⁸⁸ More generally, in the absence of an overlapping consensus about justice, when should we try to forge a peaceful *modus vivendi* with our opponents, and when should we take up arms? When is accommodation unacceptable, and revolution necessary?

This whole set of questions related to political strategy and action in the context of non-ideal conditions is extremely difficult and but also extremely important. My dissertation is positioned right at the borderline between ideal and non-ideal theory, since I am arguing that even in ideal moral and epistemic conditions, reason is not always able to adjudicate our disagreements about justice, thus forcing us to resort to non-rational forms of interaction. Nonetheless, I have nothing especially interesting to say about this topic in the abstract, and I am very dubious about theories that claim to provide general

⁴⁸⁷ See Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New York: The New Press, 2010.

⁴⁸⁸ For example, the very respectable journal *First Things* featured a widely-discussed and controversial symposium in November of 1996 entitled “The End of Democracy? The Judicial Usurpation of Politics” (which included contributions by prominent intellectuals such as Robert P. George and Robert Bork) which explored the fact that many pro-life Americans “can no longer give moral assent to the existing regime,” opening up questions about “possible responses to laws that cannot be obeyed by conscientious citizens—ranging from noncompliance to resistance to civil disobedience to morally justified revolution” (“Introduction,” accessed 8 March 2014, <http://www.firstthings.com/article/1996/11/001-the-end-of-democracy-the-judicial-usurpation-of-politics>).

principles that give a criterion that can be applied to all possible cases. But no doubt there are justified and unjustified acts of political violence, and we do not want to do away with such a distinction (since doing away with the distinction would essentially return us to the Hobbesian war of all against all). But the line that separates these categories (like the line that separates the categories of the reasonable and the unreasonable) is so thoroughly contested and contestable that it must itself be the subject of democratic and agonistic political debate. When Chantal Mouffe was asked “What forms of violence—real and symbolic—are acceptable? Where do you draw the line?”, she responded,

There's absolutely no way in which one could draw the line from an abstract point of view. It's always a question of what's acceptable in *which* circumstances and by *whom*. I don't think that there is some answer that could be given for everybody and for all societies, even for liberal democratic societies. It very much depends on which positions you take, which view of citizenship you are going to defend in the agonistic contestation among notions of citizenship, because obviously the answer to that is going to be different according to the circumstances. Obviously, there are forms of violence which are perfectly justified in order to put an end to a dictatorship. I'm very much worried about the ultra anti-violence movement because violence is not necessarily bad. Violence in some cases might be absolutely necessary in order for a democratic society to emerge. This is a line that we need to draw, but we need to draw it always

in different circumstances and there is no answer to where it should be drawn.⁴⁸⁹

The lines between Adversary and Enemy, between legitimate and illegitimate political violence, between reasonable and unreasonable political demands remain forever unclear and contested. But they are lines that must be drawn. We hope that our political contests remain between Adversaries, but there is no such guarantee. We should not ignore the existence of real Enemies who stand in the way of justice even within modern non-ideal democratic regimes.

In any case, besides engaging in partisan agonistic political advocacy and action, there must be some further role for political philosophers, and this is where the Jamesian political philosopher comes in. I recognize that my dissertation makes two somewhat different claims that seem to be in tension. First, I insist that we look upon our political disagreements with open eyes, and accept the depth and persistence of those disagreements, and refuse to pretend that they are merely the products of mean-spiritedness or ignorance, or that they are merely a temporary and transient phase soon to be exited into a bright future of consensus. Second, I encourage political philosophers to search around for hitherto unrecognized or unappreciated or unarticulated points of convergence that might be drawn out into new ideals and which might help push us beyond some particular point of seemingly hopeless disagreement. But it should be clear that one important implications of my first claim is that Jamesian solutions do not always (or maybe even often) exist for any given political disagreement. But I hope to have developed some tools for thinking through this tragic condition, and I hope that I have shown what a positive contribution might look like.

⁴⁸⁹ Worsham and Olson, "Rethinking Political Community," 188.

