

Citizenship Beyond Liberal Neutrality

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Abstract

The liberal tradition has borne great fruits since the dawn of the modern era by emphasizing the value of equality and personal liberty, and by developing a theory of rights. Despite its incredible success, many authors have been pointing to fissures in the liberal structure, including practical and theoretical problems with state neutrality, with the state's stance vis-à-vis different cultures, and with liberalism's purported radical individualism. It is my belief that the gains of liberalism can be reconciled within a new theory that better answers to such critiques.

Citizenship Beyond Liberal Neutrality begins with an analysis of contemporary debate between liberalism and its critics. This leads to a discussion of the state's relationship toward cultural identities, and to a discussion of the meaning of citizenship within a liberal-democratic state. What we need, I argue, is a civic identity that is both capable of judging cultural practices, and capacious enough for a citizenry characterized by reasonable pluralism. This common identity, moreover, provides a locus for attachment that is often found wanting in contemporary liberal theory. I draw on relevant insights from virtue theories, constitutional patriotism, and an 'analogical' understanding of public reason to inform a new, liberal-like conception of citizenship. In order to exemplify this conception, and to bolster the case for it, I consider how such a philosophy could play out with respect to two public policy areas that are central to citizenship, namely education and immigration.

Distilled to its simplest, I argue for a theory of citizenship that admits a conception of the good, that can promote virtue while respecting autonomy, and that can provide a basis for civic unity.

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To my wife, Renee, and my children, Charlie, Olivia and Isabelle, I dedicate this thesis. It has been a long and often arduous road, and not a sacrifice was made on my part that was not also yours.

Contents

Abstract.....	ii
CHAPTER 1 – INTRODUCTION	1
1.1 Setting the Stage.....	1
1.2 Concern and Motivation	2
1.3 An Alternative View	3
1.4 Outline of the Chapters	6
1.5 Conclusion	8
CHAPTER 2 – LIBERALISM AND ITS CHALLENGES	9
2.1 Introduction	9
2.2 Rawlsian Liberalism	10
2.2.1 The Principles of Justice	10
2.2.2 The Right and the Good	11
2.2.3 Political Liberalism	13
2.2.4 Liberal Neutrality	15
2.2.5 Public Reason.....	17
2.3 Critiques of Liberalism	19
2.3.1 Neutrality	19
2.3.2 The Original Position.....	24
2.3.3 Community	29
2.3.4 Rights talk	36
2.4 Conclusion	40
CHAPTER 3 – LIBERAL RESPONSES.....	42
3.1 Stephen Macedo.....	43
3.1.1 Macedo on Liberal Neutrality	43
3.1.2 Civic liberalism	44
3.1.3 Civic Liberal Education	46

3.1.4 Macedo's Political Liberalism	48
3.1.5 Assessing Macedo.....	52
3.1.5.1 Macedo's Political Liberalism	52
3.1.5.2 Macedo's Political Liberalism versus Ethical Liberalism	54
3.1.5.3 Neutrality, Legitimacy and Stability.....	56
3.1.5.4 Macedo and the Critiques of Liberalism.....	58
3.1.6 Conclusion.....	62
3.2 John Tomasi	63
3.2.1 Political Liberalism and Spillover	63
3.2.2 Liberalism Beyond Justice.....	64
3.2.3 Liberal Citizenship and the Formative Project.....	65
3.2.4 High Liberalism	68
3.2.5 Assessing Tomasi	69
3.2.5.1 The Neutrality We Want.....	69
3.2.5.2 Goods Through the Back Door?.....	71
3.2.5.3 Tomasi's Liberal Citizenship.....	72
3.2.5.4 Tomasi and the Challenges to Liberalism	73
3.2.6 Conclusion.....	77
3.3 William Galston.....	77
3.3.1 Liberalism and the Neutral State	78
3.3.2 Liberal Pluralism	80
3.3.3 Liberal Goods	82
3.3.4 Liberal Citizenship.....	84
3.3.5 Liberal Coercion	86
3.3.6 Assessing Galston	88
3.3.6.1 Pluralism and Liberalism.....	88
3.3.6.2 Galston's Limits.....	92
3.3.6.2.1 Civic and Human Virtue	93
3.3.6.2.2 The Depths of Pluralism.....	94
3.3.6.3 Galston's Answer to Liberal Critics	96
3.4 Conclusion	100

CHAPTER 4 - LIBERAL CITIZENSHIP AND CULTURE	102
4.1 Introduction	102
4.2 An Introduction to Citizenship	103
4.3 Alternative Conceptions of Citizenship	106
4.3.1 Young's 'Differentiated Citizenship'	106
4.3.2 Differentiated Citizenship Reconsidered	108
4.3.3 Carens' Minimalist View	111
4.3.4 Citizenship as Passport	112
4.3.5 Pettit's Republican Citizenship	115
4.3.6 Assessing the Republican Schema	119
4.4 Liberal Multiculturalism	122
4.4.1 Kymlicka's Multicultural Citizenship	122
4.4.2 Evaluating Multicultural Citizenship	126
4.4.3 Brian Barry on Multiculturalism	130
4.4.4 Contra Barry	135
4.5 A Different Stance Toward Culture	139
4.5.1 The Substance of the Multiculturalist Critique	139
4.5.2 Neutrality, Citizenship and Culture	143
4.5.3 The Practice of Valuing a Culture - Bringing Birth Back to Nunavik	147
4.6 Conclusion	149
 CHAPTER 5 - BEYOND LIBERAL CITIZENSHIP	 151
5.1 Introduction	151
5.2 Pluralism and the Good	151
5.2.1 We Can't Help but Promote a Way of Life	152
5.2.2 Reflections on our Pluralistic Society	153
5.3 A Conception of the Good and the Challenges to Liberalism	157
5.4 Virtue and Autonomy	160
5.4.1 Introduction	160
5.4.2 Virtue Theories	161
5.4.3 Civic and Human Virtue	162
5.4.4 Autonomy and Virtue	168

5.4.4.1 Some Points on the Nature of Autonomy	168
5.4.4.2 Virtue Theories and the Value of Autonomy	170
5.5 The Promotion of Virtue	175
5.5.1 Introduction	175
5.5.2 The Situationist Critique	175
5.5.3 Response to Situationism	177
5.5.4 The Goals of Virtue Promotion	182
5.5.5 Some Ways to Promote Virtue	183
5.6 Paternalism	188
5.6.1 Introduction	188
5.6.2 Defending Paternalism	191
5.6.3 Moral Paternalism	194
5.6.4 Limiting Considerations	199
5.7 Civic Unity and Political Reasoning	200
5.7.1 Introduction	200
5.7.2 Liberal Efforts at Unity	201
5.7.3 Constitutional Patriotism	202
5.7.4 Analogical Public Reason	208
5.7.5 Unity and Diversity	218
5.8 Conclusion	221
 CHAPTER 6 - PROMOTING CITIZENSHIP	 222
6.1 Introduction	222
6.2 Character Education	222
6.2.1 Introduction	222
6.2.2 Liberal Education	224
6.2.3 Assessing Liberal Education	228
6.2.4 On the Possibility of Character Education	232
6.2.4.1 Situationist Critique Revisited	232
6.2.4.2 What Works in Character Education?	233
6.2.5 Empathy	237
6.2.5.1 Nature and Value of Empathy	237

6.2.5.2 Promoting Empathy	240
6.2.6 Responsibility	244
6.2.6.1 Responsibility in Business	244
6.2.6.2 Promoting Responsibility	252
6.2.7 Beyond a Civic Education	254
6.3 Immigration	259
6.3.1 Introduction	260
6.3.2 Liberal Views on Immigration	261
6.3.3 Demands of Citizenship on Immigrants	265
6.3.3.1 Introduction	265
6.3.3.2 ‘Honour Killing’ and Equality of Sexes	265
6.3.3.3 Autonomy and Critical Thinking	269
6.3.3.4 Patriotism	270
6.4 Conclusion	273
 7. CONCLUSION: CITIZENSHIP BEYOND LIBERAL NEUTRALITY	 274
7.1 Introduction	274
7.2 Overview of My Arguments	274
7.3 Limits and Outcomes	279
7.4 Conclusion	281
 References	 282

CHAPTER 1 – INTRODUCTION

1.1 Setting the Stage

It offends our liberal sensibilities to suggest that the state ought to help us live good lives.

The phrase ‘republic of virtue’ evokes frightening images of terror, trumped up charges and trials, guillotines, religious and political repression and Robespierre’s disastrous equation:

“Terror is nothing more than speedy, severe and inflexible justice; it is thus an emanation of virtue.” (Linton, 2006)

Isaiah Berlin contributed to making fear of the overbearing state central to modern liberal theory. Historically it has seemed an easy step to pass from reason ruling the passions, to the more rational in society guiding the less rational. At its worst, claims Berlin, this logic leads to the belief that legislators should prescribe what their subjects’ truly rational selves would choose, even when this runs contrary to their expressed wishes. (Berlin, 1969, 133) The effects can be disastrous: self-determination and plurality are quashed in the name of some ideal. Because ‘negative freedom’ defines an area of self-determination, Berlin believes that protecting it is our best guarantee of resisting these dangers. (Berlin, 1969, 171)

Modern liberals in the Rawlsian mould do not hold so strictly to the preference for negative liberty.¹ Their devotion to equality ushers in a host of policies – resource redistribution, education rights, affirmative action and so on – that involve the promotion of ‘positive liberty’. Defined as a ‘freedom to’, positive liberty is an ideal of freedom that upholds the promotion of capacities that allow us to be free. In place of an all-out preference for negative liberty, contemporary liberals typically rely on the doctrine of state neutrality

¹ Even Berlin allowed that there could be public goods whose pursuit could justify the restriction of (negative) liberty.

which requires that state action never, by justification or aim, seek to establish some controversial vision of the good. With respect to substantive moral values, this means that ideals that are central to a liberal democracy, namely equality of rights and opportunity, are acceptable, whereas views that follow from particular visions of the good, such as the value of charity and courage, are not. (Freeman, 2007, 383; Rawls, 1993b, 139.)

Neutrality has become a dominant theme in contemporary liberalism. It enjoins toleration, restricts paternalism and seeks to remove from the public sphere a host of controversial opinions and viewpoints that otherwise might lead to discord and strife.

1.2 Concern and Motivation

So far, the liberal position appears eminently reasonable. And yet I here join the chorus of detractors who believe that the liberal picture is seriously flawed. Modern liberalism seems to reduce the project of living together to merely getting along. Social peace is itself a remarkable achievement, but this is not to say it should be our endpoint. Liberal neutrality has given rise to a new dogmatism: the state is never to act on the basis of a conception of the good. This is a neat and clean principle on paper, but a blunt and troubling one in practice. It prohibits us from building on and applying common-sense ideas of what makes for good living, and except where rights are involved, it is incapable of saying anything about what distinguishes between good and bad practices.

A neutral state also seems ill-equipped to serve as a source of patriotic pride. Why extol the virtues of a state that recognizes no virtues? Why risk life and limb for a state that is unwilling to say anything about what is worth living for?

What is more, if we pay heed to the many good-promoting practices that we currently allow, we can recognize that we in fact endorse a political philosophy with a purview beyond liberal neutrality. We allow for illiberal practices that we nonetheless believe are valuable: seatbelt laws, antismoking campaigns, tax incentives for charitable activities, and so on. These are just some examples of how the state encourages us to live better. Sometimes such policies can be justified as instrumental to democracy and political stability, but often times policies in these areas would not pass muster without the addition of paternalistic incentives which admit to some conception of good-living.

1.3 An Alternative View

Political Liberalism is premised on the belief in widespread reasonable pluralism, whereby reasonable people disagree about the nature of the good, and so cannot be expected to endorse views that go against their conception of the good. But how radical is our pluralism? Liberals, I believe, have overstated their case: the fact of widespread disagreement on many elements of good living does not vitiate the possibility of all agreement beyond the political values of public reason. If we take our inability to agree on some goods as evidence for our inability to agree on any goods, then our political discourse is needlessly limited from the outset.

The false dichotomy between a liberal political philosophy and a radical statism hampers our ability to seriously discuss the ample middle ground between these positions. Admitting a conception of the good does not entail opening the floodgates. The liberal tradition has furnished a host of good reasons to limit our zeal, including our collective moral epistemic incertitude on many questions and our high regard for self-determination.

Put differently, the distinction between political and comprehensive views, or neutral and non-neutral views, does not map neatly onto the distinction between freedom-respecting and freedom-throttling views.

I present in this thesis a political philosophy that ‘tugs at the seams’ of liberalism in an attempt to see what comes loose. Liberalism, the political philosophy of toleration, equality, and a host of other good things, is my point of departure. The liberal tradition has borne great fruit since the dawn of the modern era, by emphasizing the value of equality and personal autonomy, and by developing a theory of rights. Accomplishments such as *habeas corpus*, freedom of religion and universal suffrage come to mind as achievements largely inspired by liberal values. Liberalism, as it is, is commendable; but I think we can do better.

My tack, then, is not to stand liberalism on its head, nor to suggest a radically new starting point so as to revolutionize contemporary political philosophy. What I offer, instead, is a defense of rather commonplace notions of the good. But in this very way, I hope to show that current liberal theory is inadequate to our intuitions, and that a political philosophy with a commitment to some conception of the good could serve us better. This is an important and significant challenge to liberalism as commonly understood.

So, am I a liberal or not? I attempt to push liberal theory in a new direction, and in this sense I consider myself a liberal reformist, and my effort here a work of immanent critique. Many of the values I argue for promoting, like autonomy and critical thinking, are thoroughly liberal ones. Others, like empathy and responsibility, are values that enjoy a broad degree of support in liberal societies. Some liberals, such as Brian Barry, would claim that my arguments take me afield of liberalism in as much as I advocate the promotion of values, rather than merely providing a just framework for their realization by individuals.

(Barry, 1995, 129; 2002, 120) Clarifying my liberal credentials may simply rest on a debate between what is and isn't essential to the definition of liberalism, and this is a debate I do not care to wade into. Suffice it to say that the liberal tradition is my starting point here.

Much of this thesis comprises a critique of liberal theorists. Beyond it, my positive case involves two central claims: that we can reasonably admit a conception of the good into our political philosophy, and that this conception can inform a sense of citizenship that serves as a normative standard. Two theorists deserve mention for presenting arguments that complement the direction taken here.² Richard Arneson adeptly points out problems with the neutrality thesis and the absurdity of abdicating all claims to knowledge of the good in the political sphere:

...the opponent of neutrality can readily concede that there are many claims about human good that are contentious and uncertain and unlikely to figure in any successful argument concerning what state policy should be. To defend nonneutrality in practice one must only hold that there are some sound yet controversial conceptions of good that should figure in justification. The most likely candidates are common-sense and perhaps humdrum notions.
(Arneson, 2003, 37)

Ronald Beiner, for his part, has repeatedly challenged the consistency of liberal accounts of citizenship which, he says, make demands on us without a corresponding theory as to why these demands should motivate us. He advocates for a thicker conception of citizenship:

the civic article of faith is that citizenship in modern societies, as attenuated as it is, offers a sufficient trace of genuine attachment to a community of citizens and sufficient possibility of viable civic agency that there are at least intimations here of citizenship as a meaningful normative standard...all of this

² There are other potential allies whom I have not been able to give due attention to in the present work. Among these are Joseph Raz (1982) and George Sher (1997).

serves as a weaker late-modern version of Aristotle's conception of the human being as a political animal. (Beiner, 2003, 199)

1.4 Outline of the Chapters

In rough outline, the first half of the thesis presents a critical overview of liberalism and liberal citizenship, addressing Rawls, Kymlicka, Macedo, Tomasi, Galston, Barry, and to a lesser degree other authors, as its primary representatives. In the second half of the thesis, I present an alternative conception of citizenship that answers the criticisms of liberal theories, and respects our intuitions on what a good theory of citizenship should be like.

More specifically, Chapter Two, **Liberalism and Its Challenges**, begins with an overview of the main tenets of liberalism, taking Rawls' *A Theory of Justice* and *Political Liberalism* as its starting points and supplementing it with the work of other contemporary liberals. Where possible, I also attempt to draw out implications for 'substantive' or 'ethical' liberalism, as opposed to Rawlsian 'political liberalism', but the latter brand remains my central focus.

This chapter goes on to explore some of the main criticisms of contemporary liberalism. I have divided these into four categories for ease of exposition, though one should bear in mind that the issues are highly interwoven. I begin with the critique of liberal neutrality, a critique which is central to the whole thesis. Second, I challenge liberalism's use of the argumentative device of the 'original position' which aims to enforce fairness and cooperation as we determine the principles of justice. Third, I consider the communitarian critique which complains that liberalism treats us as detached reasoners, devoid of culture, tradition and history. The last critique I consider is that of liberalism's emphasis on rights, and more importantly the rhetoric of absoluteness that accompanies this.

Chapter Three, **Liberal Responses**, takes up the theories of three leading liberal authors who have attempted to address many of the critiques leveled against liberalism. Stephen Macedo presents a ‘liberalism with spine’ that places liberalism’s civic commitments front and centre while remaining committed to liberal neutrality. John Tomasi argues that if citizens come to recognize the limits of their liberal rights, and that these rights underdetermine their relations with one another, they can recognize a space for citizenship beyond liberalism. William Galston argues that liberalism can best meet its critics by disavowing a purely “political” liberalism and clearly articulating value commitments.

Each of these attempts, I will argue, comes up short in various ways. Critically, each is weakened by the core commitment to liberal neutrality which leaves the authors searching for a more robust liberalism without the wherewithal to articulate what this could be.

Chapter Four, **Liberal Citizenship and Culture**, takes a closer look at the concept of citizenship and its relationship with other sources of identity. I survey several liberal views of citizenship, with a special emphasis on Kymlicka’s ‘liberal multiculturalism’ and Brian Barry’s reaction to it. The central source of liberal error on citizenship, I argue, is once again the commitment to neutrality. In this chapter I also argue for what I take to be an appropriate form of multiculturalism. I attempt to show that with an enriched (albeit limited) conception of the good we can value cultures in a manner that is beneficial to both citizens and the state.

Chapter Five, **Beyond Liberal Citizenship**, addresses a series of issues that block liberalism from providing a better account of citizenship, including a misunderstanding of the concept ‘virtue’ and undue resistance to paternalism and to the possibility of a non-neutral public reason. I argue that a theory of citizenship that admits a conception of the good can promote virtue and still value autonomy in a manner that limits the potential for the

zealotry that Berlin and other liberals feared. I also argue that a conception along the lines I advocate can help provide for the civic unity that other liberals have been concerned with losing.

My focus on citizenship leads us to consider the qualities of mind and character that we hope citizens will possess. I turn to virtue theories to help correct the liberal understanding of virtue and to underpin a substantive conception of citizenship. In defense of virtue-promoting theories, I acknowledge and answer the situationist critique which challenges the possibility for the robust and stable characters that I maintain are necessary for an account of citizenship.

Chapter Six, **Promoting Citizenship**, aims to show the value of my conception of citizenship as applied to two policy areas: education and immigration. I argue that school-based character education to promote empathy and personal responsibility is a reasonable enterprise that involves non-neutral judgments about what makes for a good life. Similarly, I argue that our conception of citizenship authorizes non-neutral demands on would-be citizens, including a willingness to enjoin equality, autonomy and patriotism.

1.5 Conclusion

This thesis covers many facets of political philosophy and poses many different challenges to contemporary liberalism. Venturing into the promotion of “good living” and even limited forms of paternalism puts me at odds with the majority of contemporary liberals. Without a doubt, there will remain many issues which I will have to refrain from addressing. My modest goal is to show that a more robust theory of citizenship presents a viable alternative to standard liberalism, and is thus a worthwhile line of enquiry.

CHAPTER 2 – LIBERALISM AND ITS CHALLENGES

[W]hether it is reasonable to bracket moral and religious controversies for the sake of political agreement partly depends on which of the contending moral or religious doctrines is true. (Sandel, 1996)

2.1 Introduction

To get our discussion off the ground, I begin this chapter by presenting the general outlines of contemporary liberal theory. It is obviously not possible to address the full range of liberal scholarship now available. I therefore give primary attention to one of the most systematic and influential of recent theorists, John Rawls, and draw on other figures when helpful. The second section of this chapter investigates some of contemporary liberalism's most significant problems. My critique will focus on four general areas. First, I consider liberal neutrality, arguing that it is impracticable in any way that is meaningful for citizens, as well as not desirable as a political aim. Second, I consider the constructivist device known as the 'original position', and challenge the idea that cooperation and fairness depend on bracketing our identities and conceptions of the good. Third, I take up the communitarian critique of liberalism, and endorse its claim that liberalism is incapable of properly appreciating the value of culture and tradition. Lastly, I take up the critique of liberalism's adversarial rhetoric of rights, arguing that it promotes individualism and tacitly endorses self-interestedness.

My exposition here is not meant to break new ground, but rather to set the stage for discussion in the rest of the thesis. In the next chapter we will consider the attempts of several prominent liberals who answer to these critiques. The position I propose later in the thesis is meant to provide a remedy, or at least a constructive response, to these problems.

2.2 Rawlsian Liberalism

2.2.1 The Principles of Justice

Rawls' *Theory of Justice (TJ)* aims to determine principles of justice that will establish the basic structure of society, defining rights, social institutions and a distribution of goods. His principles of justice arise from the 'original position', a constructivist procedure designed to exemplify our intuitive understanding of 'justice as fairness'.

The original position is a variation of the social contract argument used by political thinkers like Hobbes, Locke, Rousseau and Kant. In Rawls' version of this hypothetical state, citizens are represented by denizens who are blind to their position in actual society. Rawls refers to this epistemological state as being behind a 'veil of ignorance'. The original position is designed to incorporate reasonable restrictions on arguments for principles of justice. Among these restrictions, Rawls includes the idea that no one should be advantaged by natural fortune or social circumstances when choosing the principles. Neither should they be influenced by personal conceptions of the good, nor the particular inclination and temperament they have. (Rawls, 1999, 18-9) Given these constraints, Rawls believes the principles they choose will be just.

A particular conception of justice is more reasonable, Rawls claims, if rational persons in the initial situation would choose its principles over those of other conceptions. (Rawls, 1999, 17) Rawls argues that the denizens will choose two lexically ordered principles of justice which guarantee the best position for the worst well off with equal liberty for all. (Rawls, 1999, 303) The first principle, the principle of liberty, holds that each person should have equal rights to the most extensive total system of equal basic liberties compatible with granting such a system to everybody. This follows from the assumption that

it is essential to our leading a good life that we lead it according to our own beliefs and that we are free to examine, question and challenge these beliefs. (Cf. Kymlicka, 1990, 204) The second principle, 'the difference principle', holds that social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged and attached to offices open to all with equality of opportunity. From the point of view of the original position, you can't know if you will be a Wall Street tycoon or, what is more likely, a struggling wage labourer. The principles of justice are said to represent the 'maxi-min' position – while respecting liberty they guarantee the greatest possible privilege to the least well off. Forced to choose from a blind position without knowledge of our views and social status, the maxi-min position seems like a reasonable hedging of bets.

Rawls holds that we can also check our choice of principles from the other end, seeing how they measure up against our firmest moral convictions. This 'reflective equilibrium' is a sort of dialectical encounter between the conditions of the original position and our considered judgments. When discrepancies arise we can either modify our account of the original position or we can adjust our considered judgments until eventually the original position is marked by reasonable conditions and yields principles that match our duly refined considered judgments. Thus, the principles of justice proposed are not necessary truths nor derivable from such truths. Their justification is a matter of support from many considerations that fit together into a coherent view. (Rawls, 1999, 20-1)

2.2.2 The Right and the Good

According to Rawls, the distinctiveness and advantage of liberalism is its characterization of the relation between the right and the good. Moral systems based on the good, he says, have

rules that change to the degree they serve the good in any particular instance. Mill's Greatest Happiness Principle, for example, exhorts the promotion of the greatest happiness for the greatest number, where happiness is understood in terms of pleasure and pain, and associated qualitative notions. Such a principle may counsel protecting an innocent in one circumstance, but require sacrificing the innocent for a greater good in another. Kant, for his part, believed the moral law was universal, and thus proposed the need for an *a priori* moral law. For Kant, if it is wrong to kill an innocent in one circumstance, then it is always wrong to kill an innocent. Rawls takes up this Kantian concern and endeavours to formulate a political philosophy that is not contingent on circumstance.

It is important to clarify Rawls' understanding of the relationship between the right and the good, especially since it figures highly in many critiques of his brand of liberalism.³ The right, he claims, is "a set of principles, general in form and universal in application, that is to be publicly recognized as a final court of appeal for ordering conflicting claims of moral people." (Rawls, 1999, 135)

What sort of priority does this imply? Concerning the foundational stage of Rawls' theory – the original position and the principles that follow from it – the right and the good are interdependent. The original position itself requires some substantive conception of the good, including the value of reasonableness and the needs of citizens to enjoy certain protections and standards of living. Still, there is a conception of the right that is regulative here as well: denizens are required to discern the principles of justice under conditions of fairness and reasonableness (i.e., conditions of the right). Rawls holds, moreover, that the conception of the good he does allow is a thin one, and common to all reasonable conceptions of the good. This common conception of the good, moreover, serves as a

³ I am indebted to Jayson MacLean for an appreciation of the intricacies of this relationship. (MacLean, 2006)

threshold – health, for example, is not to be maximized, but rather ensured to a level necessary for building a meaningful life. With this minimal and duly qualified conception of the good, Rawls believes he can keep to the Kantian aim of avoiding the charge of contingency. (Rawls, 1999, 396)

In Rawls' *TJ*, then, there is a thin conception of the good used to help derive a theory of right, the principles of justice. Other goods will follow from this conception – it is good to have a judicial system, for example, so that rights can be protected. These two senses of good are distinguished from a third kind, the goods that are the preferences of actual citizens because of the role they play in their comprehensive views. For Rawls and others, this third sense of good, covering the vast preponderance of things we call good, is beyond the purview of political judgment. It denotes those ends established by varying conceptions of the good life, ends that are discerned to be good by individuals. (Rawls, 1999, 399)

In sum, Rawls' principles of justice are largely a theory of right, informed by a minimal conception of the good. The principles regulate political life and the role that comprehensive views of the good can play there.

2.2.3 Political Liberalism

In his later work, *Political Liberalism (PL)*, Rawls' emphasis shifts from a defense of principles that reflect a conception of justice as fairness, to a defense of principles that are *reasonable*, and thus acceptable to all people who maintain reasonable comprehensive conceptions of the good. *PL* is motivated by the idea that our society is characterized by reasonable pluralism, the belief that "...even after reasoned reflection, decent, intelligent people will come to different conceptions about the nature of the good life." (Sandel, 1996,

18) Like former accounts of justice, *TJ* is partially ‘comprehensive’ in that it appeals to moral values, like autonomy, rather than dealing with justice alone, and in that it invokes philosophical accounts of the nature of agency, practical reason, moral objectivity, moral justification and moral truth. Rawls comes to see this as problematic in that citizens could reasonably disagree about the philosophical justification for his principles of justice.

(Freeman, 2007, 325) Rawls himself does not disavow the comprehensive elements in *TJ*, but rather is troubled by the possibility of reasonable disagreement concerning them.

Political Liberalism avoids dependency on any metaphysical notions for its conception of justice. Rawls’ *PL* espouses the same principles as the comprehensive theory in *TJ*, but shifts the emphasis of political philosophy from the nature of justice to the question of legitimacy. A legitimate government, on this view, does not act in ways that can only be justified by appealing to principles citizens could reasonably reject. (Arneson, 2003, 31) Justice, Rawls now claims, is the locus of an overlapping consensus, a minimum standard common to all reasonable conceptions of the good that can serve as a basis for a conception of justice. (Rawls, 1993b, 95) The ideas of the good integrated into the justification of the principles of justice are *political*; they are shared by citizens regarded as free and equal, and do not presuppose any particular comprehensive doctrine. (Rawls, 1993b) These ideas constitute our public, political culture which “comprises the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historic texts and documents that are common knowledge.” (Rawls, 1993b, 13-14)

Despite this thin, political conception of justice, several key concepts are still needed for the constructivist procedure (the original position), including “the conceptions of society

and person, and the public role of principles of justice...” But these concepts, Rawls claims, are basic ideas, “as basic as the ideas of judgment and inference, and the principles of practical reason.” (Rawls, 1993b, 110)

The standard of a political conception of justice moves from truth to reasonableness, reflecting the ontologically thin nature of the project.

Once we accept the fact that reasonable pluralism is a permanent condition of public culture under free institutions, the idea of the reasonable is more suitable as part of the basis of public justification for a constitutional regime than the idea of moral truth. Holding a political conception as true, and for that reason alone the one suitable basis of public reason, is exclusive, even sectarian, and so likely to foster political division. (Rawls, 1993b, 129)

Still, Rawls points out, reasonable pluralism is the long-run outcome of the work of human reason under enduring free institutions. Thus, whatever the moral truth might be, it is reasonable to suggest that it is expressed in one or a mixture of these reasonable doctrines, and thus the political conception will be an accurate, if minimal, representation of this truth. (Rawls, 1993b)

2.2.4 Liberal Neutrality

One well-known upshot of the liberal theory of justice, both in its political and more comprehensive forms, is a state that is neutral with respect to the aims of its citizens. Justice as fairness is designed to avoid undue advantage to some citizens over others. Political liberalism, for the same reason, rests on a minimal set of assumptions common to reasonable comprehensive views. If the state justifies its coercive power on the basis of any one vision of the good life, it thereby violates legitimacy by appealing to principles that some citizens could reasonably reject. Liberal neutrality is designed to respect both the individual autonomy of its citizens and the plurality of ends which they seek. It resonates with the

modern contempt for, and indignation towards, those who ‘push’ their views upon others. A neutral government promises to leave questions of the good largely in the hands of individuals.

It is important to note that liberal neutrality is not meant to imply neutrality of effect. For example, the percent of sales tax on the Koran is as much as on the Christian bible; but it is no issue for the government if the latter is easier to promote because the market dictates that it cost less to produce. Indeed, enforcing a consequential neutrality could mean disrupting individual liberty. Imagine, as Nozick has us do, that a stadium full of citizens pays to see some star basketball player who then has a clear wealth advantage over others. (Nozick, 1974) Since this advantage arises through the free choice of individuals, the state should not prevent it. Moreover, neutrality with respect to consequences would require some sort of public ranking of visions of the good life with respect to which their consequences could be measured and thereafter evened out. But avoidance of these presumptions is essential to the liberal stance. Liberal values, then, might tend, but not intend, to promote some ways of life over others; the promotion, if it occurs, is blind. (Kymlicka, 1989, 886; and Rawls, 1999, 95)

Instead of neutrality of effect, liberal neutrality instead concerns one of, or both of, two other senses of neutrality. (Arneson, 2003, 3-5) *Neutrality of aim* requires that no policy seeks to promote one controversial view over another. This could be *justified* by a controversial view, like skepticism with respect to knowledge of the good. *Neutrality of justification* requires that no policy rests on appeal to the superiority of some controversial view. On these terms, however, one could *aim* to promote a controversial conception of the

good on the grounds that said conception serves some neutrally justified purpose, like social peace.

To distinguish the two we need merely recall that the justification of a position can be distinguished from its intended effect. As in Arneson's example, the state could honour neutrality of justification (he calls it 'neutrality of procedure') if it were to favour a religion, say Protestantism, solely because doing so would facilitate civil peace. On the other hand, neutrality of aim could be upheld on the basis that Quakerism is the one true religion, and among its tenets is broad religious toleration by the state. (Galston, 1991, 100-1)

Contemporary liberal theorists, particularly those inspired by Rawlsian political liberalism, typically believe the state should be governed by neutrality of aim and justification.

2.2.5 Public Reason

Public reason involves appealing to premises we accept and believe others could reasonably accept in a society characterized by reasonable pluralism. It is premised on two theses: first, there is a multiplicity of reasonable views of the good such that there is no objective way of deciding between them. When choosing between competing theories we are thus faced with the 'burdens of judgment'. Second, persons merit respect and so should not be forced to do anything on the basis of reasons they reasonably do not accept.

The idea of an 'overlapping consensus' can easily lead us to see public reason as simply the sum of reasons that are held in common by the majority of citizens. But this is a mistake, for in that case the public reason of Saudi Arabia would correspond with widely held conceptions of Islamic law, or the public reason of the United States might be able to

appeal to the existence of God, or not appeal to the truth of evolution theory (given that by some polls a majority of Americans disagree with it). (Freeman, 2007, 383) Public reason is instead grounded in the democratic conception of citizens as free and equal moral persons; “the political values of public reason are the values that are of interest and significance to free and equal citizens *in their capacity as democratic citizens...*” (Freeman, 2007, 389-390) Democratic citizens, as Freeman explains, judge in light of their shared higher order interests in developing and exercising their moral powers, in maintaining their civic equality, their freedom to pursue a rational good and their individual and economic independence. It is this ideal democratic citizen that Rawls takes as the basis of public reason, rather than the majority position, or the position of some ‘average person’.

Rawls proposes that ‘public reason’ should govern the discourse of judges, legislatures, political candidates, and ideally the political actions of citizens when these concern questions of basic justice and constitutional essentials. (Rawls, 1993a, 443-4) The constitutional essentials are the basic liberties, their priority, and the institutions necessary for law. Basic justice includes issues of social and economic equality, opportunity, and the social minimum. (Freeman, 2007, 394) Rawls did not intend for public reason to limit citizens’ freedom of thought and expression, though he is at times unclear as to what is expected of individual citizens.⁴ He suggests, at a minimum, that they should respect public reason when voting in elections which bear on matters of justice and constitutional essentials, and also in their political advocacy. This follows from the ‘duty of civility’ which, out of respect for other persons, would not have us enforce policies on them that they could not reasonably accept.

⁴ Rawls’ writings present a mixed picture of the extent to which public reason should govern citizens. On this, see (Neal, 2).

There are two general kinds of public reason. First, the ‘guidelines of public reason’, which include formal and procedural rules of argumentation and justification, the standards of scientific enquiry, of legal reasoning and so on. Second, the ‘political values of political reason’, which are a subset of substantive moral values. These are accepted by all in as much as they accept democratic ideals: equality of political and civic liberty, equality of opportunity, the common good and so on. (Freeman, 2007, 383; Rawls, 1993b, 139) The political values also include virtues like reasonableness and fair mindedness which make it possible to have reasoned public discussion.

Public reason, it should be pointed out, is in the service of legitimacy, and not strictly justice. The goal is a language of public discourse that allows citizens to appeal to reasons their co-citizens can reasonably accept, rather than a language that determines questions of justice, or ensures answers to questions of justice.

2.3 Critiques of Liberalism

In this section, I address four general areas of liberal vulnerability: the neutrality thesis; the original position argument (in particular its ‘blindness’ criterion); the question of culture (and the communitarian critique); and, lastly, the liberal-inspired rights rhetoric. This discussion, particularly my critique of the liberal neutrality thesis, will serve as a basis for developing a modified political philosophy later in this thesis.

2.3.1 Neutrality

Liberalism, as per Rawls and others, distinguishes between our political and personal selves and holds that politics should remain neutral in the face of our many and varied personal

views. Critiques of liberal neutrality can be broadly categorized as, on the one hand, those that challenge its possibility and, on the other, those that challenge its desirability. Alasdair MacIntyre, for instance, wishes the state could be neutral, but maintains that neutrality is in fact not possible in practice. (MacIntyre, 1999, 133)

A state's policies, no matter what they are, will have some trickledown effect on the population. A recent case before the Quebec courts, *Loyola High School v. Courchesne*, illustrates this point. Loyola High School, a private but publicly funded Catholic school, wished to opt out of Quebec's mandated course on world religions because it gave equal attention to Catholicism, Judaism, Protestantism, Islam, Hinduism and aboriginal spirituality, without the opportunity to pass judgment on any particular view. As the school's principal Paul Donovan put it, "If one student wanted to be a hedonist ... and another student took the perspective of being forgiving to others ... it could never be implied (during the teaching of that course) that one of those perspectives might be a better choice ..." (Mennie, 2010) Justice Dugré decided against the state, likening the 'totalitarian' imposition of state neutrality to the Church's demand that Galileo disavow Copernican cosmology.⁵

It is doubtful that any incarnation of the course could be neutral in a way acceptable to all reasonable citizens. Even having no course at all could be construed as favouring atheism over belief, or as denigrating the importance of religion. There is no need to belabour this point further, for there is now broad consensus among liberals themselves that neutrality of effect is not possible in practice.⁶

⁵ Dugré, Gérard, L'Honorable, *Loyola High School v. Courchesne*. J.C.S, 2010, 331. In a related case before the Supreme Court of Canada, the court ruled against a family's appeal to have their child exempted from the course. See *S.L., et al. v. Commission scolaire des Chênes, et al.* 2012 SCC 7.

⁶ See, for example, Berkowitz, 1999, 12; W. A. Galston, 1980, 18; Macedo, 2000, 181; Rawls, 1993b, 194; Tomasi, 2001. Interestingly, as Nussbaum points out, Aristotle takes pains throughout Politics II, to show that even regimes with no explicit commitment to some good, do in fact promote some conception of the good through their policies (Nussbaum, 1990, n.26)

This concession may seem to sit well with Rawls and Kymlicka's distinction between neutrality of aim and justification on one hand, and neutrality of effect on the other. The effect of the course on world religions may have been nonneutral, but its aim and justification could still be neutral. It is not clear, however, that this distinction is enough to quash concerns. Justice Dugré, for one, also challenges the desirability of the neutrality thesis, arguing that a state's neutral law privileges openness to religion over adherence to any one of them. Why should citizens be satisfied if the effect of a policy is nonneutral simply because its aim or justification is? It is generally the effect that is of prime importance for the living out of comprehensive views of the good. This lack of neutrality is troubling for comprehensive liberals whose system of equal liberties for all turns out to be more welcoming for some than others, and more troubling still for political liberals whose theory is designed to accommodate all reasonable views. In the end, the attempt to give equal attention to many religions impinges on peoples' view of the good as they are given the message that all views are equal.

The distinction between neutrality of aim/justification and neutrality of effect suggests that unintended consequences of a policy are not blameworthy. John Tomasi likens this logic to those who would use the doctrine of double effect to forgive the unintended yet foreseeable civilian casualties in war. (Tomasi, 2001, 36) Though intent is clearly relevant in acts of war, soldiers surely have a real duty to avoid killing civilians whenever possible, and not just a duty not to intend to kill them. Liberals, similarly, cannot simply wash their hands of the damage inflicted on (reasonable) views that rub against the grain of state neutrality.

Liberalism, like any other political philosophy, promotes an ethos based on its core assumptions and commitments. Placing liberty ahead of perfection, for example, is one way of saying that liberty is a greater good than moral perfection.⁷ Liberalism, it is claimed, is

characterized by the aspiration to increase and enhance the prerogatives of the individual; by maximal mobility in all directions, throughout every dimension of social life [...]; and by a tendency to turn all areas of human activity into matters of consumer preference; a way of life based on progress, growth, and technological dynamism. (Beiner, 1992)

The liberal ethos encroaches on our personal views, whether we like it or not, and liberalism, it seems, should be held to account for this.

Liberty, equality and tolerance are good things, and the liberal tradition is rightly a proud one, from *Magna Carta*, *Habeas Corpus* and the like, to universal suffrage and gender equality.⁸ But does the state have no interest in how citizens direct their liberty, equality and tolerance? On their own, these liberal values offer very little ground to stand on. As Galston puts it, “The greatest threat to children in modern liberal societies is not that they will believe in something too deeply, but that they will believe in nothing very deeply at all.” (Galston, 1991, 255)

An unwillingness to speak on more substantive issues can in fact contribute to serious problems. Consider the vast gender imbalance in China, large swaths of India, much of the Southern Caucasus and other regions.⁹ In China, for the generation born between 2000 and 2004, the ratio of boys to girls is 124:100. In India, by 2001, 46 of its more than 600 districts had sex ratios over 125, up from only one such district in 1991. These outcomes,

⁷ Liberals like Galston and Aronovitch, while opposing perfectionism, recognize this hierarchy of liberal values, and thus cast off the liberal commitment to full neutrality. (Aronovitch, 2000)

⁸ Liberals do not have an exclusive claim on these accomplishments for they fit equally, for example, into the Republican tradition.

⁹ Economist, 2010b. The natural ratio is roughly 105 boys to 100 girls which compensates for males’ greater susceptibility to childhood mortality.

referred to as ‘gendercide’, result largely from selective abortion following the now widespread use of ultrasound technology. Importantly, researchers have found that imbalanced ratios *do not* track low income and education. Many of India’s most prosperous states have the worst ratios, and in China, the higher a province’s literacy rate, the more skewed its sex ratio in favour of boys. The social problem is not limited to a lack of suitable mates; “In any country rootless young males spell trouble; ...Crime rates, bride trafficking, sexual violence, even female suicide rates are all rising and will rise further as the lopsided generations reach their maturity.” (Economist, 2010a) These outcomes resulted from the free choices of individual citizens, and yet clearly the state holds a vital interest in these choices. Peace, prosperity and even a state’s survival may depend on how individuals direct their free choices.¹⁰

A neutral state is also limited in its ability to serve as a source of national pride and as a bearer of a sense of belonging because it lacks substantive content. This might not sound like a bad thing. The twentieth century was the ‘bloodiest century ever’ in part because of the excesses of nationalism. But a distrust of nationalism need not lead us to its contrary. It is a mistake to think, for example, that the only alternative to an ethnic Serbian or German state, or a Christian or Muslim state, is a neutral state. Lack of agreement on a *well-defined* sense of identity or moral code does not preclude all sense of shared value. Richard Arneson suggests we already do recognize a list of ‘humdrum’ goods, including pleasurable experience, friendship and love, intellectual and cultural achievement, autonomy and other such commonplace values. (Arneson, 2003, 37-8) We want to believe that the pride we have for our country, or the anxiety we feel when that pride is lacking, has more to do with values

¹⁰ The issue of gendercide reached Canadian public debate early in 2012 following articles in Canadian medical journals which evidenced the prevalence of sex-selective abortion among several immigrant communities.

than geography, and a recognition of common values can help underwrite this pride. (As a recent Canadian Minister of Immigration put it, citizenship needs to have some currency.)

The Canadian immigration system is explicit in its recognition of certain values. Citizenship and Immigration Canada has over the years offered a study guide to candidate citizens. The current guide is called *Discover Canada, The Rights and Responsibilities of Citizenship*. (Citizenship and Immigration Canada, 2010) Among the values promoted therein are a sense of responsibility for oneself and one's family, a willingness to help out in the community, and the value of military and other forms of service. Prospective citizens are also asked to learn the country's history, including proud moments such as when the 'shock troops of the British Empire' captured Vimy Ridge in 1917, and sad mistakes, such as the residential school program for First Nations people in the 19th and 20th centuries. Our history, for its part, 'imposes' many values on us – the duty to honour our forebears, including recognizing their contribution to our well-being, but also the humility to admit to, and the responsibility to atone for their errors; a willingness to stand up against injustice, even if it takes place on the other side of the world; and so on. These values, moreover, begin to fill a gap that Canadians feel, as witnessed by the well-known anxiety of demarcating a Canadian identity.¹¹ Strict adherence to liberal neutrality jeopardizes our ability to speak of a Canadian identity and so is in this way problematic.

2.3.2 The Original Position

Michael Sandel famously took liberals to task for relying on a false conception of persons: "For the liberal self, what matters above all, what is most essential to our personhood, is not the ends we choose but our capacity to choose them." (Sandel, 1996, 12) To its credit, the

¹¹ See for example Gwyn, 1996; Cohen, 2008.

liberal position highlights the human ability to rise above the contingencies of culture and background. Though I may be raised Christian, Jewish, Muslim or other, I can separate myself from my beliefs and judge whether I choose to maintain, modify or abandon my faith. The liberal position also supports a vision of persons as equal, which is consonant with most every political philosophy. If we discern our political philosophy from the position of the liberal self, there is no place for arbitrary bias based on sex, race or culture.

But, Sandel argues, contemporary liberalism here relies on a conception of self given prior to and independent of its purposes and ends. This ‘unencumbered’ self is ignorant of its values, ends and goals; it is a self capable of choosing anything and biased by nothing. This conception of human persons is fundamentally flawed, he says, because it is incapable of making sense of our moral experience and the obligations we recognize and even prize.

(Sandel, 1996, 13) There is no ‘person’ that can choose apart from knowing her desires, life goals and so on; no ‘I’ prior to its ends, as Rawls believed. (Rawls, 1999, 560)

Sandel’s critique may overstep. Rawls’ original position is meant to simulate fairness by placing reasonable constraints on the denizens choosing the principles of justice. It is not meant to make claims about the nature of persons. The original position, claims Rawls, merely exhibits the conditions that express the relevant criteria of reasonableness and rationality that apply to principles and standards of political justice. (Rawls, 1993b, 103)

But concerns arise. For one, we can ask whether we agree on the conditions under which we should choose the principles of justice. Rawls, for instance, argues that the reasonable agents in his social contract argument evince objectivity, which implies, in part, that “...the order of reasons given by its principles be assigned to agents as reasons to which they are to give due priority and to distinguish from the reasons they have from their own

point of view.” (Rawls, 1993b, 115) This important constraint will inform and be reflected in the principles of justice.

Do we in fact believe that the principles of societal cooperation trump the convictions of our comprehensive views? At first blush, we may think that we do, for agreement seems to be a precondition for life in society. But as Sandel puts it, “... whether it is reasonable to bracket moral and religious controversies for the sake of political agreement partly depends on which of the contending moral or religious doctrines is true.” (Sandel, 1996, 19) Slavery, segregation and Cold War Détente all offered a certain stability, even security, but overcoming these was worth risking the relatively stable political ambience that pervaded before them, and could have persisted had it not been for the challenge of new values.

Rawls asks us to agree to cooperate with everyone who meets criteria of reasonableness. But we are generally more discerning than this. If we look to our regular social interactions where cooperation is likewise important, we notice that we pass judgment before entering into cooperative relationships. We judge the worth of cooperating based on both the prospective partner and the activity being undertaken. I might, warily perhaps, enter a cooperative relationship with a former petty criminal, but not a felon, to mow my lawn. When it comes to other sorts of ventures, however, the criteria will change. If I wish to found a charity, I may abstain from partnering even with friends and family if our visions of the good sufficiently diverge on the relevant topic, say reproductive health. Something similar can be said about our political life. French and British Canadians came to cooperate with each other because they learned to trust each other enough to agree on certain laws and institutions. (And cooperation was better than the alternatives.) As time progressed, these were amended, expanded or dropped. None of this cooperation depended on a veil of

ignorance, nor on an agreement to simply avoid judging the views and characters of prospective political partners.

Now, Rawls' original position is of course a hypothetical argument. But I am asking, why is such an argument necessary? And why should we submit to the constraints placed on us therein? In an attempt to achieve cooperation while respecting radical pluralism, the supremacy of cooperation becomes programmed into the original position. But it is not clear that cooperation should always take precedence over other values we hold, nor does it seem wise to respect the views of others before looking to the substance of these views. As Bernard Williams put it, the liberal approach inadequately characterizes citizens as

People who, first, are resolved to reach agreement on important ethical questions, and indeed are more strongly resolved to reach agreement than they are to express different ethical conceptions of the world... [and who] want this process to govern the discussion of problems that will arise later from the principles they agree upon, such as conflicts between them. (Williams, 1985, as quoted in Aronovitch, 1996)

Rawls' blindness criterion is supported by two assumptions: first, given the varying, irreconcilable yet reasonable views of the good, there can be little agreement on the nature of the good life; and second, the principles of justice should be chosen in conditions of fairness, with no one able to shape them to her own vision of the good. But we can ask: Is the radicalness of reasonable pluralism exaggerated? If fairness is an appropriate goal, is removing all conceptions of the good the best way to achieve it?

The fact of reasonable pluralism is the starting point for political liberalism; "Intelligent, noncrazy people show no discernible tendency over time to converge in beliefs about religion or more generally what is valuable and worthwhile in human life." (Arneson, 2003, 25) As a general characterization, reasonable pluralism is undisputable, but before

building a political philosophy on this assumption we should round it out – is our pluralism radical and irreconcilable (except by the terms of political liberalism)? Or is it a mix of pluralism along with a large measure of common ground?

Consider the redistribution schemes used presently in liberal democracies. No modern government simply redistributes wealth and leaves the rest up to individuals. Rather, they rely on some implicit conception of a good life. For this reason, states do not just hand out cheques, but instead provide resources for goods like health, education and defense. (Nussbaum, 1990, 57) We may have serious disagreement on the existence or nature of God, or familial relations or the right to an abortion. This does not rule out consensus on other issues. We likely have, for example, a consensus that young people should be encouraged to practice other-regarding behaviour because a charitable life is better than a miserly one.¹² If I am right, this suggests that the radicalness of our pluralism does not run as deep as is often claimed. This is not to claim that the state is society's primary vehicle of virtue, but it can nonetheless play a supporting role via the design of public education, the honours bestowed on champions of charity and so on.

Consider next the issue of fairness which the blindness criterion is meant to ensure. Are we incapable of coming to fair terms of cooperation while espousing a vision of the good life? We might be, if this vision invokes male, or white supremacy, or the belief that the strong/wise should forcibly rule the weak/simple. But this cooperation is not in principle, and often not in practice, ruled out by the belief that God will send a Messiah to the Jews, or that said Messiah has already come in the person of Jesus, or that Jesus was the last in a line of prophets leading up to Mohammed, or even that all of these beliefs are nothing but a

¹² Jan Narveson suggests that we ought to help others since we might require similar help from them in the future. (Narveson, 2003) I take up this critique in Chapter 6.

bunch of hocus pocus. We might well agree that principles of justice should be fair and non-arbitrary, but this does not require us to shut off our vision of the good. We just need to appreciate the value of fairness.

In sum, even if the original position does not reveal an erroneous characterization of human nature, this device can be challenged in several ways. It assumes the overriding importance of cooperation based on an exaggerated account of societal pluralism and it imposes blindness to achieve fairness. But cooperation can be and is achieved without this device. Similarly, citizens with conceptions of the good can come to fair terms of cooperation (as in the history of existing liberal societies).

2.3.3 Community

One of the strongest challenges to liberalism comes from the so-called communitarian critique. The gist of the critique is straightforward. Liberalism, it is claimed, fails to see the moral-political relevance of tradition, social context and community, all of which we can broadly refer to as ‘culture’. (Bell, 1993) Whereas states in the past found common cause in ethnicity, religion, shared values or devotion to the nation-state itself, the liberal state lacks any unifying focus and is disparaged as a place where it is ‘every man for himself’.¹³

Apart from the relevance of culture to moral-political questions, there is the further concern of the effect of liberalism on people’s culture. Rawls and other liberals admit that the effects of liberal philosophy are disparate, that it will require more reform of some than

¹³ A stronger statement of the critique argues that we are socially situated beings and should therefore recognize that our conception of justice does not arise *a priori*, as Rawls’ Original Position might suggest. Rather, our view of justice is shaped by our language and the associated framework of reasons we employ. (MacIntyre, 2007, 221) This thesis is an attempt to push the boundaries of liberalism from the inside, and so I will leave aside the stronger version of this critique.

others. So what of this? Is it acceptable that our neutral, largely *a priori* political philosophy can spell the demise of certain cultures?

Rawls' *Political liberalism* was supposed to correct our reliance on the comprehensive and controversial positions that are present in *A Theory of Justice* and other previous liberal theories. These positions include moral values like full autonomy and the good of the community, and philosophical accounts of concepts like agency and moral truth. (Freeman, 2007, 325) *Political Liberalism* instead presumes a common conception of justice as well as reasonable pluralism. In some strange way we might call *PL* a communitarian theory since it takes justice as it is in western societies as a given, and doesn't seek to apply a universal conception of justice. (Freeman, 2007, 326.1) Nevertheless, the tradition that political liberalism does defend is the universal, detached reason of the enlightenment. Neutrality, public reason, and related concepts at best speak to a tradition that demarcates public and private concerns and that is in this sense inhospitable to culture and tradition in the public sphere.

Rawls' largely *a priori* approach to liberalism¹⁴ rests on a minimal conception of human nature – if we are rational and want to be able to seek our conception of the good, and reasonable such that we seek justice and value cooperation, then we should accept his principles of justice. But the whole idea of a morally relevant community, a concept which communitarians have rightly insisted upon, is lacking in the liberal scheme.

It fails to capture those loyalties and responsibilities whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular persons we are – as members of this family or city or nation or people, as bearers of that history, as citizens of this republic. (Sandel, 1996, 14)

¹⁴ It is not entirely *a priori* since Rawls' Political Liberalism takes as its starting point an existing political culture, and both *Political Liberalism* and *A Theory of Justice* rely on the concept of 'reflective equilibrium' which weighs the principles of justice against our 'considered judgements'.

