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**FOUNDATIONS OF ETHICS PROGRAMS FOR GOVERNMENT
IN A LIBERAL DEMOCRACY**

**A Thesis Submitted to the Faculty of Graduate and Postdoctoral Studies
in Partial Fulfilment of the Requirements for
the PhD Program in Philosophy
Faculty of Arts,
University of Ottawa**

by

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ABSTRACT

Dennis Thompson says that the years since the 1960s have witnessed a “revival of concern about ethics” that has spread to all sectors of society. The nature of the “revival,” however, raises many important and critical questions. Foremost among them is the question of what foundations are being proposed for institutionalizing ethics in government in a liberal democracy? The ethical values and principles promoted in these initiatives, as well as the ethical obligations they can generate, can only be as strong the foundations offered for these values and principles. In searching for these foundations in the public sector, the dissertation limits itself to and focuses on the executive branch of government in a liberal government.

Chapter One starts with a review of the literature on public administration ethics produced in the twentieth century and examines why the discipline has not yet found a firm foundation for public administration ethics. Although most of the literature produced on the subject is mainly on public administration ethics in the United States, Chapter Five will focus on initiatives in the Canadian context. The results of the review suggest that finding a foundation for public administration ethics requires reopening the question of the relationship between ethics and political philosophy. The dissertation then turns to the works of liberal political philosophers to see what they could propose as foundations for ethics in liberal democratic government. To structure my research, I adopt Ronald Dworkin’s distinction between continuity and discontinuity strategies for explaining the nature of the relationship between the ethical in our private lives with the ethical in the political domain. The dissertation interprets John Rawls’s political liberalism as a discontinuity approach to reconciling the ethical in these two domains and concludes that such an approach cannot provide a firm foundation for ethics in liberal democratic government. The dissertation interprets the liberalism of Ronald Dworkin and of William Galston as examples of a continuity approach and concludes that a continuity approach possesses the best potential for identifying the nature of a foundation for ethics in liberal democratic government. However, it also concludes that both these liberal political philosophers leave out something important and necessary for such a foundation. The dissertation also reviews the work of other liberal political philosophers: Amy Gutmann, Dennis Thompson, and John Tomasi. A critical analysis of their work shows in what way the deliberative democracy theory of Amy Gutmann and Dennis Thompson and the work of John Tomasi on liberalism beyond liberal justice cannot serve as a foundation for ethics in liberal democratic government while at the same time arguing that they provide essential elements for any effort to institutionalize ethics in government in a liberal democracy.

The review of the literature on public administration ethics and the critical assessment of the works of liberal political philosophers provide conceptual resources to propose a minimum framework for ethics programs for the executive branch of government in a liberal democracy. On the basis of this framework, the dissertation assesses two current Canadian federal government initiatives to institutionalize ethics in government in a liberal democracy: a public service-wide initiative called “Values and Ethics” and the Defence Ethics Program of the Department of National Defence.

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INTRODUCTION

Dennis Thompson says that the last thirty years have witnessed a “revival of concern about ethics” that has spread to all sectors of society.¹ Michael Davis speaks of an “ethics boom,” spreading “from one profession or occupation to another.”² Gilles Lipovetsky claims that ethics has been granted the privileged status of being the mirror through which we will see the new spirit of our age.³ If a concern about ethics did indeed wane in the eyes of citizens during the period preceding the last thirty years, it should be cause for joy to be told of its “revival.” On the other hand, a “revival of concern about ethics” may itself be a cause for concern.

The nature of this “revival” does indeed raise many important and critical questions. In what way is it a “revival?” What set of ethical values and principles are being advocated? Since the “revival” has spread to all sectors of society, including government, what set of ethical values and principles are being advocated for government in a liberal democracy and are they appropriate? More importantly, what foundations are being proposed for institutionalizing ethics in government? Ethical values and principles will only be as strong as the obligations they can generate. Yet the strength of such obligations, what I will call their categorical force - to use Ronald Dworkin’s concept,⁴ is a function of the ethical foundations of the obligations. Therefore, one of the main concerns in this dissertation will be to ascertain the strength of the foundations that could be proposed for institutionalizing ethics in liberal democratic government.