APPENDIX A

JONATHAN HAIDT'S SIX MORAL FOUNDATIONS

MFT's 6 Moral Foundations		
Moral Foundation	Adaptive Challenge it evolved in response to	Description
Care/Harm	Caring for vulnerable children	Makes us sensitive to suffering and predisposes us to help those in need
Fairness	Punishing free riders	Makes us concerned about proportionality and karma – others should get what they deserve
Loyalty/Betrayal	Creating and sustaining cohesive coalitions	Makes us sensitive as to whether or not others are team players, and encourages us to ostracise those who betray our group
Authority/Subversion	Forming relationships that benefit us at various levels with social hierarchies	Makes us sensitive to people's rank, class and status, and to signs that they are behaving according to their position
Liberty/Oppression	Keeping tyrants, bullies and alpha males from becoming too powerful	Makes us resent anything that feels like attempted domination or oppression
Sanctity/Degradation	Knowing which foods were safe to eat and maintaining clean surroundings	Makes it possible for us to invest objects with seemingly irrational value, which helps to bind groups together

Source: <http://homemadelemoncake.blogspot.com/2012/12/the-righteous-mind-why-good-people-are.html>

APPENDIX B

ECONOMIC LIBERTY THROUGHOUT THE LIBERAL TRADITION

	Libertarianism	Classical liberalism		“Neoclassical” Liberalism	High liberalism	Liberal Socialism
Representative theorists	Robert Nozick, Eric Mack, Ayn Rand, Murray Rothbard, Jan Narveson	F.A. Hayek*, Milton Friedman*, Adam Smith, David Hume, Richard Posner, Gary Becker*, Richard Epstein, Ludwig von Mises*, Isaiah Berlin		John Tomasi, Gerald Gaus, Loren Lomasky, Jason Brennan, Will Wilkinson, David Schmidtz, Jacob Levy, Matt Zwolinski	John Rawls, Samuel Freeman, Martha Nussbaum, Samuel Arnold, Ronald Dworkin, Will Kymlicka, Jeremy Waldron	G.A. Cohen, John Roemer, Samuel Bowles, Herbet Gintis
Basic liberties	EL upgraded above CL & PL (only EL as BL)	CL, PL, EL equally important (CL, PL, EL, as BL); also EL as <i>precondition</i> for CL and PL* -Negative liberty protected, positive liberty rejected		CL, PL, EL equally important (CL, PL, EL, as BL) -Positive liberty indirectly promoted	EL downgraded below CL & PL (only CL & PL as BL; only thin EL as basic) -Positive liberty guaranteed	EL potentially not protected liberties at all
Form of economic justice	Capitalism with unconstrained outcomes	Capitalism with constrained outcomes at the bottom (via income subsidies, e.g. negative income tax)* -Sufficientarianism		Capitalism with constrained outcomes at the bottom (via income subsidies, e.g. negative income tax) -Welfarism, sufficientarianism, or prioritarianism	Capitalist or non-capitalist markets with constrained outcomes at the top (inheritance tax) and bottom (transfers) -Egalitarianism	Designed egalitarian outcomes
Scope of public justification	Rules of property acquisition and exchange are subject of justice	“Rules of just conduct” are subject of justice*		BS is subject of justice	BS is subject of justice	All (private) economic activity is subject of justice
Model of the self	Self-owner	Humean anti-rationalist model (Hayek, Smith, Hume)	Rational choice model* (Friedman, Posner, Becker)	Having highest order interest in developing two moral powers (conception of justice, conception of good) -Focus on role of agency in moral personality	Having highest order interest in developing two moral powers (conception of justice, conception of good)	Communally-responsive
Mode of moral justification	Deontological	Consequentialist*		Deontological + contractarian	Deontological + contractarian	Deontological (?)

Key:

EL: Economic liberties = freedom of ownership and exchange [Tomasi: necessary condition for exercising moral agency]

CL: Civil liberties = freedom of conscience, association, expression [Rawls: necessary condition for developing a conception of the good]

PL: Political liberties = freedom to vote, run for office [Rawls: necessary condition for developing a conception of justice]

BL: Basic liberties = built into Rawls' (lexically prioritized) first principle of justice; equally enjoyed, inalienable liberties

BS: Basic structure = "...the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time" (John Rawls, *Justice as Fairness*, 10)

*: Indicates a subset of classical liberalism referred to as "neoliberalism."