We cannot, as Bentham would have it, legislate for the world from our study. Our public philosophy must also consider the context of our political community.

Furthermore, the liberal desire to respect a plurality of views and the state neutrality designed to accommodate this limit our ability to find common cause with fellow citizens. There is something difficult about taking pride in a commitment to noncommitment, in a preference for no preference at all. Being impartial is in many instances admirable, but on its own it fails to inspire a committed sense of citizenship.

Liberals, of course, do not stand for nothing. Liberalism has a proud history of defending human rights, equality, freedom, toleration and respect. The concern is what happens when we follow ‘content-free’ norms to their logical conclusion. It is possible that a sustained emphasis on rights could lead us to concentrate more and more on ourselves, or that our appreciation for equality, unchecked, could lead us to treat all views equally without judgment. It is possible that freedom could become license, and toleration and respect could become indifference.

Citizenship, on such terms, does not seem capable of making sense of our historic understanding of what it means to be a member of a political community, nor does it bode well for the perseverance of the state. A bearer of individual rights with guarantees of state protection need not concern herself with the fact that her forebears sacrificed their lives on Vimy Ridge decades ago. Liberalism does not necessarily forbid attachment to community or nation, but its silence on the topic is itself telling, and may in fact encourage a sort of indifference. What is more, as Sandel reasons, tying the responsibilities of citizenship to a conception of human persons puts the moral case for welfare on a par with the case for foreign aid. (Sandel, 1996, 17) Qua person, the fellow citizen and the foreigner are one and

the same, and so by the terms of liberalism it is hard to say why we should tend more to the former than the latter.

Will Kymlicka has argued that liberalism can absorb the communitarian critique by recognizing the importance of cultural membership. (Kymlicka, 1988, 162) At first glance, valuing culture seems doomed from the Rawlsian liberal perspective. Liberties can only be limited in lieu of a more extensive system of liberties for everyone, and an unequal distribution of basic liberties is permissible only if it will secure for the least free person a greater system of basic liberties than she would otherwise have. But instead of seeking to value culture via a permissible limitation on liberties, Kymlicka instead positions culture as a primary good, one of the very conditions of liberty, along with others that Rawls recognized such as health, a modicum of wealth and so on. Liberty is central to the liberal project because it underpins self-respect, our ability to own our beliefs and challenge them if we so choose. But, as Kymlicka points out, we do not invent our own values; culture presents options to us and it is from these that we choose.

Liberals should be concerned with the fate of cultural structures, not because they have some moral status of their own, but because it's only through having a rich and secure cultural structure that people can become aware, in a vivid way, of the options available to them, and intelligently examine their value. (Kymlicka, 1988, 165)

True to liberal neutrality, however, Kymlicka claims that liberalism can only be concerned with culture as a context of choice, and not with the character of culture, and the values it embodies (thus the reference to 'cultural structure' in the quote above). Protecting the *character* of culture implies conservatism and the abandonment of liberalism. (Kymlicka, 1988 169-170) In later works Kymlicka criticizes 'conservative multiculturalists' who protect the character of culture on the grounds of its centrality to a person's identity.

This, he claims, would lead to the blind acceptance of a host of illiberal practices.

(Kymlicka, 2007, 102)

One reaction to this line of reasoning, a critique which Kymlicka takes up, asks the following: why protect any particular culture? Why not, for instance, have the Inuit assimilate into the culture of European Canada and let them find their cultural options there? This option would surely be easier and more economical from the policy perspective, and it offers the further advantage of social unity. The problem with this, claims Kymlicka, is that individuals are already bound, in important ways, to their own cultures. A person's upbringing and social history stay with her and form a constitutive part of her identity. A cultural structure is not important, then, only to provide life options, it is also crucial in allowing individuals to develop the sense of self-worth necessary for effective agency. (Kymlicka, 1988, 175) Imposing changes on cultures is taboo, then, as it affronts this source of identity and self-worth.

In this argument we see that the distinction between neutrality of aim and neutrality of effect continues to play a central role. The liberal goal is to protect the existence of a primary good, culture, not to protect its 'success' as a culture. Again, the idea that we should respect a view (a given culture) without looking to the content of that view is troubling. Cultures can harbour all kinds of things that we want stamped out, not protected: racism, harmful superstitions and gender inequality, to name a few examples. Kymlicka rejoins that all cultures within a liberal state remain subject to liberal norms, and that not even practices internal to cultures can flout these norms. Indeed, Kymlicka espouses a multiculturalism in which liberalism plays a transformative role. (Kymlicka, 2007, 99) But if this is the case, the

state becomes involved in just the sort of practice that Kymlicka warned against – culture is being changed from the outside, and not from within.

Kymlicka cites the example of Quebec whose culture changed via the choices of French Canadians themselves during “The Quiet Revolution” of the 1960s. This is contrasted with the threatened demise of First Nations cultures. A prime instrument serving this latter end was the now infamous residential school system for aboriginal children. Yet surely, in the Quebec example, the forces of change were only partly interior – a reaction to clericalism, authoritarianism and so on. Equally important were the exterior pressures: the example of more liberal cultures, the opportunities presented by the expanding free market and so on. It may be said that these causes were passive and thus entirely liberal causes. But for those who valued the previous culture, this distinction makes very little difference.

What is more, the damage to First Nations culture is due at least as much to passive liberal causes as to intervention from outside forces. Studies show, for example, that First Nations people in Canada are twice as likely to engage in heavy drinking, and a full 36% are obese, more than twice the Canadian average of 15%. (Health Canada, 2009) It is thus not clear that Kymlicka’s liberal approach to the communitarian critique will work because liberal practices themselves, just by making things like alcohol and fatty foods available, can contribute to the demise of culture (as alcoholism and obesity clearly do). In an important study on liberalism and indigenous peoples in Canada, Keith Smith writes:

The experience of liberalism in western Canada, as elsewhere, demonstrates that its benefits can best be seen as rewards for being able and willing to comply with its mandates. Despite the outward appearance of tolerating, or even embracing, difference, liberalism ultimately seeks to homogenize and this is particularly evident in relation to Indigenous peoples. (Smith, 2009, 13)

One example of this homogenization was the pressure on indigenous peoples to privatize their land and property so as to enter the market as free individuals. Arguing against a 1914 bill that would limit Native's rights to freely exchange property, one member of parliament claimed it would

...not give scope to the Indian to grow in his sense of proprietorship, of personal ownership, which is really essential to his progress and civilization. Ownership, selfishness, which is foreign to the mind of the Indian in his normal condition, is really the foundation of civilization.¹⁵

The communitarian critique argues that liberalism does not recognize the importance of culture. The response on behalf of liberalism is that it *has* accommodated culture: it has universalized and 'neutralized' the need for it because a context of choice is a primary good. But as we have seen, liberalism can also be a threat to culture. My point here is not to fault liberalism for being transformative. No political order can evade this charge. I wish, rather, to point up the fact that liberal neutrality does not sit well with a valuation of culture. Liberalism is transformative of cultures, if not by design than by nature, and strained distinctions between inside and outside, or aim and effect do not change this fact.

The liberal 'bracketing' of culture is itself problematic. It is not simply that culture is important to individuals, a point that Kymlicka fully realizes. It is also the fact that identity is not left behind when we engage in public debate. We can only discuss justice as a people, or groups of people, with particular languages, history, ethical commitments and so on. Sectioning off culture as a 'context of choice' fails to recognize our situatedness. It also presents the real threat that non-mainstream values will slowly fade as they are kept from recognition and expression in public life.

¹⁵ Smith, 2009, 14, referencing Canada, House of Commons, Debates, May 8, 1914: 3482.

2.3.4 Rights talk

As we have seen, the Rawlsian original position suggests that we hedge our bets and opt for the most extensive system of liberties compatible with equal liberties for all. This concern for liberties translates into an emphasis on individual rights. The liberal conception of rights has been a point of contention at least since the time of Marx. The rights-bearing individual, he claimed, is an "isolated monad...withdrawn behind his private interests and whims and separated from the community."¹⁶ Modern critics of the liberal rights program generally agree with Marx that the current language of rights does damage to our sense of social unity and community.

Alasdair MacIntyre holds that rights are fictions akin to witches and unicorns, for like these latter, no convincing reason for their existence has ever been given. To illustrate this point, MacIntyre points to Alan Gerwith's attempt to prove the existence of rights via an analysis of human agency. According to Gerwith, human agency requires that we assert rights to the features that make us agents, viz. a certain level of freedom and wellbeing. These rights become moral in the Kantian sense when we recognize that others have the same reasons we do for asserting them. (Gerwith, 1978, 145-7) MacIntyre's critique is straightforward – the *need* for freedom and well-being does not logically imply a right to these. (MacIntyre, 2007, 67)

The primacy of rights has also been challenged by William Galston who argues that the language of rights can be rewritten in the language of the good without loss of content. What is more, he claims that a right is not itself a moral reason, but the outcome or result of moral reasons; "Rights are not independent moral reasons at all, but rather an elliptical way

¹⁶ Marx, Karl, "On the Jewish Question," 1884, as reprinted in Waldron, 1987, 146.

of talking about claims based on utility, need, desert, or rationality.” (Galston, 1980, 135)
Rights, on this view, are abbreviations for certain goods we deem worthy of protection.

I will not press this issue further here. The ontology of rights is for us ancillary to more central concerns, namely the rhetoric of rights and the social effects of this way of seeing the world. The centrality of rights to the liberal project, and the absolute language used to claim them has made them an effective vehicle for getting what we want, and silencing opponents. Indeed, they are often held to be trump cards meant to end all discussion. The right to one’s body and the right to life are often meant, equally, to be the last word on the abortion issue. Either way, the rhetoric masks the reality that within our laws, rights are actually limited in a number of ways. The first clause of the Canadian Charter of Rights and Freedom makes this abundantly clear: “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it *subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society*.” (Canadian Charter of Rights and Freedoms, 1982, emphasis mine)

Mary Anne Glendon’s *Rights Talk* offers an extensive critique of the rights rhetoric. It betrays, she claims, an exaggerated sense of absoluteness that leads to an increase in conflict, a reduction in meaningful dialogue, and the narrowing of rights talk to the expression of desire. (Glendon, 1991, 44-5) Furthermore, since rights are said to (primarily) adhere in individuals, this rhetoric tends to treat society as a conglomerate of isolated individuals, void of attachments, responsibility and social situatedness. (Glendon, 1991, see in particular chapters three to five) The current rhetoric, in other words, vindicates Marx’s 1844 criticism noted above.

Glendon points to a study of a thousand young Americans who consistently see the United States' uniqueness in 'freedom', filled out as "individualism", the fact that you can do "whatever you want", or "as we please, when we please". (Glendon, 1991, 9) Surely liberalism is not the sole cause of this way of seeing the world. The language of radical individualism finds a ready ally in free market capitalism, for example. But philosophers and sociologists alike have been pointing to the way that legal and political institutions affect the way we think. (See especially Tomasi, 2001; Wuthnow, 1988) Brian Barry, for example, points out that liberal attitudes often follow rather than precede liberal laws, as in the case of abortion and homosexuality. (Barry, 2002, 275) Martin Luther King admonished wariness on this same point:

Let us never succumb to the temptation of believing that legislation and judicial decrees play only minor roles... The habits, if not the hearts, of people have been and are being altered every day by legislative acts, judicial decisions, and executive orders. (Glendon, 1991, 105; King, 1981)

Most rights we recognize make *claims* on others and thereby imply corresponding obligations. If I have a right to peaceful protest, then others have an obligation not to obstruct my peaceful protest. But as Onora O'Neill points out, talk of rights goes down easy, while the question of the corresponding obligations is often left obscure or untouched. (O'Neill, 2000, 98-9) It is easy to demand rights to education, health care and the like. The case for such rights is *prima facie* strong given the central importance of these goods. However, it is rarely easy to determine how the corresponding obligations to provide these goods should operate. O'Neill argues that the easiness of rights talk, and the corresponding difficulty of 'obligations talk', serves to deteriorate both public debate and our conception of justice; "...the actual claiming can go on loudly and confidently, with panache and bravado, without establishing who should deliver whatever is claimed." (O'Neill, 2000, 100) The

focus tends to be on adversarial demands rather than on the mechanisms for tending to people's needs. True, some of these effects can perhaps be countered, by increasing awareness of the limits on rights, for example. But the focus on rights flows from the very essence of liberalism which promotes the most extensive compossible system of liberties. For this reason, liberalism is not easily divorced from the individualism it promotes.

Focusing on rights may also impoverish our moral vocabulary in another way. O'Neill argues that while *claim rights* imply obligations, the reverse is not true – there may well be obligations without corresponding rights. (O'Neill, 2000, 107) Consider a civic obligation, like the duty to vote. This is clearly a concern of justice, but it is not captured by the rhetoric of rights which focuses on what is owed to us. If our considerations of justice begin with, and are shaped by the dialogue of rights, we will be more apt to miss the importance of obligations that have no corresponding rights. (O'Neill, 2000, 107-8)

Western states in fact rely on citizens fulfilling duties beyond the legal requirements of rights. Consider the phenomenon of unpaid caregivers. A study out of the University of Victoria conservatively estimated the financial-equivalent contribution of adults who take care of older or disabled family members at \$25 billion in 2009. (Hollander, Liu, & Chappell, 2009) This represents an enormous amount of social support that would be difficult to duplicate by means of public institutions and programs. Social support of this kind¹⁷, in other words, is required for the proper functioning of our liberal order, and our political vocabulary should recognize this since it could be necessary, now or in the future, to encourage and promote these practices.¹⁸

¹⁷ Other examples come easily to mind: parents supporting their adult children through university, charitable organizations that feed and house the poor, and so on.

¹⁸ In the following chapters we will discuss liberals who are willing to promote 'civic' goods which are instrumentally valuable for the continuance of the liberal order. To be clear, my point is not that the state should

We can challenge liberalism not only for what it does, but also for what it fails to provide. With ethnic, religious and nationalistic causes ceasing to serve as unifying factors for a state, one of the sole remaining sources of common morality is the law; “[l]egality, to a great extent, has become a touchstone for legitimacy.” (Glendon, 1991, 3) The language of our legal and political institutions is, more and more, the language of the people. If the law is silent on other-regarding behavior, the people are more apt to be likewise silent.

2.4 Conclusion

We have considered four problematic areas for liberal theory: the neutrality thesis, the original position, the communitarian critique and the rhetoric of rights.

I have argued that liberal neutrality is not practicable in a way that is meaningful for citizens. The neutral justification or aim of policies does little to assuage the concern of citizens who experience their nonneutral effects. Neutrality, moreover, is not clearly desirable, given widespread agreement on certain elements of the good. Lastly, a neutral state fails to inspire in a way that meets our desire for a sense of citizenship.

The original position is designed to embody fairness and enforce cooperation in conditions of reasonable pluralism. It remains to be established, however, that cooperation is an overriding political value that takes precedence over other goods. The original position presumes that citizens with a definite conception of the good cannot come to fair terms of social cooperation while respecting a plurality of views, but historical experience suggests otherwise. The radical pluralism underwriting political liberalism, moreover, has been

undertake these obligations, but rather that it should recognize its dependency on them, given that they are goods it could theoretically need to promote.

exaggerated, with the unfortunate consequence of limiting our opportunities for common ends.

The liberal focus on the individual runs against our nature as socially-situated beings who find value in shared projects and within a shared tradition. Kymlicka's attempt to appreciate community from a liberal perspective fails on its own terms. Liberals, I argued, cannot successfully disown responsibility for liberalism's transformative nature by appeal to questionable distinctions.¹⁹ Moreover, liberalism leaves culture bracketed from public life, and so in the political realm we are still taken as persons without culture and tradition.

Lastly, the rhetoric of rights that liberalism promotes further exacerbates the problem of radical individualism and the lack of a sense of community. The smug absoluteness of rights talk hinders true dialogue, obscures mutual obligations and increases conflict. The liberal quiet with respect to virtue and obligation can lead us to forget these public concerns.

Criticisms along these lines have been around for the past twenty years or so, giving liberal theorists the opportunity to provide sophisticated responses. In the next chapter we will consider liberal theories that have attempted to respond to challenges along these lines.

¹⁹ Kymlicka argues that liberalism is justifiably transformative since it promotes values for the instrumental reason of preserving the liberal order. His work on liberalism and culture is extensive, and I return to it in greater detail in Chapter 4.

CHAPTER 3 – LIBERAL RESPONSES

The liberal state has no view on whether witchcraft is more valuable than all-in wrestling. Like a tactful publican, it has as few opinions as possible. Many liberals suspect passionate convictions are latently authoritarian. But liberalism should surely be a passionate conviction. Liberals are not necessarily lukewarm.... You can be ardently neutral, and fiercely indifferent. (Terry Eagleton, 2009)

In the preceding chapter we considered general problems for liberalism – the neutrality thesis, the use of the original position for constructing political philosophy, liberal individualism over against the value of community and the isolating nature of rights talk. In the present chapter we turn to three prominent liberals who have attempted to respond to or absorb the critiques that have arisen over the past 20 to 30 years. The three authors presented below are chosen because they offer three influential and distinct ways of answering the aforementioned challenges.

Stephen Macedo styles himself a political liberal in the tradition of Rawls. His ‘civic liberalism’ adheres to state neutrality and yet openly recognizes that liberalism requires certain habits of mind and character which must in some way be promoted among liberal citizens.

John Tomasi also considers himself a Rawlsian political liberal. He articulates a liberal philosophy that goes beyond justice to consider the wider implications of political liberalism’s concern for legitimacy. What do liberals have to say, he asks, to citizens who feel threatened by the pattern of life liberalism (inadvertently) promotes?

William Galston, for his part, believes that the answer to liberalism’s critics lies in owning up to a comprehensive account of liberalism based on expressive liberty, value

pluralism and political pluralism. He disavows the neutrality of political liberalism, offering instead a pluralist account of the good.

3.1 Stephen Macedo

3.1.1 Macedo on Liberal Neutrality

In *Diversity and Distrust*, Macedo argues that liberalism relies on a certain civic culture, and that this culture in turn depends upon shaping or liberalizing the moral and religious communities within a state. He claims that even a liberal democracy depends on being nonneutral with respect to the patterns of moral and social life that arise and persist. (Macedo, 2000, x) Macedo wants to prevent the liberal foreground of basic liberties and institutions from blotting out the liberal background of a civic culture conducive to its foremost values.

We have no reason, argues Macedo, to simply assume that diversity is a good thing. Not all diversity is to be celebrated, nor is all marginalization to be regretted. We should not lament, for example, that violent anarchists are underrepresented in our society, nor that neo-Nazis feel sidelined from the political mainstream. Put another way, Macedo wants to reject the view that liberalism requires that public policies are neutral with respect to different views of the good. Liberalism's values, in fact, imply a commitment to a civic project at odds with a neutral stance concerning different ways of life. He wants to highlight this fact in response to both those liberals who obscure it, and critics who decry liberalism's lack of moral substance. (Macedo, 2000, 11)

In spite of Macedo's explicit formative ambitions for liberalism, and his disavowal of strict neutrality on the part of the state, he does ally himself with the Rawlsian/Dworkinian

position advocating neutrality of aim. As Rawls puts it, “The state is not to do anything intended to favour or promote any particular comprehensive doctrine rather than another.” (Rawls, 1993b, 193) Macedo’s endorsement represents a shift with respect to the position he took in his earlier book *Liberal Virtues*. In that work, Macedo claimed that “a liberal political morality will have to speak directly to illiberal personal ideals, arguing that these are false or less important than competing liberal values or that they can be mended and made compatible with liberalism,” and that “being a self-critical reason-giver is the best way of being a liberal *and a good way (liberals must suppose) of living life.*” ((Macedo, 1990, 60 and 59. Italics mine.)) These are substantive positions on Macedo’s part: illiberal views are not ignored, but deemed false, and the life of critical reason is elevated as an ideal. Compare this to *Diversity and Distrust* where Macedo argues that political liberal principles and policies are neutral in the sense of being “justified *independently* of religious and other comprehensive claims.” (Macedo, 2000, 179, emphasis in original.) This neutrality of justification requires silence on the value of critical reason. It also requires silence on the substantive views of nonliberals. These could be deemed incapable of coming to fair terms of cooperation, and thus unreasonable (Rawls, 1993b, 114), but they could not be deemed false, since truth and falsehood are not in the vocabulary of political liberalism.

3.1.2 Civic liberalism

The defining features of Macedo’s *civic liberalism* are state neutrality (of justification) with respect to the good and a decisive non-neutrality with respect to the habits and tendencies required to support a liberal order. Liberal political philosophy, he believes, should

deliberately suggest a way of life, but this shaping is not valued in itself, but only instrumentally for the persistence of the liberal state.

Macedo believes the temptation to ignore the project of shaping diversity arises from a misguided allegiance to liberal values. Liberalism is seen as the political philosophy for self-determination and respect for individuals, not for character formation. (Macedo, 2000, 14) But, as Macedo argues, we cannot simply assume that people naturally want to live in peace and mutual respect; this isn't always the case. Many come from overbearing families or communities, and if the state does not move to temper their illiberal attitudes and ways of life, they may eventually become threats to the regime. Koresh's Branch Davidians provide a poignant example.²⁰ A more pervasive threat, on Macedo's view, is the tendency of many Muslims and Christians to mix religion and law.

Some critics within liberalism, like Iris Young, want a political philosophy that attends to difference, and they complain about the liberal tendency to marginalize certain groups. But, as Macedo points out, defenders of difference like Young *do* stand by certain controversial virtues such as 'openness to otherness'. In essence, claims Macedo, such views presuppose an ordering of values while shirking responsibility for articulating that hierarchy. (Macedo, 2000, 26) Moreover, on Macedo's view, marginalization can be a good thing; non-liberal views *should* have a harder time getting by within liberal society precisely because they run against the liberal grain. Not even liberalism, he claims, can endure without acting to ensure its continued ascendancy. (Macedo, 2000, 24-5)

²⁰ Koresh presented himself as a messianic figure and was alleged to have taken multiple underage wives and to have stockpiled illegal weapons. In 1993, the FBI laid siege to and then assaulted the Davidian compound, leading to a fire and gunfight that killed 76 people. This particular sect was never a threat to the American regime, but if such groups are left unchecked it is conceivable that they might become such a threat.

Macedo traces the roots of his civic liberalism to Locke's writings on toleration. Locke's separation of Church and state, he argues, is nothing but the guarantee that the state not act for sectarian reasons. This position does not entail there will be no effects, or that the effects of government policy will be neutral. (Macedo, 2000, 31) Indeed, Locke held that toleration depends on a certain 'ordering of the soul' (and Locke placed part of the responsibility for cultivating this character on Christian pastors). The success of the liberal order, in other words, depends on an ability to be educative, to inculcate the proper habits of mind. (Macedo, 2000, 35-6)

3.1.3 Civic Liberal Education

The primary locus for Macedo's formative project, and thus the context for the bulk of *Diversity and Distrust* is the public education system. Public schools, claims Macedo, have a crucial civic mission, primarily to promote tolerant forms of ethical and religious belief, in spite of doctrines that run contrary to this. The best political science for liberal democratic citizenship, he says, draws on resources and virtues from community life, but it also shapes these resources so that they are supportive of liberal democratic civic ideals. (Macedo, 2000, 108)

Even if, as most liberals now argue, schools should leave religion and religious controversy aside, this does not, for Macedo, establish the need for ethical neutrality. (Macedo, 2000, 122) Attempts to achieve ethical neutrality in recent years have lead many teachers to take up the position of moral subjectivism, a position that often goes under the label 'values clarification'. But despite claims and appearances, values clarification is judgmental. It sides with 'nonconformism', 'pride in one's convictions' and other preferred

values. The answer, claims Macedo, is not to pretend to the impossible position of value-neutrality, but to own up to liberalism's value commitments. (Macedo, 2000, 124-5)

Part of this reckoning, claims Macedo, comes with the realization that free self-government is not compatible with every normative standpoint, let alone unlimited diversity and difference. Views that promote prejudice, misogyny, authoritarianism and so on are not compatible with liberal civic aims and will thus face greater obstacles in public life. Women, for example, will be taught they are equal, and that they have the right to vote and so on. Consider also, as Macedo points out, John F. Kennedy's declaration of allegiance to America over Rome. It was thought by many at the time that a Catholic could not lead the United States since true loyalty would lie with the Pope. On Macedo's view, a public clarification of JFK's sort is justifiable on the grounds of liberalism's civic ends, even if it involves a certain tempering of character of the public official.

Macedo fears that concern for fairness will overshadow the liberal need to mould worldviews towards liberal support. (Macedo, 2000, 137-8) The desire to accommodate, he claims, leads us to overlook the legitimate civic ends of liberal education. Moreover, he claims that some groups are out of the mainstream and treated 'unfairly' precisely because of their rejection of liberal civic values. (Macedo, 2000, 150) Extreme efforts to accommodate these views could be tantamount to undermining support for liberalism.

Macedo turns to the 1983 case *Mozert v. Hawkins* as an important test concerning the accommodation of marginalized groups and the relative weight of liberalism's civic purposes. *Mozert* involved a complaint by fundamentalist Christian families against a reading series used in their children's public school. Among other complaints, the textbooks were said to give an even-handed presentation of many religions without making mention of

the supposed superiority of the children's own religion. The Court decided in favour of the school board, arguing that the books promoted civil tolerance without requiring belief in opposing views. (Lively, 1987)

Mozert raises important questions concerning civic education: can respectful exposure to diversity threaten religious belief? And can state education be contingent on a program including exposure to diversity? (Macedo, 2000, 161) Macedo realizes that so-called neutral programs, like those involving the disputed textbooks, have effects on the populace, and these effects are relative to the worldview of the people involved. He acknowledges, moreover, that it is often difficult for outsiders to appreciate these effects. Thus, his answer to the first question is yes, exposure to diversity can threaten religious belief. But this does not settle the second question. Bending to accommodate is not always the answer, he claims, because this often means overlooking the legitimate need for liberal civic education. (Macedo, 2000, 163) The liberal order requires mutual respect, and coming to know other points of view may be necessary to attaining this respect. If the state were to allow children to sustain ignorance of other views, it would in effect contribute to intolerance and lack of understanding and thus threaten support for liberalism.

3.1.4 Macedo's Political Liberalism

Despite the aforementioned formative character of his liberalism, Macedo considers himself a political liberal in the tradition of Rawls. Rawls argued that persons are characterized by two moral powers: a capacity for a conception of the good, and a capacity for a sense of justice. The latter includes the ability to understand, apply and act from the public conception of justice. It also expresses "a willingness, if not the desire, to act in relation to

others on terms that they also can publicly endorse.” (Rawls, 1993b, 19) Political debate is carried out in accord with public reason which recognizes the reality of reasonable pluralism (the long-term outcome of human reason under free institutions and the need for citizens to agree on fair terms of cooperation). (Macedo, 2000, 171; Rawls, 1993b, 144) Applied to the *Mozert* case, Macedo believes public reason asks us to focus on shared public values and sidestep the religious dimension which calls upon comprehensive values. In other words, he sees it as a choice in favour of liberalism, and not against religion. Kymlicka argues the same line, claiming that to learn public reasonableness, children need to have experience with others who are reasonable yet disagree with them. (Kymlicka, 2001, 305) If the state has a vested interest in toleration and mutual respect, it thus has grounds for requiring that children learn these values in public schools. (Macedo, 2000, 174-5)

Political liberalism, says Macedo, despite its commitment to respecting reasonable pluralism, is not equally hospitable to all, as Rawls also acknowledged. (Rawls, 1993b, 179) It is neutral only in the manner of its justification – it does not invoke comprehensive values but instead relies on the shared space of public reason. Any attempts to ensure that policies affect people neutrally, claims Macedo, would encourage social division, leading people to invoke comprehensive values, or to argue over the relative effects of policies on their worldview. (Rawls, 1993b, 180)

But the question arises: can exceptions ever be made for marginalized groups? If, as Rawls seems to say, impartiality with respect to different worldviews is the essence of the liberal stance, then liberalism is barred from even trying to understand the effects of liberal policies on comprehensive doctrines. (Rawls, 1993b, 194-5) Macedo is willing to allow for certain exceptions, arguing that peace and justice are often served when we accommodate

minority communities when the civic cost is minimal. This is so, perhaps, in the *Yoder* case which exempted Amish youth from attending school beyond the eighth grade. But according to Macedo, this does not imply that liberals should apologize for inadvertently favouring some views over others. Some communities, like the Amish, do not promote good liberal citizenship. (Macedo, 2000, 207) By leaving school at a younger than standard age, Amish children are less capable of making informed and independent decisions about their futures. Allowing this exception is acceptable to Macedo because the Amish are small in number and political strength. A general right to exceptional treatment, on the other hand, is unacceptable because it could threaten our political structures by allowing for the atrophy of liberal civic virtues. (Macedo, 2000, 209-10) So, if the Amish constituted a larger portion of society, the *Yoder* exception would become unacceptable.

Responding to critiques from substantive liberals, Macedo argues that political liberalism does not leave comprehensive questions aside altogether, but rather rests on those comprehensive values shared by all reasonable views. What it doesn't do, he says, is rest on any particular, debatable conception of the good. What is more, he claims several advantages for political liberalism over its comprehensive (or 'ethical') counterpart. Unlike comprehensive liberals, political liberals do not appeal to reasonable but complicated views, like the superiority of the autonomous life. Instead they rely on premises that form part of every reasonable view of the good, and so are accessible to all reasonable people. (Macedo, 2000, 215) And due to its pretensions to knowledge concerning the good, Macedo believes that comprehensive liberalism tends to the politicization of the deepest forms of disagreement, a move that can easily become politically destructive. (Macedo, 2000, 218-9) In the *Mozert* case, for example, the comprehensive liberal might invoke the special value of

critical thinking over the value of protecting religious views. The political liberal doesn't foray into such interminable debates, arguing that the state is silent on substantive issues and merely promotes the civic aim of toleration.

Moreover, Macedo claims political liberalism is more subtle and less confrontational, and thus better suited to take advantage of the 'looseness' often present in people's comprehensive views – those areas that aren't fully explored or decided upon.

Comprehensive liberalism, in as much as it presents an ideal of human life, openly challenges these uncharted areas. Political liberalism's subtle approach helps form these areas slowly, without direct confrontation. When people do turn to consider the loose areas, they are more likely to see things from the liberal vantage point, and to side with liberalism over comprehensive doctrines because they have lived the advantages of liberalism. Critics may charge that political liberalism is deceptive in this way, but Macedo claims the charge ignores the fact that all orders rely on structures justified in part by the ability to promote civic aspirations. (Macedo, 2000, 215-6) (See also Rawls, 1993b, 160 and 208)

Civic education in public schools illustrates Macedo's distinction between political and comprehensive liberalism. The substantive liberal Joel Feinberg, for example, argued that education should prepare children to become autonomous adults, a need he sums up as a child's 'right to an open future'. (Feinberg, 1980) Macedo *does* see public schools as a place for children to build an identity independent from their family. They acquire there the critical capacities and knowledge of other views of life necessary to judge their own comprehensive views. But schools, he claims, should not induce children to critically reflect on their religious beliefs. This would be tantamount to promoting critical thinking as an element of the good life. Instead, Macedo believes schools should only provide the skills necessary for

critical reflection which allow students to reflect on their beliefs, should they so choose. The crucial distinction from comprehensive liberal views is that autonomy and critical thinking are celebrated for civic purposes. Macedo is not concerned with the substance of children's belief per se, but rather with the tolerance and understanding required to sustain liberalism. (Macedo, 2000, 237-8)

3.1.5 Assessing Macedo

3.1.5.1 Macedo's Political Liberalism

My first point of concern with Macedo's position is one of inner tension. Is Macedo, as he claims, a political liberal in the Rawlsian sense? Macedo, at times, seems to want a comprehensive liberalism along the lines of the overlapping consensus. For instance, in responding to Raz's charge that political liberalism is really a disguised form of comprehensive liberalism, Macedo responds,

Political liberalism does not leave comprehensive questions aside altogether, but that is not the same as asserting a particular view of the whole truth. Any liberalism assumes a certain range of answers to many ultimate questions, and political liberals assert that the values supporting the liberal settlement – individual freedom, tolerance and respect for social diversity, and so forth – override competing sets of values. The important point is that asserting the public unacceptability (or even falsehood) of religious imperatives requiring the persecution of heretics – or other illiberal measures – does not depend on a particular account of religious truth... *Liberalism cannot avoid making certain general assumptions about what does and does not have ultimate value*; it need not rest on a particular comprehensive account of the truth or of good as a whole. (Macedo, 2000, 213, italics mine.) (See also Rawls, 1993b, 160 and 208)

The idea, for Macedo, is that by taking elements common to all reasonable views, political liberalism can have an account of the truth without having any particular account of the truth. Compare this to Rawls who, in an effort to denude political philosophy of

metaphysical ambitions, shifts the normative standard from truth to reasonableness:

“Reasonableness [and not truth] is its standard of correctness, and given its political aims, it need not go beyond that.” (Rawls, 1993b, 127) Rawls does at one point make the case that, because political liberalism is based on an overlapping consensus, if any available reasonable view is true, then so is political liberalism (its propositional members all being part of the true set). And Macedo endorses this claim. (Macedo, 2000, 197) But for Rawls, this is an additional reason to support political liberalism. As he says, “Should we think that any of the reasonable doctrines present in society are true, or approximately so, even in the long run? The political conception itself does not speak to this question.” (Rawls, 1993b, 128) Whether the political conception of justice is also a true conception is a question, according to Rawls, we must ask of ourselves, or among co-believers, in private. (Rawls, 1993b, 129) Indeed, if the argument for political liberalism were based on its truth, this would “negate the very spirit of Rawls’ enterprise.” (Raz, 1990, 9)

Rawls, to be clear, claims that citizens affirm the principles of justice on the basis of reasons found in their own comprehensive views, and thus the overlapping consensus is not merely a *modus vivendi* between competing factions. (Rawls, 1993b, 147) But even if a conception of justice is legitimized due to a consensus on substantive values, this does not mean political liberalism takes the consensus values as substantive. As Rawls says, “From the beginning the scope of political constructivism has been limited to the political values that characterize the domain of the political; it is not proposed as an account of moral values generally.” (Rawls, 1993b, 125)

The problem I am getting at can be clarified by considering the meaning of the word *political* in political liberalism. For Rawls, political liberalism is a set of principles we can

agree on to guide our *public* dealings. Macedo tries to take political liberalism beyond this, turning it into an ‘ethical liberalism lite’ wherein the state promotes goods only instrumentally, and not for the good of its citizens, but where these goods are deemed to be *real* goods, judgments about what has “ultimate value.” Liberal values are taken as true values (not merely reasonable), and it is this that justifies Macedo’s formative project. Thus, while Rawls presents his liberalism as a theory of right independent of a theory of the good (see discussion in Chapter 2), Macedo takes the overlapping consensus to be a core theory of the good.

At any rate, Rawls’ argument about the overlapping consensus being true if one of its contributing views is true is problematic. It suggests that a true view of the world is just a bunch of isolated true propositions. But an ethical system is more nuanced than this – it must consider the proper hierarchy of values, what to do in cases of conflict and so on. Thus, political liberalism could contain several true ethical propositions, but placed in an improper hierarchy, or perhaps, even worse, isolated from important guiding principles that are not at all recognized. What is more, the strongest case for political liberalism is likely as a sort of compromise, a view we will agree on given the need to respect others, though apart from that we would favour other principles. But then there is no reason to presume political liberalism overlaps with the best political philosophy *simpliciter*.²¹

3.1.5.2 Macedo’s Political Liberalism versus Ethical Liberalism

It is not clear, moreover, that the supposed advantages Macedo cites for political liberalism over its comprehensive cousin are real. Comprehensive liberalism is faulted, for example, for

²¹ That is, in an ideal world with fully rational/reasonable people who agree on the basics of a conception of the good. If MacIntyre, Taylor and Walzer are right, there may be no such ideal since justice is, on their accounts, essentially contextual.

recourse to rational conclusions that are too complex to be *public* arguments. (Macedo, 2000, 215) But we are often ready to defer to expertise. I, for one, am ready to submit to a host of conclusions based on reasoning I either cannot understand, or do not take the time and effort to understand. Many of us, for example, do not understand the ins and outs of changing the Bank of Canada's interest rates, raising the debt ceiling, or which medical advancements we should invest in. It is enough that practices are in essence intelligible and that many intelligent people do understand them.

Macedo also challenges the comprehensive liberal tenet that we should build upon our current common ground, claiming it will lead to the politicization of the deepest forms of disagreement, and could be politically destructive. This argument seems far too quick. First, what comprehensive liberals do say about our ultimate ends has always been very thin and indeterminate, only involving for certain a valuation of autonomy, equality, critical thinking and perhaps little more. Mill, for instance, believed that an expansive space for self-determination would support creative genius to the benefit of the collective interest. (Mill, 1869, 38) And Berlin, for his part, is unwilling to promote a detailed common ground because he believes the good is essentially plural. (Berlin, 1969, 148) In short, it is not clear that comprehensive liberals do think we should build upon common ground to go beyond liberal basics. Second, from a historical perspective, liberalism has a respectful record of keeping the peace, and since political liberalism is only a recent variant of liberalism, it can hardly claim credit for this. The charge that comprehensive liberalism allows for destructive politicization of belief does not stick easily. And third, Macedo's argument ignores the fact that comprehensive liberalism has its own constraints on publicly acceptable arguments where, for example, religious-based premises do not, of themselves, hold water. Any

construction on common ground would have to adhere to liberal principles, and this allows little room for the politicization of deep disagreements.

3.1.5.3 Neutrality, Legitimacy and Stability

In response to the common complaint that political liberalism is not neutral with respect to different views of the good, Macedo concedes that no philosophy could live up to such a measure. We might ask, though, whether this is all that can be said on the matter, especially given the political liberal concern for maximum legitimacy among a reasonably plural population. If the effects of policy are disparate, why not look to see if something can be done to level things off? Macedo would likely reply that a policy of enhanced accommodation threatens liberalism's civic aims of producing a supportive populace. But this just goes to reveal the tension at the heart of the entire project – one of the motivating concerns of political liberalism, maximum legitimacy, is jeopardized by another, stability, which requires the promotion of civic values that run contrary to maximum respect for reasonable pluralism.

Another contentious aspect of Macedo's political liberalism is his willingness to take advantage of the looseness in people's views. In spite of Macedo's defence, it is hard to see his position as anything but deceptive. Political liberalism, he claims, is better suited to take advantage of the looseness in people's views, and so liberalize their views, because it is more subtle than comprehensive liberalism. And all orders, he continues, rely on structures justified in part by the ability to promote civic aspirations. (Macedo, 2000, 216) This may be so, but it is not much by way of defence. There is a difference between subtle and outright promotion, akin to the difference between subliminal and straightforward advertising. If we

are to buy something, concern for respect demands that the reason we want it was not imposed on us through force or trickery. Once again, moreover, we can see a conflict with the motivating aim of political liberalism. The goal is to have as many reasonable people as possible freely opt in, and the idea is that citizens are not forced to change their views for the sake of the regime. Espousing policies of ‘subtle moulding’ does not square neatly with this goal.

It is strange that Macedo, who recognizes the unequal effects of political liberalism, gives so much weight to the argument that if a procedure is followed correctly we need not worry about its consequences. It is legitimate, for instance, to have Catholics profess their allegiance to America over Rome in public because the purpose of such an exercise is political. (Macedo, 2000, 137) It is legitimate to require greater sacrifice on the part of fundamentalist Christians because political liberalism only asks of them what it asks of others. (Macedo, 2000, 183) Similarly, it is legitimate to take advantage of the looseness in people’s views because all views must do this, and again, the purpose is political. But this eschewing of responsibility is in some way a betrayal of political liberalism’s goal of legitimacy and maximum inclusiveness of reasonable views. Many views are included only at significant cost to its adherents and this is supposed to be excusable on the grounds that it is what is demanded by a procedure.

Macedo might rejoin with a position of maximum respect of people’s views up to what is necessary for the maintenance of the regime. But this would be a shifting standard, based on the political climate of the time. In times of great strife perhaps only a police state can ensure the regime’s existence, and such a state would clearly represent a departure from liberalism.

The role of ‘legitimacy’ in political liberalism is in fact inherently problematic. Both Macedo and Rawls argue that it is liberal institutions and practices that have helped produce a consensus on public ideals and principles. (Macedo, 2000, 169; Rawls, 1993b, Lecture III) And Macedo, as we have seen, believes these same institutions should reproduce and reinforce this consensus. In other words, the existing overlapping consensus was, to some extent, manufactured, and its continued ascendancy likewise requires formative efforts on the part of the state. This calls into question the normative importance of legitimacy. What, exactly, is the value of a manufactured legitimacy?

3.1.5.4 Macedo and the Critiques of Liberalism

Neutrality

Macedo, as we have seen, criticizes neutrality of effect in state policy as both impracticable and undesirable. Macedo’s civic-political liberalism only commits us to neutrality of justification – the state cannot justify any policy by appeal to a comprehensive view. This should not, he claims, obscure the fact that political liberalism, like any other political philosophy, requires certain virtues in its citizenry. Macedo’s position on neutrality, however, reveals a fundamental contradiction within his account of political liberalism: the civic project necessary to maintain the ascendancy of liberalism and to secure stability runs against the political liberal concern for maximum legitimacy. And so, Macedo’s position on neutrality is problematic on his own terms.

Moreover, Macedo offers no further justification for the need for neutrality of justification, so we can put to him the same critique leveled against Rawls earlier: How does neutrality of justification answer to those citizens who suffer the unequal effects of liberal

policy? What good is the neutrality of justification/effect distinction to them? And furthermore, how can a neutral political philosophy answer to our aspiration to have a state that is a source of pride and common purpose? Macedo wants to answer this aspiration by having liberalism return to focus on goals, in particular civic education, and yet the *raison d'être* and justification of this worthy goal is the furtherance of the liberal order; hardly, on its own, a source of great pride.

Tackling these very points, Beiner comments, “there is nothing philosophically uncontroversial about the notion that citizenship is a sufficient human good to warrant trumping (for certain purposes) other nonpolitical commitments...The valorization of citizenship itself can only be established on a perfectionist basis...” (Beiner, 2003, 59) Macedo, to his credit, recognizes that political liberalism is not the innocuous regime it is often made out to be. But though Macedo owns up to the transformative nature of political liberalism, he still lacks the philosophical resources to justify his civic liberalism to a pluralist population. Why should civic aims be allowed to trump private conceptions of the good, as in the *Mozert* case? Only if we recognize citizenship as a substantive good on its own can this hierarchy be justified. Only a decidedly *non-political* argument, in other words, could justify the weight given to a state’s civic purposes, but such a tack would run us afoul of political liberalism.

The Original Position

Macedo also defends the Rawlsian contractual approach for justifying the principles of justice. Political legitimacy, he argues, depends on our ability to discern basic principles of political morality that we believe on reflection could be justified to all reasonable people,

and the original position demonstrates this ability. But there is still no argument as to why we need the systematic politics of programmed cooperation and fairness. If Western liberal democracies operate on roughly fair terms of cooperation, this shows that people with diverse visions of the good can come to fair terms of cooperation, and this leads us to question why we should accept the limits of the original position - blindness with respect to the good and imposed neutrality - which arise from its attempt to ensure these values.

Macedo's robust civic project would be better off situated in a political philosophy that admits certain values like autonomy, critical reflection, the value of education and so on. Only a comprehensive view can claim these are public values that may override private ones. The original position has us concerned that we not promote a preferred vision of the good. But at the same time, it limits us from aspiring to greater common ground.

The Communitarian Critique

With respect to the communitarian critique and liberalism's supposed overemphasis of individuality, Macedo believes he can afford a space for communities within civic liberalism. In fact, agreeing with Locke, he believes liberal regimes depend upon support from private associations to foster appropriate civic virtues. (Macedo, 2000, 35-6) Macedo emphasizes, however, that all communities within a liberal regime should be shaped so that they fit within the regime. In other words, to the degree that they help promote and foster liberal civic virtues, moral communities are to be encouraged; to the degree they do the opposite they are to be transformed.

Communitarians have argued that liberals fail to recognize the moral and political relevance of community, tradition and social context. They challenge the liberal tendency to

view people as unencumbered selves, to use Sandel's memorable phrase. It is not clear that Macedo's proposals will assuage their misgivings. In fact, Macedo offers no more space for the recognition of community than Rawls who draws the line at respecting reasonable views. Civic liberalism may even threaten communities more than Rawls' political liberalism, for communities appear in Macedo's theory only as potential sources of reinforcement or potential focuses of realignment towards state purposes. A state with substantive values could presumably look to communities for contributions to its national character and not necessarily, in the process, transform or neuter them until they fit the language of public reason.

The Rights Rhetoric

Concerning the so-called liberal rights rhetoric, Macedo wants to move beyond the barebones understanding of liberalism as an atomistic regime based on selfishness. Law, he points out, is often thought as a marker delimiting legitimate state interference and personal action. But he argues that the law is also tasked with shaping people so that they are satisfied leading lives of "bounded freedom". (Macedo, 2000, 15) Beyond their role of delimiting interference, Macedo believes rights also bear and promote a common civic morality. Thus we can imagine him siding with Glendon and calling for a reformed understanding of rights and law.

But note that the civic unity espoused by Macedo is superficial – we are not united along any substantive lines, but only in our common concern for the continuance of the liberal order. Part of the criticism of liberal rights discourse is its silence on substantive value which follows from its commitment to neutrality. This, in turn, tends to obscure

common purposes that unite us, purposes whose primary end is not necessarily the strengthening of the liberal order. For example, Glendon points out that the language of individual rights makes it difficult to account for the fact that the public has a great stake in assuring the conditions in which children are raised, and thus an interest in stable families. (Glendon, 1991, 125) This interest is, in the first place, not about ensuring the furtherance of the liberal order, but the welfare of children themselves. We would not, for example, force a course of study on children that helped ensure political stability even as it proved detrimental to the children's own flourishing (on some straightforward metric).²² Our stance on the law – whether it should be neutral in aim, or should at times promote substantive values – is important, for as we argued in Chapter Two, law propagates the view of persons that underwrites it. (Glendon, 1991, 175) Since the law is concerned with people at cross purposes (united only by the need to sustain the liberal order), and since the law is more and more the locale of interaction with other citizens, then we are more liable to come to see ourselves as a people at cross purposes.

3.1.6 Conclusion

Macedo attempts to improve the argument for liberalism, particularly political liberalism, by owning up to its transformative nature. Reflection reveals, however, that Macedo's project is problematic on its own terms. Contrary to his design, his civic liberalism takes him beyond the limits of Rawls' political liberalism. He has not shown any advantages over ethical liberalism, and his refusal to consider the nonneutral effects of neutrally justified policies

²² Feinberg and others try to capture the concern for children's future welfare and autonomy through 'rights-in-trust'. (Feinberg, 1980, 126) However, the scope of such concern is notoriously difficult to adequately pin down which further displays the inadequacy or incompleteness of rights talk (at least as currently conceived). (see Mills, 2008)

runs him afoul of the political liberal concern for legitimacy. His civic liberalism, moreover, does little to address the challenges to liberalism explored in the previous chapter.

3.2 John Tomasi

3.2.1 Political Liberalism and Spillover

Political liberalism, as we have seen, is born of the liberal desire for legitimacy and stability faced with the fact of reasonable pluralism. As Tomasi explains, it makes two major adjustments with respect to ethical/comprehensive liberalism. Justice is taken to be political in that it is not based on an account of human nature (as, for example, in essence free), but on shared elements of public life and democratic values. And further, the justification for liberalism is strengthened by political liberalism's increased claim to legitimacy. Liberal justice, as an overlapping consensus of reasonable views, should appeal to the maximum number of reasonable citizens. (Tomasi, 2001, 7-8)

What Tomasi calls "the liberal proviso" spells out the *intended* effects of political liberalism: citizens are to acknowledge the principles of the political conception of justice; and they are to appreciate its political ideals of person and society. (Tomasi, 2001, 13) The question Tomasi wants to take up is what, if anything, liberals have to say about 'spillover', the *unintended* consequences of liberalism? As he puts it, "Liberal principles cannot just 'stay on the surface' of people's lives. Citizens who do not affirm individualism or autonomy as personal values will be forced to divide their lives in a way that is psychologically demanding." (Tomasi, 2001, 14) These unintended sociological effects, he claims, impinge on political liberalism's claim to legitimacy. The overlapping consensus

argument will break down if people wish to opt out of liberalism because it threatens their way of life.

Not accounting for spillover can mean that more views become labelled as unreasonable as citizens reject liberal justice on the basis of its deleterious effect on their views. There is thus less stability and support for the regime. As discussed earlier, Tomasi sees liberal silence on this issue as analogous to soldiers just shrugging off the unintended consequences of war. Though intent is clearly relevant in acts of war, and may even be exculpatory, it seems reasonable to ascribe a real duty to soldiers to avoid as far as possible the collateral damage suffered by civilians. Analogously, if liberals really care about equality of respect, they cannot wash their hands when some citizens are pressured to reform by the demands of liberalism. (Tomasi, 2001, 37-8) True neutrality of effect is indeed unworkable, but it is possible, says Tomasi, to reduce the effects of unintended spillover. The question, then, is whether the tax of political liberalism can be lessened while remaining faithful to its defining commitments.

3.2.2 Liberalism Beyond Justice

But what options are open to the political liberal? If justice can be achieved by the principles of political liberalism, what further work is there to do? As Tomasi reminds us, political liberalism begins with a concern for legitimacy. If there is a way to lessen the sense of disenfranchisement felt by nonliberals, then it behoves the political liberal to try to do so.

Tomasi's innovation is to highlight the fact that liberal justice and rights always underdetermine human action. My right to dispose of my money as I see fit does not prevent me from being generous with my friends, or from giving to charity. By emphasizing this

underdetermination, political liberals can help open up a moral-political space for citizenship, a space beyond the mere fulfillment of rights;

If when a sense of justice spreads in a community it is accompanied by a vivid awareness of the flexibility in the exercise of political autonomy, then – if there is any goodwill at all in the grouping – goodwill has a chance to take root and spread. A public conception of principles of justice that specify individual rights may *strengthen* citizens' non-political attachments to one another. (Tomasi, 2001, 14)

Tomasi offers the example of the devout Jew and mill owner Aaron Feuerstein. When Feuerstein's mill, which employed 1400 people, burned down in 1995, he had the right to relocate the mill to a location with cheaper labour. Instead, relying on his Judaic ethic, he kept the mill in the town, continued to pay his employees while the mill was being rebuilt and even gave the workers Christmas bonuses. (Tomasi, 2001, 49) Legal rights underdetermined Feuerstein's moral relationship with his employees, allowing ample space for him to practice non-public virtue.

On this view, then, rights are not just essential constraints on conduct. Tomasi sees them as the supports upon which nonpublic virtue and attachments can be built. They are a sort of foundation, and nonpublic virtue distinguishes itself to the degree it moves beyond them. (Tomasi, 2001, 54)

3.2.3 Liberal Citizenship and the Formative Project

Political liberalism typically requires what Tomasi calls a derivative sense of citizenship. The virtues of a liberal citizenry are political virtues – those dispositions and habits conducive to a liberal system of democratic self-governance. (Tomasi, 2001, 60) Liberal theorists like Galston and Macedo develop fuller accounts of liberal virtue, but no liberal theorist claims that such virtues are sufficient for human flourishing.

Tomasi wants to take liberal citizenship further. Liberalism, he claims, cannot escape the fact that a flourishing society is dependent on the flourishing of its people. A *liberal* society can be said to flourish when its citizens flourish according to their own conceptions of the good. (Tomasi, 2001, 67) There is thus in his view a strong link between citizenship and human flourishing. But liberals, he says, have tended to reduce the question of human living togetherness to one of coercion – when the state can and cannot intervene – and accounts of liberal virtue tend to follow in this vein. (Tomasi, 2001, 65) On Tomasi's view, liberal justice does not commit us to such a limited role for citizenship.

Tomasi believes we should expand the liberal conception of citizenship to include the virtue of being able to negotiate the public-private interface. This involves a concern that goes beyond the mere maintenance of the political order. The self-aware liberal, he says, must consider the way public values impinge on non-public spheres and how those values can be put to personal uses there. (Tomasi, 2001, 71) For Tomasi, we can in this way have “a *substantive or eudaimonistically directed* understanding of liberal good citizen conduct.” (Tomasi, 2001, 67, italics in original)

Tomasi believes that liberals can reduce free erosion, the tendency of liberal mores to intrude into private spheres, and that they can do this while respecting political autonomy. (Tomasi, 2001, 72) The need for nonpublic virtues that can mitigate spillover rests on the premise that the best liberal polity is as welcome as possible to reasonable citizens. The good liberal citizen, he says, is one skilful in the art of exercising her rights; she recognizes the flexibility of these rights in nonpublic dealings and achieves a certain equipoise between public commitments and the personal convictions that guide her life.