Some have linked the “revival of concern about ethics” to events in the early 1970s surrounding Watergate in the United States that saw a president step down from

office.⁵ In the aftermath, the U.S. Congress passed the *Ethics in Government Act* in 1978. Using the Act as an historical marker, Dennis Thompson makes this statement in *Ethics in Congress* about ethics cases related to the United States Senate and House of Representatives: “More members of Congress have been investigated and subject to sanctions for ethical misconduct in the past decade and a half than in the entire previous history of the institution.” Thus, from 1789 to 1977, Congress took official notice of charges of unethical conduct involving fifty-three members, while from 1978 to 1992, it considered sixty-three such cases, of which thirty-one resulted in sanctions.⁶ However, says Thompson, there is no evidence that members of Congress today are worse than their predecessors: “On the contrary, most informed observers of the institution believe that the legislators’ integrity and competence are greater than in the past.”⁷

Notwithstanding the importance of the Watergate effect,⁸ the “revival of concern about ethics” is probably linked to more fundamental changes that were occurring in western societies after WWII.⁹ For example, religion, in particular Christianity, lost its traditional strong hold on many in the liberal democracies of the post WWII period. In addition, citizens in liberal democracies showed a certain unwillingness to simply allow the law to fill the gap. Michael Davis speaks of most citizens having “lost faith in the ability of the law alone to provide common standards of conduct.”¹⁰ In other cases, market forces may have been perceived as a popular solution to the problem, but they did not and could not supply the necessary base for dealing with most of the important ethical issues that were assailing our modern democratic societies.

Although we could speculate further about the causes of the “revival,” there are many good reasons to accept that it did occur, that the literature situates the beginning of

its observable effects in government around the 1970s, and that the effects are still unfolding. Thus, Kenneth Kernaghan points out that prior to 1970 “no government had a statement of ethics rules¹¹ that came close to being a comprehensive source of information on proper ethical behaviour.”¹² However, as he says, the 1970s saw an “unprecedented outpouring of ethics rules from all levels of government”¹³ both in the United States and in Canada. The U.S. Congress passed the *Ethics in Government Act* in 1978. As was already mentioned, the post-1970s observable effects are not limited to government, but are also found in other spheres of society. For example, in 1982, only 1 percent of American hospitals had ethics committees, while in 1995, 60 percent of large hospitals had such committees.¹⁴ Finally, if we consider the enactment of the Canadian Charter of Rights and Freedom in the 1982 Constitution Act as a phenomenon that fits into this revival of concern for ethics in a liberal democracy, then we can understand why Ian Greene and David Shugarman claim, “It has only been since the enactment of the Charter of Rights and Freedom that the creative energy of Canadian democracy has begun to focus on ethics issues.”¹⁵ Thus, the observable effects of the increased concern about ethics in government were definitely part of “a society-wide growth of concern about ethical issues in general, whether in government, business, medicine, law, journalism or other occupations.”¹⁶

In the case of a “revival of concern about ethics” in the public sphere, one question that must be addressed sooner or later is the question of foundations. This is a particularly acute issue because institutionalizing ethics in government in a liberal democracy may well require introducing more ethics into the political domain than has been the case to date. A basic long-standing tenet of liberal democratic thinking is the

requirement for liberal neutrality. It implies, at a minimum, that politics and religion don't mix well,¹⁷ especially since the very emergence of liberal democracies is often seen as a political solution to the wars of religion that held European nations in their grip during the sixteenth and seventeenth centuries.¹⁸ Thus, a zealous introduction of ethics in government could be seen as eroding the ability of respecting the requirement for liberal neutrality, especially if it is somehow linked to any comprehensive religious beliefs. To the extent that one can distinguish between the private and the public life of citizens, many would argue that morality should and must be relegated to the realm of private life.