Definition: Capitalism: an economic regime that legally allows for private ownership of productive property (e.g. capital), as well as other forms of voluntarily-agreed upon forms of ownership (e.g. worker cooperatives)

APPENDIX C

THE SPACE OF CAPITALIST PROPERTY

The space of capitalist property. I have been describing a regime of maximally extensive feasible property rights; as Figure 1 shows, there are numerous regimes of property that lie between such a regime (point A) and communism (point D):

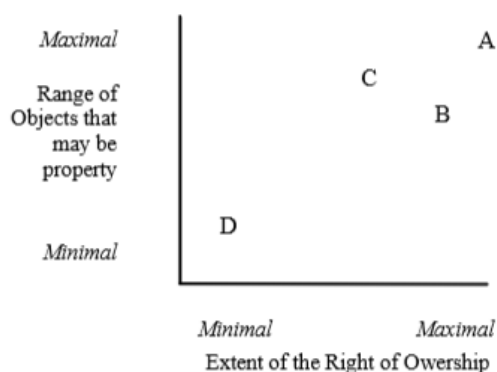


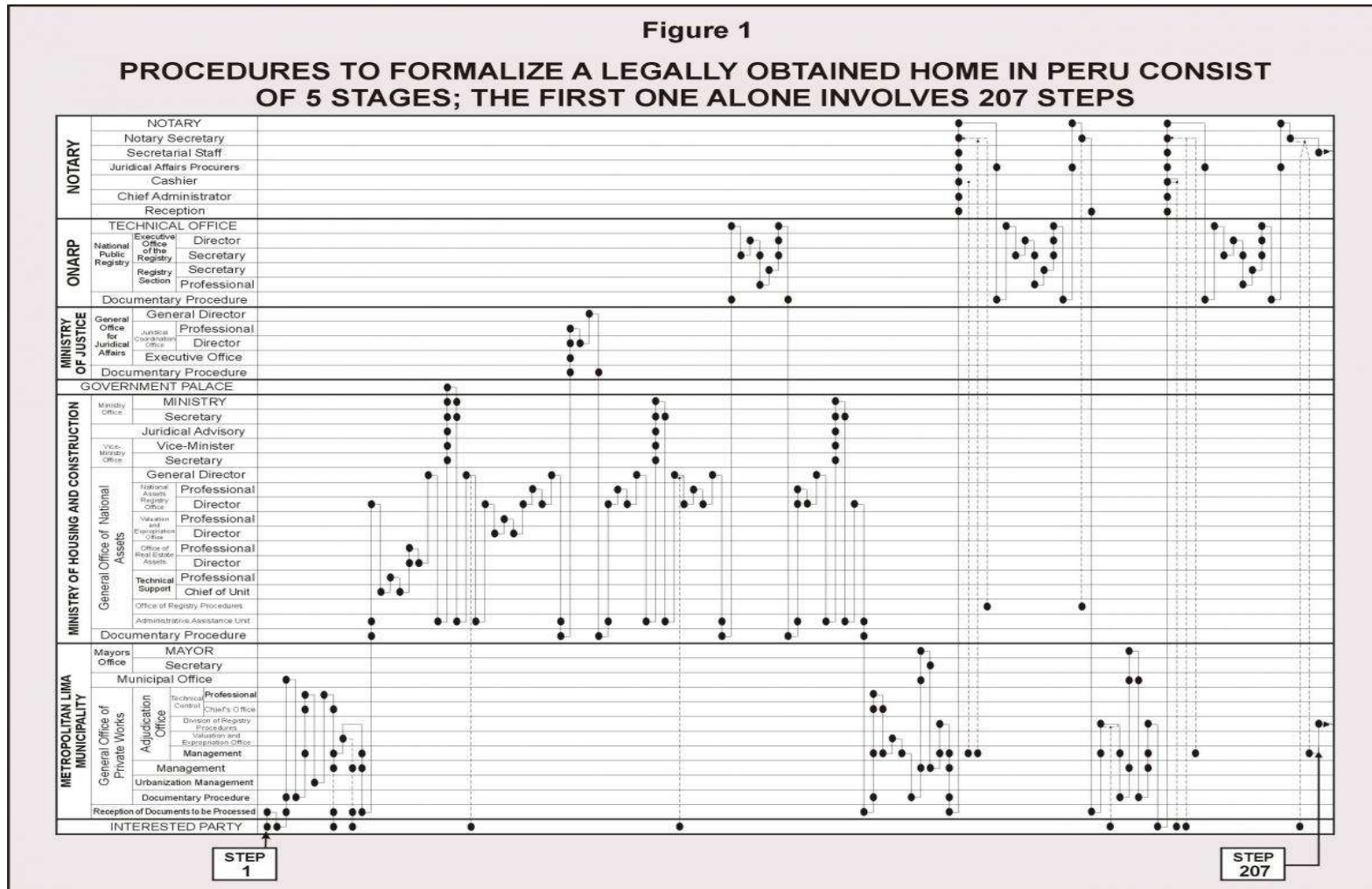
Figure 1

One might speculate that, say current American capitalism is closer to point C than to A, the capitalist ideal: the range of things that can be owned is quite extensive (though certainly not maximal — think of the absence of property over