The question, of course, is how such a stance can be squared with the political liberal commitment to neutrality. How can political liberals concern themselves with the flourishing of individuals according to their comprehensive conceptions of the good? Tomasi argues that this ideal of citizenship is consistent with political liberalism because it maintains (and enhances) a position of neutrality with respect to diverse views of the good. As he sees it, the state is not endorsing any conception of the good, only helping individuals in their personal search for the good. Moreover, he argues that this ideal can be shown to arise freely rather than from paternalistic intervention; people naturally acquire the desire to “exercise their rights artfully” in service to their own conception of the good and to be assisted in this endeavour. (Tomasi, 2001, 84) In other words, Tomasi believes a state that facilitates our search for the good can maintain its claim to legitimacy.

With respect to civic education, Tomasi believes his view could help ease the tension often arising between traditional views and public school curricula. On his view, civic education would involve teaching children about how their support of public norms can be used to support the nonpublic views they hold. In other words, students can be taught to flourish according to their own views, while remaining adherents to liberal public philosophy;

...civic education must explicitly invite her to consider the *meaning* of her rights within the context of her own life. She needs to be encouraged to consider those other aspects of her self and her interests that her own politically [sic] autonomy – exercised obtusely or without skill – can gradually erode or corrupt. She needs to be encouraged to consider the meaning of her rights within the story of her life. (Tomasi, 2001, 87)

As mentioned, Tomasi believes that the success of political liberalism and of the liberal social project depends on the self-evaluation of individuals. If citizens find it

conducive to working out the narrative of the good life as they see it, then political liberalism has achieved a degree of legitimacy. Civic education, on Tomasi's view, does not just help secure justice. It helps ensure that the liberal home is a good one. (Tomasi, 2001, 90)

Tomasi introduces a 'tax-flattening' principle, lexically ordered after Rawls' two principles of justice. This principle represents the conceptual insertion of Tomasi's legitimacy concerns into the political liberal theory of justice. According to this principle, the 'psychological tax' exerted by policies justly implemented under the first two principles should be minimized and counteracted whenever possible. (Tomasi, 2001, 102) Liberal laws on no-fault divorce, for example, might have the unintended effect of suggesting that when faced with persistent difficulties, divorce is preferable to continued marriage. If this is so, the tax-flattening principle mandates that efforts be taken to ensure that no such message is sent. (Tomasi, 2001, 103-4)

In sum, Tomasi believes that there is a gap between the dictates of public reason and the available institutional response to achieve legitimacy. He sees a space for liberalism to move beyond questions of pure justice, to questions of legitimacy and citizenship. This represents an important difference between ethical and political liberals. While the former allow for policies that shape and limit diversity, on Tomasi's account the latter protects diversity as much as it can. (Tomasi, 2001, 107)

3.2.4 High Liberalism

Tomasi takes aim at the Rawlsian tendency to assume that liberalism and liberal public values are coextensive. Tomasi characterizes this tendency as 'high liberalism', an error akin to the High Middle Ages tendency to equate church and state. The mistake, in his view, is to

hold that liberalism is a theory of justice and nothing more. According to Tomasi, liberals have concerns beyond justice, like the flourishing of its individual citizens. What distinguishes a political liberal society, claims Tomasi, is that citizens abide by the principles of justice *and* they understand their non-public commitments in relation to these principles (as, for example, underdetermined by them).

To have a determinate conception of the good within a liberal society means to have built attachments and loyalties to certain people, and to have become committed to certain projects and ends, *through* one's awareness of one's standing as a political equal – not simply in ways logically consistent with that awareness. (Tomasi, 2001, 116)

Not only can political liberalism move to mitigate the uneven 'psychological tax' it exerts, it can also help to open a space for individuals to pursue their nonpublic goods. Interestingly, Tomasi believes liberalism can help people achieve their particular ends without breaking its covenant with neutrality. This is achieved in a liberal society when citizens are aware of their rights, and of how liberal public philosophy impinges on their personal views, and aware also that law and rights underdetermine their relationships with fellow citizens.

3.2.5 Assessing Tomasi

3.2.5.1 The Neutrality We Want

On the one hand, we can applaud Tomasi for attempting to reconcile the effects of liberalism with its concern for legitimacy and neutrality. On the other, we are led to wonder whether it was with good reason that other liberals dared not take up this line of thought. It is difficult to see, for instance, how Tomasi's tax-flattening principle could be brought to bear in public policy. He offers the aforementioned example of no-fault divorce laws. Such laws might

mistakenly send the message that difficult relationships should be readily abandoned, and so he suggests the state should move to correct or neutralize this message. Surely, on Tomasi's view of political liberalism, the state could not promote the virtues of stable marriages. It could, however, publicize statistics that give a truer picture of the benefits and downfalls of continued marriage. Does this mollify the conservative Catholic who believes marriage is for life, but who is tempted by the 'quick fix' of no-fault divorce? It is the recognized existence of the law, not just the potential unclear message, that challenges the Catholic's view, and it is not clear how this effect could be neutralized in any meaningful way. If we put state monies towards counselling we would effectively endorse the superiority of marriage, a non-neutral stance. Tomasi has made the case that, on their own terms, political liberals *should* be concerned with liberalism's disparate effects. But it is not clear they can allay nonliberal concerns in any effective way, especially on terms permitted by political liberalism.

Tomasi thinks that liberal society flourishes when citizens flourish according to their own conception of the good. But it seems clear that Macedo is right in that we don't want all views to have equal survivability within a regime. Macedo is able to make this claim because he does not push the neutrality thesis beyond neutrality of justification and leaves space for the pre-eminence of civic virtues. Tomasi is unwilling to pass judgment on any reasonable view and unwilling to reform any either. Do we not want the neo-Nazi sidelined? True, if her racism has public manifestations, like a refusal to hire minorities, it becomes an unreasonable (and unlawful) view. But if it does not, Tomasi has nothing further to say on the matter, save that should the state's policies impinge on his racist creed, the state should seek to minimize this effect. Not only is private racism allowed to flourish, but we could end up with a state full of racists who will eventually abandon the liberal project. It is better, at

least for the sake of the regime, if some views can readily flourish, while others are left to founder.

Earlier I criticized Macedo for ignoring the disparate effects of liberal policy despite the political liberal concern for legitimacy. We can also reverse this criticism and turn it on Tomasi. If a politically liberal regime is consumed with respecting diversity, it may lose the wherewithal to ensure its own continuance. Many views may be permissible within political liberalism without being, at the same time, conducive to its persistence. Said differently, if Macedo is right to claim that liberalism, like any other regime, must ensure its own survival via the promotion of civic ends, then this cannot be squared with Tomasi's desire to push for neutrality of effect – his obsession with legitimacy could spell the end of the liberal regime. What is more, Tomasi's position also does not allow for a sense of civic community that is based on the common values that unite and bind a nation state. For everywhere, on Tomasi's view, we must account for the 'deleterious' effects of these common values (the regime's tendencies).

3.2.5.2 Goods Through the Back Door?

We might call Tomasi an ultra political liberal – he moves beyond the run of the mill neutrality of justification and calls for a measure of neutrality of effect. Yet Tomasi's work leaves it clear what he feels is missing from liberalism, and what he hopes to add:

If, when a sense of justice spreads in a community it is accompanied by a vivid awareness of the flexibility in the exercise of political autonomy, then – if there is any good will at all in the grouping – *goodwill has a chance to take root and spread.*" (Tomasi, 44, my emphasis)

He wants to open up a space for citizenship that allows for acceptable practices such as preferring community to profit, practicing charity to alleviate the hardships of others or taking care of our elderly. (Tomasi, 2001, 49-50)

Tomasi is hampered by a twofold problem. First, as a political liberal he cannot distinguish bad practices from the good practices he hopes will take root in society. It is clear that he has what most of us recognize as good practices in mind – the generous mill owner who cares for his employees, or the African Americans who practice elder care. (Tomasi, 2001, 49-50) But the criteria available to the political liberal are ‘reasonable and unreasonable’ and they do not clearly map onto ‘good and bad’. His second problem is that the principles he calls for will help the bad practices as much as the good. What of the plight of the wealthy radical egoist who balks at the social safety net? If political liberalism represents an affront to her, then she too deserves protection under the tax-flattening principle. At this point Tomasi’s political liberal citizenship loses much of its appeal. Indeed, it only looks tempting if we drop the strictures of political liberalism in the first place and recognize certain practices as good, and others as bad.

3.2.5.3 Tomasi’s Liberal Citizenship

According to Tomasi, in a liberal regime non-public virtues should be accompanied by an awareness that in practicing them we are going beyond the obligations of our legal rights. (Tomasi, 2001, 44) Furthermore, our commitment to projects and ends is not merely consistent with the principles of justice, but done in awareness of our status as political equals. (Tomasi, 2001, 116) In other words, we should understand our nonpublic virtues as supererogatory with respect to justice. Certainly with respect to our own personal histories,

we are typically educated into the values of our families and particular communities before we have a clear understanding of our legal rights, and no liberal is likely to intervene in this ordering. Thus, Tomasi must be suggesting that part of liberal citizenship is to be educated to look at virtues in relation to rights – a charitable donation is special, for example, because I have the legal right to keep all of my property (save what is lost to taxation). But this seems to be a contradictory position for a political liberal. If our primary concern is with not impinging on the views of reasonable people, how can we ask everyone to reinterpret their own views according to their relation to legal rights?

The problem here hearkens back to an earlier critique about the original position. This construct has us reason about justice while leaving aside particular comprehensive conceptions of the good. This places cooperation ahead of our other values, and we challenged whether this ranking was justified. In a similar way, Tomasi asks us to place rights at the core of our conceptions of the good, and again we can ask: is this hierarchy justified? Just as we can challenge why justice requires the bracketing of comprehensive views, so too we can challenge the need to understand virtues and values in terms of liberal rights.

3.2.5.4 Tomasi and the Challenges to Liberalism

Neutrality

As we have seen, Tomasi believes that liberal political philosophy can be pushed beyond the question of justice to consider the question of legitimacy more broadly. In Tomasi's view, the most legitimate regime, the one garnering support from the greatest number of citizens, is the one that is overall least detrimental to people's comprehensive views and best suited to

allow them to flourish according to their conceptions of the good. In practice, this requires a move towards neutrality of effect, even if this cannot be perfectly realized. Tomasi is unwilling to shirk responsibility for liberalism's disparate effects and instead proposes to mitigate them.

But Tomasi, as we have seen, nowhere makes the case that the project of reconciling liberalism's effects with its concern for neutrality and legitimacy can succeed. Barring further argument, it seems that Tomasi's effort towards neutrality of effect is impracticable. Until we are furnished with concrete proposals that can realistically be transposed into policy, even approximating a level playing field sounds utopian. Tomasi even betrays his political liberalism by hoping that his theory will allow for good practices to flourish. In fact, his proposals would apply equally to good and bad visions of the good – the closet racists, misogynists and so on would not have to face the full moral pressure of liberal justice and rights. Macedo is likely right to argue that it is better if some comprehensive doctrines have a harder time getting traction in our regime because said views are illiberal and threatening.

Furthermore, Tomasi's policies would in essence ensconce us in our differences, so concerned is he with not upsetting people's views. This leaves little room for the formation of common purposes on which to found a conception of citizenship.

Tomasi recognizes that the neutrality of justification/effect distinction is problematic for the project of political liberalism, but he does not make the case that neutrality is a requirement of justice. And the neutrality thesis becomes more problematic if, as I have argued, Tomasi's attempts at neutrality of effect are bound to fail. For in that case, as Tomasi himself would admit, the liberal state is only neutral in a theoretical sense, a sense that carries little weight with the people who are burdened by this neutrality.

The Original Position

Tomasi also favours the Rawlsian systematic politics of the original position, at least concerning justice. He thinks it would be reasonable for citizens to be concerned with how the principles of justice will affect their view, and thus that they will opt for a tax-flattening principle. Tomasi, in some sense, tries to bring real persons with conceptions of the good back into the discussion of justice. Liberalism flourishes, he claims, when citizens flourish according to their individual conceptions of the good. It may well be that the best way for people to protect their views of the good, and for the state to respect these views, is to not have to hide them in their public dealings.

Like Rawls and Macedo, Tomasi offers no reason as to why the original position style blindness is required to ensure fairness and cooperation. This has been achieved even when people bring their comprehensive views to bear. At times this has meant bracketing partisan concerns, but this has been done with full understanding of what is bracketed.

The Communitarian Critique

With regard to the communitarian critique, Tomasi believes that moving beyond justice can help open up space for communal action within a liberal regime. By attempting to ameliorate the disparate effects of liberal policies, Tomasi claims his liberalism can help protect communities from liberal assimilation. To some degree this is likely true. His proposals, if successful, would better protect communities from liberal influences. But this applies to both good and bad communities. And the liberalization citizens are meant to escape comes back

disguised in the need to reinterpret worldviews in the light of liberal rights. On this basis, we are all political liberals at the core, and merely build our views on top of this.

Communitarians, moreover, are not only concerned with protecting their views but also with the way liberalism views people as unencumbered, at least in the construction of the principles of justice. Justice, according to the critique, needs to consider who its citizens are, and this question cannot be answered apart from an appeal to history, tradition and other social forces. Even if Tomasi's political liberalism does more to protect communities, it still does not give communities a voice when it comes to questions of justice.

The Rights Rhetoric

To some extent, Tomasi agrees with Glendon's analysis that the rhetoric surrounding rights needs to be reformed. Tomasi would have us recall that rights represent merely a baseline and thus should not fully determine our relations with each other. It is important to note, however, that Tomasi does not seek a greater role for other-regarding behaviour within the law. The only changes he might advocate would be measures to mitigate the spillover effects of liberalism. And this, as we have seen, would apply equally to those espousing other-regarding behaviour and those espousing hatred. And thus, on this view a clearer understanding of law and rights will not necessarily increase our other-regarding thoughts and behaviour and combat the overly individualistic tendencies of liberalism.

Tomasi's proposal promotes legalistic thinking since we are to see our own worldviews in relation to our liberal rights. Glendon complained that legal talk too often reaches down to the kitchen table and begins to dominate in spheres where it is not meant to. By promoting its recognition, Tomasi seems to be promoting this hegemony.

3.2.6 Conclusion

Like Macedo, Tomasi's position is problematic on its own terms. His protracted neutrality seems impracticable, susceptible to abuse by illiberal views and unable to support the persistence of the liberal order. Tomasi clearly wants to bring goods into our political philosophy, but cannot do this without betraying the terms of political liberalism. Furthermore, the need to reinterpret our conceptions of the good in terms of rights will disenfranchise in the very sense his theory is meant to evade.

The challenges to liberalism raised in Chapter 2 remain unanswered. Neutrality remains impracticable and undesirable, a point which Tomasi's position serves to highlight. The forced cooperation of the original position remains without justification. Communities receive protection, but since this is done in a spirit of neutrality, bad and good communities alike are protected, and context and tradition remain without currency when it comes to public life. Lastly, and again problematically, the hegemony of rights talk may only be enhanced by Tomasi's proposals for a new understanding of rights.

3.3 William Galston

In *Liberal Purposes*, William Galston argues for a more comprehensive understanding of liberalism, in opposition to both communitarianism and, more importantly, the increasingly popular political liberalism. Galston believes that a proper understanding of liberal goods and virtues can help bridge the gap between the fear of state tutelage and public moral agnosticism. The choice between the neutral and the overbearing state is, he claims, a false dichotomy. "There is a vast – and vitally important – terrain between Plato and Ronald

Dworkin. And therefore, there is a coherent alternative to both liberal neutrality and its communitarian critics.” (Galston, 1991, 9)

Galston’s middle ground invokes a theory of liberal good that allows for the promotion of, and even compelling support for, common goods like public health. It does not, however, compel dissenters to accept the liberal position. The important distinction, which we will return to later, is between coercion for public purposes as opposed to coercion directed at individual ways of life. (Galston, 1991, 10)

3.3.1 Liberalism and the Neutral State

Galston argues that the neutrality espoused by political liberals like Rawls and Larmore is neither authentic nor desirable. All liberal neutrality theories, claims Galston, betray a commitment to the good they explicitly disavow. Dworkin, for example, rests his neutrality argument on equality – we should treat all people equally because there is no philosophic demonstration that some are superior to others. But as Galston points out, equality on its own gets us nowhere – we also need an idea of what is valuable, what has positive worth.

Dworkin’s fundamental liberal principle is ‘equality of concern and respect’, but what is this concern and respect *for*, if not for human goods – existence itself, pleasure and freedom from pain, the ability to act on purposes, achieve goals, etc? (Galston, 1991, 90-1)

In general, claims Galston, political liberals assume the good of rational humanism - the worth of human existence, the worth of human purposiveness and of the fulfillment of human purposes, and the value of rationality as the chief constraint on social principles and actions. The political liberal may respond that this view of the good is common to all reasonable views. But why should we assume that this is all the common ground available?

We cannot even claim that these values are undisputed, Galston claims, for many believe that a religious text, not reason, should be the chief constraint on social principles. Thus, he charges, "... the partial skepticism characteristic of neutralist liberalism has the appearance of an arbitrary arrangement of convenience rather than a principled position." (Galston, 1991, 93-4)

Political liberals admit that their brand of liberalism is more challenging for some forms of life than others. (Rawls, 1993b, 196-7 for example) The underlying assumption is that only undeserving ways of life will suffer, and so we need not worry too much. But, Galston argues, there is no reason to assume that the criteria of political liberalism will neatly delineate worthy from worthless views of the good. "The line between ways of life that can flourish in the midst of social heterogeneity and those whose viability depends on a more hospitable homogeneity does not neatly divide valuable from worthless, or generous from repressive, conceptions of the good." (Galston, 1991, 96) It is unreasonable to govern with the Bible, for example, but it could be that certain valuable forms of life could flourish only when the Bible is taken as the governing text of the state.

Contemporary political liberals, according to Galston, take the neutrality thesis to require neutrality of aim and justification.²³ Given its constraints, a neutral procedure will need to base public discourse on those propositions common to all reasonable views. But, Galston argues, the range of such propositions in a large and varied society is far too narrow a basis for public policy because moral disagreement is far too wide-reaching. (Galston, 1991, 104) And why, he asks, should we insist on procedural neutrality in public discourse instead of attempting to find further common ground? At the point of public decisions, he says, it may be wise to justify policies on grounds common to different views. But imposing

²³ Galston uses the term 'neutrality of procedure'.

a 'public reason' at the level of public debate has what Galston sees as the unfortunate consequence of forcing citizens to couch their arguments in premises they themselves do not endorse. Further, while it can be helpful to argue from common premises, Galston argues that at times we simply want to insist on our view to make others see things from that point of view. (Galston, 1991, 109)

3.3.2 Liberal Pluralism

In *Liberal Pluralism*, Galston presents the reader with a choice between two versions of liberalism. The one, championed by thinkers like Kant and Mill, advocates the overriding value of autonomy. The other, championed by Locke and Berlin, champions the value of protecting diversity. It is the latter version, claims Galston, that should gain our adherence. Siding with Kukathas against Kymlicka, Galston argues that liberalism cannot give central place to *both* autonomy and diversity due to the simple fact that many cultures do not encourage critical reflection and choice. A liberal valorization of autonomy is an affront to those communities. (Galston, 2002, 21) The problem with idealizing choice, claims Galston, is that it limits the range of goods that could otherwise be allowed in liberal societies. A monk, for example, might find value in a life of deference to his superiors. A certain priority for diversity, claims Galston, allows us to appreciate such a choice. And, as he puts it, autonomy would "exert[s] a kind of homogenizing pressure on ways of life that do not embrace autonomy." (Galston, 2002, 23) Importantly, however, Galston admits that diversity must be kept in check, and not allowed to proceed to its logical limits. Following Berlin, Galston elevates negative liberty, the absence of external coercion, as a 'threshold' value.

Diverse visions of the good are acceptable, provided that individual adherents can freely accept or reject them. (Galston, 2002, 48-50)

Galston's liberal pluralism rests on three concepts: expressive liberty, value pluralism and political pluralism. Expressive liberty sums up the familiar liberal idea that we should be free to live the lives we see as valuable without being constrained by others (and, of course, without so constraining them). (Galston, 2002, 28)

Value pluralism is a substantive position about the nature of the moral universe. Following Berlin, Galston argues that moral values and goods are irreducible to some foundational principle, or to a hierarchical ordering. This inherent (metaphysical) pluralism, he claims, does not imply relativism, for we can say, on the one hand, that shedding innocent blood is objectively evil, and on the other hand, that there is no clear ordering among the values of life, liberty and happiness; we are often willing to limit liberty for the sake of life and happiness, but we might face death before giving up some level of liberty. (Galston, 2002, 30) Galston's preference for diversity liberalism, mentioned above, reflects his belief in value pluralism, viz. that there exists a plurality of incommensurably good lives. The reason liberals are right to give such wide berth to individual choice, he argues, is not because of ignorance with respect to the good, but because of the variety of good lives on offer.

The third concept underlying Galston's liberalism is political pluralism, a theoretical standpoint advocating a social life with multiple sources of authority – the self, the state, churches, associations and so on. None of these sources will be dominant in all arenas on all occasions. The idea is not that our lives are divided into different spheres, each with its own authority, but rather that we are often faced with multiple, conflicting authorities, and must

somehow work out for ourselves their relative strength on any given occasion. (Galston, 2002, 36)

In contrast with liberals in the social contract tradition, Galston bases his liberalism on key liberal concepts that have survived the weathering of time and philosophical scrutiny. As he puts it,

The value-pluralist liberal state will respect self-aware autonomous lives but will not insist on promoting Socratic or Millian ideals (or any others) as valid for all citizens. It will limit the agreement on principles and practices required of all citizens to constitutional essentials, parsimoniously understood. It will seek to create conditions within which, to the greatest extent possible, individuals and groups can lead their lives in accordance with their own understanding of what gives life meaning and purpose. And it will vigorously defend the ability of individuals to exit from ways of life with which they have ceased to identify. (Galston, 2002, 62)

3.3.3 Liberal Goods

According to Galston, the liberal tradition admits a host of liberal goods: life, the normal development of basic capacities, the fulfillment of interests and purposes, freedom, rationality, society and subjective satisfaction. (Galston, 1991, 174-7) These may only comprise a thin theory of the good, but thin, he says, is not the same as vacuous. According to Galston they provide a basis for public policy and coercion. Liberal goods like life and health, for instance, could justify public monies towards promoting nutrition or vaccines. By lightly coercive methods such as taxation, he argues that the liberal state can coerce without forcing individuals to embrace the views of the state. For Galston, this reflects both the liberal conception of the good and respect for individual agency. (Galston, 1991, 179)

Rawls, as we have seen, finds liberalism's distinctiveness in its special valorization and priority of the right over the good. For Galston, liberalism is not distinct for not having a

view of the good, but for its special set of reasons for restricting movement from the good to public coercion: “These reasons give liberals grounds for refraining from coercion altogether in some circumstances, for limiting coercion to the collective provision of capabilities or opportunities in others, and for substituting respectful persuasion for coercion wherever possible.” (Galston, 1991, 180)

In support of liberal goods, liberalism needs an account of individual virtue that supports liberal institutions. “... [T]he viability of liberal society depends on its ability to engender a virtuous citizenry.” (Galston, 1991, 217) Indeed, virtues such as courage, lawfulness and loyalty are required for the sustenance of any regime. But beyond these, *liberal* states also require independence, tolerance, work ethic, moderation, adaptability, respect for rights and more. (Galston, 1991, 221-8)

In *Liberal Pluralism*, Galston identifies three types of liberal civic goods. The first type, ‘compelling state interests’, could in principle even moderate or override claims based on expressive liberty. (Galston, 2002, 125) Galston might allow, for example, the government of Northern Ireland to proscribe certain routes to politically or religiously motivated marches or parades. The second type of liberal civic good is civic education, required in the interest of the state’s continued existence; “Liberal pluralism is not a suicide pact; liberal pluralist institutions are not debarred from securing the conditions of their own perpetuation.” (Galston, 2002, 126) On this view, civic education is instrumentally valuable for the purpose of securing political goods, like peace, tolerance and respect for law. A third common civic good is found in a shared sense of justice, involving respect for the rule of law, equality, and distributive justice revolving around the categories of equality, need, desert, and choice. (Galston, 2002, 129)

Talk of liberal virtue raises the important question as to whether these liberal virtues are thought to be intrinsically or merely instrumentally valuable. There is, argues Galston, a rough common vision of human excellence that appears throughout the liberal tradition. This is the view that individuals should in some manner take responsibility for their lives. Beyond this he thinks there is little more that can be said to be of substantive rather than merely instrumental value. And even this common vision admits varying interpretations and implications. (Galston, 1991, 230)

Galston realizes that liberal public principles cannot help but affect the lives and thinking of the citizenry. There is, for example, the use of constitutional law to enforce liberal mores on individuals, such as equality in hiring practices. And Galston admits that public values have a way of creeping into private life and talk. (Galston, 1991, 292-4) Despite these effects, claims Galston, liberal regimes permit the widest range of human activity, when compared both historically and transnationally. Within liberal regimes many traditional groups still manage to flourish, and withdrawal and isolation remain viable options. What is more, much conflict can be managed by intelligent compromise, as in the allowance made in the *Yoder* case which permitted Amish children to forsake formal education past the eighth grade. (Galston, 1991, 295)

3.3.4 Liberal Citizenship

Given the adherence to pluralism that underpins Galston's liberalism, we are lead to wonder what room is left for citizenship or political community. In spite of the inherent plurality of the moral universe, Galston believes his liberalism offers three sources of commonality. The first source is what Galston calls the minimum demands of public order. This comprises

goods like a recognized authority, respect for the rule of law, stable property relations and the so on. Along with these minimums go some of their underlying conditions – an education system, a stable, suitably regulated market economy, a basic level of social provision and so on; “...pluralists will understand that in the vast majority of circumstances, reliable public order increases, rather than undermines, the ability of individuals to live in accordance with their own conceptions of what gives life meaning and value.” (Galston, 2002, 66)

A liberal state’s constitution represents a second source of common purpose. It brings, as Galston puts it, a partial ordering of preferred values to the foreground where they are then used for assessing legislation, public policy, and even public culture. (Galston, 2002, 66) Even these elevated values are not absolute – they are kept in check by the demands of public order, by conflicting values among the citizenry and by being balanced by each other.

A third source of common purpose comes from what Galston calls the ethical presumptions of universal ordinary morality and of specific public cultures. The idea is that a culture’s moral and political principles stand as strong but rebuttable presumptions, much like legal rulings. While it is clear, for example, that our public institutions are far from perfect, the burden of proof lies with the reformer who wishes to change them, not the defender of the *status quo*, because we do not know the consequences of change. The idea of moral and political rules as powerful but rebuttable presumptions applies to two areas: First, to the realm of ordinary universal morality, the principles found in the world’s great religions and men’s normal social practices such as strictures against lying, theft, murder, oppressing the weak, sexual anarchy and so on. (Galston, 2002, 77) The citizen who wants to

open a common bawdy house, for example, must overcome a tradition that forbids such a practice. (She could perhaps appeal to other values within that tradition in her defense.) The second area is the realm of political culture, the guiding principles that distinguish a political community, such as the commitment to equal opportunity and personal responsibility, and the mistrust of authority common in the United States. Galston's idea, to be clear, is that there is a strong presumption in favour of the way people do things, but as in clear cases like slavery, these presumptions can and should be overcome. A culture's ethical presumptions, Galston claims, can help mitigate the "centrifugal tendencies" of moral pluralism which would otherwise threaten a unified sense of citizenship. (Galston, 2002, 69)

3.3.5 Liberal Coercion

As we have seen, Galston believes liberalism takes positions on equality, freedom and the human good, positions that cannot be considered philosophically settled. (Galston, 1991, 243) We should not, he argues, simply extend the principles of religious toleration to the idea of philosophical truth, as Rawlsian neutrality has us do. Locke, he claims, unlike Rawls, did not extend religious epistemic neutrality to morality in general, nor did he turn religious toleration into the inviolable private sphere of conscience or individual liberty.

Consider Galston's example of liberalism's concern for the family. A liberal regime, he claims, can prefer a two-parent home, and enact supportive policies such as tax breaks for married couples, not because the nuclear family is morally superior, but because it has proven better for keeping children out of poverty and for supporting their psychological development.²⁴ Again, this does not constitute a judgment of individuals. On the policy

²⁴ There is always the danger that the state will get behind poor science. Maybe children fare better with two-parent homes for reasons that are the result of social constructs which could be modified. Privileging two-

level, claims Galston, we need to look at this as a society-wide phenomenon. To claim that family is a purely private matter, he says, is to ignore the fact that we all pay for the effects of family breakdown. (Galston, 1991, 285)

So, what principled limits does Galston place on state intervention? The state, on his view, cannot support a conception of the human good that is unrelated to the functional needs of its socio-political institutions, particularly when such promotion would be at odds with the deep beliefs of many citizens. (Galston, 1991, 254) These institutions are based on a shared, broad core of civic commitments (the aforementioned liberal goods). The state, he believes, can ensure that this core is disseminated, directly or indirectly, and indeed, this core can take priority over individual or group commitments, a priority which can even be enforced. But, for Galston, this is the end of the line. Enforcing ideals beyond this shared core, he says, would effectively prescribe a single, debatable vision of the good life that is valid for and binding on all, betraying the principles of liberalism. These measures and limits are bound to displease libertarians and moral conservatives alike, but according to Galston, this level of agreement is as much as we can hope for. (Galston, 1991, 288)

On Galston's view, liberal principles are not simply those that win out in case of conflict, but neither do they always override or overwhelm personal views. For on the one hand, he says, even those who are able to live their vision of the good in spite of liberalism are faced with the altering task of having to be on the defensive. And on the other hand, liberalism allows for the highest level of diversity. Seen in this light, he defends liberalism not as the neutral eliminator of all coercion, but as a view of the good that most intelligently minimizes that coercion. (Galston, 1991, 298) In later works, Galston summarizes his view

parent homes may obscure such possibilities. This risk cannot be completely avoided, even with institutionalized safeguards. Of course, the neutral stance bears the risk of not getting behind *good* science.

as one of *maximum feasible accommodation* wherein a state is cautious about intervening with individuals and civil associations, and does so only when required for individual security or civic unity. (Galston, 2006, 167; Galston, 2002, 20 and ch 8-9)

3.3.6 Assessing Galston

By disavowing political liberalism and the liberal neutrality thesis, Galston can fall back upon a substantive theory that makes a strong case for liberalism. This is a theory that gives capacious space to individual self-development, respect for the rule of law and for human rights. Beyond this, it has the virtue of owning up to certain goods for the regime – respect for law, courage, peace, toleration, understanding, critical reflection and so on. He leaves aside the troubling neutrality thesis and can own up to public goods and a civic identity based on these. Abandoning neutrality and its attendant public reason also affords respect to people by allowing them to put forward their true reasons for their positions.

Rather than resting liberalism on troublesome theoretical constructs, Galston makes an empirical case based on historical achievements like peace, the rule of law, inclusiveness and so on. (Galston, 1991, 301-4) These values have stood the test of time, including critical reflection and debate in courts, legislatures and the public, and continue to command a large base of adherence. True, this approach is not as systematic as Rawls' constructivist theory, but I take this to be a virtue. People are to be taken as they are, recognizing that views of the good do not make us incapable of coming to fair terms of cooperation, or from practicing a measure of impartiality.

3.3.6.1 Pluralism and Liberalism

Nevertheless, Galston's liberalism remains problematic. Galston, we have seen, argues that liberals should grant wide berth to individual choice because of the variety of good lives on offer. Galston invokes a natural presumption against coercion and in favour of individual liberty, a presumption which rests on "the pervasive human desire to go our own way in accordance with our own desires and beliefs." (Galston, 2002, 58) But if, as per value pluralism, goods are essentially incommensurable and 'impossible', there is no possible way of ranking them. And if this is so, there is no non-question begging step from value pluralism to the liberal preference for individual liberty which is essentially the ranking of one good above others. (Talisie, 2004, 131) The mere fact of many goods in no way implies that individuals should be left to decide on these goods themselves.

Furthermore, Galston's position implies too weak an appreciation of autonomy. Galston, following Berlin, argues for a 'right to exit' as a check against patriarchal and other controlling value systems. But as critics have argued, such a right is useless without the capacity to effectively exercise it. Galston seems to have in mind a valuation of autonomy on the part of the state that amounts to honouring it without promoting it, to invoke a distinction by Philip Pettit. Pettit distinguishes consequentialist from non-consequentialist theories on the basis of their understanding of what it means to respect a value. (Pettit, 1991, 233) The consequentialist sees this respect as implying promotion of said value, while the deontologist or other non-consequentialist sees it as implying an attitude of honouring. The latter attitude may have no implications with respect to state action since part of what it means to honour one important value, autonomy, is by not interfering with individuals, even to promote autonomy.

But merely honouring a value is, at times, insufficient. Consider the subservient wife who has never known ways of life beyond her own patriarchal community, but who at the same time has no effective desire to leave said community, or to emancipate herself. The mere fact of laws guaranteeing her legal freedom, or a right to exit, does not make her actually free in an important sense, for she cannot do other than continue in a life where she is dominated. For this reason, the attitude on the part of the state must sometimes be one of promotion. Indeed, many liberals have been rightly concerned with ensuring citizens learn what their rights are and acquire the critical wherewithal to rationally choose a way of life. (Rawls, 1993b, 199; Barry, 2002, 150-1; Okin, 2002, 222) ²⁵

George Crowder agrees with the value pluralist position, but believes it leads to a more autonomy-based liberalism rather than the toleration-based version favoured by Berlin and Galston. These latter argue for ‘freedom of exit’ as a means of keeping overbearing communities in check, but as suggested above, without a capacity for autonomy, such a freedom is useless. (Crowder, 2007, 130) Securing guarantees for the individual has been central to the liberal project, and this is hardly achieved by a theoretical ability to exit that has no serious chance of becoming a reality. Furthermore, Galston’s toleration-based liberalism would allow for cultural communities that, within their bounds, limit diversity. If value pluralism implies respect for the vast diversity of goods, the more widespread the ability to search for goods the better. As Crowder argues, the existence of closed

²⁵ This distinction tracks the liberal neutrality problem as well. Neutrality allows for honouring, whereas promoting constitutes a breach of neutrality. Larmore believes that Rawls, too, must hold that some degree of promotion is legitimate. Commenting on Rawls, Larmore writes: “If equal liberty forms the paramount principle, the point must be that people should be free, not only from undue interference by others, but also from the unfair influence or dominion of others, when such fundamental matters as religious conscience, association, and political voice are at stake.” (Larmore, 2001, 235)

communities therefore runs against the spirit of value pluralism as it limits individuals' capacity to achieve goods. (Crowder, 2007, 133-135)

Earlier we mentioned the charge that value pluralism does not imply the value of individual liberty which brings into question the link between value pluralism and liberalism. We might think that value pluralism forgoes the prospect of moral reasoning, given that it is the nature of incommensurable goods that they cannot be adjudicated. Crowder attempts to meet this charge by referring to a broad consensus that holds that, though values cannot be ranked in general, "there may still be good reason to accept a particular ranking or trade-off in a specific context." (Crowder, 2007, 122)

Even if this is the case, the *general* move from value pluralism to liberalism remains in question, despite Crowder's efforts to improve on Galston's attempt. Crowder argues,

Value pluralism is the idea that there are many objective and intrinsic goods—that is, goods that are valuable for their own sake as components of human well-being. Each of these goods makes its own unique claim on us, requiring our respect. Since none of these goods is inherently superior to any other, we should in that sense respect them all equally...In principle, then, pluralism commits us to the promotion of as many goods as possible in a given situation—that is, pluralism generates a principle of maximum diversity. (Crowder, 2007, 132)

This principle of maximum diversity is supposed to lead us to the individual self-determination at the heart of liberalism. But the move to liberalism remains problematic. The fact of a diversity of goods does not, on its own, entail a principle of maximum diversity. It could just as easily suggest a principle of spinning a roulette wheel to choose which goods to seek. The move to liberalism requires the addition of some other principle, for example, requiring that within the range of goods on offer, individuals are best suited to find the goods that are best for them. And this principle acts as a hierarchical value. Liberalism will require something stronger than the principle of maximum diversity – that the preferred ordering of

goods accords with the choice of the individual (Galston's assumption), or with the choice of the sufficiently autonomous individual (Crowder's assumption).

And at any rate, 'promoting as many goods as possible' doesn't sound like good political philosophy. In the first place, there seems to be agreement on a general ranking of goods. The state will promote health, education and defense, but not bird watching, spelunking and taxidermy. Feinberg, among others, has argued that goods in the first list are *welfare* goods that are necessary conditions for other goods we seek; "... given that I have my life, health, economic adequacy, liberty, and security, there is nothing more that the law (or anyone else, for that matter) can do for me; the rest is entirely up to me." (Feinberg, 1984, 62) But in this case, welfare goods occupy a place of priority with respect to other goods. We wouldn't need to promote as many good as possible, but only the welfare goods.

What is more, promoting as many goods as possible might mean not promoting any very well. If the state must choose between providing moderate support for a vast array of goods, or more adequate support for a smaller set of goods which, nonetheless, appeal to the preponderance of citizens, we might be wise to side with the latter policy over the former.

3.3.6.2 Galston's Limits

My overall judgment of Galston's theory is an appreciation for his repudiation of liberal neutrality and for his willingness to admit to a theory of the good, coupled with disappointment over his eventual account of civic virtue which renounces concern for the good of individuals. The question I wish to turn to is this: why does Galston stop where he does? Could the state admit a fuller conception of the good than Galston allows, and could it recognize certain goods as substantive, rather than merely instrumental? Our public

philosophy inevitably suggests a way of life and this requires us to consider whether the way of life promoted and fostered by liberal politics is a flourishing life *tout court*. (Collins, 1990, 10)

Galston, let us recall, only admits some minimal elements of the liberal tradition as substantive goods, identified by their appearance in most every liberal view. There is a core conception of liberal human excellence, “a vision of individuals who in some manner take responsibility for their own lives.” (Galston, 1991, 230) But even this core, he goes on to admit, is interpreted differently by different authors. And according to him, the state cannot support a conception of the good that is unrelated to the functional needs of its socio-political institutions, institutions that are based on a shared core of civic commitments. (Galston, 1991, 254)

In Chapter Five we will consider two arguments which can be characterized as a two-pronged challenge to Galston. First, I will argue that societal agreement on goods and virtues is more extensive than liberals like Galston allow. And second, I will argue that we should admit these goods as substantive, and not solely in service to the regime. We can already consider some preliminary arguments in the context of a response to Galston’s theory.

3.3.6.2.1 Civic and Human Virtue

It is worth noting that Galston’s position on human and civic virtue has shifted over the years. James Murphy notes that in Galston’s early work, *Justice and the Human Good*, his ideal of citizenship required true excellences that are independent of a citizen’s regime.²⁶ Galston’s later work, however, repudiates this stance.

²⁶ For a review of this shift, see Murphy, 2007.

The bifurcation of civic and human goods and virtues is a convenient theoretical construct that allows for the defence of liberal goods while maintaining the traditional liberal silence on what constitutes good living. However, the distinction between the two sorts of virtues is not as sound as it seems at first blush. Even civic virtues, for example, teach us what to recognize as good, and what to avoid, and so in this way change our character. This calls into question Galston's suggestion that civic virtues are innocuous, and congruous with his antipaternalism. It may be, as I shall argue later, that this whole distinction needs to be rethought.

Galston seems to evade some of the critiques levelled at fellow liberals by denying the turn to political liberalism. However, his conception of civic virtue brings him to virtually the same positions and, ultimately, the same problems. He does not allow the state a substantive conception of the good and he promotes virtue only for instrumental reasons. Galston offered the promise of a political philosophy between Plato and Ronald Dworkin, but in the end it is difficult to even distinguish his liberalism from Dworkin's.

3.3.6.2.2 The Depths of Pluralism

Galston, we have seen, criticizes political liberals for the neutrality thesis. For on the one hand, there are no indisputable grounds for public reason, and on the other, there may be further common ground to recognize (with a lower threshold of support). Galston's liberal goods are identified by the fact that we have come to agree upon them, and for this reason they can serve as a basis for public policy. Galston's value pluralism does not allow him to fix a highly unified conception of the good life, but it does allow him to reject some paths and validate some promising leads. If this is so, and if we can identify other values that we

can agree on that do not fit within the liberal rubric, why can we not also base public policy on these, even if they do not serve the functional needs of the state?

This discussion can quickly become muddled, for often the virtues we believe are good for people, like courage, justice and honesty, are also instrumentally good for the state. I would argue, however, that we are at times ready to promote other virtues even if they could work against the state's interest. Consider concern for the less fortunate. Perhaps, as some social Darwinians claim, the state would be served by ignoring the plight of the poor and stricken because supporting them merely prolongs and propagates the problem they represent, and drains resources from the more productive citizens. But such a view is in the minority and there is widespread agreement that we should use the mechanisms of the state to care for the unfortunate and promote the virtues that tend towards this. Or to take another example, the state could potentially be served by the rampant consumerism which currently prevails, but for the good of citizens this could conceivably be discouraged.

Surely, stomping on reasonable pluralism would be a problem, but as Martha Nussbaum points out, a thicker theory of the good can at the same time be open to many realizations in particular individuals, avoiding or mitigating the charge of coercion. (Nussbaum, 1990, 62. Nussbaum argues for a list of ten universal, basic human functional capabilities which the state can promote and thereby promote the good of citizens. Her list includes the guarantees of life, bodily health and integrity (freedom from assault), the ability to sense, imagine and think, aided by education, and unrepressed, the ability to have emotional attachments to things and people, to have friendships and a love life, to be able to reason and engage in critical reflection, to commune with nature and animals, to be able to play and enjoy leisure and recreation, and the ability to exercise some control over one's

political and material environment. (Nussbaum, 1999, 41-42)) Promoting autonomy, for example, will help a large variety of people realize a wide variety of life projects. Taking a stand that is more substantial than liberalism, I argue, does not necessitate an affront to self-realization.

It may be, then, that Galston commits the same mistake as the one he accuses political liberals of – presuming so little common ground on views of the good.

In Chapter Five we will return to question the depth of pluralism and the problematic civic/human virtue divide. For now, I hope it is clear that these issues remain unresolved by Galston.

3.3.6.3 Galston's Answer to Liberal Critics

Neutrality

Galston, as we have seen, disavows the popular liberal neutrality thesis. There is plenty of space between state neutrality and paternalism, and he believes liberals would do well to articulate and own up to the liberal conception of the good. (Galston, 1991, especially 15, 174-7 and 180) According to Galston, every contemporary liberal theory relies, explicitly or tacitly, on a theory of good asserting the worth of human existence, the value of the fulfillment of human purposes and a commitment to rationality as the guide to individual and collective undertakings. (Galston, 1991, 143-4) Liberal neutrality theorists, he claims, harbour a hidden conception of the good along the model of rational humanism. (Galston, 1991, 92) Even the procedural neutrality advocated by Macedo is found wanting by Galston.

Why, he asks, should we bracket conceptions of the good at the beginning of our political discussions?

Thus, Galston is in general agreement with critiques of liberal neutrality. Indeed, he claims the liberal neutrality thesis is merely the subtle reinterpretation of the priority of the right as the priority of the public over the non-public good. (Galston, 1991, 148) The success of liberal philosophy, for Galston, lies in acknowledging the liberal account of the good, and recognizing the capacious space it leaves for diversity while respecting basic rights.

Despite his repudiation of the neutrality thesis, Galston eventually adopts a position that is ultimately very similar. (Galston, 2007, 628) On Galston's view, the liberal state rests on a minimal conception of the good, but part of this conception includes a commitment to maximum feasible accommodation. In practice, this results in an emphatically antipaternalistic stance wherein the state only promotes ways of life for civic, or instrumental reasons, and never for the good of citizens themselves. Galston's position thus remains open to the attacks levelled at liberal neutrality. A regime of maximum accommodation, for example, is more palatable to some views than others; it suits the liberal, but not the citizen who believes we should limit further our options with respect to ways of life. In this sense, maximum feasible accommodation is only maximally accommodating for some. This thesis also limits our ability to pursue common projects in as much as it will typically prefer diversity to common causes. This emphasis on diversity undercuts the sense of national unity required for our desired sense of citizenship.

The Original Position

Galston dispenses with the contractualism of the original position. According to him, political philosophy does not need a view from nowhere like the original position, nor a view from somewhere, like the bible. Instead, we can build our philosophy on the view from everywhere, our diverse and shared experiences of human life, value and living together. (Galston, 1991, 49) Rather than hypothetical arguments, Galston sees the liberal political order justified by achievements like social peace, the rule of law, the recognition of diversity, the tendency toward inclusiveness, minimum decency, affluence, scope for development, approximate justice, openness to truth and respect for privacy. (Galston, 1991, 301-4)

Contrary to political liberals, Galston believes the fundamental argument for diversity is not our collective inability to know and agree upon the good – the premise underpinning political liberalism – but the variability of the good. There are many ways to lead a good life, he says, and mandating any one or set would be unnecessarily restrictive. (Galston, 1991, 194) History shows, moreover, that fairness and impartiality do not depend on ignorance, as the original position suggests. Galston points out that Locke, reacting to the religious wars of the 16th and 17th centuries, advocated state neutrality with respect to different religions, but he never extended this to the idea of morality in general. (Galston, 1991, 158 and 261) Indeed, Locke held the state should prefer religion to atheism because he felt important aspects of public morality like oaths and bonds had no hold on the atheist. (Galston, 1991, 262) Liberal regimes have since Locke's time developed a reputation for fairness and impartiality, and, as I have argued, they have done this without the extreme of complete ignorance with respect to the good.

The doctrine of maximum feasible accommodation does reintroduce some of the problems associated with the Original Position. The Original Position, I argued, presumes the overriding importance of cooperation. Maximum feasible accommodation, for its part, presumes the value of cooperation understood as accommodation. This presumes that it is always better to accommodate the practices of others when it could be the case that some practices are not worth accommodating.

The Communitarian Critique

Galston's answer to the communitarian critique is to admit, on the one hand, that liberalism has a moulding effect on all communities that find a home within its regime. On the other hand, he claims, liberalism is uniquely suited for modern, pluralistic conditions, allowing the most capacious space possible for personal and communal values to thrive. He describes liberalism as an account of the manner in which diverse moral communities can coexist within a single legal community: "Liberalism is not the antithesis of community but, rather, a conception of community framed in response to the particular circumstances of modern society." (Galston, 1991, 45-6)

Furthermore, and in contrast with other liberal views, Galston's position would allow people to acknowledge their comprehensive views of the good as they argue for public policy. This would go far towards meeting the communitarian complaint that liberalism treats us as non-persons or unencumbered selves. However, given his account of civic virtue, Galston would not allow the state to endorse any virtues per se. And so, even if people can acknowledge their comprehensive views in public, they can never expect the state to endorse any of their substantive positions.

Galston also falls short, as I see it, is in his conception of a national community. The larger legal community, he argues, finds common purpose in the demands of public order, constitutionalism and the ethical presumptions of universal ordinary morality. (Galston, 2002, 78) And yet, the spirit of maximum feasible accommodation strikes in the opposite direction, watering down common causes so that the state becomes acceptable to as many views and people as possible.

The Rights Rhetoric

It is clear that Galston would decry the tendency of our rights rhetoric to depict society as a battleground pitting the individual against potential infringers of her rights. For him, liberal goods represent a common civic morality, and a basis for legislation that at times runs against the grain of radical individualism. On his view, policies favouring the two-parent family, for example, could be preferred in light of the benefits for children.

Galston's doctrine of maximum feasible accommodation, however, is still a decentralizing force and so a foil to civic unity. Galston does emphasize that liberalism retains and relies on a conception of the good, but his concern for toleration means that the law's emphasis will continue to be on protecting individual interests rather than also promoting common responsibilities.

3.4 Conclusion

The three liberal authors considered in this chapter admit that liberalism suggests a way of life. Indeed, they turn to the concept of citizenship, what it means to be a member of a certain state, in order to bolster liberalism against its critics. Galston and Macedo want to

own up to the liberal way of life and endorse it. Tomasi wants to take measures to level out the unequal effects of liberal policies. For various reasons we have challenged each of these attempts. In the next chapter we will turn our attention to another important problem faced by liberals, and one that we have touched on in considerations of the communitarian critique – the question of culture.

CHAPTER 4 - LIBERAL CITIZENSHIP AND CULTURE

The traditional conception of equality, based on the principle of uniform treatment, has given way to another conception that pays closer attention to differences. Little by little, the law has come to recognize that the rule of equality sometimes demands differential treatment. (Quebec's Consultation Commission on Accommodation Practices Related to Cultural Differences, 2008)

The truth is that in all our democracies we have been too preoccupied with the identity of those who arrived and not enough with the identity of the country that welcomed them. (Nicolas Sarkozy, 2011)

4.1 Introduction

In large measure, the liberal theorists discussed in the last chapter turn to the concept of citizenship to bolster liberal theory in the face of perceived weaknesses. Macedo advocates a 'civic liberalism' that unabashedly stands by the values that sustain and promote the liberal state. He sees the success of the liberal order bound up with its ability to be educative and to inculcate the proper habits of mind. Tomasi, for his part, wants to move beyond the 'derivative citizenship' that countenances the dispositions conducive to a liberal system of democratic self-governance. He believes that by teaching people to recognize the limits of rights, and to navigate the public-private interface, liberalism can offer a more robust account of citizenship. Galston envisions a liberal citizenship based on the minimum demands of public order, a state's constitution, and the ethical presumptions of universal ordinary morality. Each of these accounts represents an attempt to present a liberal theory that is neither thoroughly individualistic nor barren of value.

In various ways, I have already challenged these liberal positions. In this chapter I will consider the concept of citizenship more directly with a particular emphasis on efforts to reconcile citizenship with other sources of identity. This will lead to an examination of the relationship between liberalism and culture. Contrary to liberal multiculturalism, I will argue that if we drop the strictures of state neutrality, and are willing to judge cultural practices, we will be better equipped to value culture in a way that is beneficial to citizens and the state.²⁷ This discussion will serve as a starting point for a new conception of citizenship which will be the subject of Chapter Five.

4.2 An Introduction to Citizenship

Kymlicka and Norman explain that after World War II, a liberal view prevailed wherein citizenship was considered reducible to civic, political and social rights. (Norman & Kymlicka, 1994, 354. See also Pocock, 1995, 37) This view is criticized as individualistic and bereft of the means to provide a sense of common identity, purpose and meaningful cooperation. Michael Ignatieff believes the liberal view has led to a crisis of citizenship because experience has not validated the post-war ideal that public goods would translate into civic solidarity. (Ignatieff, 1995, 69) This is problematic since a state cannot function well if citizens do not actively participate in voting, or practice a modicum of civility or even charity towards fellow citizens. Others argue that the one-size-fits-all rights model does not recognize the need to account for the circumstances of various groups such as women and immigrant communities. (Norman & Kymlicka, 1994, 355)

²⁷ I will throughout typically refer to ‘cultures’ as the source for these identities without getting into the lengthy and difficult discussion of trying to define a culture or determine which groups count as cultures.

In contrast to the passive possession of rights, some in the civic republican tradition see an active sense of citizenship as central to a good life, holding that “the preferred setting for the good life is the political community.” (Walzer, 1995, 155) Other republicans, like Pettit, see political participation as a means to ensuring the most important human good, freedom. Active civic participation is meant to help avoid the fragmentation that liberalism is supposed to have produced. The republican view, however, is criticized for being unrealistic, even utopic. In the modern world, political participation is rare, and often considered an annoying distraction from more central concerns. In such a world, one is hard-pressed to make the case that public life is important to every individual’s good life.

Liberals and civic republicans define citizenship in part by what it guarantees us, or what it asks of us. But another important question surrounding the meaning of citizenship is what it says about who we are. ‘Nationalism’ has typically considered citizenship to be based on an ethnic or historical/territorial identity. For obvious reasons, such cultural criteria prove problematic for countries with a high degree of diversity. And the dangers of nationalist zeal, especially when tied to such criteria, have been made painfully clear following the two World Wars, and more recently from conflicts in Bosnia, Rwanda and elsewhere.