However, the “revival” at issue here involves “ethics” and not religious morality *per se*. Those leading the call for ethics are not advocating a return to a pre-liberal democratic period in which governments affirmed and enforced a state religion. For most, to speak of “ethics” in the public sector in a liberal democracy is not the same thing at all as to speak of religious morality. If that is the case, what does the foundations of ethics in government involve? If there are actions and states of affairs that result from decisions by public officials that include ethical considerations, the question of the ethical foundations of those ethical considerations becomes both important and critical in these times where citizens have become so strongly concerned about ethics.

In most cases, the “ethics boom” means that governments and business in liberal democracies are involved in ethics initiatives. What is the basis of the “ethics” in these initiatives in the public sphere? Is it nothing more than reminding public officials¹⁹ to obey and implement the law? It would certainly be tempting to conflate ethics and the law since it would seem to simplify things. However, if ethics should not be conflated with religion and religious morality in a liberal democracy, neither should it be reduced to

what is dictated by the law. The need to distinguish between ethics and the law, even in the public sphere, is captured to a certain extent in the difference between the expressions “the letter of the law” and “the spirit of the law.” For most people, to say that a public official should fulfil the responsibilities of office in accordance with a set of ethical obligations is to say something much more demanding than to say that he or she has fulfilled the obligations of office in accordance with his or her strictly legal obligations.

An example of the complexities of ethics initiatives in government is provided by the current public service wide “Values and Ethics” initiative of the Canadian federal government. It was begun in 1995 when a Task Force led by a Deputy Minister was given the mandate “to examine the relationship between existing and evolving values in the public service.”²⁰ The Task Force, and the report that ensued in December 1996, focused on the “ethos” of the public service, on values considered to be “enduring beliefs that influence attitudes, actions, and the choices we make.” The report of the Task Force on Public Service Values and Ethics identifies four “families” of overlapping public service values: democratic, professional, people, and ethical. It refers to public service ethics as “enduring beliefs that influence attitudes and actions as to what is right and wrong.”²¹ The report continues to serve as one of the main basis for the government-wide “Values and Ethics” initiative. The report raises many important questions for which it does not provide clear and justifiable answers. For example, what is the nature of the “ethical” in the *ethical* family of values? In what way are the values in the democratic, professional, and people families of values not “ethical” values? What is the relative priority of the “ethical” values in relation to the values in the other three families of values? What is the basis of and how strong is the categorical force of each family of

values? To the extent that the “ethical” values are different from the other values, what is the ethical foundation invoked to resolve a conflict between the “ethical” values and the other values?

Of all the questions the report raises, the question of foundations represents the most pressing one to answer. In particular, what should be the nature and the role of ethics in the political domain in a liberal democracy? In my private life, if I am asked what is the basis of my moral²² obligation, I will probably turn to values rooted in what Rawls has called “comprehensive conceptions.” Comprehensive conceptions²³ can be either religious or secular²⁴ and refer to all values and virtues, including moral values and virtues, within one system of normative values that may be either precisely or loosely articulated. Comprehensive conceptions usually serve as the ultimate basis for defining and distinguishing what is moral from what is immoral in life. Accordingly, if I am a Christian, I may justify my moral obligation to be honest in my dealings with people in my private life on the basis of a Christian principle like love thy neighbour. I may also justify that obligation on the basis of a Kantian deontological requirement to adopt a meaning of honesty that ensures that I treat each person always as an end and never solely as a means.²⁵ However, it is commonly believed that the ethical²⁶ judgements of public officials should not rest solely on their personal beliefs when fulfilling the obligations of office in a liberal democracy.