heroin, certain sexual services, and kidneys), but ownership rights are qualified in numerous ways (licensing regulations, environmental regulations, health and safety rules, and so on). On the other hand, John Stuart Mill seemed to support a system closer to B: something like full property rights over what can be owned but significant limitations on what should be owned. For Mill, the justification of private property — that people deserve the fruits of their labor — does not apply to land: “No man made the land. It is the original inheritance of the whole species.”²⁰

Source: Gerald Gaus, “The Idea and Ideal of Capitalism,” 6.

APPENDIX D

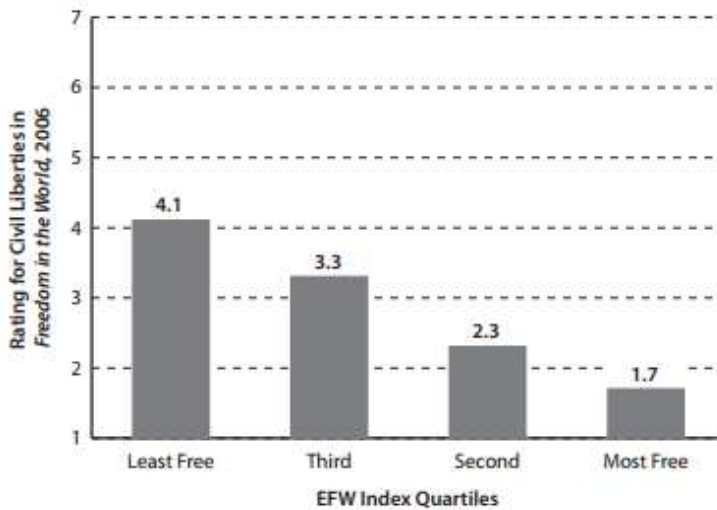
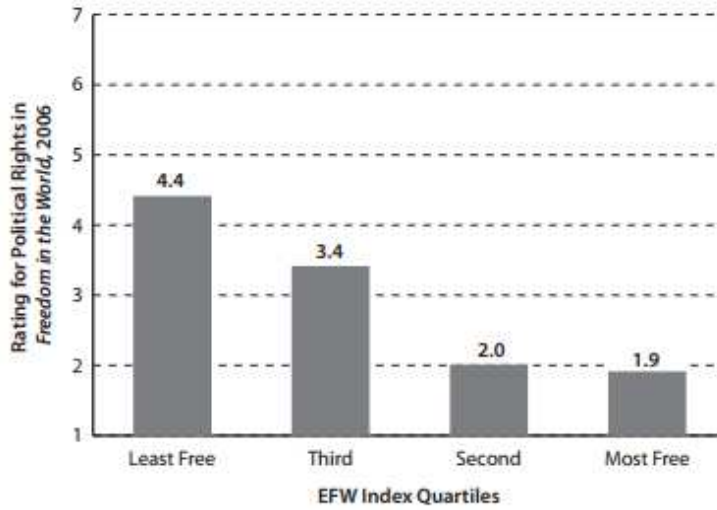
BARRIERS TO PRODUCTIVE PROPERTY OWNERSHIP FOR THE POOR



Source: Fernando de Soto, *The Mystery of Capital*, 16.