The *prima facie* answers to the identity question from the liberal and civic republican seem to be, respectively, ‘a citizen is a rights bearer,’ or ‘a citizen is one who participates in ruling and being ruled’. But both of these options are found wanting, or so at least I shall argue. On the one side, we need to be more than mere business partners engaged in projects that promise benefits to the individual; on the other side, we should not necessarily make political identity central. The question, then, is whether there is room for another theory of

citizenship that avoids the dangerous elements of nationalism and yet provides a more substantive answer than liberalism and republicanism.

The need for an account of identity has not been lost on liberals. It comes to the fore when we consider that secession is still an issue within liberal democracies. Separatists in Quebec, Catalonia and Scotland, for instance, generally want to separate to form their own liberal democracies, and not to set up illiberal regimes. (Kymlicka, 2007, 94) Highlighting this identity question, Kymlicka criticizes Rawls for believing that shared principles of justice offer a sufficient basis for national unity. As he points out, in the mid-90s, liberalism and nationalism were constantly seen together. (Kymlicka, 2001, 311) These arguments suggest that there is a place for an account of civic identity that goes beyond a simple collection of rights, or an obligation to participate, even if it includes a measure of these as well. This civic identity forms the character that distinguishes one liberal democracy from another, and that provides the commonness that helps keep a disparate people united as a people. To be sure, this identity will not be all-encompassing, or preeminent – it will generally be less important than the identity derived from our cultural community, or than our religious or deepest philosophical views – but it can nevertheless remain an important source of meaning and normativity.

Rather than simply rejecting the liberal, civic republican and nationalist views, I suggest that each of these provides part of the true or best view of citizenship. A citizen, I suggest, has legal status and possesses various rights; participates or has the opportunity to participate in the political decisions that affect individual life and the life of the community; and lastly, identifies with other citizens as members of the same community who share certain values, presuppositions, and customs.

As this thesis continues, my goal will be to illuminate further this identity aspect of citizenship and show how a fuller account of civic identity can help remedy many of the problems facing liberal citizenship. My contention in this chapter is that the liberal inability to deal with culture is partly rooted in the too pale view of citizenship it normally advocates. A conception of citizenship that avoids both liberal neutrality and communitarian parochialism could provide a basis for a national civic (rather than ethnic) identity.²⁸

4.3 Alternative Conceptions of Citizenship

In the quest for an adequate theory of citizenship I will first turn to some current alternatives that are more particular than the broad categories presented above. After critically exploring these, I shall consider a different understanding of the state's approach to the question of culture. That understanding of the relationship between citizenship and culture will help bring to the fore identity issues within my account of citizenship.

4.3.1 Young's 'Differentiated Citizenship'

According to Iris Marion Young, the push for equality and the emancipation of marginalized groups like blacks and women has in fact been driven by a problematic ideal of universal citizenship. According to this ideal, all people have equal moral worth and deserve equal protection under the law. (Young, 1989, 250) The problem Young finds with this ideal is that a universal citizenship can actually provide a rationale for unjust practices since it naturally leads to the belief that all citizens should be the same in specific and biased ways;

Founded by men, the modern state and its public realm of citizenship paraded as universal values and norms which were derived from specifically masculine experience: militarist norms of honor and homoerotic camaraderie; respectful

²⁸ Ronald Beiner advocates for an account along these lines. (Beiner, 2003)

competition and bargaining among independent agents; discourse framed in unemotional tones of dispassionate reason. (Young, 1989, 253)

In the past, sameness was used as a criterion to obtain citizenship – for example, only white landowners qualified in the early American republic. Even now, argues Young, since citizenship is seen as sameness, only the allegedly universal value of dispassionate reason, which she insists is actually a white republican priority, is asserted in the public sphere. (Young, 1989, 255-6) Citizenship, she claims, has presumed that the values of the majority or the powerful are universal. Citizens with different values and viewpoints are thus in some sense excluded.

According to Young, participation in political life should not require conformity to a specific common way of thinking and acting. She believes people can maintain group identities, and be motivated by these identities, while remaining open to and concerned about justice for all. (Young, 1989, 258) It is not because we are all the same, she argues, that we can care for each other and be motivated by justice rather than egoism.

The universality of rights and law presents a similar problem. Young criticizes the understanding of liberalism that would have the state and even some private institutions be blind to race, gender and other differences (e.g., in hiring practices). Laws, rights and public practices, she argues, have been formulated with the dominant group in mind, unconsciously taken to represent universal man, thus perpetuating rather than remedying inequalities. For example, maternity leaves from work are categorized along with other “disabilities”. (Young, 1989, 269) Similar problems arise for the elderly who at some arbitrary point are deemed too old to work, *tout court*, or non-Christians who are expected to observe the Sabbath and holidays of the dominant group. Young sees this universal standard as oppressive – disabled persons or elderly workers are told they cannot perform up to the

standard of the able-bodied white male, and onerous ‘exceptions’ need to be made for the non-Christian.

Young’s solution to these problems is a ‘differentiated citizenship’ based on group representation, and on special rights as opposed to universal ones. According to differentiated citizenship, marginalized groups need to be empowered by, for example, mechanisms that allow them to organize and advocate for their views, or veto rights to block policies that bear on them in a particular way. (Young, 1989, 263)

Special rights are the means to remedy the inequality perpetuated by the universal application of rules. For example, although white men have no legally allowed advantages in job competitions over women and people of colour, they may have *de facto* advantages due to a socialization that promotes articulateness, competitiveness and other values that are appreciated by employers and others. Affirmative action policies, then, are for Young justifiable in part because they compensate for the cultural biases of employers, school admissions teams and so on. (Young, 1989, 271)

4.3.2 Differentiated Citizenship Reconsidered

Young claims that because there is no general perspective – no “view from nowhere,” or no impartial vantage point – we are left with the need to represent all groups in the public sphere. (Young, 1989, 257) But this claim rests on the erroneous move from a supposed inability to be impartial to the view that all views deserve equal representation.²⁹ Similarly, if no substantial, non-group-specific positions can be sustained, then there is little basis for the primacy of respect required to permit the expression of other views. We might attempt to

²⁹ Brian Barry levels the same critique – if value is, by nature, incommensurate, then we have no basis for claiming that all cultures are equal. (Barry, 2002, 265)

ground this respect in the need for political peace, but peace could at times be better served by a strong and oppressive majority.

Young in fact argues that her stance does not induce the expression of narrow self-interest since groups are still required to make appeals to justice. (Young, 1989, 263) But the concept ‘justice’ merely exemplifies her quandary— is it the justice of the inviolate individual, supposedly distinctive of the West, or the heightened preference for the family, group and hierarchy common in other societies? In the end, even defenders of group differences, like Young, need to stand by certain controversial virtues such as universal respect, or an openness to others. Young thus presupposes an ordering of values while shirking responsibility for articulating one. (On this see Macedo, 2000, 25-26)

Indeed, Young often speaks as if social and cultural groups are radically incommensurable such that one group could never hope to understand the motives, grievances and so on of another. As Beiner points out, this position ensures that there will always be “something phony about the very notion of a citizen identity as such.” (Beiner, 2006, 27) How can a nation-state have an identity, and how can we promote inclusion, if ‘citizens’ are incapable of knowing each other in any deep way, let alone capable of forming a common political culture? The postmodern rejection of universals underlying this view would undercut not only citizenship, but equality and justice as well. (Beiner, 2006, 32)

Young’s arguments suggest that if we deny that there is a “view from nowhere,” we are left only with radical relativism. But radical relativism is vitiated by the undeniability of certain goods: It is better to be alive than dead, free than a slave, healthy than sick, nourished than malnourished and so on. (Barry, 2002, 285) Besides, have not men been helped to see the injustice of sexism, whites the injustice of racism, Europeans the problems of

eurocentrism and colonialism? If learning of this sort is possible, and indeed desirable, the incommensurability thesis in Young's account is problematic.

A further issue with the promotion of difference as a preeminent value is that we lose the ability to criticize practices and traditions that we believe are wrong: "...the suspicion of universals takes its revenge. Despite a rhetoric of subversion, it leads intellectuals down the path of acquiescence." (Jacoby, 2000. Originally read in Beiner, 2006, 34.) Certain groups are characterized by paternalism, authoritarianism, sectarianism and so on. So, far from being willing to devote the resources of the state to enhance the voice of such groups (Young, 1989, 261-2), often times we want them marginalized because their values run contrary to what we think is right: "There are groups that thrive on ignorance and the demonization of outsiders. Surely, a world in which such groups are marginalized is exactly what we want." (Macedo, 2000, 26) And this marginalization already occurs in some ways – enforcing public education, or ensuring equality of the sexes in public hiring practices, for example. Indeed, Young herself implicitly admits that we cannot accept all groups wholesale since her proposal would have groups meet together in democratic forums. (Young, 1989, 266) Many groups would find such forums an affront to their group character. This result represents either a failure on Young's part to appreciate the nature of different groups, or, what is more likely, to an acceptance of the universal value of self-determination.

At the heart of Young's critique is the fear of the unjust imposition of the dominant view upon the minority. Universal citizenship, however, does not require a thoroughgoing sameness, which is what Young supposes. It does require the agreement on *some* values, but Young's view requires this as well, and indeed, she surely must endorse values such as democracy and (some) individual rights. Furthermore, the preference for some values does

not imply that differently situated peoples are all treated the same. Indeed, some values like solidarity and compassion might of themselves imply differential treatment. This is in fact standard liberal fare when it comes to unequal distribution of wealth and opportunities, such as tax breaks for the poor, or extra funding for the education of disabled children. It is commonplace that the law now seeks to be sensitive to the different situations of citizens.

Young's position also faces a host of practical problems which I will only highlight by means of a series of questions: Will the politics of difference not encourage disunity, an upsurge of enclaves and the proliferation of grievances (since these are wont to benefit those suffering under the majority)? Will a politics of pervasive veto power on any issue central to a group's identity not enfeeble, or more likely, paralyze politics? All of this is further exacerbated by the fact that, if we follow Young's guidelines, we need to deem as much as 90% of the (U.S.) population as oppressed.³⁰

Young's 'differentiated citizenship' is hardly a citizenship at all since it removes from the agenda any sense of a nation's common vision. It is surely preferable, then, if we can attend to her concerns in some other fashion.

4.3.3 Carens' Minimalist View

Joseph Carens believes the core of liberal democracy is a deep commitment to the fair and equal treatment of all people under the authority of the state. And this commitment to equality implies that differential treatment requires justification. (Carens, 2005, 32-3) As he sees it, the only viable basis for the privileges of citizenship is the strength of one's social

³⁰ See Barry, 2002, 306. Young herself says: "In the United States today at least the following groups are oppressed in one or more of these ways: women, blacks, Native Americans, Chicanos, Puerto Ricans and other Spanish-speaking Americans, Asian Americans, gay men, lesbians, working class people, poor people, old people, and mentally and physically disabled people." (Young, 1989, 261)

ties to a community. Children of citizens, for example, are automatically citizens because of the existing and foreseeable social ties between them and their society. (Carens, 2005, 36)

Bearing this principle in mind, the only requirement that should be asked of new immigrants is that they live in a society on an ongoing basis, the time required to build significant ties. This minimalist requirement is supported by two arguments: first, the longer someone lives in a place, the greater their interest in living there, and after some threshold this interest is strong enough to justify a demand for citizenship; and second, it is the essence of democracy that competent adults should be able to participate in their community's self-determination. (Carens, 2005, 39) After a reasonable amount of time has passed, then, Carens thinks immigrants should be recognized as full members of a society with all the rights of citizenship.

Carens' view entails the abandonment of the usual requirements attendant on naturalized citizenship – language proficiency, education or economic stability, knowledge of history and so on. The ability to exclude people from citizenship on the basis of what they ought to know, or how they should live, he argues, is contrary to the very idea of democracy as an inclusive form of political participation. “Everyone recognizes this with regard to the children of citizens and they have begun to see it with regard to the descendants of immigrants, but it also applies to the immigrants themselves.” (Carens, 2005, 39)

As Carens sees it, taking the non-immigrant population as the standard of normalcy is potentially a form of assimilation, and is therefore (we are to presume) oppressive.

4.3.4 Citizenship as Passport

Carens' minimalist view of citizenship is problematic on several accounts. First, we should point out that his argument that long-established residency be the sole requirement for attaining citizenship is problematic. Let's first reproduce the argument here:

I offer two arguments in support of the view that a long-established residency should be a sufficient basis for the acquisition of citizenship, one from the interests of the individual and the other from the nature of democracy. First, the longer one lives in a society, the stronger one's interest in living there, and, at some point, a threshold is passed that should entitle a person to the full protections of citizenship itself. Second, sane, competent adult members of a democratic community should be able to participate in the community's process of self-determination, and the fact that one lives on an ongoing basis within the boundaries of the community should be sufficient to establish that one is a member of the community. (Carens, 2005, 39)

The argument from interest is clearly insufficient to establish citizenship on its own. There is no necessary correlation between interest and rights (of citizenship). Residents of third world countries could have a strong interest in living in North America or Western Europe, but this surely doesn't amount to a valid claim to citizenship. Similarly, given the current global nature of the world economy, I have a vested interest in political decisions taken in Berlin, Tokyo, Beijing and Tehran, but to say these support a claim to citizenship would be absurd.³¹

Carens' second argument, from democracy, is clearly a case of *petitio principii*. He attempts to establish a basis for citizenship based on length of residency and then claims that "sane, competent adults of a democratic community should be able to participate in the community's process of self-determination." This second clause is clearly true in some circumstances, and it is these circumstances we are trying to establish. The second clause, then, is no help since it merely affirms what he is trying to prove, viz. that length of

³¹ The opposite also seems true, namely that there seem to be cases where there are rights without, or antecedent to, interests. I have the right, for example, to associate with any number of different groups, even when associating with some of these is contrary to my interests.

residency establishes citizenship rights. What is left, then, is the not unreasonable presumption that long-standing residence speaks in favour of citizenship. But it is far from established that this should be the only requirement for citizenship.

What is most problematic with Carens' view, however, is its denial of the worth of something I have been presuming throughout, namely the need for a common, national identity. His view of the liberal state is that it allows people to peacefully mind their own business. For now I will merely turn the arguments of fellow liberals against Carens. Brian Barry, for one, argues for the need for a civic nationality that goes beyond the formal one embodied in the possession of a passport. The core of national identity, he claims, is a commitment to the welfare of the larger society – the majority and minorities – and mutual trust to abide by and even sacrifice for this commitment. It requires that citizens be willing to make sacrifices for one another, that they have firm expectations of one another and are even prepared to give up money, leisure and perhaps life if the occasion arises. (Barry, 2002, 80-88) Carens' position does not tend towards fostering this common commitment and therefore places the state at risk. The failure of post-colonial states, many of which possessed impeccable liberal-democratic constitutions, is evidence of the stringent conditions required for maintaining a liberal democracy. It cannot take root anywhere, but requires a certain sort of citizenry. (Barry, 2002, 79; Kymlicka, 2001, 311) For liberals, this common civic identity serves an instrumental purpose: it helps ensure the proper functioning of democratic institutions, and helps protect the state from external aggression by ensuring that citizens see their own good tied up with the good of the state. But if there is no *common* public culture, citizens will lack the motivation to be willing to sacrifice for others when circumstances

demand it. This suggests that citizenship involves taking on an identity, even if this does not require abandoning other, perhaps more central identities.

This suggests the need to recapture some of what was lost when we cast off the excesses of nationalism. That creed generally entailed a loyalty based on the unthinking category of ethnicity. But a civic nationalism, based on the shared ideals of a people in a region with a common history, could provide for this identity in a more rational and less dangerous way. Carens' view does not account for this. It cannot answer to our enduring desire for a national identity, an identity which also sustains our political order and helps provide the conditions for liberal democracy.

Carens' view represents one pole in the citizenship debate, the view of 'citizenship as passport' as Brian Barry puts it. In the last chapter we canvassed views that tried to recapture a sense of identity and commitment from liberalism's critics. But Carens presents an important challenge to liberals. We have seen that a common citizenship is important to liberals, but we should also ask by what liberal argument we demand a normative citizenship identity. We will return to this question in Chapter Five.

4.3.5 Pettit's Republican Citizenship

Isaiah Berlin describes the negative concept of liberty as the absence of obstacles or constraints, understood simply as freedom from interference. One is thus coerced or oppressed if restricted within an area in which one could normally act. He criticizes the rival positive concept of liberty, described as the ability to rule one's life as one sees fit. This goes beyond the mere absence of external coercion. It derives, says Berlin, from the wish of an individual to be one's own master, to have one's decisions depend on oneself, independent

of external forces. (Pettit, 1998, 131) Berlin is wary of the excesses of those who espouse an ideal of positive freedom, because their zeal often leads them to trample on the negative liberty of others. He believes some realm of freedom must remain sacred beyond the reach of political coercion if we are to not 'degrade or deny our nature' as free individuals. This leads him to a political philosophy that gives pride of place to the protection of negative liberty, though this important value must be still be weighed against others like peace and security.

According to Phillip Pettit, republicanism rests on a particular understanding of freedom different from both of the conceptions of liberty famously expounded by Berlin.³² This republican conception sees freedom as 'non-domination' – not merely the absence of interference, as liberals have typically assumed, but the absence of even the possibility of arbitrary control by others. Being still a 'freedom from', freedom as non-domination is a form of negative liberty in Berlin's sense. Pettit's republican freedom is best understood as being in opposition to the master-slave relationship. A benevolent master might never interfere in the life of her slave, but the fact that she has the arbitrary ability to do so, he claims, is enough to constitute an affront to liberty; "exposure to the arbitrary will of another, or living at the mercy of another, [is] the great evil." (Pettit, 1997, 32)

Pettit believes republicanism further distinguishes itself by its understanding of law. On the standard liberal view, law is at best a necessary evil, accepted because it can serve to bring about greater liberty; "Liberty can only be restricted for the sake of liberty itself." (Rawls, 1999, 214) On the republican view, on the other hand, non-arbitrary law constitutes interference without domination, and so is acceptable in a non-begrudging way; "To the

³² Gerald MacCallum charged that Berlin set up an artificial distinction between the two conceptions of liberty. (MacCallum, 1967) MacCallum argued that freedom is a triadic relation between an agent, certain preventing conditions, and certain doings or becomings of the agent. On this analysis, there is no simple dichotomy between positive and negative liberty, but rather a whole range of possible interpretations of liberty.

extent that just laws rescue us from the relations of domination in which the natural course of things would otherwise place us, they constitute freedom's condition of possibility, not its antithesis." (Pettit, 1997, 35) Freedom, on this view, can only exist under a suitable legal regime.

Laws meet the criterion of non-arbitrariness provided they are exercised for the welfare of and by the worldview of the public. In other words, if our lives are to be interfered with, we must in some way be the authors and beneficiaries of this interference. (Pettit, 1997, 56) This brings us to the republican emphasis on democracy. Universal suffrage and citizen participation ensure that laws represent the political will of those affected. Democratic self-control, argues Pettit, is not the end of republicanism, but the principal means of safeguarding freedom. (Pettit, 1997, 30)

Contemporary political philosophers tend to see republicanism as a theory of positive liberty. Pettit sees this as a conflation resulting from a misunderstanding of the justification for republicanism's emphasis on democracy. He criticizes fellow republicans like Michael Sandel for opting for a strong version of republicanism wherein freedom is intrinsically related to democratic self-government. (Sandel, 1996, 9) Pettit argues that from the historical perspective, the principal concern of republicans has always been a negative sense of freedom – the desire was to be *free from* rule rather than a desire *to* rule. (Pettit, 1997, 27) Furthermore, he claims it is this understanding of republicanism which adheres best to the goal of enhancing freedom. Seeing democracy as an end in itself, he argues, rather than as a means to ensuring freedom, leads to a state controlled by popular opinion which will in time tread upon the rights of individuals and members of minorities in particular. (Pettit, 1998, 83)

Pettit argues that the relationship between freedom and the institutions that support freedom is best described as *constitutive*. It is not *definitional*, he says, because freedom as non-domination can be understood apart from the institutions which help realize it. And neither is it *causal*, for this would suggest that the conditions for the freedom (self-government) are one thing, and the freedom another. It is better, he says, to see the institutions of democratic government as the realization of republican freedom; “freedom just is the protected and empowered status – the invulnerability or nondomination – enjoyed in the presence of the institutions...” (Pettit, 1998, 87) This relationship leads republicans to equate freedom and citizenship, for it is only the citizen under laws which enable freedom, authored in part by herself, who is free. (Pettit, 1998, 36)

As we have seen, laws are necessary conditions for republican freedom, as is democratic, civic participation. There is thus a place for civic virtue on Pettit’s scheme. Nevertheless, public life is not meant to become the central locus of moral living. Walzer describes the republican view as holding that “the preferred setting for the good life is the political community.” (Walzer, 1995, 155) On Pettit’s view, democratic participation is the principal *means* for ensuring conditions of non-domination, and for being able to live the life that we see fit.

Pettit believes that republican freedom is well-suited to cater to the claims of minority cultures and can thus support a form of multiculturalism. Freedom as non-domination, he argues, is a communitarian ideal – arbitrary interference is always justified by the fact that it is applied to persons of a certain “inferior” kind or class: black, female, poor and so on. And so, to advance freedom on this view is to help remove the vulnerability that allows domination to occur. Those who wish to secure their freedom need to take up

their cause with others who are similarly vulnerable. Because membership in a minority culture is likely to be “a badge of vulnerability to domination,” it is fitting that the state redress concerns for domination at the cultural, rather than solely the individual, level. (Pettit, 1997, 145)

4.3.6 Assessing the Republican Schema

Charles Larmore praises Pettit for clarifying the concept ‘freedom as nondomination’ as distinct from the two senses famously discussed by Berlin, yet he takes him to task for being too quick to oppose liberalism and republicanism. As Larmore points out, there are republican themes evident in the writings of leading liberals, including Rawls. It is because Pettit’s distinction was not so clear in the past that one can find both freedom as non-interference and freedom as nondomination figuring highly in the accounts of prominent liberals. (Larmore, 2001)

Pettit sees republican freedom as the supreme public value to which institutions and civic values are mere means. In this vein, he promotes a ‘shared-value neutralism’, as opposed to liberal neutrality, which espouses only freedom as nondomination. But this account seems wrong in two important ways. First, while Pettit’s account rehabilitates the law by making it an instrument of freedom, there is surely something compelling about the liberal account which sees the contraction of ‘freedom as noninterference’ as a sort of loss. For example, privacy laws are in theory aimed at protecting individuals, and the relevant question when debating these seems to be ‘how much liberty should we fork over to secure the good of protection?’ Pettit’s account suggests that since laws are constitutive of freedom as nondomination, there is no sense of loss involved. But this misses something that the

liberal picture rightly captured.³³ If I am right, treating republican freedom as our one value is therefore problematic.

There is a related problem which concerns whether Pettit's neutralism is in better shape than the liberal neutrality it hopes to best. To answer the central political concern of republicans we need to know where domination exists in our society. But to answer what counts as domination we will need to determine which sorts of lifestyles are worth protecting. Now it may seem that, being a theory of negative freedom, Pettit's republicanism is off the hook here, for the concern is with a protected space of free (non-dominated) action, not with what is done with that freedom. And so any form of domination is to be overcome. But this doesn't seem right. The problem comes to the fore when Pettit discusses abortion. Disallowing the practice would count as domination of women. But what of the fetus? To this question, Pettit replies: "I simply record that the most compelling view, as I see things, is that until the fetus is viable, it cannot assume the place of a citizen and cannot make a claim on the protection and empowerment that the republican state would offer to its citizens." (Pettit, 1998, 93) So in addition to republican freedom we also require an account of which domination is worth resisting. This isn't just a problem concerned with drawing the line between citizens and noncitizens, or persons and nonpersons (for even political liberalism depends on theoretical positions at this level). Consider instead an odious but oppressed group, like white supremacists. While it may be true that if these supremacists controlled the levers of power they would unleash a whole lot of domination³⁴, it remains the case that, absent this power, they themselves are dominated. They cannot, for instance, discriminate in hiring on the basis of race and will thus experience state antidiscrimination

³³ My cues are primarily from Larmore, 2001.

³⁴ Though it might be logically possible to be a political libertarian, political liberal or political republican, and a white supremacist in private.

laws as a dominating force. Pettit's own discussion here should have tipped him to the inadequacy of freedom as the solitary political value. When it comes to battling domination, moral judgments are needed to discern our targets.

Now the republican might argue that restrictions we do accept, such as restrictions on supremacists, are nonarbitrary since they follow from our democratic institutions which represent our collective will. But this merely points up the known problem that there is no necessary connection between democratic government and moral laws: bad laws (racist, sexist etc.) can be nonarbitrary. The republican reliance on democracy seems more prone to the problems of majoritarianism than liberal theories.

Pettit's neutrality also leads him to a civic account of virtue akin to what Galston has put forward. But as we said there, the issue is not so simple, for even if we are willing to promote certain dispositions, in this case to instrumentally serve freedom as nondomination, we still need to contend with the effects of said virtues. They will teach people what to see as good and bad, and lead them to live a certain way. The stated republican goal is to keep a realm of self-determination free from potential dominators, but this self-determination itself is challenged by formative civic virtues. These, too, are seemingly a form of domination since the power of the state is placed behind a certain way of living.

Pettit's attempt to accommodate multiculturalism is also problematic. Empowering cultures could very well promote domination in as much as paternalism and hierarchicalism are central to many cultures. Consider the Amish in the United States. A believing member of this community may experience mainstream American culture as a dominating force. Enforced public schooling until adulthood (at least prior to *Yoder*), for example, is an affront to the Amish belief in the value of community and manual labour. But what of the individual

members of this community? They may experience community leaders, or even the ideal of the Amish way of life, as a source of domination that has the ability to control how they live their life. They may be psychologically incapable of making a break with this way of life. And so what unites them, what gives them reason to fight for rights and recognition as a group according to Pettit, can also be a source of domination.

The typical tack for those concerned with the fate of groups and cultures, as we saw with Young, and as we will see further with Kymlicka, is to empower them.

Multiculturalism, in other words, is wedded to a belief in positive rights and liberties: state recognition of same-sex unions or marriages, affirmative action policies, the enforcement of French language in Quebec, public funding for cultural events that affirm the value of a certain tradition and so on. These policies are meant to empower minority group members and allow them to better live the lives they desire. All of these policies would be problematic for Pettit in as much as republicanism avows a theory of negative freedom. Liberals like Kymlicka can justify these policies in virtue of the liberal commitment to equality. But if liberty is our one recourse, and only liberty in a negative sense, we are left bereft of the justification for multicultural practices.

The republican ideal of citizenship is thus problematic. Its shared-value neutrality, which recognizes only republican freedom, renders it inadequate and it does not appear capable of providing a source of common identity necessary for uniting disparate peoples.

4.4 Liberal Multiculturalism

4.4.1 Kymlicka's Multicultural Citizenship

Will Kymlicka offers an account of citizenship that seeks to attend to difference while avoiding the excesses of Young's postmodern proposal. According to Kymlicka, multicultural policies represent the next step in the logic of the rights revolution. This revolution discredited successively racial hierarchy and segregation, and led to the general acceptance of universal human rights, as embodied in the United Nation's 1948 declaration. More recently we have witnessed the growing assertiveness of groups who claim to suffer oppression (broadly construed) that is not remedied by the application of 'undifferentiated citizenship'. (Kymlicka, 2007, 91) For example, French-Canadians in Quebec have garnered special legal protections for the French language within their province, and orthodox Muslims and Jews in the UK are permitted to practice traditional (and otherwise prohibited) animal slaughter rituals. These developments have taken place under the guise of equality, a notion that has expanded beyond the original sense of sameness of treatment. The idea, though carried to less radical conclusions, is essentially the complaint expressed above by Young – a universal account of citizenship and uniform application of laws and norms can in fact mask discrimination and oppression. Quebec's recent commission on reasonable accommodations explicitly takes up this position: "The traditional conception of equality, based on the principal of uniform treatment, has given way to another conception that pays closer attention to differences. Little by little, the law has come to recognize that *the rule of equality sometimes demands differential treatment.*" (Bouchard & Taylor, 2008, 23)

For Kymlicka, the genesis of multicultural policies testifies to their kinship with equality and liberal rights. Canada's *Multiculturalism Act* of 1988, for example, explicitly justifies the adoption of a policy of multiculturalism *in virtue* of its commitment to civil liberties, particularly the commitment to individual liberty, non-discrimination, equality and

human rights. (Kymlicka, 2007, 106) This link between human rights and minority rights is also present in the UN's 1992 Declaration on the Rights of Minorities, and in official descriptions of multiculturalism in Australia.

Kymlicka believes the liberal multicultural state rests on three principles: first, it repudiates the vision of the state as the possession of a single national group and holds that the state belongs equally to all citizens; second, it repudiates nation-building policies that assimilate or exclude members of minority or non-dominant groups – citizenship does not entail downplaying ethnocultural identities; and third, it acknowledges historic injustices against non-dominant groups and manifests a willingness to attempt to rectify these. (Kymlicka, 2003, 150)

Importantly, Kymlicka argues, the need for differential treatment does not signal open season to dismantle liberalism from the bottom up. Though multicultural policies are seen as an extension of the logic of human rights, these same rights also serve as constraints on policy, keeping overly ambitious cultural minorities in check. (Kymlicka, 2007, 92-3) As he sees it, the track record of multicultural western democracies testifies against critics who claim that empowering cultures will lead to the deterioration of rights. Accommodations, he maintains, have not given way to illiberal practices like honour-killings. (Kymlicka, 2007, 161-3)

Kymlicka clarifies his position by distinguishing between internal restrictions and external protections. Internal restrictions involve limiting the rights of individuals in the name of group policies or ideals, and so these are prohibited on traditional liberal grounds. External protections, on the other hand, involve protecting cultures from the potentially harmful impact of policies, tendencies and the ways of living of the larger community. Such

protections are designed to allow people to live according to their culture and so are permissible. (Kymlicka Will, 1995, 35)

Kymlicka's liberal multiculturalism does not leave groups and cultures untouched. There remains what he calls the 'liberal expectancy', the colonizing influence of liberal institutions on illiberal ways of life. This is borne out by research showing that long-standing immigrants of European and non-European descent have no statistically significant differences in political views, and furthermore, that a consensus on human rights and liberal-democratic values cuts across racial lines (Kymlicka, 2007, 160, referencing Soroka, 2007; Frideres, 1997; Howard-Hassmann, 2003;) Kymlicka is critical of approaches to multiculturalism that shield practices from critique by linking them with a group's identity. Liberal multiculturalism, he claims, is transformative: "It demands both dominant and historically subordinated groups to engage in new practices, to enter new relationships, and to embrace new concepts and discourses, all of which profoundly transform people's identities and practices." (Kymlicka, 2007, 99)

The extensive turn towards accommodation and the rejection of assimilationist policies does not, on Kymlicka's view, entail the end of all nation-building. Multicultural countries like Canada have continued to enact nation-building policies that inculcate a national identity – mandatory teaching of the nation's language(s), history and so on. Kymlicka sees liberal multiculturalism as a form of nation-building since it leads people to see the state as a guarantor of their identity, and so leads them to an increased interest in the welfare of the state. (Kymlicka, 2007, 84) In the past, nation-building involved focusing on a majority identity and tying the interests and opportunities of the people to this identity.

Multiculturalism, he argues, changes rather than repudiates these policies by ensuring that they do not marginalize minority cultures or tend towards undesired assimilation.

4.4.2 Evaluating Multicultural Citizenship

We can usefully distinguish Kymlicka's position from both Young's and Carens'. Carens would remove every vestige of assimilation; Young would go further and protect and empower different groups, effectively arming them against assimilation. Kymlicka wants to recognize and be sensitive to difference without removing it from critique, and without removing the need for a national identity. Kymlicka sees his multiculturalism as part of, and not in opposition to, the liberal rights tradition. He thus insists that liberal multiculturalism has not severed its ability to criticize cultural practices that transgress rights, nor its ability to promote the overriding value of justice. And unlike both Carens and Young, he maintains the value of national citizenship as a unifying and normative standard. (Kymlicka, 2001, 311)

Nevertheless, Kymlicka's theory remains problematic. He argues that what matters is the recognition *that* people have other beliefs, and not *what* those beliefs are.³⁵ Kymlicka has been dealing with the interface of liberalism and culture for a long time. (See for example Kymlicka, 1988; Kymlicka, 2001; Kymlicka, 2007) In all of his works he attempts to recognize the value of culture in general without judging particular cultures, except where these run up against liberal rights. This is equivalent to the state saying: 'Beyond the minimum, I don't care what your values are, but I'll help you protect them.' And the cultural proponents' public argument for her values is reduced to: 'because they are ours'. To be

³⁵ Kymlicka, 2003, 163-4. Kymlicka offered a similar position in "Liberalism and Communitarianism," which I discussed in chapter two.

sure, this argument *is* often found in defence of cultural practices, and further, some people *do* simply want the freedom to live out their own values, but many others argue that the things they value are *true* values, and they want to be able to argue for this truth before others in the political sphere. Kymlicka's state neutrality effectively shuts out this option. Arguments concerning the good, with roots in particular cultures, are still cordoned off from the public sphere, and so on the political plane we are still not taken as persons in the full sense. In this important sense, multicultural citizenship leaves the communitarian critique unanswered.

Kymlicka and others are perhaps willing to accept the above complaint, a necessary outcome given the fact of reasonable pluralism. But other problems ensue. If culture is an excuse or reason *simpliciter*, we may be prone to allow a lot of unsavoury things. Kymlicka suggests that liberal rights remain as the sole check on cultural practices, but this is an impoverished vocabulary. Some cultures, for example, could be utterly unsupportive of liberal rights and institutions – encouraging drug use, discouraging education and so on – even if they never contravene them. Furthermore, for those cultures that promote honour killings or female gender mutilation and the like, is the appropriate response to passively wait by until rights are infringed? Our public values would be better served if we possessed the conceptual resources to judge cultural practices and know which of these we need to be wary of. Kymlicka is wary of 'conservative multiculturalism' which he criticizes for being uncritical of cultural practices, and yet his adherence to liberal neutrality limits his own ability to be critical and proactive.

We might be tempted to think that Kymlicka *can* take a proactive stance with respect to troublesome cultural practices by appealing to the civic good of the persistence of the

liberal regime. But Kymlicka's political philosophy precludes him from such a move. He remains committed to liberal neutrality of aim which means that policies cannot purposely seek to reform people.³⁶ What is more, if Kymlicka were to allow interventions on this basis, he would have to allow a very wide berth for interventions, given that very many cultural practices are not fully supportive of the aims of the liberal state.

Kymlicka heralds liberal multiculturalism as an unqualified success when implemented in western democracies. But we have reason to be concerned that its logic conduces to turning a blind eye to illiberal practices. It is often easier, or politically expedient, to make exceptions for cultural groups rather than stick by common standards. Barry offers as an example the exception (which he opposes) to humane slaughter rules made for orthodox Jews and Muslims who, as per religious ritual, do not stun animals prior to slaughter. If we believe that the undue suffering of animals is wrong, why do religious requirements override this concern?

Importantly, there is a conceptual tension at the heart of Kymlicka's multiculturalism that threatens to vitiate the entire project. He is thoroughly committed to maintaining liberal neutrality, holding that the state should remain neutral with respect to different conceptions of the good, "...in the sense that they are not evaluated at all from a social standpoint."³⁷ And yet liberal multiculturalism strikes in the opposite direction. It is motivated by the fact that western liberal democracies are not equally conducive to the flourishing of all reasonable views, and so it tries to counter this by protecting cultural minorities. This makes for odd political philosophy. Kymlicka seeks recourse to a neutral state, with neutrally guided policies, in order to help equalize outcomes. Kymlicka criticizes Sandel for failing to

³⁶ Though he tips his hand by extolling liberalism's ability to quietly liberalize the populace.

³⁷ Kymlicka, 2001, 330. Kymlicka is explicitly endorsing Rawls. (Rawls, 1982, 182) See also Berkowitz, 1999; Galston, 1980; Macedo, 2000; Rawls, 1993; Tomasi, 2001.

recognize that liberalism can make use of categories like virtue and community in as much as these are instrumental to liberal justice. But even with these categories, Kymlicka still lacks the conceptual resources to recognize the needs of citizens who are in an unequal position with respect to the state due to their culture. For to know if people are getting along well, we need to be able to judge by means of the categories of the good which they employ. Kymlicka's liberal multiculturalism, on the other hand, "[does not say] anything about what ends in life are rewarding or fulfilling." (Kymlicka, 2001, 333) Will special language rights help Quebecers succeed, for example, given the culture they possess? We cannot answer this from a neutral standpoint, but only from a standpoint that knows which categories count as success and which as failure. Equalizing outcomes, in other words, rests on an ability to judge outcomes, and this is clearly an affront to liberal neutrality. In earlier writings, Kymlicka praised liberal neutrality for allowing competing conceptions of the good to duke it out in the 'cultural marketplace' which would, we were to suppose, allow good ideas to supplant bad ones. (Kymlicka, 1989, 895) But now, instead, we must be concerned with the 'losers' in the cultural marketplace, and make amends for their shortcomings.

A related concern with Kymlicka's account is what the content of our shared national citizenship is supposed to be. As we have seen, he thinks Rawls' principles of justice are an insufficient unifying force, but it is hard to see how the politics of multiculturalism will help. A case can be made that Quebec's *Bill 101*, which forces children of non-Anglophone immigrant parents to attend public school in French, serves to alienate the province's English-speaking minority. English culture is being kept in check while Quebec's French culture is being promoted. And on the other side, granting immigrant minorities education rights in their native tongue, as some have proposed, is likely to inhibit mutual dialogue and

understanding. As Barry puts it, it seems a minimal goal of citizenship that citizens should come to see themselves as contributing to a common discourse about shared institutions. (Barry, 2002, 301) Liberal multiculturalism, at least on Kymlicka's terms, does not clearly support such a discourse. What is needed, or so I will argue, is an account that doesn't respect merely the existence of beliefs, but that looks to the content of beliefs and practices, supporting those that are good, limiting those that are bad and remaining silent on those which we need not or cannot speak.

Kymlicka does support the promotion of a 'thin' national identity which is instrumentally valuable in that it increases the likelihood that citizens will fulfill their obligations of justice. But, true to liberal neutrality and the spirit of Rawls' political liberalism, he assures us, "it is not saying that a life with this particular identity is more rewarding than a life with some other identity." (Kymlicka, 2001, 334) This sort of account of citizenship should give us cause to question – if liberals do not even claim that the life they promote is a valuable one in itself, or more valuable than the worldviews it is replacing, then how do they dare confidently promote it? 'Because it serves justice' Kymlicka may retort. But this conception of justice is a *political* one, meaning that it sets aside all ambitions to truth. (Rawls, 1993b, 129) And so if we ask whether the life of liberal justice is better than the life I had planned for myself, the liberal neutrality theorist must remain silent.

4.4.3 Brian Barry on Multiculturalism

In *Culture and Equality*, Barry fiercely disavows the marriage between liberalism and multiculturalism that has enticed fellow liberals. Multicultural theorists typically present their policies as the response to the 'oppressive' hegemony of universal citizenship. Barry,

however, defends that very universal citizenship long championed by liberalism. As he sees it, the core idea of left liberalism has always been a *common* emancipatory project. (Barry, 2002, 26)

Barry argues that the central assumption of multiculturalism - that identical treatment should be contrasted with equitable treatment - is false. (Barry, 2002, 11, 34) Because people are different, laws will always burden some more than others, and so the multiculturalist's desire for equity is impracticable. A prohibition on hand guns, for example, will clearly tax street thugs and gun enthusiasts more than typical suburbanites. He traces the multiculturalist error to a misunderstanding of fairness, a concept that concerns rights, resources and opportunity, but *not* what is done with these. (Barry, 2002, 35) On Barry's view, the universal application of helmet laws does not discriminate against Sikhs, because these laws present all people with the same, equal set of opportunities (or limits on these). Sikhs and non-Sikhs alike are prohibited from riding without helmets. This is importantly distinguished from laws that explicitly, or by design, limit certain groups. There is a difference, claims Barry, between a denial of equal opportunity ('no Sikh may...') and a choice people make from a set of equal opportunities. (Barry, 2002, 45)

Ascribing rights to cultures, claims Barry, generally comes at the expense of individuals, and so it is foolish to claim that respect for individuals *entails* respect for cultures. (Barry, 2002, 300) Barry believes we can speak of a community possessing rights if these are based on the rights of its members, but cultures are not essentially tied to individuals (indeed, cultures from days gone by may have no remaining members). (Barry, 2002, 67) When we do ascribe rights to cultures, Barry claims that these will invariably run roughshod over individuals. Language laws in Quebec are one example. In a bid to protect

French Canadian culture, non-anglophone immigrant parents are forced to send their children to French schools, despite any preference for, and the ready availability of, English language schools. Such efforts at cultural protection, claims Barry, take us afield of liberalism wherein the ideal extent of diversity is whatever arises from the free choices of individuals. (Barry, 2002, 71)

Multiculturalists and some feminists promote policies that seek a desired pattern – more francophones in Quebec, more female CEOs in Fortune 500 companies, or more ‘colour’ in the government.³⁸ A lack of diversity in different sectors could be *evidence* of discrimination, but this is something quite different from *constituting* discrimination. Barry believes that Iris Young is particularly beholden to this conflation: “The driving force behind Young’s advocacy of group proportionality is the idea that different ways of life pursued by different groups should have no effect on their collective success...” (Barry, 2002, 95) But, claims Barry, equality of opportunity coupled with cultural diversity is almost certain to result in different distributions of outcomes in different groups. People with different values and concerns will make different choices.

Barry maintains that rejecting multiculturalism requires coming to accept what he calls liberal universalism. This is merely the claim that some things just are better than others – life, health, freedom, for example, almost invariably trump their opposites. (Barry, 2002, 285) Admitting this, he explains, is perfectly consistent with the familiar liberal reticence to have the state take a position on certain questions. For example, an inability to decide for or against God, or for one God over against another, does not impugn the value of liberty. And further, we can admit some universal goods without claiming they are

³⁸ One of President Clinton’s campaign promises was a cabinet that ‘looked like America’, meaning one that reflected the diversity of the nation.

unconditionally good. Freedom of association may be of little value and concern for the starving man, but it is still a good for those who have their more fundamental needs met. (Barry, 2002, 286) Further, Barry argues, when duly limited by the harm principle, liberalism can even countenance the legal enforcement of conventional norms where these create a public good that benefits most of the population. Garbage collection is one example: “Nobody (aside from the libertarian lunatic fringe) doubts that the public good of clean streets is sufficiently valuable to underwrite compulsory contributions to the cost of collecting household refuse.” (Barry, 2002, 287)

Contrary to the claims of Kymlicka and others, Barry argues that the politics of multiculturalism is decidedly illiberal. For one, it entails protecting cultures that are often paternalistic and abusive, whereas liberalism is defined by equal freedom which underwrites basic liberal institutions, and this includes the freedom to leave a culture. (Barry, 2002, 117, 122, 149) Indeed, Barry charges, groups often want special rights precisely so they can circumvent equal concern and respect. (Barry, 2002, 128) Barry decries the multiculturalists’ insinuation that culture is, of itself, a reason for special treatment. Analogous arguments often underlie the claim that natural health products do not need to be regulated simply *because* they are natural, or that organic foods are superior *because* they are organic. Snake venom is both natural and organic. The nutritive value of food is a function of its molecular composition and our biological needs, not its history.³⁹ Barry exemplifies the folly of this sort of nonargument:

If slave-owners in the South had had access to the currently fashionable vocabulary, they would doubtless have explained that their culture was inextricably linked with the ‘peculiar institution’ and would have complained that abolitionists failed to accord them ‘recognition’. (Barry, 2002, 258)

³⁹ Organic foods and natural products can often make a case for superiority on these very terms.

Barry accuses multiculturalists of allowing diversity to overrun liberalism. One potentially disturbing result of multiculturalism is an unwelcome buffer between the state and cultures who condone honour killings, child abuse, forced marriages and similar practices. Chandran Kukathas, for example, denies the right to intervene with group practices, even in the name of liberalism.⁴⁰ And James Tully only manages to criticize the abduction and forced 'initiation' of an off-reserve Salish Indian by gerrymandering a defence in the name of culture.⁴¹ Even Kymlicka would grant self-government rights to national minorities while not subjecting them to the constraints of the liberal state. His position would prevent the Canadian federal government, for example, from intervening with illiberal practices in Quebec. (Barry, 2002, 138)

Many multicultural policies are premised on the view that the defining feature of all groups is cultural and that a group's problems arise from its distinctive cultural attributes and the failure of society to accommodate these. As a result, time and resources are directed towards cultural programs instead of remedying inequalities. (Barry, 2002, 321-3) As Barry points out, resource distribution is a zero-sum game – resources directed towards culture could have served to remedy inequalities, the true object of liberal concern.

Barry also fears that ambitious plans to protect diversity come at the expense of the shared identity required for a common citizenship. Egalitarian liberal societies require for their survival a willingness to sacrifice for the common good, and this requires recognizing a good that is common. (Barry, 2002, 79-80) Protecting liberal institutions, for example, has at

⁴⁰ Kukathas doesn't describe himself as a multiculturalist, yet he argues for allowing the maximum breadth for families and groups to determine their own conception of the good. (Barry, 2002, 131-2)

⁴¹ *Thomas v. Norris*. Tully says the court was right to decide against the abductors, but only because the particular initiation ceremony, and more specifically the involuntary aspect of it, was not a central feature of the Salish way of life. (Barry, 2002, 257)

times meant asking citizens to risk health and life on the battlefield. Enshrining difference can contribute to citizens failing to find common cause with one another, and so puts the project that is the political community at risk.

4.4.4 Contra Barry

The natural progression from rights to recognition that Kymlicka speaks of becomes more questionable in the face of the misguided practices that it protects, and given that multicultural policies often come at the expense of individual rights. What is more, multiculturalism can distract us from the problems that traditional liberalism faces, namely unequal distribution of wealth, resources and opportunities.

The concept of opportunity is central to Barry's critique of multiculturalism: he believes we ought to accommodate the disabled person who cannot climb two flights of stairs and thus does not have the opportunity to access the public library; however, the conservative Christian, Muslim or Jew *has* the opportunity to go to the publicly funded rock concert but opts out citing reasons of faith. 'Beliefs', on the other hand, he likens to 'preferences' – while it is true that beliefs are not simply the choice of the beholder, the same is true of preferences. This facet of beliefs, then, does not supply a special reason for redistributive justice. (Barry, 2002, 36) Liberal accommodation, Barry emphasizes, is premised on equalizing opportunities, whereas beliefs do not impinge on opportunities.

But Barry is looking at this all wrong. The case for giving special consideration to religion, culture and tradition lies in their central importance to the lives of citizens (an importance which, as we will see, needs to be weighed against other considerations). There is a reason, after all, why constitutions and bills of rights explicitly enshrine freedom of

religion. This is a recognition of both the value of the individual as arbiter of her own life, but also of the importance of certain sorts of choices to the lives we make for ourselves. This is why, I suggest, we codify freedom of religion rather than simply adopting the harm principle which would protect all choices which did not harm others. Perhaps we have no clear metric to say why one person's inability to afford expensive wine is less important than another's inability to, as she sees it, achieve salvation by praying to the God of her choice. But for the mass of mankind the difference is obvious. It is the artificial blindness foisted on us by liberal neutrality that turns this into a problem in the first place. Thus Galston's lament: "Liberalism may have originated in an effort to disentangle politics and religion. It has culminated in what I see as a characteristic liberal incapacity to understand religion." (Galston, 1991, 13)

Without a doubt, the business of judging beliefs (their importance to the believer, for instance) is a murky one, but not for that reason unnecessary. Barry, while later discussing belief apart from the issue of opportunity, actually cites Justice Scalia (U.S. Supreme Court) approvingly on this very point. In the 1990 *Smith* case concerning, in part, religious freedom, Scalia argues:

In any case, dispensing with a "centrality" inquiry is utterly unworkable. It would require, for example, the same degree of "compelling state interest" to impede the practice of throwing rice at church weddings as to impede the practice of getting married in church. (Scalia, 1990)

Scalia's solution, which Barry applauds, is to keep the courts from weighing in on these matters, lest they be plunged into a "parade of horrors" requiring justices to balance the significance of religious practice against the importance of general laws.⁴² But part of

⁴² Accommodation, he says, should be the business of the legislature. This would remove any 'general right to exemption,' and so would prevent cultural groups from running roughshod over general principles. (Scalia,

Scalia's point, and the point I wish to make, is that we can and often must weigh in on centrality, for we otherwise give up our ability to discern fundamentals from incidentals, as difficult as this often may be. This ability to discern challenges Barry's claim that, with respect to opportunity, beliefs need to be treated along the lines of preferences.

A better way to look at this would be to view disability as one pole in the accommodation schema, a clear case where exemptions are in order. Religious beliefs would fall somewhat lower on this scale. This is not because they lack importance – many have preferred death to forsaking their faith. But two other reasons come to the fore. First, a general right to exemption based on religion (or culture or tradition) would be unworkable.

As former U.S. Justice O'Connor noted in the case just referenced:

Precisely because "we are a cosmopolitan nation made up of people of almost every conceivable religious preference," *Braunfeld v. Brown*, 366 U.S. at 606, and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming *presumptively invalid*, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. (Scalia, 1990)

A second reason not to accommodate all belief is that religious and cultural values will often run counter to the values of the state. The familiar examples make this point clear: honour killings, female genital mutilation and so on. This last point shows that even if centrality is important, it is not decisive. We witness a willingness to entertain this balancing in the Canadian courts. Consider former Canadian Justice McLachlin's judgment of marijuana activist Malmo-Levine:

While we accept Malmo-Levine's statement that smoking marihuana is central to his lifestyle, the Constitution cannot be stretched to afford protection to whatever activity an individual chooses to define as central to his or her lifestyle...Lifestyle choices of this order are not, we think, "basic choices going

to the core of what it means to enjoy individual dignity and independence”
(*Godbout, supra*, at para. 66). (McLachlin, 2003)

Barry is right – we cannot let culture be, *ipso facto*, a justification for policy.⁴³ But Barry should recognize, and his own arguments support this contention, that we can weigh in on centrality, including the centrality of religious and cultural values, and that we must often weigh this against other interests of the state.

As with the other liberals we have considered, Barry’s account remains lacking in terms of civic identity. Consider the following claim: “... the core of common national identity is a common commitment to the welfare of the larger society made up of the majority and the minority (or minorities), and mutual trust in others to abide by that commitment even when it entails sacrifice.” (Barry, 2002, 88) These are admittedly strong words from a liberal, and I endorse the point Barry is making. But it seems there is more to national identity that is not captured by this quote. We have above mentioned Kymlicka’s remark that in the 1990s, liberalism and nationalism were often seen together. And consider also the case of Quebec separatists in Canada. Their goal, clearly, is not to set up an illiberal regime, but rather a liberal regime *au Québec*, alongside a liberal regime in the rest of Canada. (Kymlicka, 2003 155-7) Returning to Barry’s comment, what is missing is an element of national character, the element that distinguishes one liberal nation from another and that responds to our enduring nationalistic tendencies (despite the well-known pitfalls). Relatedly, we have little insight into what Barry considers to be the object of patriotism that will help ground civic unity. As Robert Putnam has argued, ‘sameness’ is the natural

⁴³ As he says, the fact that Newfoundlanders have been hunting seals for generations does not in itself justify the seal hunt. Other reasons might.

grounds for unifying people. And so the question to Barry becomes: what makes members of a liberal state the same, and yet significantly different from other liberal peoples?

Barry, I believe, exposes the excesses of multiculturalism and multicultural policies without getting to their essence. Indeed, his criticism of multiculturalism is weakened by his lumping together of a diversity of views. As Pierik and Young complain, Barry criticizes a mishmash of group claims alongside a wide spectrum of theories (the *politics of difference* (Young), the *politics of recognition* (Taylor), *liberal-egalitarian multiculturalism* (Kymlicka), *dialogical multiculturalism* (Parekh), *multicultural constitutionalism* (Tully), and *libertarian multiculturalism* (Kukathas)). (Pierik & Young, 2002) The only ‘essence’ common to these views is the claim that liberal egalitarianism cannot live up to its ideals without due consideration for groups or cultures. In the next section we will challenge Barry on the question of how we should value culture.