APPENDIX E

ECONOMIC LIBERTY AND POLITICAL/CIVIL RIGHTS

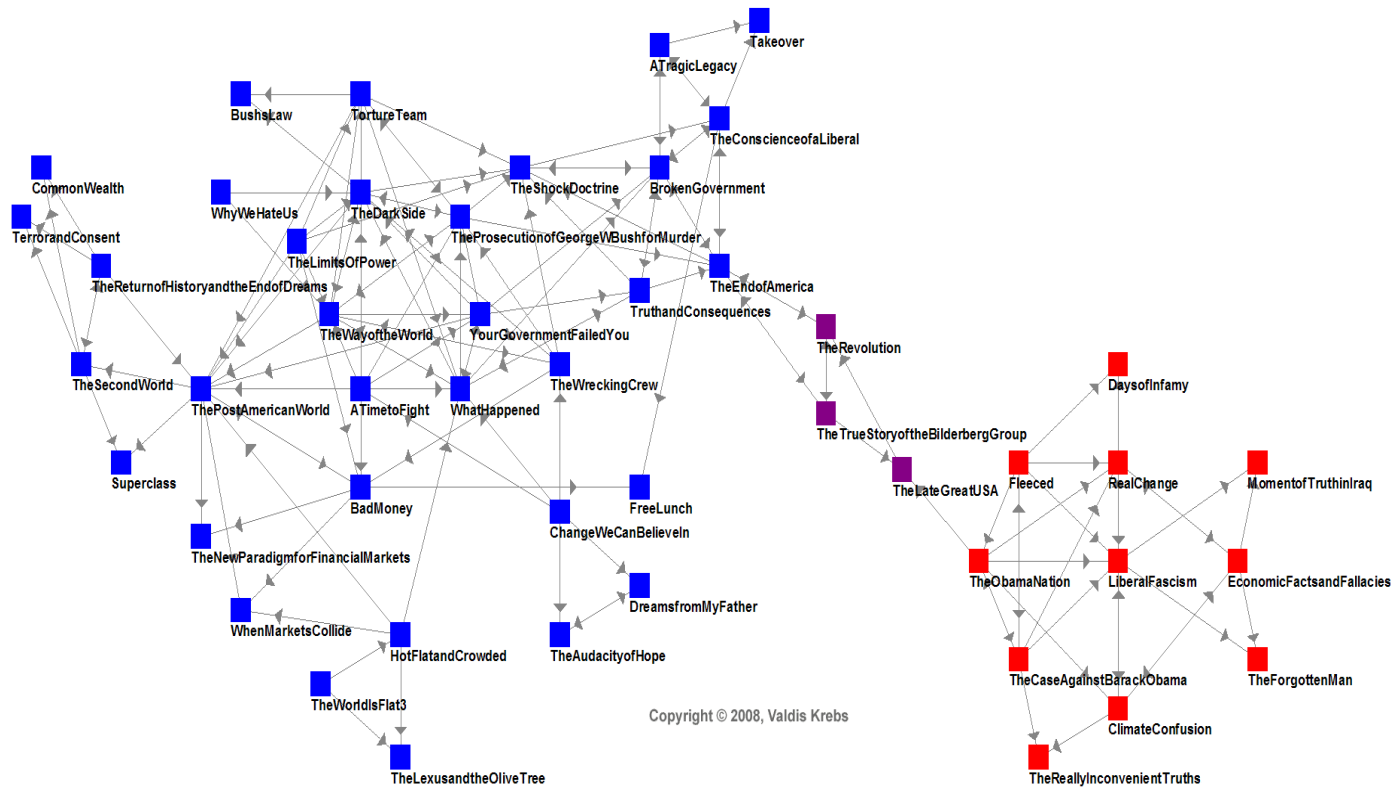


Note: “most free” refers to “most economically free countries” according to the Economic Freedom of the World index