4.5 A Different Stance Toward Culture

4.5.1 The Substance of the Multiculturalist Critique

The other major question for Barry, and the question that is yet to be resolved throughout this chapter, is the value of culture, and the recognition we should grant it. The preceding critique of both proponents and opponents of liberal multiculturalism leads us to ask: What, if any, is the valid motivation behind the politics of multiculturalism? Charles Taylor, I believe, does a better job at answering this question than Kymlicka and others. The modern conception of the self-made man, he claims, is misleading since it underestimates the degree to which our identities are ‘dialogically’ built. (Taylor, 1994, 32) We become full human agents by acquiring a rich human language, including how and what to love and hate, seek

and avoid. We are introduced to the language of self-definition through interaction with others, especially those who are close to us.⁴⁴ This self-understanding, moreover, is not restricted to what is commonly referred to as our formative years. For the contribution of others in these years stays with us and even helps inform our reaction to these contributions later in life, be it one of appreciation or disdain;

The monological ideal seriously underestimates the place of the dialogical in human life. It wants to confine it as much as possible to the genesis. It forgets how our understanding of the good things in life can be transformed by our enjoying them in common with people we love; how some goods become accessible to us only through such common enjoyment. (Taylor, 1994, 33)

Our identity is built in dialogue, and in particular, in dialogue with our cultures and so the persistence of our identity is intimately tied up with the persistence of our culture. Our culture's persistence depends for its part upon due recognition in the public sphere. Oppression, public deprecation and misrecognition can threaten a culture's existence. Taylor offers the example of American blacks. "White society has for generations projected a demeaning image of them, which some of them have been unable to resist adopting. Their own self-depreciation, on this view, becomes one of the most potent instruments of their own oppression." (Taylor, 1994, 26) Taylor's point is that if our public culture unconsciously militates against certain identities and cultural groups, if public misrecognition can constitute real harm, then the state has reason to intervene to prevent this. By Taylor's argument then, if Muslim identity is tied up with praying five times a day, and the social customs of the Canadian work setting are inhospitable to this practice, then we

⁴⁴ Alasdair MacIntyre makes a similar point when arguing for the relevance of community to our moral character: morality, he argues, is learned from a community and is justified with respect to communal goods. This community, moreover, supports our moral character by rewarding good behaviour and condemning the opposite. It follows, then, that without this community I am unlikely to flourish as a moral agent. (MacIntyre, 1995, 218)

may owe it to Canadian Muslims to help find solutions that allow them to live out their identity.⁴⁵

Kymlicka explicitly resists understanding culture as an unchanging identity, attributing this mistake to communitarians and ‘conservative multiculturalists’. Traditions, as he says, are not static and timeless, and so we cannot claim that traditions are essential to an identity and therefore immune to critique. He even argues that many so-called cultural practices are recent innovations, or even conscious creations for the expediency of patriarchal group leaders. (Kymlicka, 2007, 100) In addition, most of us have a myriad of identities (ethnic, national, religious, political), and the saliency of each can change with the context of our interactions. (Scheffler, 2007, 100) Travelling in a foreign country I may feel a special connection with co-nationals, whereas in the midst of a theological debate I may feel more kinship with coreligionists. It is a mistake, then, to link the whole of a person’s identity to one culture.

Nevertheless, severing the protection of culture from its importance to identity is problematic. As I have argued, it is because culture is of central importance to our lives that it may at times deserve special protection. This is one of the principal rationales for multicultural policies. Besides, if *most* ‘traditional practices’ are the result of opportunistic expediency on the part of unscrupulous or dogmatic leaders (as Kymlicka suggests), it is hard to see why culture should stand as a concern for justice in the first place.

Taylor advocates the ‘presumption of equal worth’ as a middle ground between an imperialist Eurocentrism and multicultural excess (wherein cultures are considered equal as

⁴⁵ I am here trying to point to a presumption in favour of addressing cultural oppression. There may be legitimate reasons why certain cultures are less capable of thriving. One reason might be that a culture lacks respect for women, or for certain skin colours. I am not suggesting we should apologize for any ‘oppression’ that this causes.

a matter of right). (Taylor, 1994, 72-3) He believes that the mere fact that cultures have persisted for generations as a locus of meaning for a host of people is a *prima facie* reason to believe they contain something of value. The proper way to size up other cultures, he believes, is by coming to appreciate the vocabulary of these cultures and their standards of values, undergoing what Gadamer called a “fusion of horizons”.

But presuming equality seems a gratuitous attempt to placate the multiculturalists who want to stipulate the equal value of cultures. It is too important and potentially dangerous a matter to presume, even if we’re not asked to affirm it. Why presume equal worth, rather than adopting an openness to value? This, in fact, is the position Taylor arrives at. As he claims, "what the presumption requires of us is not peremptory and inauthentic judgments of equal value, but a willingness to be open to comparative cultural study of the kind that must displace our horizons in the resulting fusions." (Taylor, 1994, 73) Given this explanation, I am not sure why Taylor maintains the word ‘equal’ in the formula ‘presumption of equal worth’.

Even with merely a ‘presumption of worth’ we should be circumspect. The subordination of women, for instance, has been an enduring feature of many cultures, having a much longer tradition than liberalism itself. Persisting cultures are likely to contain *some* value, and we should not presume to speak on said value without serious investigation. Sometimes determining this value will be easier than others, depending on how recognizable goods in a foreign culture are within our own categories. Other times it will require learning a second language, a ‘fusion of horizons’ If we are willing to look to the cultural practices in question and judge them (or at least some range of them), we can support those that merit it.

4.5.2 Neutrality, Citizenship and Culture

All of this seems to put the liberal in a difficult position given the oft repeated claim that silence on such judgments is the essence of liberalism. Recall Rawls and Kymlicka on liberal neutrality: "...government is neutral between different conceptions of the good, 'not in the sense that there is an agreed public measure of intrinsic value of satisfaction with respect to which all these conceptions come out equal, but in the sense that they are not evaluated at all from a social standpoint.'" (Kymlicka, 1989, 886) This limitation leads to one of two unsatisfactory results: either we deny culture any truck with justice, or we embrace culture blindly and try to promote all cultures equally. Barry exemplifies the first approach, holding that equality deals with rights, resources and opportunities, and no more. But this leads to the unsavoury result of not recognizing the centrality culture can have to citizens' identity. Taking the second approach, Young, for example, would empower anyone who can make the case for having been marginalized. And Kymlicka, while clinging to liberal rights, cannot offer adequate reasons to value culture, and since he will not judge cultures (except when these impose internal restrictions and thereby violate liberal rights), his proposals could end up empowering bad cultural practices along with good ones.

If we drop the neutrality restriction, the way out of this seems clear. For one – and this argument is open to liberals – strong cultures can contribute to producing good citizens – stable families, low rates of teen pregnancy, low drug use and other addiction issues, high levels of mutual support and so on. (J. A. Baldwin et al., 1999; Ladue, 1994; Norick, 1970) Research shows, for example, that Native Americans who have meaningful roles in either or both traditional and modern cultures have the lowest susceptibility to alcohol and drug

abuse, while those who are marginal to both are most likely to abuse.⁴⁶ Although it is clear that liberals like Barry, Macedo and Galston hope for similar results via education programs, culture presents a more encompassing and surer solution. It follows that on many fronts, cultures and the state are not inimical and indeed, there are open prospects for partnership.

Second, cultures may be vehicles for certain goods the state can recognize, and can thus aid the state in fulfilling its non-neutral concerns. Consider the education of children.⁴⁷ Apart from a functional education that serves the individual and the civic ends of the state, we also want children to receive an ‘education for living’, as Brian Barry calls it, one that enriches children so that they learn to appreciate the “finest creations of the human mind and spirit.”⁴⁸ The person who learns to appreciate fine art, literature, music and so on is, *ceteris paribus*, enriched with respect to her co-citizens. The important point for our purposes is that cultures are often uniquely suited to help further these same ends given that they are closer and more influential to citizens than typical mechanisms of the state.⁴⁹ For example, ethnic communities often serve as schools for the appreciation of art and music.⁵⁰ Cultures also often promote many of the common-sense values that people stand by, and that the state could endorse: respect, concern for others, courage and so on. It was in this spirit of cooperation that Locke once called upon Christian pastors to help instil tolerance in their

⁴⁶ J. A. Baldwin, 1999; May, 1982; May, 1986; Schinke et al., 1986. Dostoevsky’s Raskolnikov, in *Crime and Punishment*, represents the nihilist danger, the man without religion or culture who becomes a law unto himself, who sees through traditional mores and can justify murder.

⁴⁷ Children are not properly speaking objects of paternalism since they lack the autonomy that arises with the development of their rational capacities and so forth, but an education designed to be good-promoting will nevertheless contravene liberal neutrality.

⁴⁸ Barry, 2002, 221. For Barry these goods are so important that “parents should not be permitted to withhold [them] from their children.”

⁴⁹ There is no guarantee, of course, that a given culture will promote truly good art, music or literature. There is something, though, to Taylor’s claim that those which have stood the test of time and of cultural confrontation likely have something to offer.

⁵⁰ Cultural groups can even save artistic genius from being lost, and can share this with other cultures. Cultural interaction in the middle ages, for example, gave the West Avicenna, Maimonides, Averroes and Aristotle as well (since the mediaevals first knew the latter via Arabic translations).

followers. He believed they could promote virtue that would serve both individuals and the state.

In addition to these two considerations in support of valuing cultures we can add a third reason based on a concern to allow citizens the necessary space to build their identity and live out their central beliefs and practices, provided these do not contravene fundamental values of the state. This reflects the point made by Taylor above concerning the harm that can be done to our identity if we are denied recognition. (Taylor, 1994, 25) In this vein we can recognize exceptions to general rules, balancing the weight of religious/cultural concerns against the importance of the general rule and the effect of any exceptions.

Valuing culture in this way does not pretend to state neutrality. Cultures are valued because they can be good for society⁵¹ and can support goods recognized by the state, including goods for individuals themselves. We are not presuming equal worth, as Taylor's formula suggests, and indeed, we are presuming the need to judge the value of cultural practices when these come into contact with state policy. This willingness to judge can preempt the problem of empowering problematic cultures. The view here is neutral with respect to cultures only in the sense that valuable practices are promoted irrespective of the culture.

The valuation of culture I am proposing needs to take place within a context where an ideal of citizenship serves as an overarching normative view with respect to communal goods. This conception, it bears emphasizing, could have a great deal of overlap with our liberally recognized rights. Thus, while we appreciate cultures as contributors to a common good, we also demand that they recognize freedom of conscience, dissent and rights of exit. We can applaud the British Prime Minister David Cameron, then, who, citing the horrors of forced marriage, has made it known that organizations that do not believe in women's rights

⁵¹ The question of how such goods are identified will be taken up in the following chapter.

will be barred from state funding. (Kay, 2011) Citizenship can say more than this as well. It is not the mere possession of a passport, but reflects a nation's history, social context and the public values that these have helped inform.

A thicker conception of citizenship could provide a firmer basis for national unity, a need that liberals have been wont to point out. A society based on shared values, rather than on common principles supported by a diversity of values, would provide better ground for a sense of national civic identity. The political liberal might respond that a national civic identity comes at the cost of the disaffection of those who disagree with it. But the strength of this charge depends on the claim that political liberalism has broader popular appeal than a limited vision of the good.

A fortunate consequence of the position defended here is that policies supporting cultures will not empower oppressors. This is so because all policies are to be governed by a conception of the good, rather than solely by a concern for equal treatment, as Kymlicka and others would have it. Barry has argued that we cannot value both culture and the primacy of rights. (Barry, 2002, 125) But the dichotomy is false. It is true that many policies enacted in the name of multiculturalism have overstepped – consider *Bill 101* in Quebec that prohibits parents who did not receive their elementary education in English, and in Canada, from sending their children to English language schools. But not all policies need overstep in this way. To take one illustration, in 2009-2010, Citizenship and Immigration Canada supported the Peernet Association of British Columbia on a project entitled Building Youth Leadership Development. The project established peer support groups among visible and ethnic minority youth at local community centres and secondary schools. Young people were trained to help their peers on issues of racism, building trust, conflict resolution,

discrimination, social alienation, family relationships, bullying and violence.⁵² In this way, members of minority cultures were less likely to experience the host culture as oppressive. None of this challenges the rights of individuals. Indeed, such programs, if carried out successfully, can facilitate the integration of immigrants while at the same time arming them with the skills and knowledge necessary to defend their own culture.

4.5.3 The Practice of Valuing a Culture - Bringing Birth Back to Nunavik⁵³

An example will help make my case. Aboriginal peoples in Canada often face extreme poverty, poor health, poor nutrition, domestic violence, family dysfunction, and more often than not, a poor sense of self-worth. (Native Women's Association of Canada, 2002)

Aboriginal scholars blame the dissolution of aboriginal culture as the cause of many of these poor social outcomes, outcomes which are only partially offset by the advantages of modern medicine and technology.⁵⁴

The evacuation of pregnant Aboriginals from northern and remote areas to hospitals in urban Canada has been the norm in Canada since before the 1980s. Many authors have documented the disruption felt by Inuit mothers when forced to leave their home community to give birth in an unfamiliar environment.⁵⁵ Mothers often feel bored and alone. Many cannot communicate effectively with their caregivers, and they are often anxious about transitioning back into the community. They experience financial stresses, such as airfare for accompanying partners, and childcare expenses for their other children at home.

⁵² Information on the project is available at: www.cic.gc.ca/english/resources/publications/multi-report2010/part1.asp

⁵³ Many thanks to Renee Curry for sharing the research she has compiled on this topic.

⁵⁴ See for example: J. A. Baldwin et al., 1999; Fisher, Storck, & Bacon, 1999; Ladue, 1994; Norick, 1970; Oetting & Beauvais, 1989.

⁵⁵ See for example, Baikie & Allderice, 1990; Davis-Putt, 1990; Lessard & Kinloch, 1987; O'Neil et al., 1990; Paulette, 1990; Webber & Wilson, 1993.

Removing birthing from Aboriginal communities has also had profound repercussions on the culture and spirituality of Aboriginal communities. In the Aboriginal worldview, as in many cultures, birth is considered a sacred event that strengthens family ties through a set of special relationships and responsibilities linking the community to the newborn, and the newborn to the community. (Webber & Wilson, 1993) Birth after an evacuation, on the other hand, is an isolated and isolating event that takes place elsewhere. Though motivated by a desire to promote the health of Aboriginal mothers and children, evacuation policies were not designed with an eye to the social consequences of family and community disruption, and the emotional well-being of the birthing mother.

The Canadian government is now supporting community initiatives that address these problems. One such initiative is the Inuulitsivik Maternity Centre which employs midwives who incorporate traditional birth knowledge they have received from Elders with modern midwifery practices taught by non-Aboriginal midwives. Prenatal care is no longer avoided but embraced by mothers, which allows for better education (regarding nutrition, fetal alcohol syndrome, diabetes, etc.) and monitoring. Midwives provide a holistic, culturally sensitive care in Inuktitut which contributes to the families' sense of ownership over the process. This has brought a renewed sense of self-sufficiency, self-competence and empowerment for Inuit women. (McNiven, 2008)

Bringing the birth process back to remote, northern Inuit communities serves several goods recognized by the state. First, it serves the health and well-being of a portion of the population which is instrumentally beneficial to the state. As provincial legislation in several jurisdictions now recognizes, the majority of births have little need for the extensive medical interventions that would justify an evacuation. Birthing in the community can also play an

important role in relieving financial, familial and communal stress. Second, supporting this practice coincides with legitimate goods advanced on the part of the state, including the value of autonomy. People who have control over their own lives have a clear advantage over those encumbered to others, or to the state. Third, the government's partnership with Inuit communities shows respect for the cultural identity of Inuit peoples, and reinforces the value of that identity by recognizing it publicly, viz. by recognizing certified midwives that employ traditional practices.

Importantly, at no point is it reason enough to support Inuit culture *just because* it is their culture. Traditional midwifery practices were married with modern medicine to ensure the best health outcomes. But if elements of traditional practices threatened a recognized good, say the health of the mother, this could not be supported.

Supporting cultural practices in this way also serves the end of increased civic identity. The new birthing centres resulted as a cooperation between Inuit peoples and the Canadian government. This cooperation increases our sense of common purpose, our sense of being co-citizens.

4.6 Conclusion

In this chapter we began by looking to the normative 'identity' component of citizenship as a potential source for answers to the problems that remain from the preceding two chapters. Questions concerning a citizenship-based identity lead us to consider more closely the state's relationship to citizens' more local identities. We considered different theories of citizenship which lead us to the issue of multiculturalism and the value of culture. The goal, here, has been twofold – to show the inadequacy of contemporary liberal theories to deal with

questions of cultural identity, and to argue that dealing appropriately with such identities suggests the need for a normative civic identity.

A more robust theory of citizenship could recognize that fair terms of cooperation can be worked out by people who are situated in different cultures and traditions. Unlike Rawls' original position, it need not privilege the choices of 'unencumbered' selves, or even suggest that when it comes to justice, our identities must be pushed aside. Citizenship conceived as civic identity, moreover, returns identity to the foreground by promoting a common identity informed by our many particular ones. It could at the same time judge the practices of different communities, recognize community and tradition as legitimate sources of value and promote the goods it finds there. Such a view would dispense with neutrality, but this would not mean privileging any one culture, or any very particular view of the good. And contrary to the rhetoric of liberal rights, a conception of citizenship emphasizes what we hold in common and provides a basis for joint projects and for national unity.

Thus far I have argued that a theory of citizenship as a normative identity could overcome problems associated with liberalism and liberal theories of citizenship. This is already *an* argument in favour of such a theory, but I have said very little about the theoretical underpinnings of such a theory. It is to this question that I turn in the following chapter.

CHAPTER 5 - BEYOND LIBERAL CITIZENSHIP

Is not the public itself the greatest of all sophists, training up young and old, men and women alike, into the most accomplished specimens of the character it desires to produce? (Plato, The Republic)

[Kipling] does not belong to it, or to any place; and the proof of it is this, that he thinks of England as a place. (G.K. Chesterton, Heretics)

5.1 Introduction

Thus far, the primary concern of this thesis has been to point out problems and tensions in liberalism and liberal-inspired theories of citizenship. Chapter Two canvassed four problem areas for liberalism, while Chapter Three looked at post-Rawlsian attempts to answer key critiques. I argued that these attempts have failed due to the tensions within the theories themselves, and to their inability to meet the challenges put to liberalism. Chapter Four looked more closely at theories of citizenship, and in particular liberal attempts to meet the challenges of culture and diversity. There I argued that liberalism is incapable of dealing adequately with culture. My tack throughout has been to point to a gap between the requisites for a theory of citizenship and the liberal theories on offer.

It is time now to see how a political philosophy with a conception of the good (as envisioned here) plays out with respect to central issues of law and citizenship. The goal is not to expound a full theory of citizenship, but to make the case for the viability of a conception of citizenship that is both inspired by the liberal tradition and yet endorses a substantive, albeit limited conception of the good.

5.2 Pluralism and the Good

5.2.1 We Can't Help but Promote a Way of Life

Leading liberal theorists agree that liberal political philosophy promotes a way of life, and further, that it ought to do this. Rawls admits that under political liberalism, some conceptions of the good will flourish more easily than others (Rawls, 1993b, 459), while Macedo claims that liberalism actually suggests a "pattern of life". (Macedo, 2000, 181) Tomasi, for his part, proposes additional liberal principles that account for the unequal effects of liberal political philosophy (Tomasi, 2001). But it is not only that liberalism inevitably suggests a way of life. Contemporary liberals also typically recognize the need to promote certain character traits in order to sustain the liberal order. (e.g. Macedo, 2000, 35-6; Kymlicka, 2001, 333) Galston, for example, argues that sustaining liberal institutions and practices requires specific excellences which he calls "liberal virtues." (Galston, 1980, 18) There is a growing acceptance that not even a liberal regime "can long survive unless qualities of mind and character that support its specific principles and purposes and counteract its unwise tendencies are deliberately cultivated and regularly exercised." (Berkowitz, 1999, 12)

Once it is recognized that certain virtues are in fact required and promoted for the maintenance of the political order, it becomes important to question whether those same virtues are also good in themselves, constitutive of human flourishing. In other words, our public philosophy inevitably suggests a way of life, and this invites us to consider, is the way of life promoted and fostered by liberal politics a flourishing life *tout court*? (Collins, 1990, 10) One liberal response could be that liberal political philosophy promotes the capacity of citizens to flourish according to their own conception of the good. But this is to miss the point that the 'liberal formation' comes value-laden, whether intended or not. Liberalism is

characterized by the aspiration to increase and enhance the prerogatives of the individual; by maximal mobility in all directions, throughout every dimension of social life [...]; and by a tendency to turn all areas of human activity into matters of consumer preference; a way of life based on progress, growth, and technological dynamism. (Beiner, 1992)

Liberalism does not simply leave all options equally open; intentions notwithstanding, it directs us towards leading a liberal life.

5.2.2 Reflections on our Pluralistic Society

For Rawls, the path to political liberalism starts with the recognition of reasonable pluralism. Since citizens cannot reach agreement on the basis of irreconcilable comprehensive doctrines, they adopt ‘public reason’ to govern the discourse of judges, legislatures and government officials. Citizens, too, fulfill their civic duty by making political judgments (e.g. voting for a particular candidate) on the basis of public reason. (Rawls, 1993b, 441-5)

But the move from the recognition of reasonable pluralism to the adoption of public reason is too fast – the former does not necessitate the latter. Political liberalism, we should recall, is a political philosophy built upon a pre-existing consensus concerning justice. It may be that Rawls underestimated the current consensus, and that a thicker political philosophy with a conception of the good is in fact viable.

Coping with reasonable pluralism requires understanding how deep-seated this pluralism is.⁵⁶ As a start in this direction, I argue that there is already a healthy measure of good-promotion in many commonly accepted public policies and that this is reasonable. It is

⁵⁶ Iris Young, for example, writes as if the discourse of different groups are heterogeneous to the point of being unintelligible to members of other groups. (Young, 1989, 258) But this goes too far. Due to my own proclivities, I may have difficulty appreciating the angst of fundamentalist Christian parents whose children are forced to learn about evolution in school. But surely I can understand them some if I consider what it would be like if my children were forced to learn things contrary to my beliefs.

not just that we cannot help but promote a way of life. I believe there is a strong case to the effect that we *should* promote good ways of life. If these arguments hold, then we have reason to believe that our pluralism is not as radical as is often presumed.

Public schools are likely the most uncontroversial loci of good-promotion (though hotbeds of controversy with respect to the content of this).⁵⁷ . In general, we want schools to help children acquire more than the skills and abilities required in the workforce, what we might call a functional education. We also want them to acquire the life skills and virtues that will help them achieve a good life, including critical thinking, autonomy, concern for others and so on.

In Chapter 3 we touched briefly on the 1983 case *Mozert v. Hawkins* wherein fundamentalist Christian parents objected to school texts that indirectly called into question tenets of their religion. Macedo argued that children should have to acquire capacities of critical reflection (as taught in the texts) since the liberal order depends on citizens with such capacities. I believe Macedo's judgment is at best merely half of the story. Part of our concern for the *Mozert* children, and all children, is their own flourishing. Their ability to flourish as individuals is weakened if they are unable to critically reflect on the nature of the good life. The examined life is, *ceteris paribus*, a better life. This is a contestable judgment that I believe we are nevertheless willing to make. It says that the *Mozert* parents were wrong insofar as they tried to limit his ability.⁵⁸ Macedo's case rests solely on the instrumental value education has for the state. But this leads to a question Macedo has no

⁵⁷ Mill, of course, did not extend his antipaternalism to children since children are not yet capable of autonomy, although teaching goods in school could at times contravene the autonomous choices of parents. At any rate, promoting goods is still a breach of state neutrality.

⁵⁸ I don't mean to suggest that the case should have turned on this question alone. Justice Kennedy went ever further in his concurring opinion, arguing that teaching children about controversial moral issues is essential for citizenship and self-government, values that are good for both the state and for our own happiness. (Lively, 1987)

resources to cope with – why should we allow that this civic good trumps our private good? Unlike Macedo, I can at least answer that it is for the good of the state *and* of the children that they learn critical thinking. Overriding the authority of parents is not something we should take lightly, but some goods are important enough to warrant intervention.

Consider another example. There is a long-standing debate, both in the academy and in public, concerning the decriminalization of many now illicit drugs, including cocaine, crack cocaine and heroin. The interesting thing about this debate is that, in general, proponents on each side claim to have the best interests of drug users in mind. Douglas Husak, one leading proponent of decriminalization, argues that if the recreational drug industry were subject to regulation, illicit drugs would become less harmful as companies attempt to avoid lawsuits due to overdose. (Husak, 2003, 26) Indeed, he claims, “the state may adopt any number of devices to discourage drug use, as long as these devices are not punitive.” (Husak, 2003, 28) On the other side, James Wilson, who was Chairman of the National Advisory Commission on Drug Abuse Prevention under President Nixon, supports America’s war on drugs on the very grounds that it reduces the number of victims, including victims of self-inflicted overdoses. (Wilson, 1990, 24) We can see the same arguments surrounding Vancouver’s controversial ‘safe injection site’, Insite, which provides clean needles and allows addicts to inject drugs on site without fear of criminal sanctions. Insite’s supporters make the case that it promotes harm reduction and leads more addicts to treatment. Opponents, like former Federal Health Minister Tony Clement, claim that more lives could be saved through other means. (Clement, 2008, 1455) The important point here is that a life of drug use is recognized as an inferior sort of life, certainly not a flourishing life, and public policy should be guided by this realization.

Consider next the judgment that a life manifesting concern for others, particularly the less fortunate, is better than a life where concern begins and ends with the self. This thesis is endorsed by the major world religions and enjoys widespread popular support. To be clear, the implications of this for public policy are not straightforward. Some people distrust the state as the purveyor of welfare, and blame it for creating dependent citizens. But note that debate generally concerns how best to realize this virtue, not whether it is a virtue. At a minimum we can perhaps acknowledge that the state already adopts a non-neutral stance with respect to concern for others, as manifested by tax-benefits for charitable donations, or public recognition for philanthropists.

When good-living is endorsed in political philosophy, opponents often raise the spectre of radical statism, lamenting the fate of those who do not share the state-sponsored vision of the good. But it is likely the case that a state with no vision of the good, or one designed for ‘maximum feasible accommodation’ (by tolerating as many views as possible) is more objectionable than one with a minimal conception. As Arneson puts it,

People sometimes write as though it were obvious that some “lowest common denominator” principles will be acceptable to anyone who is at all reasonable, but this neglects the possibility that acting on the basis of putative lowest common denominator principles is itself objectionable from some weakly reasonable standpoints. (Arneson, 2003, 33)

Indeed, most Western liberal democracies endorse a host of paternalistic or good-promoting laws which pass explicit judgment on the good life: taxes and warnings on cigarette packages, seatbelt and motorcycle helmet laws, forced contributions to pensions, limiting the ability of pharmaceutical companies to advertise, fluoride in the drinking water, prohibitions against incest and polygamy and so on. We can recognize a general consensus in Western democracies concerning certain elements of the good life, and that public policy should

promote this judgment. *How* it should do this, of course, is a difficult question which we will turn to later, but *that* it should is already significant.

If I am right about the general acceptance of these policies, what do I hope to add to such matters? Am I merely articulating the *status quo*? First, while I think there is widespread support for such practices, there is a tendency in both public dialogue and academic literature to overlook our agreement on certain goods, or to pretend they are justified in neutral ways. As we will discuss further, by no means can all or even most of these practices be upheld simply on the basis of avoiding harms to others or minimizing costs to society. Second, there is also the threat that the logic of liberalism will eventually spell the end of these practices. This is problematic if, as I argue, contemporary liberalism overstates its case and some of these laws and policies are worthwhile. And last, if we come to terms with recognizing certain goods, this will enable us to continue our dialogue in this direction and further define what common goods we can support.

5.3 A Conception of the Good and the Challenges to Liberalism

Let us now briefly consider what has been suggested several times already, viz., that admitting a conception of the good will help remedy several of the problems facing contemporary liberalism.

Clearly, admitting even a limited conception of the good means abandoning the liberal neutrality thesis. I argued that even neutrality of justification is a problematic concept since it represents the contestable judgment that liberty and choice trump other goods. Furthermore, ‘neutral’ policies are often not neutral in any way that is desirable to people. Citizens are interested in pursuing their conception of the good life, and a neutrally justified

intrusion is still onerous even if it is neither intended nor arbitrary. Moreover, neutrality could prevent the state from taking measures to counter the harmful effects of unfettered freedom, such as the potential crisis of gender imbalance in certain Asian and Caucasus countries. Allowing a conception of the good helps overcome these problems. If a citizen believes public policy runs counter to their vision of the good, the proper answer on the part of the state is not an appeal to neutral justification. The proper answer, instead, is that a position on the nature of the good life has been taken, a position which can be challenged, defended and amended. If a problem such as gender imbalance were to arise, the state could take measures to reverse this outcome. Education campaigns would be a first step and, if the situation were more drastic, we might impede gender identification during prenatal screening.⁵⁹ In sum, the choice, as I see it, is between a political philosophy which pretends to a neutral standard that has little meaning for actual citizens and a political philosophy which takes a stand on certain issues and is willing to defend this stance.

I faulted Rawls' original position with imposing an unnecessary veil of ignorance in order to achieve fairness and cooperation. Dropping the original position and its imposed limits enables us to develop a more robust political philosophy that can admit certain goods. A state with a conception of the good, I submit, could allow citizens to argue from their conception of the good and for the public conception of the good without requiring that citizens believe that cooperation necessarily overrides their other values.⁶⁰ Since I am presuming a secular state, citizens will need the ability to recognize what weight their arguments hold for other citizens. (I return to this in my discussion of public reason below.)

⁵⁹ This of course raises some interesting questions, such as: if gender is a bad reason for an abortion, what counts as a good one? As it stands, someone *could* have an abortion to suit her vacation schedule.

⁶⁰ Rawls eventually allows that citizens might argue from their own conceptions of the good, provided we can retrospectively provide public reasons to support any policies adopted. (Rawls, 1993a 145) But cooperation is still expected to trump other values. We will consider 'public reason' more closely later in the chapter.

The communitarian critique argues that liberalism fails to recognize the importance of context and tradition, treating us as ‘unencumbered selves’. Dropping the strictures of the original position helps us meet this challenge. Citizens, on the view presented here, come as they are – people with a history, way of doing things, habits, customs and so on. None of these, to be sure, are held immune to critical reflection, but neither are they sidelined. People enter public debate with a picture of what the good life is, and this influences their judgments on laws and policies.

In Chapter Four we saw that liberalism has a difficult time valuing culture. Liberal neutrality, I argued, leads us to either deny any place for culture within our theory of justice, or to embrace culture blindly. A political philosophy that parts ways with liberal neutrality can recognize the value of culture in three ways: first, cultures can contribute to producing good social outcomes (e.g. health, education); second, cultures can help promote non-neutral goods that are recognized by the state, and they will be more effective than the state at this since they are, for individuals, closer to them and more influential; and third, cultures provide citizens with a space to live out their central beliefs and practices, provided these do not contravene rights or fundamental goods recognized by the state.⁶¹ A politics of the common good allows the broader civic community to judge cultures, seek fruitful partnerships, and to criticize or even sideline undesirable practices. It can recognize, as communitarians would have us do, that citizens are not detached reasoners, but people embedded in cultures and traditions.

We argued that the liberal emphasis on individual rights treats society as a conglomerate of individuals, void of social responsibility (beyond respecting rights) and

⁶¹ As mentioned in the previous chapter, the first way of recognizing culture is open to liberals. The third way is of course debated among proponents and opponents of multiculturalism.

attachments. The language of rights has us make demands on one another while obscuring the question of our common obligations. Explicit recognition of a public conception of the good could help refocus public dialogue. Citizens would be encouraged to recognize both their rights and their corresponding obligations. Public debate would not be simply about securing safeguards against one another, but also about helping each other lead good lives, and about the common civic project and public goods.

In the following sections I criticize standard liberal resistance to non-neutral policies and assess the liberal concern about limiting self-government. I push for the recognition of a space for policies that promote the good of individuals.

5.4 Virtue and Autonomy

5.4.1 Introduction

We have seen that many liberal theorists have felt it necessary to develop liberal theories of virtue given that sustaining the liberal order requires a citizenry of a certain sort. Citizenship within a liberal regime, according to these authors, implies accepting that certain ways of life will be promoted over others. Macedo, Galston, Tomasi, Kymlicka and others want to maintain state neutrality with respect to the good in general, and non-neutrality with respect to the habits and tendencies required to support a liberal order. In this section I want to critically analyze the contemporary liberal use of the concept ‘virtue’. At the same time, I wish to explicate another fundamental liberal concept, ‘autonomy’, and consider whether a proper understanding of virtue can still afford us space to respect autonomy.

The general outline of my argument here is as follows: contemporary liberals have pointed up the need for the state to promote certain virtues for the sake of maintaining the

liberal order. On an adequate understanding of virtue, this promotion, I shall argue, will necessitate a departure from neutral liberalism. We should not feel our liberal sensitivities threatened by this because on many accounts of virtue we can still allow space for respecting autonomy. In what follows, I often rely on an Aristotelian account of virtue ethics, in the first place because it is the best known and perhaps most fully developed theory of virtue, and in the second place, because Aristotelian accounts are often seen to be the most threatening to our liberal proclivities. (Slote, 1993) If Aristotle's theory can be liberalized, then surely there is even greater hope for other theorists. However, neither my critique of liberal virtue, nor my positive account that allows space for autonomy, depends on accepting a particular theory of virtue.

5.4.2 Virtue Theories

'Virtue ethics' denotes an approach to ethics that emphasizes the primacy of moral character, in contrast with approaches that emphasize duties, rules and consequences. Consider the case of the university student who, in a bind, contemplates plagiarizing in order to meet a deadline. The Kantian deontologist would have us ask whether such a course accords with our duty to abide by the universal moral law. The consequentialist would have us ask whether this particular act, or this type of act, leads to a better outcome than refraining from it, according to some metric such as happiness (utilitarianism). Virtue ethics would have us ask what the virtuous person would do in such an instance, and presumably honesty would bar us from plagiarizing.

Aristotle defined virtue as a disposition of character which helps its possessor achieve certain ends. (Aristotle, 1097a34-b25) Deontologists and consequentialists also at

times make use of the concept of virtue. For Kant, virtues are the dispositions of mind and character that give persons the strength of will to fulfill the moral law. Mill sees virtue as the habits of character and mind conformable to utility and conducive to general happiness.⁶² (Mill, 1863, “On Virtue and Happiness”) The term ‘virtue theory’ is often applied to the family of theories that make use of the concept of virtue in some capacity or another. For Kant and Mill, virtue is ancillary to more fundamental moral concepts, to duty and utility, respectively.

There are many theories of virtue on offer, though most of these fit the mould of one of the three theories mentioned above. One notable exception comes from Michael Slote, who presents an agent-based virtue ethics influenced by Stoic thought. He calls his theory ‘agent-based’ rather than merely ‘agent-focused’ because he believes the moral rightness of an act is based on the motives of the agent in question. (Slote, 1993; Slote, 2001) On ‘agent-focused’ accounts like Aristotle’s, the source of value is not located exclusively in the virtues themselves, but also in some good end. (Ransome, 2010)

5.4.3 Civic and Human Virtue

In “Pluralism and Civic Virtue,” Galston considers the relationship between human and civic virtue. ‘Civic virtue’ here refers to dispositions conducive to sustaining the liberal order, whereas ‘human virtue’ refers to virtues in the usual sense, that is, to appropriate habits for good living in general. While Galston maintains that there is an inherent tension between civic and human virtue, he likewise rejects the view that civic virtue has no moral force.

⁶² Thomas Hurka, a consequentialist like Mill, describes virtues as states where one loves intrinsic goods for their own sake, and hates intrinsic evils for their own sake. (Hurka, 2000, Virtue, Vice and Value)

(Galston, 2007, 627) Government is almost universally recognized as necessary for security, and so habits of character conducive to this are thereby instrumentally justified.

Emphatically, however, he argues that this does not make any character trait serving the state a human virtue, for as Machiavelli pointed out, some cruelty on the part of the prince can result in less cruelty and violence than mercy would.

The bifurcation of civic and human virtue is a common liberal theme. Robert Audi, for example, argues that the ideal citizen can be characterized apart from what it means to be an ideal person. (Audi, 1998) In general, liberals are concerned with virtue only with respect to ensuring the stability of the liberal regime. (Audi, 1998; Berkowitz, 1999; Galston, 2007; Macedo, 2000; Rawls, 1993b, 194) Galston sees the two sorts of virtues as separate spheres, with each serving as a basis for criticizing the other. So, a state can be criticized for requiring vice from its subjects, understood from the standpoint of human virtue. On the other hand, some who pursue human virtue may fail to be good citizens. Socrates, to take Galston's example, was a disruptive nuisance to ancient Athens – a virtuous man, no doubt, but not a great citizen. (Galston, 2007, 628)

In Chapter 3 I raised a challenge to Galston: Why is the state's promotion of virtue only acceptable for instrumental and not substantive reasons? Galston, it turns out, endorses the familiar liberal stance that the state is not at all in the business of promoting human virtue. And while it is true that any regime, including a liberal one, must be measured by its success with respect to human standards exterior to itself, it is the regime in power that determines civic virtue. Since civic and human virtue are treated as distinct notions, the liberal is able to promote civic virtue without entering into the business of soul-making.

Galston has crafted himself a position that has the state refrain from judgments about the good, while admitting that it can be judged as good or bad by external standards.

But this liberal distinction is problematic for several reasons. First, how do we keep civic virtue in check? Exterminating a minority community *could* turn out to be in line with civic virtue if it were to promote peace. We want to avoid the apparently Weberian line that “Our ultimate yardstick of values is ‘reasons of state’...”⁶³ Galston may attempt to rebut this critique by claiming he has recourse to human virtue to keep our state in check. But if we need to keep checking civic virtue against human virtue, why build a conceptual structure that keeps them distinct in the first place?

One might consider this criticism unfair given that civic virtues are supportive of a presumably just political order, and are governed by the institutions and recognized rights of that order. But this neglects that liberalism, by design, does not speak to the whole of the good. If civic virtue is distinct from human virtue, then, we might ask, what effect does promoting civic virtue have on human virtue? Perhaps the liberal virtue of familiarity with the law could lead citizens to legalistic relationships, undermining the virtues of friendship and family. Anything that undermines our moral character seems unsuited to retain the moniker ‘virtue’. Galston’s distinction seems like an arbitrary attempt to allow the state to promote virtues without being susceptible to critiques about promoting substantive views of the good.

A further problem with the liberal account lies with its understanding and characterization of virtue. The liberal attempt to speak of virtues without reference to the good runs into problems on two fronts. In the first place, unless liberal citizenship is a

⁶³ Gerth & Mills, 1948. This, of course, would fly in the face of the Kantian position Rawls explicitly endorses in *A Theory of Justice*, namely to have a political philosophy that is not contingent.

substantive good, there can be no convincing reason for citizens to sacrifice personal goods for its sake. If civic virtues are merely instrumental, then they had better be instrumental for something more valuable than other virtues that compete with them. Why else, for example, expect the *Mozert* children to learn critical thinking at the risk of their faith? As Beiner puts it, "...why would an adherent of a non-liberal comprehensive doctrine defer to an understanding of shared citizenship that did not even claim for itself the moral and philosophical authority of a comprehensive doctrine?" (Beiner, 2008, 32)

The second liberal problem follows from what is implied by the promotion and possession of virtue. By way of explaining the concept 'virtue', Aristotle distinguishes it from similar concepts, one of these being a 'skill'. Skills, like virtues, are learned habits or dispositions of character that are praiseworthy. However, at least three features separate virtues from skills: virtues are formative in that they involve teaching a preferred pattern of behaviour; they require appropriate motivations in the sense that possessing a virtue implies wanting to practice it; and they are necessarily tied up with a conception of good living since virtues present certain ends, and not others, as worthwhile and desirable.⁶⁴ We have seen that liberal authors recognize that their civic virtues are formative – much of their work involves justifying why this should be permissible within the confines of neutrality. They are also tied to the motivational component, for they do not only want citizens who are *capable* of being courageous for the state, or *capable* of tolerating others, but citizens who *want* to practice these virtues.

Neutralist liberals are wont, of course, to avoid endorsing the third feature of virtues since they are silent on what constitutes good living. But learning that we should be

⁶⁴ This issue is central to Jayson MacLean's doctoral thesis, "Liberalism and the Virtues," which has helped inform this section. (MacLean, 2006)

motivated towards something already means recognizing it as an important good. Learning the civic virtue of critical thinking, for example, requires us not only to appreciate which reasons and arguments are good, which are poor, and so on, but also to see critical thinking as desirable for some worthwhile end.

Liberals like Rawls, Galston, Macedo and Audi believe they can promote ‘civic virtues’ without implicating the state in this supposedly illiberal task. Kymlicka says a virtue is not a conception of the good if it isn’t *justified* by reference to the good of individuals. (Kymlicka, 2001, 333) But liberals cannot simply shirk questions of the good-making of civic virtues. They cannot pretend that *their* virtues are merely ‘civic’, and thus immune to charge of promoting a particular vision of the good. (Appiah, 2005, 164) Even if civic virtues are justified by reference to their instrumental value for the state, they inescapably involve teaching citizens what to recognize as goods. And thus liberals must answer as to whether these goods are true goods.

These aspects of virtue are not limited to Aristotelians. They are reflected in almost all accounts of virtue. Kant, unlike Aristotle, does not see virtue as a matter of training our affective nature to love what is good and right, for Kant believed that human nature included irrational desires that could never be redirected. Kant sees virtue as the moral strength of a person’s will to follow her duty. (Kant, *Metaphysics of Morals*, 6:405) But notice that on Kant’s definition, too, virtues require character formation and the appropriate motivation, and that virtues are directed towards some vision of what constitutes good living (i.e. our duty). Mill sees virtue as a worthy end insofar as it promotes what is truly good, maximizing overall happiness, even at the expense of our own. And here again Mill understands virtue as requiring formation, holding the appropriate motivations, and being directed towards some

view of what is good (i.e. the general happiness). Regarding motivation, Mill even claims that virtue will only serve happiness if we come to love virtue for its own sake. (Mill, *Virtue and Happiness*) Slote's virtue theory "regards certain motivations as inherently admirable or deplorable and evaluates human actions in terms of whether they express, exhibit, and/or give realization to such motivations" (Slote, 1993, 16) As on the other virtue theories, acquiring the appropriate motivations requires formation and a view to what is good or appropriate. In each of these virtue theories, the three factors I highlighted to distinguish virtues from skills are present, namely that they are formative, require appropriate motivations and involve some conception of good living. The liberal view, moreover, appears inconsistent when it tries to get by with only two of the three. An adequate theory of virtue seems to require these features.

If we deny the relation between civic and human virtue, the political liberal's whole project of civic virtue is in jeopardy. The political liberal, we will recall, is not committed to moral neutrality in the metaphysical sense; it is the burdens of judgment and reasonable pluralism that lead to state neutrality. But if this is the case, any given civic virtue is either a human virtue or it isn't. If the political liberal is unwilling to speak to this question, then she must be ready to admit that her civic virtues may in fact be human vices. The reason this concern never arises, I contend, is that we typically do believe that liberalism's civic virtues are also human virtues.

A consistent account of civic virtue, then, will need to recognize that human and civic virtue are of a piece. If we are going to promote, say, courage, then we need to recognize that this promotion will have a formative relationship with respect to the identities of citizens since it will affect what they see as good. Only a political philosophy that goes

beyond standard liberalism can have a consistent account of citizenship involving virtue promotion.

For the sake of convenience, I will continue to use the term ‘civic virtue’ to refer to virtues when they are being (in part) justified by reference to their instrumental value to the state. However, it should be recognized that I part with most liberals in that I see their ultimate justification as being in the service of true human goods.

5.4.4 Autonomy and Virtue

In the previous section I argued that the liberal account of virtue is inadequate. But the promotion of virtue sounds, *prima facie*, like an illiberal enterprise, and so I must address this contention. I will begin here with a brief exposition on autonomy and then argue that virtue theories can provide a space for respecting the value of autonomy.

5.4.4.1 Some Points on the Nature of Autonomy

Autonomy, at its most basic, means 'self-rule'. The autonomous agent is one who in some sense owns her actions and her reasons for acting. Following Gerald Dworkin, we can distinguish autonomy from the closely related concepts ‘liberty’ and ‘voluntariness’.

Ignorance seems to limit autonomy, while it does not limit liberty.⁶⁵ Upon reception of maliciously misleading and bad stock advice, I am still at liberty to buy or not buy, but if I buy, the purchase is not an autonomous act. The ruling and directing of my life was hindered by the lie. With respect to voluntariness, notice that I may even restrict my ability to act voluntarily (that is, do what I want at a given time) in the exercise of my autonomy, just as

⁶⁵ Liberty is understood in the negative sense here. What Berlin refers to as positive liberty is more akin to the substantive view of autonomy I discuss shortly.

Odysseus did when sailing past the sirens, or as the novice does upon entering the monastery.⁶⁶

Autonomy theorists can be usefully divided into two camps: proponents of procedural autonomy and proponents of substantive autonomy. The former consider persons autonomous if they adhere to certain procedural constraints. Substantive views of autonomy, on the other hand, hold that even if the procedural conditions for autonomy are met, certain kinds of living cannot be autonomous. Often this means being committed to the value of autonomy itself and thus eschewing any restrictions of it. (Friedman, 2002. See also Benson, 2005; Dworkin, 1988) Proceduralists would allow, for example, that an autonomous person could sell themselves into slavery, so long as the selling qualified as autonomous. Substantivists would not allow such a move, for slavery, on their view, entails undercutting autonomy.

Just as the state can be coerced from without or usurped from within, so too an agent can lose autonomy to both external and internal psychological factors. (Noggle, 2005, 87) Autonomy theorists thus stipulate certain procedural (and sometimes substantive) conditions for autonomy. Most argue that autonomy requires a disposition to submit matters to rational criticism if circumstances warrant.⁶⁷ This endorsement of reflection is important because “it ensure[s] that our desires do not automatically move us to act, making us the passive vehicles through which the strongest impulses hold sway.” (Ekstrom, 2005, 147) In this vein, Marina Oshana claims that autonomy requires that we be good ‘local sociologists’,

⁶⁶ Dworkin, 1988, 14-5. Clarifying the relation between autonomy and free will could also be helpful. Roughly, the problem of autonomy concerns the source of agency. If I am the source of my agency, I am autonomous; otherwise, I am not. The problem of free will is concerned with the question of causal determinism and its relation to our ability to choose a course of action. Typical answers to this relation are: incompatible, therefore determinism is false (voluntarism); incompatible, therefore free will is false (determinism); and compatible, therefore free will and determinism can both be true (compatibilism).

⁶⁷ Berofsky, 2005, 74. Gerald Dworkin refers to the capacity to raise the question of whether one identifies with or rejects the reasons for which they act. (Dworkin, 1988, 15)

recognizing the influences of environment, culture and history (Oshana, 2003, 103), and Paul Benson claims that autonomy requires exercising ‘normative competence’, recognizing and appreciating the various norms that apply to our actions.⁶⁸

Critical reflection alone would be impotent with respect to autonomy were it not coupled with an ability to act upon it. Autonomy thus requires an appropriately strong will, the ability to make our rational reflections effective in our actions. (Berofsky, 2005, 74; Dworkin, 1988 16) Autonomy cannot be reduced to a merely intellectual capacity. It also requires an ability to bring the fruits of reflection to bear on our behaviour.

5.4.4.2 Virtue Theories and the Value of Autonomy

The need for a strong will, and for an ability to think critically, find a comfortable home in virtue theories. The concept of self-rule is implicit in Aristotle’s division and hierarchy of the soul, with reason as the natural ruler of the body. (Aristotle, 1970, 1254b2) Acquiring virtue involves training our passions to take pleasure in the right things for the right reasons. Like autonomy, virtue requires the strength to overcome *akrasia* (weakness of will) such that reason rules over our affective nature. (Aristotle, 1998, VII) Contemporary Aristotelian virtue ethicists have maintained the basics of this schema.⁶⁹ Indeed, any virtue theory would seem to require something like strength of will in order to ensure that virtues actually help issue in appropriate behaviours. Kant is the extreme case here, for he actually identifies virtue with strength of will.

⁶⁸ Benson describes his view as weakly substantive: it’s only normative content is the competence to recognize and appreciate the various norms that apply to an agent’s actions. (Benson, 2005, 133)

⁶⁹ Consider, for example, Annas, 1993, 47-83; Hursthouse, 2001, ch.5. As most autonomy theorists point out, the requirement is not that our motivations be continuously submitted to rational scrutiny. Truthful Jane need not reconsider, on every occasion, her commitment to, say, avoid academic plagiarism.

The goal of moral education, according to Aristotelian virtue ethics, is to achieve *phronesis* or ‘practical wisdom’, the ability to reason correctly about practical matters. "He who has it, unlike those who have not, characteristically attains ‘practical truth’; that is, he gets things right in action in what we would call ‘the moral sphere’ (1140b6)." (Hursthouse, 2006) *Phronesis* is a disposition of our intellectual nature, whereas moral virtue is a disposition of our appetitive nature that allows us to bring the wisdom of *phronesis* to bear in action. (Hursthouse, 2006)

Hursthouse suggests that the best way to understand *phronesis* is to look at what distinguishes the morally virtuous adult from a youth we would describe as nice (whether due to education or natural disposition). (Hursthouse, 2009) Children are capable of a sort of ‘natural virtue’, but their virtue is incomplete, or even dangerous, until it is governed by intelligence. (Hursthouse, 2001) The youth zealous for courage may be all too ready to take unnecessary risks, just as one espousing honesty may lack the delicacy to recognize those circumstances where silence is the right choice. What they lack is the ability to read situations well and to pick out the morally salient features, for this requires experience which the young have not yet had the opportunity to acquire.

Phronesis is a thick concept in virtue ethics that goes beyond critical thinking, but some capacity along these lines is surely needed for virtue on any account. The Kantian version of this concept is expressed in the ‘Kingdom of Ends’ formulation of the Categorical Imperative wherein we are to see ourselves as part of a community of equal, autonomous agents. (Sherman, 1997, 286) Kant argues for

a faculty for judging that... takes account (a priori) of everyone else's way of representing in thought, in order as it were to hold its judgment up to human reason as a whole and thereby avoid the illusion which, from subjective private conditions that could easily be held to be objective, would have a

detrimental influence on the judgment. (Kant, Critique of Judgment, 5:293; see also Hursthouse, 2001, 40)

I know of no similar discussion in Mill or other prominent utilitarians, but brief consideration of the nuance required to accurately apply the utilitarian rule points up the need for a similar skill. We might imagine someone responding to the supposed simplicity of utilitarianism with the following retort: “Yes, yes, maximize utility, but what does that mean in this instance, with these circumstances, and this list of potential foreseeable outcomes?”⁷⁰

And so virtue, like autonomy, requires the two types of capacities I discussed at the end of the last section, strength of will and some degree of practical wisdom. The kinship between the requirements for autonomy and the requirements for virtue goes some way towards showing that a virtue-promoting theory is not simultaneously an autonomy-quashing one. But there is more than a kinship between autonomy and virtue. Virtue *requires* the ability we call autonomy, which in turn requires knowledge and self-mastery. Consider the absurdity of ascribing virtue to someone who is not the author of her own actions. Is it to Mary’s credit that she is brave when (and only when) she is hypnotized? The virtuous person must be in some sense self-made, whereas virtue that is forced is not really virtue at all. (Hursthouse, 2009)⁷¹

⁷⁰ Part of Slote’s mission is to prove that virtue ethics is suitable for a liberal-democratic people. (Slote, 1993) He takes liberalism as his starting points, and so I am less concerned with reconciling his view of virtue here. Kant and Mill also have solidly liberal credentials of course, but they do not explicitly discuss the relationship between liberalism and their virtue theories.

⁷¹ I am not here claiming that every act of virtue must display the properties of autonomy. Virtues, on the accounts presented here, are habits of character, and the idea is that developing the appropriate habits frees us, to some degree, from having to consider each time anew the value of various courses of action. Rather, the possession of virtue requires autonomy in much the same way we say that one who is said to live an autonomous life requires autonomy. The autonomous life is not marked, in every instance or even most instances, by autonomous choices. This would be an extremely high standard. (Arpaly, 2005, 169) Rather, we judge a life autonomous if, in its main or most dominant elements, it is reflectively endorsed. (Christman, 2005, 345)

This bodes well for our liberal sensitivities as it provides good reason to resist an overly ambitious state. Yes, we want a citizenry of a certain sort for the sake of stability, and this will involve promoting virtues. But on an adequate theory of virtue, this promotion cannot take place without at the same time respecting the conditions of virtue, including autonomy. I believe this resonates with one of the lessons from Nozick's experience machine, that – on whatever our description of the 'happy' life which the virtues guide us towards – a life without autonomy is not the kind of life we want. (Nozick, 1974) For what we want is not only to *be* happy but to *own* our happiness, and in some sense the *being* cannot really occur without the *owning*.⁷²

The discussion thus far shows that virtue theories are committed to autonomy in at least the procedural sense: the need for critical reflection, along with the desire to be led by reason, or at least not blindly by desire; the need for a strong will, capable of following through on the desires or volitions of the 'true self' (Noggle, 2005, 87); and lastly, the need to know and recognize our situation, influences and so on, capacities within the purview of something like practical wisdom.

Like many autonomy theorists (Frankfurt, Dworkin, Berofsky, Mele, and others), the virtue theorist requires a stance of critical reflection vis-à-vis the desires, values and motivations one happens to have. But the self-rule espoused by virtue theories goes beyond a freedom from external coercion, and cannot be cast as solely procedural, for the manner of achieving this critical stance is none other than the acquisition of the virtues themselves. It is in acquiring courage that we can rationally rule ourselves in the face of our fears (whether this be through training our affective nature, or simply strengthening our rational will), and

⁷² Some people will surely have an easier time being happy than others, whether through fortune or natural disposition. This does not challenge the claim that we want our happiness to be based on our own actions.

in acquiring temperance that we can rule ourselves in the face of corporeal desires. This suggests a valuation of autonomy like that of substantive autonomy theorists. True autonomy means possessing certain capacities.

These considerations bring out the need for a cautious stance on the part of the state. Since virtue must, in the end, be a person's own project, the role of law with respect to virtue must be duly limited. For even if the law plays a supporting role, unless the rule of personal virtue replaces the rule of law, "our virtue would remain at the level of the mere good behaviour of children, who do right without knowing why, simply because they are told to do it." (Miller, 1990, 392; quoting Stewart, 1892.) We want people to be autonomous, and indeed the state should likely support them in this effort. But virtue cannot be forced, it must in some sense be owned by the individual. The paternalistic promotion of virtue and autonomy must necessarily be, in accord with their very nature, a limited enterprise.

Liberals, as we saw, rely on the concept of virtue without following through on its implications, particularly with respect to their effect on motivations and our vision of what is good. If we are to promote virtue, it is important to understand what that means and also to realize that this ought to be done while according much respect to autonomy. I do not want to suggest that the state should take on a full theory of virtue. But, in the first place, if virtue ethics can offer a high level of support for autonomy, then *a fortiori*, it would seem that so can a theory that is less committed to a specific ideal of human flourishing.⁷³ And further, any adequate account of virtue recognizes that true virtue requires some sense of ownership on the part of the agent.

⁷³ Aristotle displays a mix of both prescient liberal and ghastly illiberal elements. He championed political autonomy, the self-government of citizens under law. In the correct constitution, citizens are ruled voluntarily – they choose to be ruled and to rule. In spite of this liberal thread, Aristotle called for the regulation of sexual reproduction, population control, and questionable limits on free speech and expression. For a list of some of Aristotle's more illiberal moments, see Miller, 1995, 248-9.

5.5 The Promotion of Virtue

5.5.1 Introduction

An important point from the previous section is that the promotion of virtue need not eclipse autonomy. We could allow Amish citizens, for instance, the right to resist fighting in the army, but this would not distract us from publicly honouring (and thus promoting) the life of the good soldier. People may shun organ donation on religious grounds, but this does not prevent us from promoting this practice in public. The liberal could support such policies as well, but she would need to find an instrumental justification for them. In politics there is a natural tendency to preach to the lowest common denominator – why argue that a life of charity is better than a life of miserliness when we can instead argue that the life of charity better serves the persistence of the state? But something is lost in this move. In the first place, we limit our political vocabulary and thus shut out arguments that appeal to the good of citizens without any clear instrumental value for the state. And second, we unwittingly train citizens to take the instrumental arguments for the state as those which carry the most weight. It is true that citizens who disagree with a state's virtues will be living against the grain, so to speak. But this is a common feature of any society adopting any political philosophy, including liberalism. (Macedo, 1995, 485; Rawls, 1993b, 438)

Before going further into the theoretical underpinnings of our value-laden conception of citizenship, it is important to here say some more about the relationship between virtue and politics. Several themes that are touched upon here are taken up in greater detail in the next chapter.

5.5.2 The Situationist Critique

Gilbert Harman and John Doris have recently taken evidence from the social sciences and turned it on virtue ethics, claiming that the moral theory is committed to ‘globalism’, the popular misconception that we possess durable, robust character traits⁷⁴. Globalism, they claim, has been thoroughly debunked by a wealth of empirical studies, which leads to the claim that “virtue ethics is empirically inadequate.” (C. Miller, 2009)⁷⁵ Situationists point to studies like the famous Milgram experiment⁷⁶, the Stanford prison guard experiment (Haney, Banks, & Zimbardo, 1973), and the Princeton Good Samaritan experiment (Darley & Batson, 1973), and to historical cases like Nazi Germany or the Rwandan genocide, as evidence that human behaviour is governed more by the vicissitudes of situation than the depth of our character.

Situationists often exemplify their case by recourse to the famous and oft repeated Milgram experiments. In these experiments, unwitting participants were instructed by an experimenter to administer electric shocks to a third party in the case of wrong answers to a series of questions. This third party, who could be heard but not seen, was an actor in cahoots with the experimenter who pretended to feel the effects of the shock. In a typical trial of 40 participants, all administered shock beyond the 'Very Strong Shock' level (150 volts), all but one administered up to 300 volts, and 26 out of 40 (65%) continued to the maximum of 450 volts, despite the screams, pleas for mercy and eventual silence of the purported answerers.

⁷⁴ Harman and Doris target virtue ethics in particular, but they in fact challenge any theory premised on stable character traits.

⁷⁵ Although situationists take Aristotelian virtue ethics as their primary target, their arguments typically apply to any theory which presupposes the capacity for fixed, stable character traits.

⁷⁶ Both Harman and Doris offer provide good summaries of the experiment. See Doris, 2002, 39-51; Harman, 1999, 321-2.

To explain these disturbing results by appeal to character we would seemingly need to suppose rampant character defects in the population. Nearly two thirds of subjects displayed outright callousness, and almost everyone displayed egregious behavior. The best explanation, according to many social psychologists, is that elements of the situation led to the lamentable outcome: the incremental character of the move from mostly innocuous to objectionable behavior; the difficulty in disobeying the experimenter; and finally, the confusion of the situation as the scene moved from a question and answer session to senseless shocking session. (Ross and Nisbett, 1991)

The issue of seemingly trivial factors having a large effect on behavior is one of situationism's most troubling claims for virtue theory. Isen and Levin found that people who happened upon a coin in a payphone slot were much more likely thereafter to help a confederate who dropped a pile of papers. (Isen and Levin, 1972) And Doris offers the example of 'group effect', wherein individuals fail to meet their regular moral standards when in the presence of others. (Doris, 2002, 33-34) What hope is there for character if my behavior is like a leaf blowing in the wind?

If the situationist critique holds, both the liberal program for civic virtue and my own alternative are doomed enterprises.

5.5.3 Response to Situationism

The evidence that Doris, Harman and others present in favour of situationism underdetermines their claim that a lack of robust character in many people signifies the impossibility of robust characters. (Doris, 2005) The evidence, while impressive and

concerning, shows only that many people do not possess robust character traits.⁷⁷ The mistake is to presume so much virtue in the population, and to take lack of evidence for virtue in the masses as a lack of ability to achieve it.

Doris is aware of this ‘virtue is rare’ response. Such an approach, he claims, is empirically modest (i.e., hard to prove or disprove) at the price of not covering the preponderance of subjects, and thus projects such as moral education seem to be lost. (Doris, 2005, 665) If virtue is so rare, the situationist asks, why should the many clamour after it? The error with this line of thinking lies with a second underdetermination error - evidence of inconsistency is not necessarily evidence of rampant inconsistency.⁷⁸ We may conceive of virtue on a scale, with the virtuous agent fully consistent in virtue, and those lacking virtue consistent to the proportion they are virtuous. On this view, it is not that the participants in the Milgram experiment fully lacked compassion, but rather that their compassion was incomplete, and indeed, to varying degrees.⁷⁹ So virtue may be rare, but approximations to it are less so. It may be disheartening to hear that most of us will never achieve the ideal of virtue, but this is being realistic, not elitist.

There are several answers that virtue theorists could offer to the problem of trivial factors playing a large role in our behaviour. The first is to challenge the claim that trivial factors like finding a coin really play a large role in behavior. Indeed, attempts to repeat the coin in the slot experiment by Blevins and Murphy discerned no relationship between

⁷⁷ Consider, for example, the Good Samaritan experiment where 10% of the participants in the high hurry scenario *did* stop to help the slumped over man.

⁷⁸ This meshes with the view of the empirical evidence offered by Sabini and Silver, 2005. They argue that the situationist’s evidence points to a few local problems concerning character rather than a global phenomenon.

⁷⁹ And furthermore, certain elements of the experiment may serve to mitigate the extent of the seeming callousness displayed. As Aristotle put it long ago, there is very general agreement that happiness is the highest good of man, but as to the essence of happiness, “the many do not give the same account as the wise.” The mass of mankind pursues pleasure, the more prominent types seek honour, while only the wise and well brought up seek virtue. (EN I.4-5)

finding a dime and helping. (Blevins and Murphy, 1974) In short, the dime studies taken together seem to offer no support for or against virtue.⁸⁰ Similarly, Sabini and Silver argue that much of the situation-specific behavior highlighted by situationists can be explained by recourse to a set of finite, well-known local explanations including deference to authority or peer pressure. (Sabini & Silver, 2005) It is important, moreover, to figure out not only what situational factors have an effect on behavior, but also to know the magnitude of their effect. Perhaps finding a dime makes me *slightly* more likely to exhibit charity – this is to cede very little to the situational factor. A real concern would arise if finding a dime moved me from quite unlikely to quite likely to cheat on my wife.

A second answer, related to the ‘virtue is rare’ thesis above, is that indeed *some people* are so weak that trivial factors do have a large impact on their behavior. Imagine Jim who has never learned to properly control his rampant mood swings. Perhaps something as simple as finding a dime can move him from cranky to peachy and affect his behavior accordingly. A third response is that we need to inform ourselves, with help from social psychologists, about which trivial factors can have wide effects on our behavior. Many people are aware of triggers like group effect and peer pressure and thus are better armed to counter their influence. Knowledge of this kind is a welcome addendum to practical wisdom.

What the virtue theorist cannot accept is that trivial triggers with high impact are ubiquitous (and powerful), so much so that it would be a lost cause to attempt to catalogue and account for them. But notice too that if the ‘ubiquitous trivial trigger’ thesis holds, the situationist ethic advocated by Doris is threatened. On his view, we can learn virtuous

⁸⁰ Andrew Sneddon argues it is wrong to see the Isen and Levin studies as making a claim about our susceptibility to trivial factors. Instead, the true import of all of the coin-finding studies is that they exemplify how little we know about the origins of human action. (Sneddon, 2011) My concern at present is only to argue that it has not been clearly established that we are susceptible to trivial influences. See also: Annas, J. (2005), and Miller, C. (2003).

behaviour in a limited set of very common situations. (Doris, 2002, 66 and 166) But if trivial triggers are ubiquitous, this view will be impossible to defend due to the sheer number of potential causal factors involved in a given situation. Taken to the extreme, the ‘ubiquitous trivial trigger’ thesis destroys not only the possibility of practical wisdom, but also the possibility of local traits and perhaps also moral responsibility, if this latter requires an ability to get a hold of or at least recognize the causal factors in a given situation. If, on the other hand, we can get a hold of or recognize these causal factors, virtue may be able to withstand the arguments of situationism.

Furthermore, before being taken aback by our own flippancy, it is important in general to consider how much weight should be given to the situationist literature. For one, due to methodology, experimental social psychologists are prone to manipulate situations and sample persons so as to detect the effects of situations. Their studies are thus geared to reveal the effects of situations, but not of persons. In other words, they do not sample enough persons, and are thus susceptible to missing the fact that persons, and person-situation interaction could be important causal factors. (Krueger, 2009; Wells & Windschitl, 1999) As well, we should bear in mind that many of the studies cited by social psychologists are ‘newsworthy’, or interesting for publication, precisely because they run contrary to the expectations of folk psychology, whereas those conforming to these expectations would not receive such attention. As one psychologist puts it, to corroborate the situationist rhetoric, “one would have to show that experimental findings are more valid when they differ from folk beliefs than when they do not. Logically, there is no such relationship.” (Krueger, 2009, 129)

As I see it, the problem that lends weight to this critique is a conflation between virtue theories and ‘globalist moral psychologies’ which hold that character traits are fixed such that they determine behaviour across a wide variety of situations. In support of this link, Candace Upton references many well-known virtue ethicists, old and new, that imply that virtue ethics is beholden to globalism. (Upton, 2009) But following up on these references, one sees that there is a conflation between virtue and character traits that lends strength to the situationist critique. Yes, the ideal states known as virtues are consistent across a myriad of situations. Indeed, that is part of their definition. Aristotle claims that the virtuous man always chooses well and makes the best of circumstances. (Aristotle, 1998, 1100b35-1101a7. See also McDowell, 1979, 331.) But two points should be noted here. First, virtuous behaviour does not translate into the same actions all of the time. Virtue requires a sensitivity to situations and not “cloddish habit-following.” (Annas, 2005, 637; McDowell, 1979, 332; and see discussion above on practical wisdom and other virtue theories.) Virtue does not even imply the same inner dispositions all of the time; “To fear some things is even right and noble.” (Aristotle, III.6) Second, as I have already argued, claims about virtues are not empirical claims about human behaviour. Virtue theories consider the way people should be, not simply the way they are. Virtue theories typically espouse an intelligent version of globalism for virtue, that is, true virtue is thoroughly consistent, though it could issue in different responses proportionate to the situation.⁸¹

The situationist critique brings to light important psychological and social aspects of human behaviour. Though these findings are important for our practical wisdom, they do not undermine virtue theory itself. I have put aside one aspect of this critique, namely, what it

⁸¹ For a similar point, see C. Miller, 2009, 64-65.

says about our ability to bring virtue ethics into practice, that is, to teach virtue. We will return to this issue in Chapter 6.

5.5.4 The Goals of Virtue Promotion

Feinberg takes up the question of the enforcement of virtue through law and suggests that given the complexity of virtue, it would be “ludicrous” to inculcate it by means of intimidation. “Really care about another or else...” is not a prescription for virtue. The law, in his view, could only realistically promote minimal, negative ‘virtues’ like aversions to killing, raping, stealing and the like. This task is already accomplished by the harm principle, he believes, and so the need to consider promoting virtue is a non-starter. (Feinberg, 1988, 282-5)

No one, I think, supposes the law could go far in ‘creating’ virtuous people. At best, it can do some basic things to facilitate virtue. Recall the liberal admission, particularly over the past 20 years, that all political philosophy suggests a ‘pattern of life’, and makes the living of some ways of life easier than others. This suggests a reasonable hope for the state espousing a limited conception of the good: let the pattern of life promoted be one of virtue; let it be easier to live by virtue and more difficult to live by vice.⁸²

The proper way to make virtue the easier path will vary. Childhood is a special time when humans are both in need of and receptive to direction and often in controlled settings (school, sports, etc) where this direction can be given. With children we will likely take a heavier hand with virtue promotion. As young people mature, we ought to give increasing consideration to their autonomy. To stick with familiar examples (for now), we might still

⁸² “Laws designed to uphold public morality, for example, not only contribute to the moral education of the public, they may help to establish or maintain a milieu which encourages virtue and discourages at least the grosser forms of vice.” (George, 1999, 130)

promote courage through public holidays, or charity through tax deductions, but this amounts to facilitating and encouraging virtue, not enforcing it.

Again, we should recall that there remain various limits to the promotion of virtue, especially when it involves the coercive power of the law. Autonomy, for one thing, is an important good, even if is not the only important good. Moreover, as Scoccia points out, and as Aquinas and Augustine pointed out long before, there is often the danger that prohibitions aimed at promoting virtue could cause more harm than they prevent (including the harm of restricting autonomy). (Scoccia, 2008, 378-9) And so we have reason to be cautious in our approach to virtue-promoting policy.

Apart from the value of increased virtue for the individual and the community at large, agreement on virtues would also help reinforce civic unity. This theme will be taken up in depth later in the chapter. For now, let us note that a state that believes in virtue can offer citizens a substantive ideal that merits devotion.

5.5.5 Some Ways to Promote Virtue

As Nussbaum has pointed out, we can promote a conception of the good, or good human functioning, without placing extensive limits on self-determination. (Nussbaum, 1990) Providing resources for education, for example, still leaves largely underdetermined the shape this education will take. Some issues, of course, are more difficult than others. It seems unwise, for example, to offer school children the chance to volunteer at either an abortion clinic or for an anti-abortion organization picketing that clinic. But all forms of charity do not so easily fall to the wayside. Few people have strong feelings against visiting

the elderly, assisting the severely disabled, raising money for cancer research⁸³, or providing food and shelter to those in immediate need. The state I am advocating takes a stand on certain elements of the good life, even though it is unwilling to spell out a detailed conception of that life.

[T]he opponent of neutrality can readily concede that there are many claims about human good that are contentious and uncertain and unlikely to figure in any successful argument concerning what state policy should be. To defend nonneutrality in practice one must only hold that there are some sound yet controversial conceptions of good that should figure in justification. The most likely candidates are common-sense and perhaps humdrum notions. (Arneson, 2003, 37)

Let us proceed to consider some virtues we might publicly endorse, and how we might do this. Many of the measures I mention are already common practice, and this helps strengthen my case that virtue-promotion is not so objectionable as might seem at first blush. We will consider several issues in more detail in the following chapter.

Courage

The state awards public medals of honour for those who display the virtue of courage to an eminent degree. This encourages the cultivation of courage in the populace. There is public recognition of the work of those called on most often to display this virtue: soldiers, police, firefighters, and aid workers, for example. Our education system could promote courage by giving young people the opportunity to read stories of courageous individuals, fictional characters like Antigone, and real people like Martin Luther King and Oskar Schindler.

Concern for Others

⁸³ Although there would be division where this involves embryonic stem cells.

The state is uniquely situated to facilitate and encourage certain kinds of charitable behaviour. It volunteers our military for some worthy peacekeeping and humanitarian missions abroad. It provides tax breaks for charitable donations and facilitates arrangements and funding for people wanting to participate in foreign aid but unable to afford or organize the effort on their own. The state provides awards for outstanding humanitarians. In some places it encourages volunteerism by making charitable work part of a high school curriculum. In line with this commitment to charity the state could engage in other practices. It could, for example, facilitate organ donation by educating people on the process and making it easy for people to choose this option. It could also partner with civic organizations and share its resources to increase the effectiveness and reduce redundancy in charitable works.

Piety (i.e. respect for forebears)

The state holds a day of remembrance and publicly honours those who risked or sacrificed their lives for the sake of the country. Veterans should be treated with the utmost respect, and offered the best in health care and accommodations in the case of disability and old age. Respect for elders in general could be encouraged as an aspect of piety, recognizing the contributions of past generations to the current one and ensuring that adequate plans are in place for pensions and medical coverage. As an aspect of piety, the state also recognizes the errors of its forbears and at times offers public apologies and some form of compensation.⁸⁴ Similarly, historic charitable acts from other states and communities are and could be further recognized.

⁸⁴ In Canada, the residential school scandal, the internment of Japanese Canadians during WWII, and the Chinese immigrant head tax come to mind.

Autonomy

The state makes education compulsory until a certain age, and curricula require students to learn about other cultures and to acquire critical thinking skills. The ability to think critically could be taken further than is common practice. Students should learn to recognize and create strong arguments and to critically analyze news media and the arguments of politicians. Restrictive communities could be made to show that they offer the right of exit and that members are not otherwise limited in this ability by design. The state could enforce the investigation of suspected spousal abusers such that abused women (and men) might come out from under the yoke of their abusers. (See discussion below in “Paternalism” section.) As discussed in the last chapter, cooperation with cultural groups and communities could promote autonomy by helping people take further control of their own lives.

This is just a sampling of ways that some commonly recognized virtues could be exercised and publicly promoted. It would be easy to extend this discussion to include virtues such as honesty, temperance, and others. As mentioned, many, perhaps even most of the aforementioned policies are already in place in one way or another. However, the justification for these practices points up an important distinction. The political liberal can espouse courage, but only because this virtue helps ensure the persistence of our liberal order. Ethical liberals, for their part, are typically unwilling to promote virtues beyond the limited set of individual self-determination, critical thinking and equality. I am suggesting that we also promote courage as a virtue that will (typically) make our citizens’ lives better in a moral sense. Courage could actually require us to risk life and state for the good of

others, and so instrumental justifications fail here. To take an example, North America was relatively safe from the threat of Nazi Germany, and entering that war could have been an existential threat. Our participation in that conflict is best understood as a reflection of our commitment to goods like freedom and our commitment to virtue (which required action on our part), rather than by an appeal to instrumental reasons of state.

Furthermore, even though many of these practices are widely accepted in liberal regimes, it is not clear that standard liberal theories provide sufficient justification for them (I believe my last example points to this conclusion as well). How, for example, are the interests of the state furthered by providing tax breaks for the provision of foreign aid? Surely limiting this advantage to domestic charity would better serve the state's interests.⁸⁵ Indeed, instrumental reasoning could actually lead us to distorted accounts of virtue. An instrumental concern for piety (and patriotism) might lead us to exaggerate the virtues of our forbears, as Galston openly encourages. But piety as a virtue that is good for its possessor demands correct judgments as to the character of our forbears, and devotion only where devotion is due.

If we recognize many of our current virtue-promoting practices as unobjectionable, then we may be willing to take on others. For example, we believe in facilitating charitable work through tax deductions and other means. In the same spirit we may wish to orchestrate large-scale, effective blood donation campaigns so as to reduce the number of people who suffer and die while waiting for transfusions. Or similarly, we could make it easy for all Canadians to join a bone marrow registry by instituting work and school-based campaigns. I don't know whether we could somehow come up with an instrumental justification for these

⁸⁵ I take up this issue in more detail in the following chapter.

practices, but it should not matter either way. It is enough that they would help people and would express our common commitment to charity.

The knee-jerk liberal rejection of a state with a conception of the good unfairly glosses the potential middle ground between Plato and Rawls. It is possible, as Miller puts it, "to tolerate the practice of many competing conceptions of the good, without endorsing these other conceptions or taking the neutralist stance that all lifestyles are equally valid." (Miller, 1995) A state with a conception of the good can still be open to wide plurality. It need not require a thoroughgoing sameness.

5.6 Paternalism

5.6.1 Introduction

Throughout this thesis I have been challenging the viability of the liberal neutrality thesis. If that thesis is indeed bogus, it debilitates one common argument against state paternalism. For if it were necessary to remain silent on the good, then there would be little place for promoting the good of individuals. But there are still strong grounds for the liberal presumption against state interference, including the value of self-determination.

Mill famously argued that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant." (Mill, 1869, 23) Joel Feinberg has offered one of the most forceful recent critiques of paternalism, and defenses of Mill's harm principle.⁸⁶ Feinberg, like Mill, is committed to the harm principle as the primary delineator between legitimate and illegitimate interference in personal matters

⁸⁶ See Feinberg, Joel, *The Moral Limits of the Criminal Law, Harm to Others* (1984); *Offense to Others* (1985); *Harm to Self* (1986); *Harmless Wrongdoing* (1990).

on the part of the government.⁸⁷ Feinberg cashes out the ‘harm’ of the harm principle as a ‘wrongful invasion of interests’. (Feinberg, 1984, 31 and following) Against paternalism, he believes it should be an absolute maxim of the criminal law that one cannot harm oneself: “To one who freely consents to a thing, no *wrong* is done...”⁸⁸ This being the case, there is no room left for legal paternalism.

Paternalism can be defined as “the interference of a state or an individual with another person, against their will, and defended or motivated by a claim that the person interfered with will be better off or protected from harm.” (Dworkin, 2010) The ‘voluntariness’ of an action serves as the all-important delineator between soft and hard paternalism. ‘Soft paternalism’, the interference with non-voluntary acts, is generally permissible to liberals because non-voluntary choices are considered as foreign to an individual as are the choices of another. (Feinberg, 1971, 124) As an example of soft paternalism, we might restrain a person high on drugs from jumping off a skyscraper. ‘Hard paternalism’, on the other hand, involves the interference with voluntary choices, and this represents a serious affront to the “human right” to dispose of one’s own lot in life. (Feinberg, 1971, 120)

It is important to note that ‘voluntary’ is not coextensive with ‘reasonable’. I can choose to smoke a pack of cigarettes a day, or spend thousands of dollars on lottery tickets, even though both actions fall short of being reasonable. Also of note is that voluntariness is a matter of degree. Ignorance, for instance, can reduce the voluntariness of an action, and our

⁸⁷ Feinberg also develops the ‘offense principle’. “It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense (as opposed to injury or harm) to persons other than the actor, and that it is probably a necessary means to that end” (Feinberg, 1985)

⁸⁸ Feinberg, 1971, 107. Note that in this earlier article, Feinberg uses the term ‘harm’ in the pretheoretical, nonmoralized sense.

knowledge of the factors in any given situation is always imperfect, and to varying degrees.
(Arneson, 2005, 265)

Feinberg's antipaternalism⁸⁹ actually leads him to reject Mill's prohibition against selling oneself into slavery. There is no reason to prohibit such contracts in principle, Feinberg claims, provided one can prove the contract was voluntary. Unlike Mill, Feinberg starts with the overriding value of liberty: "The principle that shuts and locks the door leading to strong paternalism is that every man has a human right to "voluntarily dispose of his own lot in life" whatever the effect on his own net balance of benefits (including "freedom") and harms." (Feinberg, 1971, 120)

Feinberg believes the state can still have paternalistic aims, but it cannot enforce these coercively. Thus, it can levy large taxes on harmful substances like alcohol and tobacco, but it cannot prohibit citizens from ingesting them. (Feinberg, 1984, 24) Feinberg's rationale for permitting such practices is twofold: first, he believes the difference in coercion between penalties of the criminal law, like imprisonment, and tax levies, amounts to a difference in kind. Second, when we look at (for example) the harm of smoking from the societal standpoint, taken altogether, it approaches the threshold of a harm to society, and so discouragement via taxation is further justified.⁹⁰ Beyond these points, Feinberg believes noncoercive paternalistic practices like antismoking policies can be partly grounded in distributive justice. Because smokers cause a disproportionate amount of costs to the public

⁸⁹ I use the term 'antipaternalism' (and cognates) to refer to what might more properly be called anti hard paternalism.

⁹⁰ In other words, the set of self-harming smokers effectively harm the rest of us indirectly: loss of loved ones, family breakdown, etc.

Note that Feinberg should require these arguments to work in concert – his first argument is useless to him without the second, for the first argument offers no rationale for sanctions, but only claims that said sanctions are not so severe.

(hospitalization, lost productivity etc), it is fitting that they pay more than the average share of taxes.⁹¹

5.6.2 Defending Paternalism

I have argued that our political philosophy would benefit from dropping its commitment to neutrality and admitting a limited conception of the good. For a certain range of policies, viz. those not dealing with criminal law, this would not represent a definite conflict with Feinberg. He might allow, for example, that we paternalistically promote health by placing gruesome (and accurate) ads on cigarette packages detailing their negative effects on health. But what about using coercion, the power of the criminal law, to promote good living?

Even if this sounds *prima facie* offensive to our liberal sensitivities, we do in fact have many commonly accepted paternalistic laws in the criminal code. It is illegal, for example, to not wear a motorcycle helmet while riding, or a seatbelt in a moving car. When faced with such examples, many liberals suggest nonpaternalistic rationales for the seemingly paternalistic laws. There are two things to be said to this. First, just because we can concoct a nonpaternalist justification does not mean that it is our actual justification. The reason we have laws mandating motorcycle helmets is not because helmetless riders make other drivers uneasy, or increase insurance rates or that no competent rider would voluntarily choose to ride without a helmet. The real reason is that we do not think people should be allowed to make such a dangerous and benighted choice. This is hard paternalism.

⁹¹ I presume that Feinberg would hasten to add that they cause more than their fair share and it's their own fault. Disabled people and poor people also cause more than their 'fair share' of expenses. If Feinberg's arguments hold they could justify increased taxation on junk food, especially under a state-funded health system. They could potentially even justify increased taxation of obese people (and others) when these are responsible for their own malady.

Perhaps the antipaternalist will respond that our intuitions are simply mistaken here, and that we should abandon such paternalistic laws. This suggests the following clarificatory question which forms our second challenge to Feinberg: does beneficence (or any other value) ever trump autonomy? At the conceptual level the answer seems clear. Given an enormously beneficial good, and a minor slight to autonomy, we should side with the good. Imagine we could open up a world of great intellectual and cultural achievement to an individual but only given we prevent her from voluntarily allowing herself to become addicted to crack at a particularly vulnerable point in her life.⁹² As Arneson puts it, “Seen in this light, absolutist antipaternalism, like absolutist insistence on upholding any moral right, is fanaticism.” (Arneson, 2005, 264) The claim here is not that beneficence, in general, trumps autonomy, but rather that the different values inhering in a certain choice need to be weighed carefully. So, in agreement with most liberals we might agree that we should not force the adult Jehovah Witness to receive a blood transfusion since, in this case, beneficence is trumped by freedom of religion and freedom from assault. (Scoccia, 2008, 371)

The antipaternalist move at this point might be to shift to what Scoccia calls a pragmatic antipaternalist position – *in our world*, they might claim, it is best to act as if hard paternalism is always wrong. (Scoccia, 2008, 365) But I don’t think even this line can be held. We have already mentioned the seatbelt and helmet cases. Arneson and Scoccia both make use of the assisted suicide example as well. Consider, for example, Oregon’s *Dying With Dignity Act* which requires proof of terminal illness within six months. This requirement is a clear case of hard paternalism for it prohibits healthy adults from obtaining

⁹² The fact that her future self would approve of this move is no help to the antipaternalist since it is the agent in the present who has full authority. (‘Future self’ arguments could justify a very broad range of paternalistic practices.)

assistance for their voluntary choice to end their life. The typical Millian response here is to claim that such rules prevent cases of manipulation which would engender breaches of the harm principle. But note that the Oregon law does not merely have safeguards, but an absolute prohibition. And indeed, it could very well be that the healthy are *less* likely to be coerced, even if we have more reason to be doubtful of their presence of mind.

The phenomenon of domestic abuse offers another example. Victims of domestic battery characteristically forgive and reaccept their abusive partners, and many voluntarily choose not to press charges. To meet this problem we empower police to seek and gather evidence of crimes during domestic dispute investigations regardless of the intention to press charges. Since the ability to press charges is an aspect of women's autonomy, and the goal of this policing power is to benefit women, its justification is clearly paternalistic. By not pressing charges, battered women are feely allowing for future abuse (because, unchecked, it will inevitably recur), and we want to remove this ability.⁹³ The temptation, in such cases, is to suggest that battered wife syndrome limits the voluntariness of women's choices, and thus such intervention could count as soft paternalism. But the syndrome limits voluntariness because it is characterized by a faulty pattern of reasoning; that is, women who suffer from this condition believe that their partners will change and the cycle of abuse will end. If we were able to intervene with anyone who does not reason properly, then the scope for intervention would be very wide, beyond what any liberal would accept.⁹⁴ We might also be tempted to claim that this isn't paternalism, but merely the police enforcing a law that has a clear basis in the harm principle. But this is to ignore the discretionary right of people to not

⁹³ Hughes, 1999, 21. This is different from saying they consent to it, but it is to admit that they pass on the most effective opportunity to stop it.

⁹⁴ Feinberg himself grapples with a few challenges to the harm and offence principles, including purposely conceiving babies with birth defects, and allowing gladiatorial death matches between consenting adults before a consenting audience.

press charges for crimes committed against them, and if we are to ignore this right in this circumstance, I believe the only convincing rationale will be that it serves the good of the abused.

As Arneson points out, the absolutist stance that proponents of soft paternalism take against hard paternalism is questionable in that so much rides on the vague standard of voluntariness. It assumes “the enormous overriding moral importance of the line between self-harming choice that is not quite voluntary enough and choice that just passes the threshold of being voluntary enough.” (Arneson, 2005, 268) Voluntary choices are supposed to be deliberate and flow from our settled dispositions and character, but we can also voluntarily act against our settled character. Or, on the other side, our character can include the settled disposition to act without deliberation, in which case none of our actions pass the threshold into voluntariness. In short, liberals like Feinberg are in the difficult position of maintaining an absolutist position (‘no strong paternalism’) on the basis of a vague criterion which requires threshold judgments.

5.6.3 Moral Paternalism

A commitment to some legal hard paternalism need not entail a commitment to moral paternalism, the principle that would allow the state to interfere with a competent adult’s liberty for the sake of her moral good.⁹⁵ We might allow paternalistic practices that only concern ensuring citizens’ welfare goods like life, health, a modicum of income, intelligence and so on. (Feinberg, 1984, 37; Rawls, 1999, 396) These goods are the conditions for most any other goods we wish to attain in life and are not, of themselves, moral goods. Scoccia, a defender of some hard paternalism, rejects moral paternalism on the grounds that in practice

⁹⁵ Feinberg, 1988, 277. Feinberg calls it ‘legal perfectionism’.

it either doesn't benefit its targets, or not sufficiently to override autonomy, or that it violates a right, or that its side effects outweigh its intended goods. (Scoccia, 2008, 378-9)

But the line between moral and legal paternalism cannot be maintained. It looks plausible to Scoccia because he uses it to rule out particularly invasive paternalistic practices like anti-sodomy laws. The general point, though, that beneficence can outweigh autonomy, holds. Indeed, much of the hard paternalism advocated by Scoccia is highly moral. For example, arguments against assisted suicide for healthy adults, I argue, involve the judgment that wasting one's life is a moral failing. In a famous 1993 Canadian Supreme Court case challenging the legality of physician assisted suicide under the charter, the court ruled that the prohibition on assisted suicide

...is grounded in the state interest in protecting life and reflects the policy of the state that human life should not be depreciated by allowing life to be taken. This state policy is part of our fundamental conception of the sanctity of life...Parliament's repeal of the offence of attempted suicide from the Criminal Code was not a recognition that suicide was to be accepted within Canadian society. Rather, this action merely reflected the recognition that the criminal law was an ineffectual and inappropriate tool for dealing with suicide attempts.⁹⁶

Richard Arneson takes a similar line, arguing:

The opportunity to have a life to live is associated with a moral duty, vague in its content but nonetheless substantive and, I think, of paramount importance, not to waste one's life but to use well the opportunity to live in a worthwhile way that is productive of significant good for self and others. (Arneson, 2005, 280)

Consider another example. Child pornography can be created without the use of actual children, and so without the risk of harming them. Furthermore, it is not clear that the

⁹⁶ *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519. The court did suggest that not allowing exceptions to the rule was partly necessitated by pragmatic concerns: "Given the concerns about abuse and the great difficulty in creating appropriate safeguards, the blanket prohibition on assisted suicide is not arbitrary or unfair."

existence of such pornography would contribute to the harm of actual children. It could actually serve as a useful catharsis that prevents actual pedophilia. A case has been made by the defendant in *R. v. Sharpe* that the consumption of child pornography should be protected by the constitutional guarantee for freedom of expression. Tellingly, one of the reasons the court presented for the upholding the prohibition of child pornography as a permissible limitation under the Charter was that it recognizes that pedophiles have a distorted view of what is right;

The possession of child pornography contributes to the cognitive distortions of paedophiles, reinforcing their erroneous belief that sexual activity with children is acceptable. (McLachlin, C.J. in *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2. Emphasis in original.)

Now it could be said, and the court did also say, that allowing this cognitive distortion could contribute to actual harms. But at the same time, the court was passing judgment on the worth of an activity that some citizens found valuable;

As a form of expression, child pornography warrants less protection since it is low value expression that is far removed from the core values underlying the protection of freedom of expression. Child pornography has a limited link to the value of self-fulfillment, but only in its most base aspect. (*R. v. Sharpe*, 2001)

In other words, even if some people can enjoy child pornography, even where this occasions no harms it is a very poor thing to enjoy.

The criminal law is a powerful source of intervention, and we should not take its use lightly. By and large, intervention will be appropriate when real harm is at stake.⁹⁷ What I want to press here is that the harm principle does not exhaust our concern as we enact laws and policies. Perhaps the greatest counterexample to the harm principle as the primary legal

⁹⁷ As I argue elsewhere, liberals' use of the word 'harm' is problematic since it is mean, on the one hand, to determine rights, and on the other hand, it is usually defined by reference to rights. See Curry, 2012.

principle governing relations between the government and people is an example considered by Feinberg himself – the moral corruption of children. As he explains: "The moral corruption or neglect of an unformed child [...] is not direct harm to him, provided that he has the resources to pursue his own interests effectively anyway, but it can be a very real harm to his parents if *they* have a powerful stake in the child's moral development."

(Feinberg, 1984, 70, italics in original) Now there seems to be something terribly wrong with this. Surely a child who has been trained to effectively lie, cheat and take advantage of others has been wronged by her parents, even if her character does not lead her to be punished under the harm principle.

Feinberg's argument entails that our problem with morality is not merely epistemological. The skeptic about her own moral knowledge is not necessarily a skeptic with respect to the existence of moral truth. Anyone who admits that there is such a thing as a truth to the matter in moral questions is committed to the claim that there is a distinction between what I *believe* is in my interest and what *is* in my interest (though we hope to have them coincide).⁹⁸ Whoever believes in moral truth likely believes that moral corruption, the inducement to perceive some bad things as good and vice versa, is a harm in itself, for whatever constitutes moral corruption will be *ipso facto* contrary to my interest. Almost everyone believes moral corruption is a harm; the disagreement is over what constitutes moral corruption. To maintain his argument, Feinberg would have to claim that the only things that are in my interest are what I believe to be in my interest which makes him a subjectivist with respect to interests.⁹⁹

⁹⁸ Admitting this disconnect is not necessarily a gateway to rampant paternalism. I may be the best arbiter of what is in my interest even if I admit that I don't always know what is in my best interest.

⁹⁹ But he also holds that 'welfare interests', like health and education, are in my interest even if I don't believe it to be so.

Feinberg explains that there are two principal standards for determining the importance of interests for the well-being of individuals. One method countenances the protection of ultimate goals such as a fulfilling family life, a successful career, spiritual grace and so on. The other method counsels the protection of *welfare* interests, interests like life, health, freedom and a modicum of wealth which are almost always means shared for the attainment of ultimate ends.(Feinberg, 1984, 37) The invasion of welfare interests is the more serious, he believes, for without these ultimate aspirations are likewise thwarted. If I have an ulterior interest to write a famous novel the law can only protect this by means of welfare interests – liberty, security from intellectual theft, and so on. As Feinberg says, "... given that I have my life, health, economic adequacy, liberty, and security, there is nothing more that the law (or anyone else, for that matter) can do for me; the rest is entirely up to me." (Feinberg, 1984, 62) If we accept Feinberg's claim that welfare interests gain their status because they are a means to our ultimate ends, we may even go so far as to suggest that a minimum degree of moral character formation is a welfare interest, for without this we cannot hope to achieve one of the ulterior goals shared by almost all people: to be good. But if this is true, welfare goods cannot be conceived of as morally neutral and neither, in virtue of this, unobjectionable.

Feinberg's argument here has another unfortunate consequence. It follows from what he says that if I never desire something I could not be harmed with respect to it.¹⁰⁰ But it is probable, for example, that someone who grows up in isolation from other potential views of the good may come to mistake false goods for true goods, or may miss opportunities to

¹⁰⁰ Feinberg actually takes up an objection along these lines in *Harm to Others* (1984). There he argues that moral education aims to turn goodness into a want-based interest, that is, we need to learn to see being good as necessary to our happiness. I fail to see how this defeats the claim, as he suggest it does, that being good is in our interest even if we don't want to be good, or the more general point that something can be in our interest without us wanting it.

realize goods that could bring greater happiness and fulfillment to her life. And so we seem to have an antecedent interest to know other, and probably many possible ways of life, and not being given these options is 'harmful' indeed, even though I cannot possibly have an interest in any of them before knowing them. Returning again to the *Mozert* case, we can now say that there is more than autonomy and critical thinking at stake for the children. We also want to ensure that children can have meaningful lives and so we want to be sure that they at least know of alternatives to their own upbringing.

5.6.4 Limiting Considerations

Feinberg assumes that a paternalist state will “assum[e] powers that it will inevitably misuse disastrously.” (Feinberg, 1971, 115) I see no reason to accept this conclusion. Indeed, given that we currently endorse several paternalistic practices (and for paternalistic reasons), while also placing many limits on our paternalism, we have good reason to believe in our ability to draw acceptable limits.

The discussion in this section has led to the conclusion that sometimes the criminal law is an appropriate vehicle for promoting good living as well as for prohibiting grave wrongs. For various reasons, including the value of autonomy argued for in the last section, we should consider the former an option for rare cases. Respect for autonomy has been a strength of the liberal tradition and we should be very cautious about limiting it. The state has many platforms apart from criminal law (education, public policies etc.) from which to promote virtue in the citizenry. Feinberg himself would allow for the promotion of virtue in other forums, including moral education in schools and public awards for notable exemplars of virtue. (Feinberg, 1988, 278) My position here in fact matches that of Aquinas who held

that law is primarily concerned with preventing harms, though it also protects a community's moral environment by forbidding the grosser forms of vice. (Aquinas, 1981, ST1-2, q96a.2 reply; George, 1999) Even if we are ready to encourage virtue and to step in to prevent moral disaster, this does not entail that we can enforce virtue.

There are other reasons to limit the state's zeal. For one, a highly particular conception of the good will run up against the legitimate Rawlsian concern for stability. Laws based on the social principles of Islam, or the Catholic Church, for example, will alienate large segments of the population.¹⁰¹

Moreover, in some cases our collective confidence in our knowledge of the good decreases as moral claims grow in specificity. We may agree, for instance, that concern for others is a good thing, but be unsure as to whether this entails forced contributions to cancer research. In the face of uncertainty, it seems wise to leave latitude so that individuals may realize virtues in the way they see most fit. This has the added benefit of letting individuals 'opt in' in the manner they prefer, and thus the state's values feel more legitimate and less imposed.

5.7 Civic Unity and Political Reasoning

5.7.1 Introduction

In the past, citizenship was thought to be based unproblematically on race or ethnicity. The twentieth century testifies against the dangerous presumption that "nationality carries an unquestioned (and, it seems, unquestionable) ethical significance." (Müller, 2009, 42) For its part, liberal neutrality seems to present the opposite threat. The lack of substantive values leaves a (seemingly) neutral procedure as our common point of departure and our source of

¹⁰¹ The promotion of any value will alienate some portion of the population, as will neutrality, as I have argued.

attachment. The goal of this thesis, of course, has been to push for a middle ground between these extremes.

5.7.2 Liberal Efforts at Unity

One of the central concerns of any political philosophy is how it will help engender civic unity. Rawls, as we have seen, argued that political liberalism represents more than a mere *modus vivendi* since it is still a moral conception based on moral ideas (e.g. person, society), and because he believes citizens will agree to the principles of justice on the basis of their own comprehensive conceptions of the good. (Rawls, 1993b, 147) Many liberals since Rawls have argued that common principles of justice are an insufficient basis for social unity. Kymlicka, for example, points out that the common coexistence of liberalism and nationalism is evidence that of itself the liberal principles of justice do not satisfy our desire for civic unity. (Kymlicka, 2001, 311) And Barry points to the many failed post-colonial states which had impeccably liberal constitutions, but lacked the conditions for securing the social unity necessary for the maintenance of a liberal democracy. (Barry, 2002, 79)

Macedo, Tomasi and Galston all try to bridge the gap between liberalism and civic unity in their work. Macedo roots unity in the commitment to a common liberal civic project that makes specific demands on its citizens. But, as we argued, it is hard to make the case for the overriding importance of citizenship from within a political philosophy that tries to be neutral with respect to the good. And the basis for unity he proposes is weak – it does not consist of any substantial values but only concern for the perseverance of the liberal order.

Tomasi believes liberals can generate greater unity by attending to the disparate effects of liberal public philosophy and helping citizens to live out their own conception of

the good. But this could serve to weaken civic unity as the only common project becomes one of protecting, and effectively enshrining, difference. And in spite of himself, Tomasi's proposal that we understand our personal commitment to the good in terms of its relationship to liberal rights is likely to promote the divisive and legalistic individualism that Glendon and O'Neill lamented.

Galston suggests a more substantive unity based on the minimum demands of public order, the constitution, and the ethical presumptions of universal ordinary morality. But, at the same time, Galston presents his view as one of 'maximum feasible accommodation', open to the greatest amount of diversity. Like Tomasi's view, this creates the potential to dissolve whatever common identity is available. Galston's value pluralism leads him to see diversity as a good in itself, and this is hardly a recipe for civic unity.

5.7.3 Constitutional Patriotism

The liberal attempts surveyed are vitiated by liberal neutrality, or by excessive efforts to accommodate diversity without a corresponding account of what is common. What we need is an account of civic unity that is more robust than these liberal theories without giving into the well-known excesses of nationalism.

Jürgen Habermas' 'constitutional patriotism' is an important step in the right direction. Habermas argues for a notion of citizenship that derives its identity from the praxis of citizens who exercise their civil rights, rather than from ethnic and cultural properties. As he sees it, the sole remaining source of legitimacy, and so source of unity, is popular sovereignty. Citizenship, then, is based on a common political culture. Constitutional patriotism can be seen as an attempt to salvage patriotism from the dangers of

‘uncomplicated’ nationalism, as Habermas calls it. Morality, even when aspiring to universality, is necessarily worked out within particular contexts, and within particular histories and traditions. Speaking of the German context, Habermas writes:

Our own life is linked to the life context in which Auschwitz was possible not by contingent circumstances but intrinsically. Our form of life is connected with that of our parents and grandparents through a web of familial, local, political, and intellectual traditions that is difficult to disentangle – that is, through a historical milieu that made us what and who we are today; None of us can escape this milieu, because our identities, both as individuals and as Germans, are indissolubly interwoven with it. (Habermas & Weber, 1989)

It is not just that the historical and cultural problems of each state are particular to it, but also that its solutions and principles for dealing with these are proportionately particular in their instantiation. Germany and Canada both endorse antidiscrimination laws, for example, but Germany has special reason to be sensitive to anti-Semitism and so has special reason to militate against it.¹⁰²

Constitutional patriotism disavows the blind attachment of nationalism, opting instead to root identity in political institutions (and central to these, of course, the constitution). These institutions embody reason and the democratic ideal because they are the result of mutual justification between citizens over time. This is still ‘patriotism’, however, in the sense desired, because the attachment is to these institutions *and* the particular political culture in which they are instantiated. (Müller, 2009, 66)

In Chapter 4 I highlighted a concern suggested by a discussion of Joseph Carens’ views on immigration: by what argument do we demand a normative citizenship identity? Most liberals, I argue, demand this without the conceptual resources to justify it. A neutral state can appeal to civic/instrumental reasons, but this does not tell us why we should prefer

¹⁰² It’s not clear that a holocaust denial law is the best solution. Rwanda’s genocide denial law – to take another example – has been applied liberally for illiberal purposes.

civic aims to our own. For Habermas, the state is entitled to promote a normative conception of citizenship by the very fact that citizens have a collective right of self-determination, although not to determine the political culture without limit; “The democratic right of self-determination includes, of course, the right to preserve one’s own *political* culture, which includes the concrete context of citizen’s rights, though it does not include the self-assertion of a privileged *cultural* life form.” (Habermas, 1995, 278. Emphasis in original.) By the ‘concrete content of citizens’ rights’ Habermas seems to be pointing to the instantiation of rights within a cultural-political context. At the same time, Habermas limits a state’s ability to promote citizenship along lines derived from features like ethnicity. To be clear, privileging the political culture already *is* to privilege a cultural life form, but an adequate political culture, we are to suppose, should be capacious enough to support a host of particular, reasonable cultures.

An important implication here is that citizens can be expected to take on, or adapt to, an identity. Kymlicka suggests that we teach students to identify with their nation’s triumphs and failures. (Kymlicka, 2001, 315) But he goes too far when he argues for a multicultural citizenship that accords the history, language and culture of non-dominant groups the same recognition and accommodation afforded the dominant group.¹⁰³ Canada’s history is clearly more European than Asian, even if it is both, and even if the future sees a shift in the balance of influence. John Meisel, disparaging the Canadian preoccupation to remove public religious symbols, complains

Christianity is a central and powerful component of Canada’s history and heritage. Although attitudes to it have changed, it is an integral part of the country’s traditions that enriches all groups living here. Many of the attractive features (as well as some less appealing ones) of Canadian culture have their

¹⁰³ Galston seems guilty of the opposite error in that he is willing to exaggerate the virtues of the American founding fathers, or obscure their defects, for the sake of promoting patriotism. (Galston, 1980)

roots in Christian churches and sects. To diminish or hide Canada's Christian heritage is a form of amputation and suppression of the past. (Meisel, 2007, 105-6)

The insight I wish to adopt here is that we not conceive citizenship as a neutral space defined solely by liberal universal rights. Public dialogue, even as a rational enterprise, takes place within a value-laden context that has evolved over time. The political culture that results from this, and which plays a normative role with respect to the identity of citizens, is justified because it results from the self-determination of people who are committed to truth and justice.¹⁰⁴

This does not mean, for example, that simply because our history is highly Christian, Christianity constitutes a special reason in our public discourse. Indeed, secularism has become central to our political project. The point, rather, is the dialectical development of our political project occurs among a people where Christianity and other institutions and events figure prominently. A newcomer seeking citizenship is seeking to become part of a particular political project that has such a history.

Though I applaud the spirit of constitutional patriotism, it remains, in the eyes of its star proponent, married to the neutrality familiar to political liberalism. Citizenship, according to Habermas, cannot be based on a "substantive consensus on values but only [on] a consensus on the procedure for the legitimate enactment of laws and the legitimate exercise of power." (Habermas, 1994,135) Again, it is not clear why we must assume that some substantive agreement is out of the question. Indeed, procedure seems a very weak basis for patriotism, even if it is *our* procedure.

¹⁰⁴ Of course, in as much as this identity is not generally aligned with truth and justice, it is not justified.

Theorists have long recognized a tension between liberalism and patriotism. The former appeals to the overriding good of seeing things through the impartial lens of reason. The morality of patriotism, on the other hand, seems to require *not* submitting all positions to rational scrutiny (namely, devotion to the state). (MacIntyre, 1995, 220) MacIntyre believes we can maintain the virtue of patriotism if what we keep from criticism is the idea of the nation *as a project*.¹⁰⁵ Seeing the nation as a project, and indeed a rational, dialectical project, helps us understand how it can serve as both a source of attachment and a means of seeking moral-political truth. There is a space for patriotism here in two important ways. The first is highlighted by constitutional patriotism theorists who remind us that even if we seek the truly just political community, it is still a community with a particular history and context which shapes and colours the application of universal rules. Dealing with historical injustices exemplifies this issue. The history of the Americas involves the domination of aboriginal peoples who nevertheless remain unassimilated. Justice in Canada (and likely the whole of the Americas) requires coming to terms with this history and with the conditions it has led to. Part of *our* commitment to justice involves a recognition of the unjust seizure of lands, lopsided or duplicitous treaties and second class treatment under the law.¹⁰⁶ A European country without such groups would not need similar institutions and policies.

The second space for patriotism arises from our collective moral epistemic position. Even those who endorse a defined worldview that is meant to encompass almost all moral questions typically admit that ‘the moral truth’ is not *demonstrable*, or at least not in any thoroughly convincing and straightforward manner. This indeterminacy means that different

¹⁰⁵ Importantly, there may come a time when this project needs to be abandoned given the other demands of morality. (MacIntyre, 1995, 221-3)

¹⁰⁶ I am not suggesting any sort of whitewashing of the history of either the Native Americans or the European colonists.

liberal democracies are liable to each come up with their own attempts to balance the ideals of universal morality with their own context and their own limited epistemic position. So, there is a place for national pride in the sense that different liberal-democratic projects are better or worse realized. Or alternatively, our patriotism could be manifested in the experience of angst at the direction our state is taking.

I am not suggesting that we are zeroing in on some very particular moral-political theory. Even as different states come up with different political solutions, each may recognize a plurality of kinds of good lives. Furthermore, our epistemic weakness requires that we leave big question unanswered, while our respect for individual self-determination further tempers formative zeal.

If we see the nation as a political and moral project, politics is in some sense a battle for the soul of a nation. Our history hinges in part on who is holding the reins of power. Whether we buttress our military power and intervene for others across the globe, whether we maintain universal health care, whether we embrace a national culture with substance and so on – options along these lines are decided in regional and national elections, and they shape our shared destiny, and the values we and future generations recognize.