Source: <http://www.freetheworld.com/2008/EconomicFreedomoftheWorld2008.pdf>

APPENDIX F

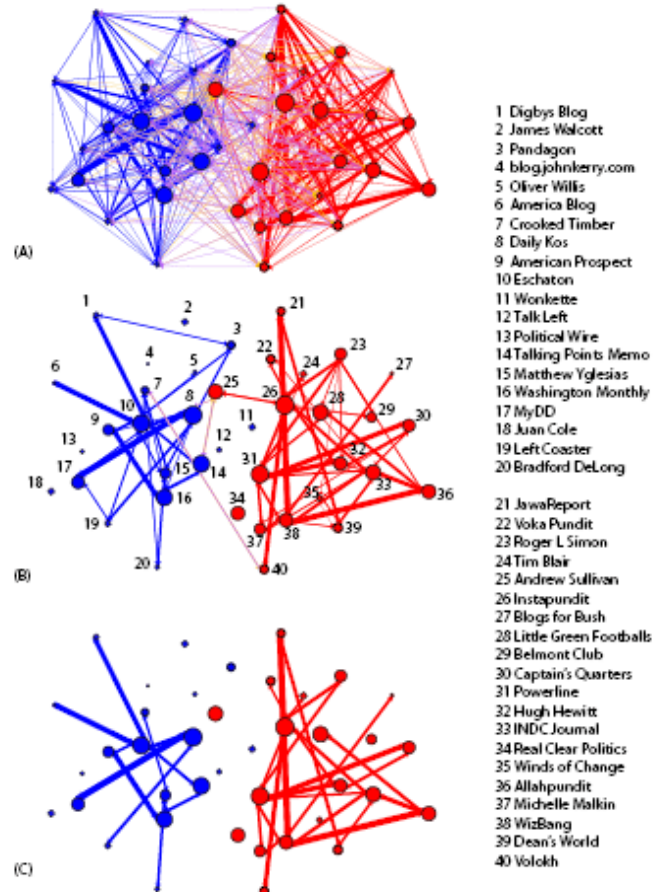
POLITICALLY POLARIZED PURCHASING BEHAVIOR ON AMAZON.COM



The arrows in the network map show which books were purchased together by the same user, from October 2008.
 Source: Valdis Krebs, "New Political Patterns" (2008), accessed 14 January 2015, <http://www.orgnet.com/divided.html>.

APPENDIX G

PATTERNS OF LINKING ON POLITICAL BLOGS



Kevin Drum summarizes: “The authors collected a sample of 40 political blogs, 20 from the right and 20 from the left, and then plotted the links between them over a period of time. The top diagram shows all connections, the middle diagram includes only connections that have at least five reciprocal links, and the bottom diagram includes only connections that have at least 25 reciprocal links” (http://www.washingtonmonthly.com/archives/individual/2005_03/005808.php)

Source: Lada Adamic and Natalie Glance, “The Political Blogosphere and the 2004 U.S. Election: Divided They Blog,” *Proceedings of the 3rd international workshop on Link discovery* (March 2005), 9.

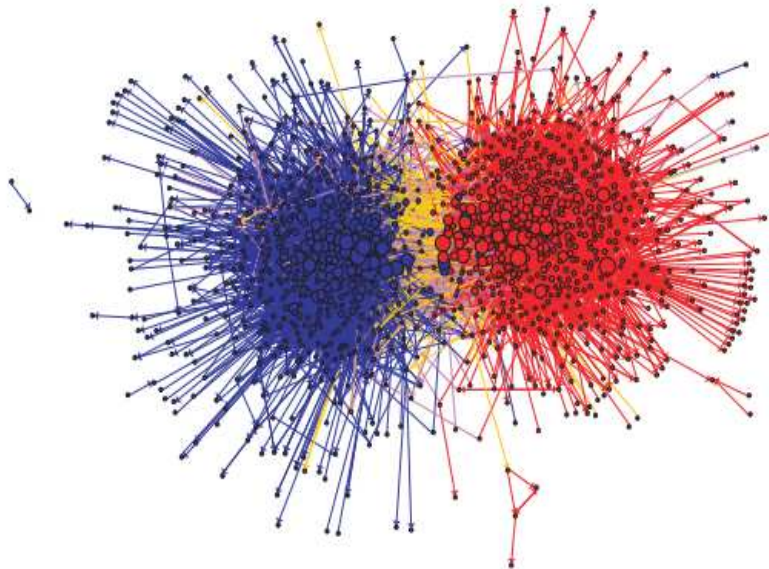


Figure 1: Community structure of political blogs (expanded set), shown using utilizing the GUESS visualization and analysis tool[2]. The colors reflect political orientation, red for conservative, and blue for liberal. Orange links go from liberal to conservative, and purple ones from conservative to liberal. The size of each blog reflects the number of other blogs that link to it.

Source: Lada Adamic and Natalie Glance, "The Political Blogosphere and the 2004 U.S. Election: Divided They Blog," *Proceedings of the 3rd international workshop on Link discovery* (March 2005), 4.

APPENDIX H

PATTERNS OF LINKING ON GENERAL-INTEREST INTERMEDIARIES AND DELIBERATIVE ENCLAVES

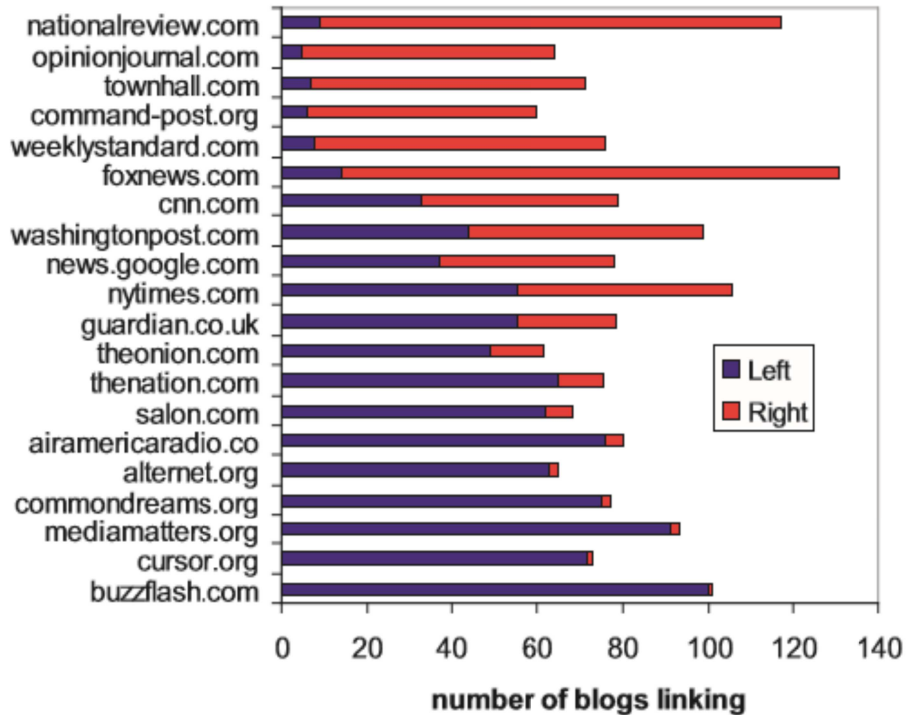


Figure 7: Most linked to news sources (online and off), showing proportionally how many liberal and conservative blogs link to them.

Source: Lada Adamic and Natalie Glance, "The Political Blogosphere and the 2004 U.S. Election: Divided They Blog," *Proceedings of the 3rd international workshop on Link discovery* (March 2005), 14.

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