Citizenship is not simply a matter of building a future but also of coming to grips with a past. A new arrival to Halifax, for example, becomes a member of a community that a hundred years ago was devastated by a massive and deadly explosion. The identity of newcomers is affected by this fact to the extent that they identify as members of that city. And the city, to this day, sends an enormous Christmas tree to Boston every year in gratitude for the generous help that city extended in 1917. By and large, these are not direct descendents thanking direct descendents – the cultural makeup of both cities has changed

dramatically over the past 100 years. This gratitude only makes sense if citizens consider themselves as members of a narrative which bears a history and values.

Similar considerations apply to the country as a whole. Becoming Canadian means taking on a history in which liberalism, English common law, Christianity, secularism, mass immigration, multiculturalism, bilingualism, separatism, Vimy Ridge, Normandy, the residential school system and a host of other events and movements play a prominent role. This is a mixed bag, to be sure, and the key historical events for each nation will be different. The policies and direction taken, and the future attitude towards these, adds to the narrative of a nation. None of this keeps us bound inexorably to certain values, or prevents us from charting new courses. But charting a new course does require first recognizing and appreciating the point of departure.

5.7.4 Analogical Public Reason

In the preceding subsection I argued for a conception of the nation and citizenship as a rational and dialectical project worked out in a context with a particular history and people. I would now like to talk about the type of reasoning appropriate to this conception of citizenship. Or to put this in Rawlsian terms, what are the parameters of our public reason?

Rawls, as we have seen, proposes the idea of ‘public reason’ as governing the discourse of judges, legislatures, political candidates, and ideally the political actions of citizens when these concern questions of basic justice and constitutional essentials. (Rawls, 1993a, 443-4)¹⁰⁷ It involves appealing to premises we accept and believe others could reasonably accept in a society characterized by reasonable pluralism.

¹⁰⁷ Rawls’ writings present a mixed picture of the extent to which public reason should govern citizens. On this, see Neal, 2008.

Habermas has criticized Rawls for suggesting that citizens would, even in ideal circumstances, couch their arguments in the idiom of Rawls' neutral public reason. Liberalism seeks to protect the individual right to religious belief and this protection is hampered, Habermas argues, by the psychological burden placed on individuals who must be other than themselves when appearing in the public forum. (Habermas, 2006, 8-9) On Habermas' view, only judges and elected officials should be required to strictly apply public reason to their discourse. Citizens, he claims, only need the epistemic ability to view their own positions from the outside so as to appreciate the weight they hold as public arguments. (Habermas, 2006, 10)

Habermas is right, I believe, to strike a middle course here. Individual citizens would often be silenced if they were burdened with translating all arguments into public reason. Indeed, Rawls himself did relax his position by introducing a proviso requiring only that ““in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support” (Rawls, 1993a, 145) Since ours is a secular state, it is important that citizens acquire the ability to appreciate the value that their arguments have, or fail to have, for others. Indeed, if they hope to win over others they may need to shift the language of their arguments. Abortion opponents, for example, may argue in public that abortion contradicts the Bible, but if they are to achieve political success they will need to make the case on some other grounds, such as the value of new life trumping the mother's self-determination.¹⁰⁸

We should point out here that even with the Habermasian/Rawlsian proviso, public reason still comes at a large cost to many citizens. For it is still according to public reason

¹⁰⁸ In opposition to earlier claims to the contrary, Rawls accepts that a case put forth against the legalization of abortion by Cardinal Bernadin falls within the parameters of public reason. (Rawls, 1993a, 170)

that all of the important political decisions are made; only public reason has political clout. There is, of course, another way to enhance citizens' ability to participate in public discourse. This involves enlarging the purview of public reason beyond the limits of liberal neutrality.

Raz and Callan have both argued that political liberalism only makes sense if we take reasonable agreement to be the politically fundamental part of moral truth. In other words, we settle for a political conception of justice because our reasonable disagreement outweighs other considerations pointing towards a more substantive view.

...we modestly seek a circumscribed reasoned agreement on how to live with each other because we know that trying to find and enforce a more ambitious consensus exceeds the limits of our ability to reason together towards the truth and invites oppression. (Callan, 2000, 215)

On this view, we conclude that public reason is best seen as a compromise for those situations where the search for truth brings us beyond the burdens of judgment. But if we interpret public reason in this way, what exactly remains bracketed within the realm of public reason is an open question. Political liberals err by generalizing from the insurmountable burdens of judgment in some cases to the claim that the burdens of judgment annul any claim to the truth and so necessitate state neutrality. There is no reason to presume that our difficulty in attaining wide-ranging agreement on moral issues precludes any agreement at all on questions of the good. On the best interpretation of Rawls, the view that Callan and Raz support, the one truth we can agree on is the need for a neutral public reason. But is this the most plausible of all claims, even in conditions of reasonable pluralism? Surely there are other truths which garner more widespread support from reasonable people

(and thus have a greater claim to legitimacy) than state neutrality, including the virtues we have considered.

The other interpretation of reasonableness, suggested at times by Rawls, is that public reason simply takes reasonable agreement rather than moral truth as the only standard in politics. On this view, reasonable agreement is all we are capable of seeking. But if this is the case, we have no real reason to accept the confines of political liberalism, nor the normative priority of civic values over our personal values. The problem with this position of neutrality is clear when we ask the question, ‘why should I follow such a political philosophy, given that it makes no claim to truth?’ It is not enough to simply say we cannot agree on the truth, for that position doesn’t speak in favour of any view whatsoever. If we cast it instead as a strategy for some other aim, say political peace, then we revert to something like the first interpretation of reasonableness discussed above; “because [it is true that] political peace is of primary importance, we advocate a policy of state neutrality.” But then we must explain why we should accept the primacy and exclusivity of political peace as our *summum bonum*.

Public reason can be seen as the application of the neutrality thesis, since Rawls believes that the views others will reasonably accept are those which do not appeal to conceptions of the good. Indeed, the critique of public reason just presented is merely a version of the critique of liberal neutrality I have been presenting throughout this thesis. We can allow ourselves to speak on questions of the good life without at the same time abandoning a conception of public reason. We can, for example, hold the state to the Lockean ideal of not acting for *sectarian* reasons without at the same time limiting ourselves to *neutral* reasons. Since, contrary to what neutralists assume, there is widespread consensus

on some aspects of the good, and since we can make a strong philosophical and political case for these goods, public reason should accept arguments which appeal to such goods. For example, that a degree of concern for others is an element of the good life, can be defended by appealing to values that are generally accessible, and accepted.

Part of the current project involves showing that we can modify some of the tenets of Rawlsian liberalism without thereby committing ourselves to an overbearing, moralistic state. As discussed in Chapter Two, Rawls sees the principles of justice, neutrality and public reason following from a rational construction and certain fundamental ideas about persons and society. At this point I would like to suggest an alternative theory for the justification of our political principles. My comments here are designed primarily to help quell the fears of those who would claim that parting from the Rawlsian method leaves us unmoored from liberalism and destined to infringe fundamental liberal principles. I believe the method I present offers distinct advantages, which I shall discuss, but I do not wish to claim it is only method for the purposes in question.

The method I am proposing involves seeing the development of liberalism, and its attendant public reason, as a tradition, the result of a reasoned, dialectical process. Consider the evolution of our modern concept of political equality. Our current understanding of this concept results from an historical development, "an enlargement of sequentially connected notions" such as *habeas corpus*, the right to trial by peers, the arbitrariness of distinctions by skin colour and gender and so on. (Aronovitch, 1996, 407) In a similar fashion, we can conceive of the parameters around public discourse, or what constitutes our public reason, as the result of a dialectical tradition. For example, over time, and with reason, this tradition has disavowed the use of sacred texts for the purposes of political coercion. As in essence is true

of any tradition, it is open to multiple interpretations. Standard liberal theory, as we have seen, demands that political decisions abide by neutrality of justification and aim. That demand is partly derived from identifying arguments from a particular vision of the good with arguments from a particular religion. Another take on this tradition, however, and the one I advocate here, is that we draw the line elsewhere. Arguments that make reference to some good need not be excluded if the goods in question forms a part of our accepted political background.

The form of reasoning I am after here is analogical reasoning, which proceeds from case to case, and wherein a novel case is judged as to whether it is sufficiently similar to previous cases as to merit a similar judgment. (Aronovitch, 1997, 79) Importantly, the answer to the question of whether it actually does will often not be clear cut, which is why this sort of reasoning must be seen as a form of interpretation.¹⁰⁹ Past cases constrain our interpretation, but not absolutely. So, for example, people might disagree as to whether homosexual unions are, as others hold, sufficiently like heterosexual ones to merit similar state benefits and protections.

Although analogical reasoning does not begin with general principles, and is generally skeptical about the existence of clear, general principles, it can over time arrive at approximate principles based on a series of past cases, and these principles can provide guidance for future cases. For example, I can say that it is partly due to our conception of equality that we should provide basic healthcare to landed refugees. But this principle of equality I am calling upon is not an abstract absolute that deductively decides the case at hand, but rather a series of similar related judgments that bear a significant resemblance to it.

¹⁰⁹ This is in accord with Ronald Dworkin's account of legal reasoning. "It follows that a judge adds to the tradition he interprets; future judges confront a new tradition that includes what he has done." (Dworkin, 1986, 22)

Analogical reasoning is distinct from deductive reasoning since, when it comes to judging an issue that arises, it is not a matter of simply matching the relevant principles to the facts. (Aronovitch, 1996, 402) The point, indeed, is that the case at hand is always somewhat different, and these differences will not be accounted for within the principle itself. There is therefore a need to *interpret* each case that arises, and judge the moral salience of the particulars at hand. Analogical reasoning is also dissimilar from inductive reasoning where the goal is to reach a general principle based on a series of cases. Inductive reasoning can lead us to describe the principle of physics which are then deductively applied to future cases. Conversely, principles on the analogical account are mere summaries of a series of similar, related moral judgments. When reasoning by analogy, new cases are constrained by the strength of the particular analogy or the relevance of a precedent, such that we can draw on previous cases where our judgments are more established while we address new or controversial questions.

There are similarities between this account of reasoning and the moral-epistemological thesis known as particularism. Particularism denies either the existence of general principles, or the need for them, or both of these. (Dancy, 2009) Particularists instead insist on the 'variability of reasons', that is, the claim that the same fact may be a reason in favour of an action in one case and against an action in another. For example, resuscitating a non-responsive patient is perhaps typically a good action, whereas doing so contrary to a do-not-resuscitate order could be the opposite. The moral evaluation of the action will depend on the case at hand.

Some defenders of analogical reasoning in legal philosophy have made an effort to distinguish their position from particularism. Gerald Postema, for example, claims that

analogical reasoning rests on a rational, discursive method to determine similarities between cases, whereas particularism supposedly relies on intuitions or dispositions. (Postema, 2009, 102) But this characterization of particularism does not seem to fit Jonathan Dancy who argues for a 'holism of reasons', rather than a reliance on intuition or disposition. (Dancy, 2009)

Particularism is typically meant to apply to all of moral reasoning, or even all of reasoning in general, whereas my present concern is with the general 'principles' of our public, political philosophy. Since politics is typically concerned with rules that have broad application, it cannot be so particular as to create rules for every potential case. I am suggesting that analogical reasoning in politics should be concerned with such issues as whether culture is relevant to the application of equality (as per multiculturalists), or whether hate speech should qualify for protection. Further, particularism implies a kind of moral leveling such that each case is seen anew, whereas on analogical reasoning we can grant that specific kinds of freedom, or equality and so on, are paramount and paradigmatic, whereas others may be less so. (Aronovitch, 2012, 346) For example, equality across skin colour is paradigmatic, whereas an equal playing field to practice one's culture, such as envisioned by many multiculturalists, is not.

A public reason based on analogical reasoning would not suffer the limitations of the Rawlsian version. The latter follows from the foundational assumptions of political liberalism and results in strict guidelines surrounding admissible public discourse. The analogical view I am advocating allows greater latitude, being a collection of many different judgments which underdetermine future development. This view is amenable to admitting substantive goods even if it has a history of caution in this area. Our discourse can draw

upon a rich tradition where a host of virtues play a substantive role. To take a familiar example, we have a history of valuing and extolling other-regarding behaviour, such as extolling the sacrifices of figures like Martin Luther King. Liberal neutrality theorists would have us maintain a value-free public discourse. But we surely have other options, such as seeing some values as reasonable principles for good living together that have a long history in our political culture.

The analogical view of public reason offers the hope of a more intelligent and nuanced politics, even if it is not as theoretically straightforward as a constructivist view that issues in a few simple principles. The principle of neutrality leads us to strange and ad hoc justifications for what we take to be valuable practices. A categorical stance against paternalism, as we saw, leads to the untenable conclusion that beneficence can never trump self-rule. Macedo says we should expose children to a variety of views only because the state requires this and not for the children's own benefit. Tomasi wants to open a space for other-regarding behaviour but only because political liberalism otherwise limits this ability. An analogical and substantive view could avoid these strange conclusions. It could allow, for example, a generalization that paternalism, more often than not, is to be avoided. But this does not rule out all potential paternalism, current or future.

There will be a temptation to criticize my position for claiming that history makes truth, that is, that the principles that have survived in our dialectic are by that fact the proper ones, or are by that fact justified. But the criticism is misdirected. The appeal here is still to justice writ large, even if it can only be worked up from our own particular history.¹¹⁰ There are, after all, better and worse narratives, even if our standards are always themselves being

¹¹⁰ "Is justice, then, variable and changeable? No, but the times over which she presides are not all alike because they are different times." (Augustine, 1955, 3(VII))

scrutinized. Our conception of toleration could have ended with Christian religions, or with tolerating theism but not tolerating atheism. Our conception of equality could have ended saying that differences between the sexes countenanced unequal treatment before the law. I take the answers we have agreed upon to be superior to these alternative stopping points, and that reasoning about the specifics at issue would support this.

The analogical view helps elucidate further the privilege I have claimed for the host culture. For our principles such as equal respect for all persons and free speech are not abstract rules but rather so many particular instantiations of an idea which is but a common thread. And all of the particular instantiations that make up the rule belong to the host culture.¹¹¹ As time passes and the host culture evolves with new immigrants and with social change, there will be more and likely different instantiations. But children and immigrants, when they learn the rules and principles of a country they live in, will need to do this by reference to the causal chains in the history of the host culture that have produced them.

Analogical reasoning is a promising avenue with distinct advantages in general and for my project. Its role as a respected methodology for legal analysis supports the conviction that a more flexible and nuanced view than allowed by liberal neutrality can be based on reason and resist giving way to overzealous promoters of particular visions of the good.

Though Rawls espouses a coherentist view overall, as evidenced by his ‘reflective equilibrium’, it too partly relies on, or aims at, highly general principles which I believe fail to capture all of our considered judgments. I suggest that we view liberalism as a family of values that has evolved and been developed analogically over time, as with accepted legal principles. On this view it could be a matter of reasonable debate whether, in particular

¹¹¹ Even if events from other states/cultures come in to play, what is of ultimate importance for the nation is the attitude the host culture takes towards them.

instances, such as life-or-death decisions for the terminally ill, autonomy trumps beneficence.

Analogical reasoning appears in the thesis as a tool I make use of, and not as a central commitment. The central point here is that there are powerful and acceptably liberal alternatives to Rawlsian constructivism.

5.7.5 Unity and Diversity

The conception I am advancing here, namely a state that holds a minimal conception of the good, and that is willing to promote corresponding virtues, is better equipped to promote the good of civic unity. In Chapter Four I argued that a state that admits a conception of the good has the resources to value cultures in the right way, and further, that this conception serves the cause of civic unity since the more that citizens share in common, the greater their sense of oneness.

Robert Putnam has famously detailed the decline (in the U.S.) of civic involvement and ‘social capital’, the “features of social life – networks, norms, and trust – that enable participants to act together more effectively to pursue shared objectives.” (Putnam, 1996, 1) This disengagement threatens civic unity and the health of our democracy as it correlates with decreased voter turnout, decreased participation with political parties, and an increased distrust of government institutions. Contemporary liberalism can be seen to reinforce this individualism and lack of engagement since it seeks to leave our discourse on values untouched. One way to prolong and promote this disengagement is by sidelining all important questions of value on the basis of some procedural requirement.

By coming to agreement on certain elements of the good life, the state acquires a richer normative content for citizens to be attached to. This may not be able to match the social engagement engendered by civil society, but it can at least move us in the right direction. On my view, the state is not merely the guarantor of rights which, in theory, could be exchanged for any other liberal regime which likewise guarantees rights. If values such as autonomy, charity, courage and so on are openly prized, then these offer grounds for attachment. Citizens of a liberal regime, I suppose, could say something like the following: “In my country, I live the life I want to lead, and no one interferes provided I do not harm anyone else.” But patriotism and civic unity require the ability to say something like the following: “My country believes in bravery. Did you hear about how our soldiers’ valour on the beaches of Normandy, or the calibre of training and protection they offered in Afghanistan? We also believe in charity. We take care of our elders and the most vulnerable, and we teach our young that this is right and proper.”

What is more, it is not just that there is content to be attached to, but also that the content is *our* political project. Like the members of a team we are invested in this political project and have a stake, not only in what it is, but also in what it was and what it could be. If this sentiment were more widespread I believe it would lead more people to become engaged with and devoted to our political project.

Nation-states where territorial and ethno-cultural boundaries neatly line up have less need to promote civic unity. Evidence shows that internally diverse countries like Canada and India can achieve high levels of pride and trust in the state government when the latter engages with and offers benefits to minority communities. Recently, social theorists have detailed the rise of ‘state-nations’, states that are “multicultural, and [which] sometimes even

have significant multinational components, [but] which nonetheless still manage to engender strong identification and loyalty from their citizens...” (Stepan, Linz, & Yadav, 2010, 52)

State-nation policies create a sense of belonging with respect to the state-wide community while at the same time protecting sociocultural diversities. A favoured example is India which, despite its immense size and level of cultural, religious and linguistic diversity, has achieved high levels of pride and trust for the central government. (Stepan et al., 2010, 62-3)

Supporting the practices of cultural communities, as I argued for in Chapter 4, can thus also help promote civic unity. This support should be given so long as the cultural practices promote positive social outcomes, promote goods recognized by the state, and provide a place for citizens to realize a conception of the good.

Along with the liberal authors I have been criticizing, I assume that civic unity is a good thing. It contributes to social piece and helps secure the stability of the regime. This is not to say that all diversity should be limited. I have been upfront about recognizing our inability to have a very thick common conception of the good. I agree with Rawls and others that our society is characterized by reasonable pluralism. I challenge the extent of this pluralism, arguing that there is more agreement than is typically allowed for, and that this agreement can inform public policy without unduly limiting the autonomy of citizens. This, at the same time, is to challenge the conclusion that Rawls and others draw from reasonable pluralism, namely that it, along with respect for others, entails state neutrality.

It is true that if we accept the promotion of certain goods we will be thereby encouraging some level of uniformity along these lines. But, as we have seen, even liberal states are formative, since in the first place this cannot be avoided, and in the second, liberals need to encourage certain habits in citizens in order to ensure stability. Furthermore, as I

have argued, I believe a state with a limited conception of public goods could be more legitimate than a neutral state because it could have greater buy-in from the citizenry.¹¹²

5.8 Conclusion

I have argued that the liberal account of virtue is misconceived, that pluralism need not entail state neutrality, and that a virtue-promoting order can respect autonomy and gain our allegiance. Lastly, I have claimed that a state with a minimal conception of the good can serve as a locus of patriotism and is thereby better positioned to promote civic unity. I have only been able to offer a broad outline of a substantive political philosophy, but I believe I have at least shown that an effort in this direction is plausible and desirable. The discussion here has been a sort of running of the gauntlet – I made the case for the viability of a political philosophy that admits a limited conception of the good, arguing that it can withstand scrutiny and meet some of the challenges of contemporary liberalism.

The proceeding chapter will continue in this direction by considering two policy areas, education and immigration. The goal will be to suggest some real value commitments our state could take on, and some real policy implications following from these.

¹¹² There is of course a strong current within liberalism (e.g. Isaiah Berlin, John Gray and William Galston) that argues for the plurality of the good such that diversity itself is seen as a good thing. It is not necessary for me to side for or against value pluralism here. I begin with the Rawlsian perspective which is silent on this question. And even if value pluralism is true, this does not preclude agreement around certain recognizable goods, goods which often could be realized in a variety of ways. (see Galston, 2002 and 2007).

CHAPTER 6 - PROMOTING CITIZENSHIP

*To educate a person in the mind but not in
morals is to educate a menace to society.
- Theodore Roosevelt*

6.1 Introduction

Thus far I have argued that liberalism is problematic and that it is vulnerable with respect to culture and other areas precisely because neutrality prevents it from recognizing substantial goods. The preceding chapter argued for the viability of a conception of citizenship that admits a conception of the good. In this chapter I consider how such a philosophy could play out with respect to two public policy areas that are central to citizenship – education and immigration.

6.2 Character Education

6.2.1 Introduction

National surveys in the US show that problem behaviours are prevalent among adolescents. (Battistich, Schaps, & Wilson, 2004, 244; Brener, Simon, Krug, & Lowry, 1999; Johnson, L, O'Malley, P, Bachman, J, 2001) These problems have not escaped the notice of politicians; character education programs in the US, for example, started by the Clinton administration, now consume tens of millions annually. (Howard, Berkowitz, & Schaeffer, 2004, 203)

Psychologists define character as “*an individual’s set of psychological characteristics that affect that person’s ability and inclination to function morally.*”

(Berkowitz, 2002) Social psychologists recognize a host of important influences on character development including family, school, peers, community, media, religion and biology.

(Berkowitz, 2002, 54)

Character *education* typically refers to school programs, often including extra-curricular activities, that attempt to shape the behaviour of students by teaching ethical values such as sociability, respect, justice and responsibility. (Lockwood, 2009, 12; Parker, Nelson, & Burns, 2010, 818, citing US Department of Education, 2005; White & Warfa, 2011, 47)

Character education experienced a revival in the late 1960s under the influence of the approach known as ‘values clarification.’ In a time of distrust for authority, and of increasing recognition of pluralism, ‘values clarification’ focused on helping young people appreciate and discover their own values. But the relativism inherent in this approach left it impotent to face the problematic behaviour that character education seeks to redress. (Howard et al, 2004, 194) As Callan puts it, values clarification treats values as preferences, and thereby provides an easy means to evade true moral dialogue. (Callan, 1997, 207) Clarity is at best part of the story. Sociopaths like the Unabomber and the Norwegian Anders Breivik, possessed clarity enough to compose manifestos on their values. Even in less extreme cases, knowing our values is often secondary to having the right values.

The values clarification approach was succeeded by Kohlberg’s developmental approach. Kohlberg posited several distinct developmental stages of moral reasoning, culminating in reasoning from principle. Kohlberg’s elevation of principle-based reasoning met resistance from feminists and others who challenged the existence of universal and invariant stages of development, and who claimed the approach suffered by being developed exclusively from the perspective of men. (Howard et al., 2004, 195)

In place of this approach, some authors advocated an ethics of care with the goal of developing virtues that dispose people to offer and be receptive to care. Critics assailed this

‘ethics of care’ view for allowing relationships to obfuscate the importance of moral questions. (Callan, 1997, 203-4) To echo a criticism I levelled against liberalism earlier, whether cooperation is the highest good in a given situation depends on the gravity of the moral issue at hand.

Contemporary theorists of character education typically now agree that children can be helped to acquire objectively good moral habits. (Howard et al., 2004; Berkowitz, 2002) However, they exercise caution, and typically discuss less controversial virtues, as we shall see.

The list of said virtues is limited in part due to pragmatic reasons. We cannot possibly instil all virtues in children, and some are more important, timely, applicable, and feasibly promoted than others. There are also theoretical limitations – the accepted burdens of judgment will limit us from promoting *Christian* piety, for example. What is promoted, I argue, should also be guided by our account of public reason, as discussed in Chapter 5. This would spell out a program of character education emphasizing aspects of our public account of the good including autonomy, critical thinking, concern for others and so on. It would be limited by the burdens of judgment, and by the value we give to autonomy.

Continuing with the general *modus operandi* of this thesis, I will first attempt to discount prevalent liberal views of education so as to appreciate the force of an alternative.

6.2.2 Liberal Education

Though Rawls’ political liberalism is designed to be neutral, this does not remove all of the state’s goals for the education of children. Children, according to Rawls, should acquire a functional education, and learn to be cooperating members of society. They should also learn

their rights, including the right to abandon the beliefs of their parents, “to insure that their continued membership when they come of age is not based simply on ignorance of their basic rights or fear of punishment for offenses that do not exist.” (Rawls, 1993b, 199) The goal here is to educate for the capacities that sustain the liberal order without promoting specific goods. Eamonn Callan, a post-Rawlsian liberal concerned with the loss of civic culture, is acutely aware of the fine line that Rawls and his followers must walk; “If public deliberation is sometimes undermined by a stifling homogeneity in soulcraft, it is also defeated by the failure to sustain the common dispositions that liberal dialogue presupposes.” (Callan, 1997, 7)

Callan expounds upon the conception of ‘reasonableness’ inherent in Rawls’ political conception of the person, taking it as the cardinal personal virtue of liberal democratic politics. The need for ‘public reason’, as we saw, arises from a recognition of the ‘burdens of judgment’, the fact that the deepest questions of life admit of reasonable disagreement. This, coupled with respect for persons, enjoins an attitude of ‘reciprocity’ which holds that coercion can only be justified by reasons others can accept. (Callan, 1997, 8)

How does all of this play out for education? Moral education, says Callan, needs to be nurtured if it is to survive – “simply avoiding moral education could lead to the breakdown of morals.” (Callan, 1997, 197) We cannot pursue a strategy of ‘no offense’, as some would have it, since true moral dialogue cannot occur if it is cleansed of all that could give offense. (Callan, 1997, 202) Callan judges other strategies to be equally unappealing. ‘Values clarification’, which attempts to facilitate students’ recognition of their own values, fails by belittling the importance of moral truth. The ‘ethics of care’ proposed by Noddings and others, he argues, vacillates between two destructive tendencies – empty, offense-free

abstractions, or a commitment to intimacy in relationships that has little value in societies largely made up of strangers. (Callan, 1997, 208-9)

Callan believes ‘justice as reasonableness’ bests these competing theories by recognizing both the need for common standards and the seriousness of moral conflict. Public reason provides a normative framework for public discussion while respecting the fact of reasonable pluralism.

Given the state’s limited reach by other means, and since it is unable to always depend on parents, Callan sees public schools as the milieu for cultivating reasonableness and uprooting unreasonableness. He believes this latter aim is often overlooked, and that much of the pluralism on offer can be challenged as unreasonable (e.g. unjustified prejudice and domination). (Callan, 1997, 216) Public schools, according to Callan, provide a place to experience the interface of visions of the truth and the need for a public dialogue based on reasonableness. This could be begun in elementary school and progress through to high school in a manner appropriate to the understanding and development of youth. Schools, on this view, provide a setting for students to argue different positions on the good, and for them to learn the burdens of judgment and the corresponding need for public reason. (Callan, 1997, 218)

Callan’s account of reasonableness bears an important distinction from Rawls’, a point we considered in Chapter 5. Rawls, as we saw, substitutes “the reasonable” for “the true” as the proper standard for political philosophy. But Callan argues that reasonableness as a political value only makes sense *if it is true* that reasonableness is the proper standard for political philosophy. (Callan, 1997, 215) Joseph Raz has made a similar charge against Rawls:

If it is argued that what makes it the theory of justice for us is that it is built on an overlapping consensus and therefore secures stability and unity, then consensus-based stability and unity are the values that a theory of justice, for our society, is assumed to depend on. ... There can be no justice without truth. (Raz, 1990, 15)

The definition of public reason itself depends on a more fundamental, unrestrained ethical dialogue. As Callan claims, it is only to the extent that we have thought seriously together about the nature of the good life and the good society that we can expect to find a common standpoint of justification that deserves our allegiance. Only then have we earned the confidence to assume that our pluralism is indeed reasonable. (Callan, 1997, 218) Of course, as Callan admits, drawing the line between reasonable and unreasonable views is a precarious task, and one that is itself subject to the burdens of judgment. This murkiness, he believes, warrants a *prima facie* attitude of charity towards the views of others.

What I wish to emphasize here is how Callan's more thorough look at liberal education aligns closely with other liberal views we have already considered. The prescriptions for education are virtually identical in being limited by a commitment to state neutrality. Macedo, for example, believes schools should teach the capacities for critical reasoning, and the possibility of building new identities. Due to his neutrality, he does not think children should be explicitly taught to question their own religious or cultural beliefs.¹¹³ (Macedo, 2000, 237-8) Tomasi likewise sees public education as necessary for teaching critical thinking and an appreciation of public reason, though he adds to this the need to teach children how to persevere in their beliefs in spite of public reason. (Tomasi, 2001, 87) Galston's recognition of liberal goods has him promote civic goods such as critical

¹¹³ This caveat seems at best a conceptual nuance, given that we should explicitly teach them how to question their beliefs.

reasoning, tolerance and respect for law, while concern for maximizing toleration has him avoid imposing virtues on students. Although all three are very careful about maintaining a conceptually anti-paternalistic stance, and a neutrality of justification and aim, all three recognize that liberal pluralism, without the supporting civic virtues, is self-defeating. All of these authors, in short, try to balance neutrality and the need for an education in citizenship.

6.2.3 Assessing Liberal Education

My indictment of liberal education follows from what I have argued thus far, particularly from my critique of the neutrality thesis and its attendant account of civic virtue. I argued that the civic/human virtue divide is problematic since civic virtue is only sensible as a species of human virtue, and because even civic virtues cannot shirk pretensions to ‘soul-crafting’. Similarly, I argued that the liberal conception of citizenship is only worth pursuing if we deem it to be a good worth sacrificing other goods for. And on top of these considerations is the plain fact that there is widespread agreement on several human virtues, including autonomy, charity and courage. In light of these considerations, in Chapter 5 I put forward a new vision of public reason that is secular, but not tied to neutrality. If these arguments hold, the case for a neutral, civic-oriented education is called into question.

Within the confines of a modified ‘public reason’, then, what sort of aims can our education system have? I suggest three sorts.

One indisputable goal of education is to foster the habits of mind, within the regular constraints of the public school system, that are optimally functional in the greater society. For example, we want the math skills necessary to get by in daily living, to engage in

carpentry or other trades, or the foundational skills to go on to study engineering or other professions.

The case for a second goal has been aptly made by the liberal authors I have reviewed, and is also widely accepted. Children need to acquire the basic skills of citizenship – knowledge of government and how it functions, some rudimentary understanding of important domestic and international affairs (or perhaps more fundamental capacities to learn about these), belief in the importance of democracy, respect for other cultures (without excluding warranted criticism), toleration, critical thinking and so on. If citizens lose their taste for toleration, respect, or for holding the bearers of power responsible, then our liberal democratic project is in danger.

But the arguments of this thesis suggest a third goal for education, namely some level of education in human virtue. As discussed in the last chapter, I believe the state can serve the good of individuals by promoting their good even when this does not instrumentally serve the persistence of the state. Autonomy, charity and other virtues could be promoted for the good of citizens. And further, civic goods themselves are in some sense dependent on human goods. Callan and Raz, as we have seen, argue that political liberalism cannot completely eschew the criterion of truth in favour of reasonableness because the latter, as a goal, ultimately rests on the argument that the *true* political philosophy for our time is one that recognizes the burdens of judgments. Similarly, according to an appropriate understanding of virtue, civic virtue would be meaningless to us unless it served true human goods. In other words, instrumental aims are always dependent on and subordinate to more fundamental aims (e.g. truth, virtue). Thus the second purpose of liberal education, civic

virtue, only makes sense in light of the third, human virtue (or, more broadly, the good of humans).

Indeed, accounts of civic virtue are plausible precisely because they coincide so well with a broadly conceived account of human virtue. Because of this, many liberals can appear to promote human goods without explicitly venturing to do so. As Kwame Appiah points out, civic virtues are likened to goods such as a national highway system, something the state requires to function and persist. But they are not merely functional in this sense. We could imagine a liberal democratic state without highways, but “there are no equivalent scenarios that would obviate character traits such as ‘A reflective, self-critical attitude, tolerance’...” (Appiah, 2005, 161. See also Brighouse, 1998, 62) Any good state, I suggest, should include the promotion of these values.

Often the three purposes of education blend together. A sense of autonomy, or critical thinking, for example, will generally help an individual thrive in society, will help her exercise civic duties more thoroughly and with greater understanding, and will help her avoid error, ethical and non-ethical, and thus lead a better life *tout court*. But there is an important sense in which the human ends of education enjoy a certain priority. In some ways the ends of a functional education could be served by a highly particularized education designed to prepare students for a specific trade, and thus could leave aside almost all training in the arts.¹¹⁴ Civic ends could be served by rote indoctrination of the values of the state.¹¹⁵ They could even be served, as Galston suggests, by a conscious historical bias in order to augment our patriotism. (Galston, 1991, 243-4) Consider a skill like cheating. Put to effective use, it could advance the ends of individuals and the state (more gold medals,

¹¹⁴ This is the case with commercial colleges which focus on applied skills for a predetermined career choice. (Glass, 2008, 55)

¹¹⁵ Though, as I have argued, this would inevitably also promote some vision of the good.

stolen scientific breakthroughs etc, followed by increased international prestige and increased patriotism).¹¹⁶ But what ultimately speaks against the promotion of such skills is the good of individuals. A life with such ‘virtues’ is a lesser life, in part because it could lead to difficulty in the job market, or with the law, but also because a life of lying and cheating is, by our common moral standards, defective. We don’t want to merely prepare children for jobs, or to become good liberal democrats. We want them to become good people, and to acquire an appreciation of good things, the ‘goods of the human spirit’, as Barry puts it. That we are hesitant to say too much about what this means doesn’t change this fact. The last goal of education is overarching in the sense that the other two ends are subservient to it – a functional and civic education are good in the first place because they are good for individuals.

Let us return briefly to the Rawlsian dilemma Callan mentioned concerning the difficult middle space between instilling the virtues necessary to continue the liberal project and the commitment to neutrality and antipaternalism. This problem is effectively dissolved not because we have to give some priority to civic values, but because we can collectively recognize the importance of some goods, including those necessary to sustain our political order. Neutrality had us backed into a corner. In its place, we limit the state for other, less categorical reasons: the value of autonomy, respect and self-determination, the idea that coercion requires special justification, and a recognition of the burdens of judgment. Together, these and related ideas underpin a secular public philosophy that is not thoroughly neutral with respect to visions of the good.

¹¹⁶ For example, China is often accused of publishing economic statistics that present an all too rosy picture of its fiscal status. If this is true (I have zero expertise on this matter), such lies have helped further the country’s economic prowess and prestige by encouraging creditors, foreigner investment and so on.

6.2.4 On the Possibility of Character Education

6.2.4.1 Situationist Critique Revisited

In Chapter 5, I argued that the situationist critique overstates the empirical case for our collective lack of consistency, and that it conflates the technical term ‘virtue’, as used by virtue ethicists, with ‘traits’, as used by personality psychologists. But even if virtue-promoting theories can meet the situationist critique in theory, there may still be serious problems bridging the theory into practice.¹¹⁷ The frequency of character failure leads us to question whether virtue ethics is psychologically adequate. We might call this the elitist critique: if only extraordinary people attain virtue, if most people clamour after it without standing a chance of achieving it, then why should we try for virtue, and why should we teach it?¹¹⁸ This problem threatens the feasibility of a public education that seeks to promote certain virtues.

This challenge suggests empirical tests for virtue ethic’s adequacy, tests which answer to the following: *Can relative stability of character be achieved, and can moral education significantly help people move towards this goal? And can this be done by normal people without resorting to extreme measures?*

Some surely do achieve virtuous characters – the heroes and saints of our history. But what about the rest of us? I suspect most of us believe character formation is clearly possible, even if difficult. We make resolutions to change our bad habits, and we want to help our friends and family change theirs. We want to raise our children properly and we want our schools to second this effort to some extent. But since the situationists are calling into question our common-sense folk psychology, it is worth looking for some firmer proof. The

¹¹⁷ Many thanks to Andrew Sneddon and Christopher Byrne who both helped me appreciate this problem.

¹¹⁸ Jesse Prinz puts it thus: “In the absence of any evidence for global efficacious traits, Aristotelians must show that minds like ours could come to possess or approximate that which we do currently have.” (Prinz, 2009)

armed services offers one example of what training and discipline can bring us to achieve.

As one author puts it, soldiers must

be trained to kill but also not to be brutal; be trained to react in combat situations almost automatically but also to deliberate and decide if a command is unlawful; as peacekeepers, be trained to be impartial but also to know right from wrong and be firmly committed to upholding the former and opposing the latter. (Aronovitch, 2001, 14)

What soldiers need, in other words, is deeply nuanced character traits we call virtues (bravery, judgment, temperance, honesty and so on). As we know, soldiers often stray from such behaviour, as some Americans did at My Lai, or some Canadians did in Somalia. But notice that we expect soldiers to seek the virtuous standard mentioned above, and are ready to punish when they do not. And while it is true that we try to habituate soldiers to the types of situations they are likely to meet in combat, we also expect them to display versatility and adaptability.

The strictures of the military, of course, are not typical, and nor do we want them to be. Can virtuous behaviour be achieved outside of those strictures? Recent years have seen a flurry of activity in character education in schools, especially in the United States, and good scientific studies are finally being done. I will now turn to examine some of this evidence.

6.2.4.2 What Works in Character Education?

Measuring the effectiveness of existing character education programs is empirically challenging. Such programs need to permeate the whole of a curriculum and be rigorously instituted. Finding comparator schools is especially problematic given the number of variables necessary to control for: gender, income, race, parental education, geographical location and so on. The strongest example of an effective character education program

concerns the Child Development Project (CDP) which has been implemented in elementary schools across the U.S. (Battistich et al, 2004) The CDP attempts to promote caring and supportive relationships between students, teachers and others (charity, concern for others); opportunities for students to participate in significant decision making concerning their learning and school environment (responsibility, autonomy, self-determination); and opportunities for them to succeed in their academic and interpersonal activities (academic achievement, sociability). The goal is to create environments characterized by caring and supportive relationships; collaboration among and between students, staff and parents; a sense of common purpose and a commitment to caring, justice, responsibility and learning; and to provide students with opportunities to participate in meaningful decisions. To achieve these ends, CDP includes a classroom component, a school-wide component, and a family involvement component. The classroom component, for example, includes collaborative learning, a literature-based language arts curriculum and an approach to classroom management emphasizing the development of student discipline and self-control.

The implementation of CDP involves helping children commit themselves to virtues promoted by the program. (Solomon et al, 2000) Children are encouraged to see the rationale and motivation for their virtue in a commitment to the community, and not as consisting in fear of punishment or desire for reward. This sense of community is meant to incline students to attach themselves to the school and so be committed to the norms and values emphasized by the school.

The observed effects of the CDP program include an increased sense of the school as a community, an increase in school-related attitudes and motives (liking school, achievement motivation), increased respect for teachers, pro-social attitudes, skills and values (concern

for others, conflict resolution) and reduced involvement in problem behaviours (drug and alcohol use, gang fighting) and higher academic aspirations. (Berkowitz, 2002; Howard et al, 2004; Solomon, Battistich, Watson, Schaps, & Lewis, 2000)

Battistich, Schaps and Wilson conducted a follow-up study on the program children during middle school to test for the durability of program effects. Their study revealed that elementary schools that implemented the CDP program thoroughly and consistently showed statistically significant differences on 20 of 40 measured variables favouring program students, and an additional six variables showed marginally significant differences. No measured variables favoured comparison students. (Battistich et al, 2004, 254)

Apart from the extensively studied CDP, two in-depth meta-analyses of character education programs bolster the case for their effectiveness: the US Department of Education's "What Works Clearinghouse – Character Education," and the Character Education Partnership's "What Works in Character Education" project. In the latter, for example, an expert panel reviewed 100 studies of 50 different character education programs and found that 69 studies concerning 33 programs met scientific credibility and showed evidence of character formation. The review found that character education frequently improves academic performance, reduces destructive habits like drug use and risky sexual behaviour, increases desirable behaviours like altruism, and improves social competence, including moral reasoning. (Berkowitz & Bier, 2005)

Marvin Berkowitz summarizes effective practices in his article "The Science of Character Education". (Berkowitz, 2002, 58 and following) First, the primary influence on a child's character is how people treat the child, not what the child is told. Second, children learn from example, how they see significant people in their lives (e.g. teachers, principals)

treat others. These two points alone make the case that teachers are inexorably involved in character education, whether they want to be or not; “If you work with or around children, *you cannot not be a character educator.*” (Berkowitz, 2002, 58, italics in original.) The question, then, is not whether to do character education, but how consciously, and by what methods. (Howard et al, 2004, 210) Third, effective programs require schools to expect good character of all members, and this must be a clear priority. Fourth, even though example is more important than word, good character habits need to be openly taught. Fifth, children need opportunities to practice good character, such as service learning activities. Sixth, to help develop their moral reasoning capacities, children need opportunities to reason about, debate and reflect on moral issues. This includes learning to take on, to some degree, the perspective of reasonable opponents. Lastly, character education is bolstered by parents who are actively and positively involved in the school’s character education efforts.

It should be clear that for a moral education program to claim value it need not attain full virtue in its subjects. This would be like expecting regular education programs to produce Newtons, Einsteins and Goethes. An education in virtue needs to offer the training and support to allow people to move (significantly) closer to virtue, and for this goal evidence is starting to accrue. Surely there is something to the idea that those instructed in the ways of virtue are more likely to achieve it, just as those instructed in the ways of calculus are more able to calculate integrals and derivatives.

If the arguments thus far hold, we have no reason to limit character education to only civic virtues on the one hand, and no reason to suppose we cannot help instil good traits on the other.

I now wish to consider two virtues which the state could stand behind, and which public schools could play an important role in promoting: empathy and responsibility. I argue that a commitment to these virtues suggests real and appealing policies that contravene a commitment to liberal neutrality.

6.2.5 Empathy

6.2.5.1 Nature and Value of Empathy

Empathy involves an awareness of others' internal states and an ability to identify with or vicariously experience the affect appropriate to another's situation. (Hoffman, 2000, 29-30)

Psychologist Martin Hoffman reports a wealth of social and psychological studies that support an empirical link between empathetic sentiment and prosocial behaviour. It is known to positively correlate with helping; to precede and contribute to helping; and feelings of empathy diminish or remain, depending on whether or not the helping behaviour was executed. (Hoffman, 2000, 30-31) Evidence also suggests that the ability to empathize reduces anti-social behaviours like aggression and manipulation. (Hoffman, 2000, 36)

Hoffman describes five modes of empathy. Three of these are primitive, automatic and involuntary: *mimicry* (1), the tendency to automatically imitate changes in the expression, voice and posture of others which then trigger affect similar to what is observed (e.g. we recoil and are aghast when we see someone lose a limb); *classical conditioning* (2), wherein we pair our internal affect with expressive cues of distress or other affect in others (e.g. a gloomy looking friend drags down the spirits of the group); and *direct association* (3), wherein cues in a victim's situation remind the observer of a similar past experience,

evoking the emotions of the past experience (e.g. the child who cries when she sees another child cut herself, remembering her own similar experience). (Hoffman, 2000, 37-49)

The other two modes of empathy involve language and higher cognitive functioning: *mediated association* (4), wherein a victim's emotional state is communicated through language and is decoded to then evoke empathy through one of the prelinguistic modes (e.g. a story of suffering evokes images of the victim which then elicit feelings of empathy) (Hoffman, 2000, 49-52); and *role taking* (5), wherein we put ourselves in the place of another and imagine how they feel. (Hoffman, 2000, 52-59) These higher-level modes allow humans to empathize with those who are not physically present, and can contribute to wider group and human solidarity.

Empathy can be described as a virtue if empathetic sentiment, under the guidance of reason, issues in right behaviour.¹¹⁹ Importantly, according to Hoffman, all of the modes, and in particular the higher modes, are subject to training. We become habituated to putting ourselves in the place of others, or, alternatively, to paying no heed to the emotional and physical state of others. (Hoffman, 2000, 288)

The civic benefits of an empathetic citizenry are straightforward. Empathy contributes to civic unity and solidarity – citizens who empathize with one another come to understand the problems of co-citizens as their own and are moved to resolve these problems. Martha Nussbaum, for example, lists the need to “develop the capacity for genuine concern for others, both near and distant” as one of the skills necessary for the preservation of democracy. (Nussbaum, 2010, 45. See also 6.)

¹¹⁹ We may wish to reserve the term ‘empathy’ for the emotion and ‘compassion’ for the corresponding virtue. Or, alternatively, perhaps a cultivated empathy underpins other virtues like charity and kindness. At any rate, it is not necessary to clear up these distinctions here.

Many authors have traced the alarming decline in civic participation to an increased sense of heterogeneity in the population. (Scheffler, Putnam, Barry) Empathy helps correct this problem by encouraging citizens to identify with the situation of others. If flood or fire strikes a portion of the community, for example, empathy leads us to see this as a problem for the community as a whole;

By reconstructing in my own mind the experience of another, I get a sense of what it means for her to suffer that way, and this may make me more likely to see her prospects as similar to my own, and of concern in part for that reason. (Nussbaum, 2010, 331)

Empathy helps underwrite another important civic virtue, toleration, or perhaps what is better, a deeper understanding and hopefully, when warranted, respect for others. In conditions of reasonable pluralism we need the ability to appreciate the situation and viewpoint of others who build their identities in dialogue with local communities other than our own. Only with an enriched understanding along these lines can a multicultural society enjoy peaceful accord and a meaningful public discourse.

The civic case for empathy, however, is not my only purpose here. I want to also argue that justifying the promotion of empathy rests in part on the belief that empathy is a real virtue, a true element of the good life. In other words, the person who has no concern for her fellows is not just a bad citizen, but also a bad person (or at least not as good as she could be). It is difficult to avoid triteness here since recognition of empathy is so commonplace. Does anyone think that a life lived entirely for oneself, with no regard for the welfare of others, is anything but, by our intuitions, a failed life, all things considered? Recall Dickens' Scrooge who tries to convince Marley's ghost his life was valuable on the

basis of success in business, "But you were always a good man of business, Jacob." Upon which the Ghost cried out in anguish:

Business! Mankind was my business. The common welfare was my business; charity, mercy, forbearance, and benevolence, were all my business. The dealings of my trade were but a drop of water in the comprehensive ocean of my business! (Dickens, Charles, in Richard, K, 2003)

Indeed, we characterize people as psychopaths or sociopaths in part by their inability to empathize with fellow people (e.g. Narcissistic Personality Disorder).

6.2.5.2 Promoting Empathy

If, as I have argued, empathy is a virtue we can agree on that is good for the community and for individuals, then we can make the case for promoting this virtue. There are many policy options available here. Consider organ donation. In Canada, the deceased donor rate is 14.7 per million, a poor ranking by global standards. (Canadian Institute for Health Information, 2009) A 2010 Ipsos poll found that 95% of Canadians approve of organ and tissue donation. But of the 51% who have already decided to donate their organs or tissues, only 27% of these have put their name on a registry that gives permission for this process. According to the pollsters, a likely cause of this fact is that 68% have no idea which organization manages tissue and organ donation in their province or territory.¹²⁰ Clearly, public education campaigns could go a long way here. Another option would be to make post mortem organ donation automatic for all citizens. Given that we also recognize the value of autonomy, we could allow people to easily opt out of such an organ donation regime. Whatever policy is undertaken, the state should make it easier to choose what we take to be the better option.

¹²⁰ Ipsos, 2010, press release. Often it is the Department of Health, and so organ donation is registered on health cards, not drivers' licenses. And even so, upon death the decision often rests with next of kin who may be unaware of the potential donors' wishes.

Our policy should reflect our common concern for the plight of the sick and injured, many of whom die every year waiting for donors (195 in 2011). The existence of this practice, and public awareness surrounding it, will encourage a sense of mutual commitment, and will encourage empathy as a worthy virtue. Blood donation, for its part, could be encouraged through programs in high schools, universities and businesses that provide students or employees with dedicated time to contribute help to those in need.

Developmental psychologists point to effective ways we can promote empathy in our youth. Not surprisingly, parents hold the greatest influence over their children. Studies suggest, however, that parents typically do not know the most effective means for educating their children. Most, for example, rely on power-assertion, or love-withholding techniques in order to discipline children, whereas studies show that induction techniques are most effective. Induction involves training children to empathize with the victims of their wayward actions. (Hoffman, 288) In other words, children who lie, steal, are abusive and so on are more likely to reform when they learn to identify with the potential victims of their actions, and are able to connect their behaviour with the suffering of others. Parent-education programs, public awareness programs and the like could help in this area. Canada (or more precisely, its provinces and territories) and other states typically offer prenatal courses to soon-to-be parents. These courses could include teaching on evidence-based discipline practices which will encourage the cultivation of empathy. Literature on best practices in child discipline could also be provided in milieu frequented by young families such as schools, health clinics and sports venues.

Two government campaigns help make the case that public education along these lines is feasible. Anti-smoking campaigns, including cigarette package images, public

advertising, and school-based anti-smoking programs have contributed to a social stigma around smoking that has helped reduce the rate of smokers in Canada from 42.5% of Canadians over 15 in 1965 to 16.2% in 2009. (Organisation for Economic Co-operation and Development, 2012) The promotion of breastfeeding is another example. Breastfeeding is known to reduce infections in babies, boost their immune system and reduce obesity. Even baby formula companies openly admit that breast milk is the best option for infants. Breastfeeding campaigns included posters and other promotional material by the Public Health Agency of Canada, Health Canada, provincial Ministries of Health and other health organizations, as well as direct education by public health nurses and others. According to statistics Canada, the proportion of mothers who attempt to breastfeed their babies rose from about 25% in the mid-1960s to 85% in 2003.¹²¹ By 2009, the number who started reached 87.5%.¹²²

But character education in schools is my primary focus here. Hoffman makes a series of recommendations for educating children in empathy, four of which I outline here. (Hoffman, 2000, 288-9)

First, he argues, children should learn to experience a wide range of emotions¹²³, such that they are better equipped to identify with the emotions of others, and second, he recommends fostering empathy by teaching children to be attentive to the emotional state of others. It is only if they recognize these states in others that they can understand and

¹²¹ Millar & MacLean, 2005. Other effective efforts include seatbelt wearing and drinking and driving campaigns.

¹²² Though only 53.9% of those who started continued to the WHO/Health Canada recommended 6-months or longer. (Statistics Canada, 2011)

¹²³ It might be better to say children should learn about a wide range of emotions, and be carefully introduced to experiencing some of them. Anger is an appropriate emotion in some circumstances – it is appropriate to be angry about gross injustices, but we certainly don't want children to frequently experience anger directed at each other. Further, some emotions share their names with vices because giving in to them results in vice; envy, jealousy and resentment are some examples. We don't really want children to experience these, though they could be taught to recognize them.

empathize with them. The ability to broaden our understanding so as to appreciate the position of others is effectively promoted through a liberal arts education. The arts, as Winnicott argued, nourish and extend the capacity for empathy. (Nussbaum, 2010, 101) As a recent report on liberal education puts it, the arts “foster the crucial human and civic capacity of empathy, the ability to care about and even identify with perspectives and circumstances other than one’s own.” (Glass, 2008, 23)

There is a host of good literature, for instance, that can help children learn to empathize. To take some familiar examples, consider Scrooge’s conversion, which was wrought by visiting almshouses, jails and hospitals, and witnessing the suffering of others. Huckleberry Finn’s empathy leads him to break with received moral wisdom and protect his friend. Atticus Finch likewise relies on empathy to resist the mores of his day: “You never really understand a person until you consider things from his point of view... Until you climb inside of his skin and walk around in it.” (Lee, 1960) I am not saying that the primary aim of literature courses should be to teach moral virtues, but rather, that literature can be used to teach a virtue that we can agree on.

In the same vein, the state could endorse character education programs like the Child Development Project which provides time for students to reflect on situations with ethical implications, and which makes use of literature to support the emotional development of youth. These activities can help young people experience a broad range of emotions, and learn to be attentive to the emotional state of others. Debates on euthanasia, abortion, capital punishment and so on can help students better appreciate the position of those they oppose. While this will not likely solve any of these issues, it will allow them to better empathize with opponents. This can help teach children how to be attentive to the needs of others, as

well as to avoid a barrier to empathy described by Hoffman, namely the tendency to rush to premature judgment. (Hoffman, 2000, 290)

Third, Hoffman recommends that empathy can be cultivated by showing children love and affection which studies show is effective in reducing egoism. Teachers need to be careful when showing affection, lest the children feel the need to compete for the teacher's affective approval. Still, good teachers are capable of equitably displaying the guarded affection appropriate their position, and this, especially in younger years, could help break down egoistic tendencies in children. In a similar vein, the CDP, as we saw, fosters attachment to the school as a means to promote character development. The idea is that children feel accepted, as part of a project, and thus do not feel the need to close in on themselves to the detriment of other-regarding feelings and behaviour.

Fourth, and relatedly, Hoffman recommends that power assertion be used judiciously, typically only as a means to ensure that children are attentive to the lesson at hand. Limiting use of power assertion will help make sure that children do not learn to empathize based solely on fear of reprisal. Otherwise, the so-called virtue may dissipate as soon as the threat does. Again, the CDP's method is congruent here, as it emphasizes the need to root virtue in proper motivations, and not in fear of punishment or desire for passing rewards.

6.2.6 Responsibility

6.2.6.1 Responsibility in Business

Responsibility is another widely recognized virtue with non-neutral implications for individuals and society. The responsible person is reliable, committed and trustworthy. She

is ready to account for the consequences of her actions and to accept credit or blame accordingly. (Williams, 2008, 459)

There are many facets of this virtue we could consider: the responsibility to serve and protect our country; the responsibility to care for other citizens, whether through regular progressive tax regimes or in times of humanitarian crisis (flood, drought, etc); the responsibility to raise our children properly, for their own sake and for the sake of the community at large; the need to be conscientious by not claiming an inordinate amount of resources for oneself etc. To focus our discussion, and to help make the case for including responsibility in our lexicon of public, non-neutral values, I want to concentrate here on one aspect of responsibility, namely the responsibility of the business and market world, or more properly those who make it up, towards the larger community of citizens. This will help make the case for responsibility as a virtue we can all stand behind.

The culture or character of a corporation or workplace has far-reaching implications. Our work-life helps inform our identity, and so it becomes imperative to ask what sort of character it promotes. If it is one of self-seeking greed, and profit at any cost, then this will come more and more to characterize our relationships with fellow citizens. Even on a liberal conception of the state, let alone the view I am propounding, this concern for the character of the citizenry can rise to the level of public concern.

Milton Friedman famously argued that, “the social responsibility of business is to increase its profits.” (Friedman, 1970) Solomon has challenged the dominant paradigm of business as a competitive realm where the sole rule is survival of the fittest. (Solomon, 2001) Business is an important element of society, he argues, because businesses advance the prosperity of the community. Profit is a necessary condition of a business’ survival, but not,

he claims, its primary purpose, for businesses are not isolated entities but constituents of a broader community, and indeed creations of that community.

Solomon argues that the business world has an ethic proper to it which includes virtues like cooperation, trust, honesty, kindness and loyalty, all of which contribute to the success of business. Aristotle, we recall, believed that both virtues and non-moral conditions were necessary for successful human living. Applying this logic to business, we can recognize two genres of failure (or success): in the first, a business succeeds financially, but at the cost of deception, abandonment of loyal employees and so on. In the second, a business maintains its virtue but fails on a non-moral level, viz. by not turning a profit. John Elliott recounts the story of a businessman who was proud to have given up the profits from a \$100 million contract when he learned that his employees had won it using privileged information about a competing bidder on the project.¹²⁴ Giving up the contract risked financial failure even as it ensured moral victory.

I do not need to defend Solomon's vision in full here. Suffice it to accept the weaker thesis that businesses have a moral responsibility to their employees and the community at large, a responsibility which may at times trump profit-making concerns. This idea is explicitly taken up in official documents by the Canadian government. Industry Canada, for example, provides a guide on corporate social responsibility which calls on businesses to be socially responsible, contribute to building better communities and making Canada a great place to live. (Industry Canada, 2011) The guide includes advice on how to reduce the waste of energy and resources, how to improve employer-employee relations and how to partake in community involvement.

¹²⁴ Elliott, 2004, 575. Presumably, or at least as the story is told, there was little risk of being caught and suffering legal ramifications. Otherwise a further goal here was to avoid jail.

Roger King poses some challenges to the vision of business as an ethical enterprise, and his concerns have implications for our ability to promote responsibility in business. First, he questions whether governments and communities are strong enough to resist the forces of the corporate world; “The business subculture has begun to usurp the guardian task of defining the society’s telos, its standards, and its conception of the good.” (King, 2001, 494) And, he argues, there are no longer any subcultures (e.g. religious groups, civic associations etc.) capable of challenging this hegemony. If, in fact, business dictates, rather than obeys our moral code, we may be unable to ensure that business serves the common good.

Second, King challenges the ethical view of business with respect to the scope of business’ moral purview. Does business need to concern itself only with relations between its own employees and partners, or must it also consider whether its products are being used harmfully, or even take account of things like the moral implication of switching suppliers? If the moral concerns of business are too far-reaching they will have ample opportunity to undermine its profitability. Moreover, King argues, we cannot rely on the larger community to set the moral priorities of the business community since the larger community is characterized by competing and contradictory values. A democratic government characterized by reasonable disagreement, he claims, offers little hope as a moral compass for business. (King, 2001, 496) King’s lesson is that we should not bother trying to make business moral because, collectively, we are not in a position to offer any guidance.

But King’s first criticism seems to actually make the case for a stronger conception of citizenship that can meet the potentially negative challenge arising from an egoist outlook in the business world. King looks to subcultures to challenge corporate hegemony and finds

none capable of this. But the state itself is a power capable of challenging and channelling the wayward vision of the good emanating from the corporate world. If, for example, we have evidence that the pursuit of wealth beyond a certain standard tends to make people less happy (as is arguably the case – see Brighthouse, 2006, 45-6), the state could take some measures to counter this by helping to educate people. And further, states can and do play a more direct moral role in the business world through labour codes, the protection of union rights and so on. They can offer incentives (low-interest loans, tax credits etc.) to ethical businesses, or vice versa, punish unethical ones. (This is not to say that moral rectitude should be the sole criterion for subventions or other state involvement.)

The democratic state, moreover, is sensitive to the values and priorities of subcultures and, ultimately, of citizens. State-imposed environmental regulations make this case. These regulations often originate from public concern and from interest groups. The resulting regulations impose norms on businesses that will often challenge their ability to turn a profit. The state can also help educate its citizens about the virtue of responsibility in business such that corporate morality will mirror our public conception of the good. While it is possible that businesses could founder on ethical scruples, this should only be the case when foundering is the lesser of two evils. Otherwise we would be forced to admit that successful business requires immoral behaviour.

King's second criticism argues that the state's inability to rest on a common conception of the good renders it incapable of fixing the scope of business ethics. I have argued that the fact of disagreement need not necessitate the abandonment of hope on all agreement. If, as I claim, we can make the case for a substantive conception of citizenship, then citizenship can serve as a normative basis for guiding the ethical practice of business.

The question of scope is something that has been, and can be further, worked out dialectically through court and labour board decisions, legislation, and academic debate in business schools and ethics journals. The problem for business ethics here is no more intractable than the problem of citizenship. We do by and large agree, for instance, on the right to collective association (e.g. unionization¹²⁵), and on the ethical responsibility of businesses for their products. That fact that ammonium nitrate fertilizer can be used to make bombs (Timothy McVeigh, the Toronto 18), while it is also legitimately used for raising crops, is a real concern we expect manufacturers to take into account. Given this knowledge, we can expect and demand that manufacturers be wary of suspicious buyers (e.g. large quantities, no farming permits, etc.).

And so, the demand that businesses maintain standards as set out by a conception of citizenship is not inherently contradictory. Moreover, it is clearly good for the community at large to have responsible businesses run by responsible people. It is not just that we want British Petroleum and Exxon Mobil to clean up their ecological disasters. This is required by liberal justice alone. We also want companies that feel obligated to their employees and treat mass layoff as a final resort; companies that take responsibility for the foreseeable uses of their product, that contribute to the community by supporting charities, sports teams and so on.

The 2008 global financial crisis was precipitated by, in the United States, a housing bubble, the sale of subprime mortgages that buyers could not afford, and the subsequent sale of this junk debt, packaged by lenders as part of seemingly valuable bonds. It is too easy, in hindsight, to criticize the current system for allowing this to happen, but it is nevertheless

¹²⁵ Even 'right-to-work' states in the US recognize that employees should have the right to organize into associations for the purpose of collective bargaining. They merely restrict 'closed-shop' arrangements which make union membership a condition of employment.

true that an emphasis on moral character would have helped. The character faults in the disastrous chain were voluminous, ranging from naiveté and shortsightedness, to outright deception and greed.

Similarly, and more recently, it has been uncovered that bankers in London have been manipulating interest rates so as to profit from trades or to appear more financially sound (the so-called ‘London Interbank Offered Rate’, or ‘LIBOR’ scandal). An artificially low rate means that tens of thousands of investors would not receive their due rates of return. An artificially high rate could mean similar numbers of people paying inflated interest on mortgages and other loans. In time, misguided self-interest and irresponsible behaviour undermined the very people who thought they were benefiting from this.

Without a doubt, effective regulation will be key to ensuring that similar catastrophes are avoided in the future. But laws will only take us so far, and what we really want from these laws is to encourage the appropriate characters conducive to a just and good society. Concerning the LIBOR scandal, Naomi Wolf criticized the banking business culture that displays a clear ‘willingness to not rock the boat’ and that rewards those who acquiesce to systemic fraud. (Wolf, 2012) Due diligence, the ability to make reasonable expectations, acting in good faith, and so on – these are behaviours that are embodied in appropriate virtues. We can enact laws that encourage this sort of behaviour, and we can similarly have laws that punish transgressions, but we are after virtues, a way of thinking that can never really be fully codified.¹²⁶

In 2008, Nokia Siemens Networks provided mobile networks and a monitoring centre to local operators in Iran which were then used by the government to monitor the communications of political dissidents. (Pop, 2010) Nokia Siemens later acknowledged that

¹²⁶ See discussion of ‘analogical reasoning’ in Chapter 5.

while they followed the law, they should have foreseen the abuse, and apologized for their naiveté. This points up the need for a well-rounded approach to promoting corporate responsibility. The law is an undoubtedly important means, but as in the Nokia case, there is a tendency to follow the letter of the law while looking for loopholes that subvert the substance of it.

We can recognize, also, that responsibility is good for its possessor. A good person, at a minimum, takes responsibility for her actions, and expects to be held accountable for them. The drunk, the drug addict, and addicts of all sorts who cede control of their life to addiction, show that something has gone astray.¹²⁷ Even the addict who harms no one save herself leads a life that we judge to be far from flourishing. And just as we judge those who do not take responsibility for their own life, so too do we judge those who do not consider their moral responsibility to others. The CEO who holds the lives of her employees in her hands and who moves her company overseas *solely* for reasons of economy, or even *solely* for the sake of her shareholders (who doubtlessly deserve special consideration), has left something from her calculation. If the livelihood of employees is in question, the good CEO weighs her options carefully and counts the loss of jobs as a serious factor. Expecting individuals to make such considerations takes us beyond contemporary liberalism. Within certain parameters, owners are within their liberal rights to protect their business interests at the expense of employees. But, collectively, I believe we are at least willing to discourage selfishness.

‘Reasons of state’ offer an insufficient basis for promoting the virtues we expect from the business world. The liberal expects citizens to prefer virtue to vice on account of the perseverance of the liberal order, yet individuals could very well choose their own profit

¹²⁷ I do not mean to oversimplify the difficulty of addiction, nor to discount the disease paradigm of addiction.

over the good of the state, as is often the case. A substantive position on virtue of the sort here advocated claims ‘be virtuous *also* for your own sake,’ because of the kind of person you thereby become. Only if we understand virtue in this way can we understand how it can be rational to face personal loss and even danger for the sake of virtue.¹²⁸

This sojourn into business ethics has helped make the case for our collective belief in the value of responsibility. Indeed, given that we typically accept and acknowledge the fiercely competitive nature of the business world, making the case for responsibility there provides something of an *a fortiori* argument: if we are willing to promote responsibility in business, how much more readily would we promote it in family life, sports and other sociocultural settings?

6.2.6.2 Promoting Responsibility

Responsibility can be taught in much the same way as empathy. Responsibility involves appreciating the appropriate breadth of our moral concern – what do we owe, and to whom, to be the sort of people we want to be? History presents plentiful opportunities for reflecting on this virtue. Canada’s involvement in the World Wars testifies to a (contested) commitment to the well-being of peoples in far away countries. Literature, too, is instructive here. Hamlet, for example, is caught between his responsibility as a son and the need to avenge his father, and his responsibility as a nobleman and prince under a new king. And he famously considers whether he can extricate himself from the responsibility of fulfilling either role.

¹²⁸ See McDowell, 1995, 150. McDowell here is treating the very large question of how virtue is grounded. I am only relying on the weaker point that moral dictates need to be more than hypothetical in the Kantian sense.

According to Martha Nussbaum, leading business educators trace some of the biggest business failures of our time, like Enron and WorldCom, to a culture of yes-people. The response to this problem, as she sees it, is a thorough-going liberal education that strengthens imagining, critical thinking, and an ability to challenge wayward authority and that emphasizes the need to be responsible for one's actions. (Nussbaum, 2010, 53) The Child Development Project, as we saw, is designed to foster this sense of responsibility. High quality literature is chosen to encourage fairness and responsibility. Evidence shows, moreover, that student autonomy and influence can be effectively promoted, where autonomy and influence are understood as an increased sense of student control paired with an ability to know how to act from moral considerations. (Solomon et al, 2000, 6) Promoting responsibility, in other words, is within our means.

Another effective practice is the teaching of helping and social service behaviour. Programs in this area can teach children to see the welfare of others as, in part, their own responsibility. One of the greatest barriers to increased volunteerism is lack of familiarity. Without a little coaching, the desire to not be uncomfortable may too easily trump the desire to help others. Facilitating youth into volunteer opportunities helps them overcome such mundane roadblocks. Many schools already require that students engage in some sort of service learning. Ontario, for example, currently requires 40 hours of community service during high school as a requirement of graduation. (Ontario Ministry of Education, 2010) Studies have shown that participation in community service during high school is linked to adult voting and volunteering. (Kahne & Sporte, 2008; Hart, Donnelly, Youniss, & Atkins, 2007, as referenced in: Journell, 2010, 354) An assessment of a community work program at Portland State University found that participating students deepened their understanding of

socio-political issues and came to better understand how to effect change in their communities. (Glass, 2008, 37)

One of the key lessons from the CDP, and one that is particularly relevant to the promotion of responsibility in the business world, is the need to promote a culture of virtue. Implementers of the CDP program strive to create environments conducive to the development of good character traits and ample opportunity to hone them. In the same way, if businesses are going to be a milieu of virtuous behaviour they will need to provide for its conditions: put simply, virtue must be supported and lauded and vice discouraged and condemned. The role for state influence in business is obviously less than it is for education. But as I have said, there is room here for the state to play a supportive role. Industry Canada already tries to promote social responsibility by offering suggestions and reviewing and compiling best practices. The state could assist in other non-invasive ways as well, like recognizing and awarding socially responsible businesses.

6.2.7 Beyond a Civic Education

We have seen how public education provides the opportunity for the state to promote two virtues that are plausible candidates for a public conception of the good. Neither virtue is highly controversial, but both also justify real, non-neutral policy prescriptions. The element of coercion here is light. Students are forced to learn responsibility much as they are forced to learn trigonometry, reflexive pronouns and Shakespeare. They can also cast off moral virtues just as many cast off math skills and knowledge of grammar and literature. As Brighouse argues, schools have a paternalistic duty to present children with opportunities to

develop the ability to lead flourishing lives, using reliable information about human flourishing. Children can reject the leads they are given, and indeed, if they have been taught to foster autonomy and critical thinking, they will be well-equipped to do so. (Brighthouse, 2006, 52)

If encouraging a certain way of viewing the world – a way that students can still reject – is already out of bounds, then students had best stay home if they are to avoid all coercion. At least on the view presented here, true goods have been identified for them such that their chances of attaining them are improved.

It is tempting to cast these virtues as instrumentally valuable to the state, in which case my view is virtually the same as the liberal positions I have been critiquing. There are several arguments, some of which we have seen already, which show that this is not the case. In the first place, I have argued that accounts of citizenship only make sense if we consider citizenship an element of the good life. If liberalism does not make some claim to truth, then it cannot justify the claim that civic goods must take priority over personal goods. Second, civic virtues themselves must also be human virtues. As I argued in Chapter 5, all virtues involve forming the proper dispositions, which means that virtues are transformative of our identity. This puts the purpose of the whole civic/human virtue divide into question since civic virtues were supposed to be in bounds because they are only instrumental. Indeed, unless we presume moral relativism, the political liberal must admit that the ‘civic virtues’ she promotes could be, for all she is willing to say on the matter, actual vices. The reason this concern never arises, I contend, is that we typically do believe that liberalism’s civic virtues are real virtues. It is too happy a coincidence that civic virtues strike us as so unobjectionable, a point that liberals like Brighthouse and Appiah concede.

I suppose the foregoing could be cast as a critique that attempts to have liberals recognize where they actually stand. But I want to go still further than this and challenge the purely ‘civic’ or ‘instrumental’ promotion of virtue in two other ways. First, I believe that there are policies that many liberals endorse that have a better justification outside of standard liberal reasons; and second, I believe we can also justify the promotion of policies and virtues that do not fit the civic mould, that is, ones that would not be justifiable on the terms of neutral liberalism.

An example of the first, which is prevalent in liberal democracies, is the provision of tax breaks for charitable donations directed towards foreign aid. Jan Narveson offers an example of an instrumental justification, claiming the reason we ought to help foreigners is that we might require help from them in the future. (Narveson, 2003) But by this logic it would seem smarter to hedge our bets and help those most likely to be in a position to help us in the future. Indeed, if tax breaks for charity are a matter of civic strategy, then the government would be better off directing them towards domestic charity in the first place, since the civic return on investment is surely greater there. There will perhaps remain cases where foreign aid remains on the policy table as instrumentally valuable, cases where such aid is very beneficial to the state. But if this is so, it should be better coordinated on the part of the state such that it is directed to countries that might return favours to us, or whose belligerence, if left unappeased, we have reason to fear and so on. The truly destitute are unlikely to ever return any favours, and yet this is the group we typically believe should be first to receive aid. The additional, and, I believe, superior justification for a policy of tax rebates on charitable giving comes with the recognition that charity is a part of good living,

that the life with charity is better than one without, and that the recipients of charity often require help to secure the basic necessities for a dignified and secure life.

The preceding sections presented policies which are not typically considered justifiable under liberal neutrality. When I discussed empathy and responsible, I also made a civic case for these values, but the case I presented would not be enough to win support from neutralist liberals. Their discomfort would arise with the nature of what is involved in promoting these virtues. Looking back to Macedo's promotion of critical thinking, I pointed out that Macedo was unwilling to suggest that children be taught to question their own beliefs, since this would amount to claiming that critical thinking is an element of the good life. Instead, he argued, they should be taught the capacities necessary to question their own beliefs, without being asked to specifically do so. (Macedo, 2000, 237-8) This theoretical parsing, questionable as it is, enables Macedo to maintain an air of neutrality. He is not engaged in purposeful reform of views he disagrees with, but only with teaching the skills necessary for civic life. Tomasi argues in a similar fashion. Civic education, on his view, cannot teach people how to see the world, but can only teach them to consider the meaning of rights *in the context of their own life plan* (i.e. without altering said life plan). (Tomasi, 2001, 87) What we see, in other words, is an attempt by liberal neutrality theorists to not only ensure that virtues are promoted for civic reasons, but also to ensure that when virtues are taught, this does not involve reforming ideas of what counts as good. The promotion of empathy and responsibility, as envisioned above, do not fit this rubric, for the promotion of these virtues involves explicitly forming or reforming what we take to be good, and what we take to be good reasons for action. The promotion of these virtues, then, takes us beyond the confines of liberal neutrality.

As I argued above, we generally agree that a life with empathy and responsibility is better than one without these virtues, and we can make similar judgments about other virtues. Even if such judgments do not issue in highly specific plans for living, they can give direction to policy.

This lack of specificity is actually felicitous given the premium we place on autonomy, and the variety of ways we can lead good lives. Nussbaum similarly argues for a list of goods, or more properly, ‘capabilities’ that we can promote, including guarantees of life, bodily health and integrity (freedom from assault), the ability to sense, imagine and think, aided by education, and unrepressed, the ability to have emotional attachments to things and people, to have friendships and a love life, to be able to reason and engage in critical reflection, to commune with nature and animals, to be able to play and enjoy leisure and recreation, and the ability to exercise some control over one's political and material environment. (Nussbaum, 1999) The relative weight of the ten basic human capabilities is largely in the hands of the individual, and how these capabilities are realized is largely open. We think, pursue education, love and live friendship in a myriad of different ways. Providing resources for education, for example, still leaves largely underdetermined the shape this education will take. (Nussbaum, 1990, 62) We can, in other words, promote goods while respecting self-determination. And again, we can even help arm children with critical thinking and autonomy such that, as far as possible, the choice to pursue or not the goods we put before them becomes their own.

Our intuitions, I argue, speak in favour of promoting virtues in this way, even if they speak against a robust and highly specific program of virtue promotion. Thus, while we're unwilling to make some vision of the good mandatory, we are willing to make children

partake in community service, listen to speeches on the value of social responsibility, on the need to take responsibility for one's life, on the need to think critically, even about one's own beliefs, and so on. We are willing to hold adults to virtuous standards in business, to encourage virtues like other-regarding behaviour, and to facilitate the development of virtues like autonomy. These are only 'humdrum' goods, as Richard Arneson calls them, but they are goods all the same.

Rawls' principle of legitimacy holds that:

Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. (Rawls, 1993b, 137)

I believe the promotion of the virtues presented here would receive broad support, and could thus meet the Rawlsian criterion of legitimacy. Indeed, I suspect there is greater opposition to being value-neutral than to a commitment to empathy and responsibility along the lines I have specified.

The program of education I have presented here gains initial support from arguments first presented in Aristotle, but taken up by modern authors such as Peter Berkowitz. Aristotle argued that every sort of state and constitution facilitates certain wayward forms of thinking and acting, and that the state, in response, should promote the virtues necessary to combat this tendency. If, as I have argued, our liberal society tends towards an obsession with rights that emphasizes extreme individualism, and towards a selfish egoism, it is all the more fitting that we learn effective ways to promote empathy and responsibility.

6.3 Immigration

6.3.1 Introduction

David Miller explains that our concern for the moral status of immigrants is a rather recent phenomenon. In the past, people were free to come and were offered nothing by way of assistance; “The exile is free to land upon our shores, and free to perish of hunger beneath our inclement skies’.”¹²⁹ What altered this former conception, says Miller, was a growing commitment to equal citizenship on the one hand, and the idea of the nation state as a culturally self-determining political community on the other. (Miller, 2008, 374-5) These dispositions lead to restrictions on admissions and obligations to and from those admitted.

There are several important moral questions surrounding immigration: how many should get it? Who should get in? By what right do we limit immigration (open v. closed borders)? What should be expected of the host country? What should be expected of immigrants once landed? It is this last question that I wish to focus on, as it gets to the heart of the “identity demands” of citizenship. Rather than describe specific guidelines, I merely want to make the case that we can reasonably make demands on would-be citizens in virtue of our conception of citizenship.

The discussion of immigration is meant to focus my treatment of the value commitments of my conception of citizenship. Most immigrants are adults who have not been enculturated by the ‘regular’ means, and so considering what we are willing to ask of immigrants helps make explicit what we consciously or unconsciously ask of native-born citizens. I wish to make clear at the outset, however, that the value commitments of citizenship are grounds for obligations and commitments of both native-born citizens and immigrants.

¹²⁹ Joshua Harney, cited in Winder, *Bloody Foreigners*, p. 118. See: Miller, 2008, 373.

6.3.2 Liberal Views on Immigration

A spectrum of liberal views exists concerning the integration of immigrants. I want now to briefly trace three sorts of liberal views in an attempt to isolate what I see as the root cause of liberal error on this topic.

Joseph Carens exemplifies the first sort of view. As we have seen, he believes that the status of the immigrant's culture with respect to the host culture, after a short term of residency, should be equal. The liberal democratic ideal is an inclusive form of political community, he argues, and it does not justify requirements of language proficiency, education, economic stability, and so on. As Carens sees it, taking the non-immigrant population as the standard of normalcy is potentially a form of assimilation, and is therefore (we are to presume) oppressive. (Carens, 2005, 39-42) The state has no business, on this view, imposing a way of life on would-be citizens.¹³⁰

Brian Barry and Samuel Scheffler exemplify a second sort of liberal view. According to Barry, liberal democracy is the core of our common public culture, and all cultures are free to fend for their way of life within these permissive guidelines.

Scheffler presents a position along these lines in his "Immigration and the Significance of Culture." He warns against 'reifying' cultures, and assigning unique, static culture to individuals which then serve as a basis for public policy. (Scheffler, 2007, 99-102) Indeed, he argues that cultures survive to the extent that they are able to adapt to changing circumstances and confrontation with different and opposing values; "Survival is successful

¹³⁰ In an earlier article, Carens considers which demands on immigrants, if any, would be legitimate. He sees these as restricted to things like health and economic considerations, and the ability to speak the host culture language, since these factors will potentially affect the lives of existing citizens. ("Who Should Get In? The Ethics of Immigration Admissions", 2003.) However, this earlier article is presented as an 'immanent critique' and does not fully represent Carens' own views. (See the introductory paragraph of the article.)

change.” (Scheffler, 2007, 108) And so, it is folly, he claims, to presume some sort of right to maintain a culture, for cultures are by their nature fluid and evolving.

Scheffler’s considerations lead him to two conclusions. The first is that liberal individualism is vindicated since adaptive strategies are most likely to arise when individuals have the widest possible berth for personal freedom. The second, related conclusion is that the only appropriate mechanism for dealing with cultural claims is liberal justice. This follows from the fact that cultures are not static entities which could claim self-preservation rights. They are inherently fluid, or fluid in proportion to their durability. If claims to cultural rights are valid, he says, they are valid *as* claims to justice. (Scheffler, 2007, 124)

Scheffler and Barry can be seen as providing an approach to immigration that is less culturally ambivalent than Carens’. The host culture, on this view, enjoys a margin of priority in that immigrants need to learn the host language, and learn the host culture’s way of doing things. This is, in effect, a demand that immigrants accommodate themselves to the host country. (Scheffler, 2007, 115)¹³¹ Their central point, however, is that culture provides no additional reason for special treatment, and all claims should be settled by appeal to our theory of justice. This theory of justice aims to be fair, setting out a common system of rights, resources and opportunities, without judging how these ought to be used.

David Miller and Will Kymlicka, who give culture a more prominent role, exemplify the third sort of liberal view I wish to present. Miller believes that a strong conception of citizenship is required to hold the nation-state together. Cultural heterogeneity, he explains, is known to correlate with a lack of trust between citizens, and a lack of support for policies geared towards the common welfare. (Miller, 2008, 378-9) With this in mind, Miller

¹³¹ Scheffler does advocate that members of the host culture be willing to accommodate reasonable demands made by immigrants. However, the duty to be accommodating is only an informal requirement with no policy implications, albeit a requirement that is essential for social functioning.

believes it legitimate to make demands on would-be citizens in support of a common culture, thinly conceived. This includes an expectation to vote, support police and their efforts, a propensity (equal to that of the host culture) to engage in volunteer work, and to protest excesses of government and other institutions. (Miller, 2008, 381) Further, he argues, citizens need to accept (though not necessarily believe) the principles of liberal democracy, and they need to learn the language, the laws, and how institutions of the host nation work. (Miller, 2008, 384-5) However, for Miller, this does not imply the need to take on non-civic elements of the host culture. Prospective Germans, for example, should not be required to read Goethe, since he believes this has no intrinsic connection with citizenship (as he conceives it).

Miller tasks the state, for its part, with providing equality of opportunity such that prospective citizens do not face gratuitous obstacles on their path to citizenship. This implies that the state be willing to split funds for cultural affairs among different cultural groups. Miller even goes so far as to claim that if a school has a high concentration of a certain culture, it should be able to provide lessons in the language of that culture. This spirit of accommodation, however, must be restricted so that it does not undermine social cohesion. He rejects, for example, the push for Muslim faith-based schools in the UK because the threat these pose to the homogeneity required for national unity. (Miller, 2008, 387)

As we can see, Miller's view on the demands on immigrants is both more demanding, and more accommodating. His position is akin to Kymlicka's wherein both the host culture and the immigrant culture are mutually transformative. And like Kymlicka, Miller seeks to recognize the value of culture and its importance to individuals within a liberal framework. Importantly, what is asked of immigrants, and what is asked of the host

country, is justified along civic or instrumental lines. This view is willing to make demands on immigrants, but only civic-motivated demands are valid.

The challenge for each of these liberal authors was to strike a balance between the demands on immigrants and those on the host community. Carens takes a minimalist view which has all sides refrain from pushing their views on others. Barry and Scheffler give some priority to the host culture in terms of language and institutions, but after this they rely on liberalism's impartial justice. Miller and Kymlicka go further still by recognizing the value of cultures and seeking to accommodate this within a liberal framework. They recognize that culture is valuable to individuals, while remaining silent on what this value is.¹³² The central problem underlying these liberal approaches to immigration is the same problem I noted with respect to multiculturalism in Chapter 4 – liberalism is weakened by its commitment to neutrality which prevents it from judging immigrant cultures, and, more to the point for our present purposes, from confidently advocating for a host culture.

Neutrality helps explain the liberal reticence to embrace a public culture, or the feeble attempts to ground the priority of the host culture over others. Liberal neutrality attempts to provide a framework of rights within which to live out different visions of the good. It is conceptually impotent when it comes to promoting itself.

If instead, as I argued in Chapter 5, we take our public culture as a reasoned, dialectical stance, a project that is an attempt to get at the truth regarding justice and public virtue, and a project of a particular community with its own history and context, then our attitude with respect to immigrants can be different, and, I think, better.

¹³² Kymlicka does give an account of the value of culture for the liberal state, namely that it provides citizens with the material with which to forge their identities. But this is something far different than the value that people within each culture claim for it. He doesn't speak to the question of whether cultures have non-instrumental value.

6.3.3 Demands of Citizenship on Immigrants

6.3.3.1 Introduction

If we apply the conception of citizenship developed thus far we have a basis for the normative demands placed on immigrants. As I argued in Chapter 4, a non-neutral state can value immigrant cultures appropriately by recognizing their contribution to goods recognized by the state. As immigrants move towards citizenship and the relationship between immigrant and the state is advanced through mutual obligations, the state can also recognize the role of culture in identity formation. Beyond valuing culture, and since the state takes a reasoned position with respect to the good, it can reasonably promote desirable practices and characters, hold expectations of and make demands on would be citizens. This includes the demand to respect the primacy of human rights, even when this is challenged from within a particular culture.

In the previous section I went to some length to defend the possibility of character education. The education system will also be one mechanism of promoting integration into the host culture. We have also seen evidence that the state can affect our character apart from this means. The effectiveness of anti-smoking and pro-breastfeeding campaigns, for example, make this case. Indeed, the civic projects of every liberal we have considered in this thesis rest on this assumption, as do the complaints of liberalism's critics who lament our subtle and collective 'liberalization'.

6.3.3.2 'Honour Killing' and Equality of Sexes

Consider an immigrant family that brings with them to Canada a conception of family honour which includes the demand that wayward and recalcitrant children who take on ways of life deemed to be shameful should be killed. In the most famous Canadian example of so-called ‘honour killing’, Mohammad Shafia and his second wife Tooba, aided by their 18-year old son Hamed, were convicted of killing three of the family’s daughters, Zainab (19), Sahar (17) and Geeti (13), as well as Mohammad’s first wife Rona, who was known as the family’s aunt. The four were found drowned in their car in the Rideau Canal near Kingston, Ontario, in June of 2009. Crown prosecutors allege the four were killed for embracing western ways of life and betraying the religious values Mohammad had taught them. Police wiretaps recorded Mohammad Shafia claiming: “They betrayed our religion and creed, they betrayed our tradition, they betrayed everything.” Upon raiding the Shafia household, police found a school paper by Hamed, the son, wherein he claimed, “Traditions and customs are to be followed to the end of one’s life.” (Appelby, 2011, 28)

One concerning aspect of this cultural practice is the extent of its acceptance among members of the relevant communities. A 2006 BBC poll of 500 Hindu, Sikh, Muslim and Christian youth between the ages of 16 and 34, some of whom were second or third-generation British citizens, found that 10% believed that honour killings of girls and women can be justified. (Kay, 2011a) Aruna Papp, who has been counselling at-risk South Asian women and families in Canada for 30 years, interviewed 21 women of South Asian descent on the day the father and younger brother of another woman, Aqsa Parvez, were sentenced to second degree murder in her 2007 killing. Alarming, Papp claimed, all of the women in their own way justified the killing; “It was too bad that the girl had to be killed,” “Our culture is in our blood. How can we change that?” (Kay, 2010)

The appropriate attitude on the part of the state here cannot be a thoroughly liberal one. The Rawlsian political liberal is silent on personal values until they surface in a transgression of rights. Even Macedo's tough-minded civicism, as we have seen, is restricted to educating for a capacity, such that we can only provide the critical thinking skills that enable students to see (we presume) the wrong-headedness of honour killing without tackling the issue directly. Substantive liberals, who stand behind values like equality and self-determination, are similarly restricted by their anti-paternalism, and are unable to be concerned for the moral good of citizens who hold wayward views on the value of women, and their authority over them. It is true that appeal to the harm principle can afford protection from prospective harms. On this basis, for example, we can outlaw drinking and driving because of the great risk of harm it entails. But taking aim at what is considered an erroneous way of thinking goes beyond this since it does not merely purport to limit certain actions, but to challenge certain ways of thinking.

What we need, I argue, is an attitude of reform, not reaction. On the basis of our value-laden conception of citizenship, we should challenge errant attitudes before they give rise to illegal actions. The difference between this approach and the typical liberal one is subtle but important. The liberal says that women and men are equal, and demands that unjust discrimination be punished. But beyond this, the goal is to be innocuous, and not impose the equality position on others. The advocate of a thicker conception wants citizens to take up the equality position and so promotes it. This allows for non-invasive, but still non-neutral practices that facilitate an appreciation of equality. And it allows us to protect against potential infractors.

An appreciation of equality has significant instrumental value for the state. By opening up opportunities, for example, it effectively doubles the pool of potential leaders and innovators in politics, science and the arts. But not recognizing this value also manifests a personal impoverishment. We judge Mohammad Shafia not only for orchestrating the death of his daughters, but also for believing their lives were entirely in his hands. It may well be that non-invasive means would never have convinced him otherwise, especially given that he was a late-comer to Canadian culture. But at the same time, we should make no apologies for challenging his beliefs, nor from promoting the equality position to all Canadians. We accept this value and believe our citizens are better off if they accept it.

So what, specifically, can be done? The important point is to foster a culture that tends to endorse the appropriate attitudes, and disparage their opposites. This could involve explicit condemnations of the practice from political leaders, or even explicit condemnation in the citizenship guide and accompanying literature (as is currently the case in Canada). It could also mean ensuring that people involved with immigrant integration programs dealing with the relevant communities are sensitive to this problem so they can recognize the warning signs and take appropriate action.

An education in liberal arts could do much to remedy this problem, especially in the second and ensuing generations. Nussbaum recounts the educational philosophy of Ellison and Tagore who saw in art and literature the opportunity to experience the position of others (other sexes, other races) which leads to fuller understanding and respect. (Nussbaum, 2010, 107) Critical thinking skills will also play a crucial role. These teach children to see past the

given and to challenge norms and traditions against the standards of rational enquiry. For the critical thinker, the response ‘that’s just the way we do things’ does not pass muster.¹³³

6.3.3.3 Autonomy and Critical Thinking

Autonomy stands out as an important virtue since there is often a concern that some immigrant groups will form patriarchal enclaves which effectively limit the rights of female members.¹³⁴ Now the promotion of autonomy may sound like a typical liberal enterprise, but, by and large, liberals reject this. As Barry argues, liberalism need only accept that people should be free to follow the life plan of their choice. Promoting an ideal, even of autonomy, is beyond the liberal pale. (Barry, 2002, 120-123)

Canadians rightly hold autonomy in high esteem – we expect citizens to hold themselves responsible for their actions, to not blindly follow others, to be capable of self-criticism. We do not want citizens overly dependent on the state. We want to enhance, as far as possible, the autonomy of those whose disabilities otherwise limit their self-determination. In short, we judge the autonomous life to be, all things considered, better than a life of dependency.¹³⁵ In Chapter 4 we saw one way to promote autonomy, namely by facilitating the ability of remote Aboriginal communities to provide their own maternity care.

With respect to immigrants, autonomy could be promoted through the citizenship documents and test. It is not that immigrants will simply pick up Canadian values from this

¹³³ Again, this holds for the natives as much as for immigrants.

¹³⁴ See for example: Ahmed-Ghosh, 2004, 94-118; Yllo & Strauss, 1984, 1-13. This is also often a concern for homegrown religious communities.

¹³⁵ I take it as given that autonomy includes the ability to limit one’s own liberty in exchange for other goods (marriage, parenthood, religious life etc.). And so I side with Nussbaum who claims our concern should be with the capability, not necessarily its actualization.

literature. But as touchstone documents, these should make clear the expectations of the host country and set a tone for integration efforts. Cultural funding opportunities should be limited where community leaders do not show sufficient appreciation for this value. The British Prime Minister, for example, recently publicly averred that no public monies would go to cultural groups that do not respect women's autonomy.¹³⁶ Such an attitude on the part of the state amounts to more than passive respect for a particular value. If we demand that cultural groups respect women's rights in order to be eligible for funding, or to receive other sorts of recognition from the state, we are already picking winners and losers.

Education offers plentiful opportunities for autonomy promotion. One means of resisting integration is isolating children and young people from the opinions and beliefs of others. As Kwame Appiah argues, in the interest of the autonomy of citizens, the state should use the education system to reform the identities of worldviews that prohibit knowledge of other identities. (Appiah, 209-211) This, he admits, is 'soul-making' (shaping peoples' value structure), an illiberal sounding project that is, nevertheless, morally necessary. The best justification for this is non-neutral, for while it may not be true that the state requires autonomous thinkers (agitators that they may be), it is true that we want to help people become such, including for their own sake.

6.3.3.4 Patriotism

¹³⁶ Kay, 2011b. Our judgment here will have to be nuanced. The case is often made that many mainstream religions are sexist in as much as positions of authority are reserved for men. The Catholic Church is one example. But notice that, in large part due to outside pressure, some of which can be traced back to liberal legislation, the Vatican has often felt the need to explain how it does in fact believe in equality, even where this does not translate into sameness of treatment. See, for example, *Mulieris Dignitatem*, 1998. Regardless of whether Catholics are right or wrong, this pressure seems salutary.

Patriotism, as we have discussed, is a difficult virtue for liberals. Liberal nationalism and constitutional patriotism try to supply a locus of attachment, but as I argued, they are limited in their ability to do this so long as they cling to pretensions to neutrality. Patriotism directed towards a state with substantive values, on the other hand, makes sense. We can attach ourselves to a political project that seeks the good of its members, that has an honourable history and or vision, that owns up to its errors and so on. We want immigrants to know and value this project, to become vested in it and to want to further it and better it. Immigrants will not have undergone the same inculcation process as native-born Canadians¹³⁷, and yet patriotism remains important for the protection of the state's values, for the idea of the nation as a project. It is fitting, then, that would-be citizens are required to learn a country's history and values and to be tested on these.¹³⁸

Most states are already adept at promoting themselves in myriad ways – mandatory history lessons, national holidays, national anthems, public ceremonies and commemorations, patriotic literature, patriotic paraphernalia and so on.

The Canadian Citizenship and Immigration guide, *Discover Canada*, can be seen as an introduction to the Canadian political and moral project. (Citizenship and Immigration Canada, 2010) The guide emphasizes that citizenship is a two-way street of privilege and obligation. Newcomers are invited to contribute to a continuing story. This story is characterized by errors and successes, both of which are instructive. Among our errors, it mentions the residential school scandal, the internment of Canadians of Japanese descent during the Second World War, the internment of Canadians of Ukrainian descent during the

¹³⁷ Without a doubt, there is much work to be done to ensure that native-born Canadians are more properly prepared for citizenship. Many, for example, have a very poor understanding of Canadian history.

¹³⁸ Whether native-born children receive an effective education in this respect is an important question, but one we will not consider here.

First World War, and the discriminatory head tax on Chinese immigrants. It also emphasizes proud successes, such as the battles of Vimy Ridge and Normandy and the first female MP. And it highlights role models and heroes who have received the Order of Canada or the Victoria Cross. The guide unabashedly promotes non-legal duties like voting and volunteering.

The promotion of patriotism is a nonneutral enterprise inasmuch as it serves the good of individuals to see themselves as part of the project of the state. Patriotism is an instrumental virtue – it is a virtue in as much as it encourages devotion to a state that promotes true goods. If we are unwilling to see patriotism as an instrumental virtue, then we should be unwilling to induce citizens to take up the mantra of the state, or even to take on the civic values required to support it.

True, the state serves many of our practical needs, and is thus often seen as only an instrumental good. But in promoting patriotism, we are clearly promoting more than this – it is more than devotion to a utility company, to recall MacIntyre's memorable repartee to liberal nationalism. As I argued, civic virtues and citizenship inescapably inform our conception of the good. And so, our only proper response is to ensure that, as far as possible, the conception the state promotes is a good one.

We have seen that Kymlicka believes that immigrants are already effectively liberalized. (Kymlicka, 2007, 160, referencing: Frideres, 1997; Howard-Hassmann, 2003; Soroka, Johnston, & Banting, 2007) The Bouchard-Taylor Commission made similar claims, arguing that popular concerns with the integration of immigrants typically rest on an improper understanding of the facts. In general, this may be so, and it is no part of my argument here to raise concern over the character of actual immigrants, but only to argue that

we can make legitimate demands on immigrants on the basis of our normative conception of citizenship. The Shafia case shows the folly of just expecting this education to happen on its own. Moreover, our concern here is also with the potential for a slow erosion of public values, like the erosion of civic participation western countries have experienced over the past 40 years. A lack of vigilance towards wayward practices could eventually prove very problematic to our liberal regime.

6.4 Conclusion

A substantive conception of citizenship, I have argued, provides a basis for public policy with respect to education and immigration. A concern for empathy and responsibility, both as civic virtues and as personal virtues worth promoting, can lead us to education programs that encourage formation of the appropriate habits. And evidence suggests that programs along these lines can be effective. Similarly, it is important that immigrants come to recognize and typically take on several important values of the host culture. We want, for example, the thinking behind honour killing weeded out, autonomy and patriotism promoted, and so on.

Most contemporary liberals argue that our public culture is transformative. I agree. But this transformation is not something we should apologize for (as per Tomasi and Carens), nor something we should (disingenuously) cast as the unintended consequences of neutral civic policy (as per Macedo, Galston, Kymlicka, Rawls and others). If the state's values are true values, and thus worth standing behind, there is no reason to shirk promoting them. This is not to arbitrarily promote certain virtues, or to arbitrarily challenge the values of some immigrants. It is to do these things with reason.

7. CONCLUSION: CITIZENSHIP BEYOND LIBERAL NEUTRALITY

7.1 Introduction

In this thesis I have attempted to demonstrate weaknesses in current liberal theory, particularly with respect to the concept of citizenship, and propose an alternative account of citizenship which departs from standard liberal theory in several key ways. I argued that we can reasonably admit a limited conception of the good into our political philosophy, in support of a normative theory of citizenship. The resulting account answers the challenges I put to liberal theories and accords with our intuitions concerning what a good theory of citizenship should accomplish.

This thesis is inspired by the liberal tradition although opposing certain tenets of its contemporary standard bearers. I do not call for a different understanding of liberty as republicans do, or a radically contextual political philosophy of a communitarian kind. In short, I distinguish myself from contemporary liberalism without allying myself with commonly proposed alternatives; I attempt to push the boundaries of liberal theory in the hopes of creating a more adequate liberal account.

7.2 Overview of My Arguments

Chapter 2

In Chapter 2, I considered four general areas of liberal vulnerability. This served to highlight areas where liberalism comes up short, and where an amended theory might make improvements.

I argued that liberal neutrality is not practicable in a way that is meaningful for citizens, and further that neutrality of aim does little to assuage the concern of citizens who experience the non-neutral effects of government policies. I also argued that there is widespread agreement on many questions concerning the good, leading me to claim that neutrality is not merely impracticable but also undesirable. Lastly, I argued that a neutral state is ill-suited to promote civic unity and to instil civic pride.

I next challenged the Rawlsian Original Position which is designed to embody fairness and enforce cooperation in conditions of reasonable pluralism. While cooperation is clearly important, it is not always the most important political good. Furthermore, the history of liberal democracies shows that citizens who are cognizant of their conception of the good can still come to fair terms of social cooperation while respecting a plurality of views.

Along with communitarians, I argued that the liberal emphasis on the individual obscures our nature as socially-situated beings who find value in shared projects and within shared traditions. Furthermore, since liberals are unwilling to favour any one culture, they cannot properly disown responsibility for liberalism's own transformative nature.

Lastly, I argued that the smug absoluteness of liberal rights talk can hinder true dialogue, obscure mutual obligations and increase conflict. The liberal quiet with respect to virtue and obligation can lead us to forget our common public concerns.

Chapter 3

In Chapter 3, I considered three contemporary liberal theorists who each, in part, attempt to answer to the critiques considered in Chapter 2 by proffering accounts of liberal citizenship.

Macedo attempts to improve the argument for political liberalism by owning up to its transformative nature. But contrary to design, his civic liberalism goes beyond the limits of Rawls' political liberalism by considering goods within the overlapping consensus as substantive goods. And further, his refusal to consider the effects of neutrally justified policies is a betrayal of the political liberal concern for legitimacy.

Tomasi's protracted neutrality, encompassing the effects of public policy, is impracticable, susceptible to abuse by illiberal groups, and unable to provide for the persistence of the liberal order. He clearly wants to bring goods into our political philosophy, but cannot do this without breaching the terms of political liberalism. Furthermore, his liberal citizenship has us reinterpreting ourselves in terms of rights, a move that would disenfranchise in the very sense his theory was meant to avoid.

Galston's emphasis on toleration and protecting diversity leads him to positions that effectively replicate the neutrality of political liberalism, and so he is left ill-equipped to accomplish what he set out to do, namely provide a source for civic unity and patriotism while avoiding the problems associated with political liberalism.

The authors surveyed here also leave largely unanswered the challenges to liberalism raised in Chapter 2. Neutrality remains impracticable and undesirable. The forced cooperation of the Original Position remains without justification. These views do typically accord increased protection to communities, but since this is done in a spirit of neutrality, bad and good communities are protected alike, and the importance of context and tradition remains without currency in public life. Lastly, the hegemony of rights talk continues unchecked since the state remains unable to speak to substantive, common goods.

Chapter 4

In Chapter 4, we looked to the normative ‘identity’ component of citizenship as a potential source for answers to the problems that remained from the first two chapters. This led to a discussion about the value of culture from a political perspective. I attempted to show the inadequacy of liberal multiculturalism and other contemporary liberal theories for dealing properly with questions of cultural identity.

I then argued that appropriately addressing cultural identities requires a *normative* civic identity, and a political philosophy with a conception of the good. Such a political philosophy, I proposed, could value cultures insofar as they are instrumentally beneficial to the state, insofar as they second goods recognized by the state, and insofar as cultures represent an important source of meaning and identity for citizens.

Chapter 5

In Chapter 5, I examined several problems with the liberal account of virtue, arguing that it is inherently problematic and that it cannot escape taking a stand on substantive goods. I went on to examine the relationship between virtue ethics and autonomy, arguing that a virtue-promoting political order could respect autonomy and gain our allegiance. With respect to paternalism, I argued that in principle the criminal law could sometimes be an appropriate vehicle for promoting good living as well as for prohibiting grave wrong. For various reasons, including the value of autonomy, the need for political stability, and our collective uncertainty with respect to the good, I argued for maintaining a strong presumption against any heavy-handed paternalism. Lastly, I argued that recognizing a limited conception of the good is salutary for patriotism and for the promotion of civic unity.

Chapter 6

In Chapter 6, I argued that a substantive conception of citizenship provides a basis for public policy with respect to education and immigration. I claimed that a concern for empathy and responsibility, both as civic virtues and as personal virtues worth promoting, should result in endorsing education programs that encourage the formation of appropriate habits. I went on to offer evidence that programs along these lines could in fact be effective. Lastly, I argued that my account of citizenship justifies claims on immigrants as potential citizens, just as for natural born citizens it justifies education in virtue.

This thesis has covered a large number of themes. At its simplest, it has attempted to show weaknesses in liberalism and liberal theories of citizenship and to make the case for a new understanding of the relationship between public discourse and the vocabulary of virtue and the good. I believe this case is defensible, appealing and capable of providing a basis for civic unity and civic pride.

I have presented my position as an immanent critique of liberalism; I accept the general thrust of liberal political philosophy while challenging some of its contemporary tenets which I find troubling. To distinguish my position from those I am critiquing, I have provided several practical policy recommendations. I have suggested, for example, that out of concern for others, we should make postmortem organ and blood donation automatic such that opting out must be a conscious choice. I have argued that military (or similar) courage and respect for our forebears should be promoted in schools, and through public recognition and ceremonies. This is often already the case, but I argued that this should be done with

conscious recognition of these values and the associated virtues, rather than under the guise of their instrumental value to the state. I have also argued for the value of autonomy, including critical thinking. I believe, for example, that we can promote the autonomy of Inuit peoples by facilitating their ability to provide perinatal health care in their communities. I argued that we should also be willing to ensure that children learn critical thinking skills in school such that they be able to question and challenge their own beliefs and those of others.

In Chapter 6, I went into detail on two major policy areas. In the area of education, I argued for the value of empathy and responsibility on both civic and substantive grounds and provided an example of a proven character education program that promotes these virtues. In the area of immigration, I argued that we should be more aggressive in promoting the values of the state, when necessary, such that we seek to reform wayward beliefs like those underpinning practices like ‘honour killing’. I argued for promoting autonomy, especially that of women, among communities that typically restrict this. Lastly, I argued for the promotion of patriotism, claiming that if we have a state that takes a stand on certain virtues and values, then we have reason to promote devotion to this state.

These policies are typically problematic on the terms of neutral liberalism since they are either insufficiently justified on civic grounds, or cannot be justified on purely civic grounds alone. These values are true values, I claim, and the virtues that promote them are true virtues.

7.3 Limits and Outcomes

My goal in this thesis was to outline a different conception of political philosophy, liberal-like, yet altered and amended. Doing this required tackling a number of issues. Necessarily, there remains much to be said and on several fronts. Here, I will highlight a couple.

I criticized Rawls' systematic view and championed a more nuanced view based on analogical reasoning. This leaves me open to complaints of promoting an overly malleable view that could, in theory, allow for just about anything. There is something comforting, after all, to a systematic view that has seemingly clear and strict rules -- 'maximize liberty with equal liberty for all', 'no promoting the good of citizens'.¹³⁹ I believe, however, that our inhibitions here should be quelled by the recognition of our multi-faced and nuanced legal system which is constantly being adjusted and tweaked, and yet which nevertheless exudes a commitment to reason and justice. Still, there is a great and long debate to be had here, it is for this reason that I put forward analogical reasoning as only a potential alternative to Rawlsian constructivism.

Throughout this thesis I have tried to emphasize that a substantive conception of citizenship need not imply the overbearing state that Berlin, Rawls and other liberals fear. In fact, as I have argued, we already accept good-promoting practices even while we have mechanisms in place to ensure that the state does not encroach too far on the liberty of citizens. There are many, however, who are likely to remain sceptical of encouraging the state to harbour morally formative ambitions. I have addressed such concerns throughout, but again, more would no doubt need to be said in response to particular challenges on particular matters.

¹³⁹ After *A Theory of Justice*, Rawls drops the formula 'maximize liberty' and instead advocates "an equal right to a fully adequate scheme of basic liberties which is compatible with a similar scheme of liberties for all." (Rawls, 1993, 291)

While I have not presented a fixed list of essential public virtues, nor definitive markers to distinguish heavy-handedness from an appropriate promotion of virtue, I have put forth the core of a political philosophy with a conception of the good, and a normative theory of citizenship for promoting that good, which form a viable alternative to competing contemporary theories.

7.4 Conclusion

Citizenship, to be a valuable concept, to instil civic pride and to serve as a locus for civic unity, needs to have purchase. It can do none of this if it is merely about sustaining the existing political order. On the other hand, if it is overly ambitious, it risks swallowing us up in its formative projects. The trick is to hit the right note, to steer the middle course between the two excesses. Admitting that we have the conceptual resources to cautiously navigate this path is an important step towards a different and better sort of political philosophy.

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