For some, this requirement would seem to imply that a public official cannot, and should not, invoke the same normative reasons for public decision making that he or she would use in private life. Of course, the question then arises whether public officials are expected to leave all comprehensive conceptions at the door each day when they assume

the responsibilities of office. If that is the case, what becomes the foundation of the “ethics” in their ethical judgements of office? The question of foundations is not limited, of course, only to public officials. The “revival of concern about ethics” has brought with it questions of the foundations of ethics in all sectors of society whether in government, business, medicine, law, journalism or other occupations. In fact, all citizens, as citizens, face the same challenge of foundations to the extent that they search for the basis of their ethical judgements on public issues that should be made in the spirit of democracy and not solely on the basis of, for example, their religious beliefs.²⁷

The philosophical issues related to the “revival of concern about ethics” have not gone unnoticed by liberal political philosophers. Thus, Ronald Dworkin’s “Foundations of Liberal Equality” is a response to what he considers the main challenge to liberalism today, a challenge aimed at the ethical foundations of liberalism. Accordingly, he says: “liberalism needs foundations in ethics”²⁸ and his purpose in the *Tanner Lectures* is “to find the ethical foundations for liberalism.”²⁹ Similarly, William Galston says: “Of all the issues facing the contemporary liberal polity, one is of special concern to me here: the relationship between liberal polity institutions and practices, on the one hand, and what might be called the moral culture of liberal society on the other.”³⁰ In response, he offers a conception of liberal purposes that is not meant to “fill the total space of public action,” but rather to “define only what we, as citizens, must publicly affirm.”³¹

My specific aim in this dissertation is to focus on the foundations of ethics in liberal democratic government, and more specifically in ethics programs for the executive branch of government. In the light of the projects put forward by both Ronald Dworkin and William Galston, I intend to deal first with the more general questions of the nature

and role of ethics in government in a liberal democracy before moving on to questions of the foundations of ethics programs for the executive branch of government and to more specific questions like the basis of the ethical judgements of public officials.

Since I am ultimately concerned with the foundations of ethics in the executive branch of government, Chapter One starts by examining how the field of public administration has approached the question of the foundations of public service ethics. In doing so, it will review the contributions of individual public administration ethics scholars throughout the twentieth century selected because their work is considered representative of significant schools of thought during that century. The review will show that leading scholars in the field today believe that public administration ethics currently lacks a foundation. Finally, it will echo the words of Kathryn Denhardt: "In addition to the absence of an agreed-upon theoretical framework for administrative ethics, the field has failed to take advantage of the philosophical traditions that should be underpinnings of any study or application of ethics."³²

In Chapters Two and Three, I turn to the work of political philosophers in search of the elements of a foundation for ethics in government. I remain entirely within the liberal tradition to work out elements of a possible foundation. The tradition itself is sufficiently complex to ensure diversity of views and sufficiently rich to allow me to expect a fruitful exercise. I concentrate my attention on the works of the following political philosophers: John Rawls, Ronald Dworkin, and William Galston, and Amy Gutmann and Dennis Thompson. I have chosen these political philosophers not only because they advocate important liberal philosophical positions on the nature of ethics in the political domain but also because there are significant differences in their liberalism.

Another reason for selecting these political philosophers is that the main body of their work belongs to the last thirty years of the twentieth century, the period that has witnessed a “revival of concern about ethics.” It is reasonable to limit myself to political philosophers who have tackled some of the main problems in political philosophy in the last thirty years since, as I have already stated and argue in Chapter One, little attention has been given until recently to the foundations of ethics in government in modern liberal democracies characterized by a plurality of comprehensive doctrines.

To carry out the critical analysis of the different proposals put forward by these political philosophers, I adopt Ronald Dworkin’s distinction between two basic types of strategies for dealing with the relationship between the ethical in our private lives and the ethical in the political domain:³³ discontinuity-based and continuity-based strategies. Therefore, Chapter Two examines Rawls political liberalism as an example of a discontinuity strategy for reconciling the ethical in the two domains, while Chapter Three examines both Dworkin and Galston’s proposals as examples of continuity strategies for accomplishing the same purpose. I will argue that none of these political philosophers provides us a completely satisfactory foundation for ethics in government, although all three contribute important elements that should be included in a possible foundation for ethics in government.

In addition, my assessment of the possible foundations for ethics programs offered by the three main political philosophers studied in the dissertation: John Rawls, Ronald Dworkin and William Galston will adopt in all three cases a method of argumentation that proceeds in two stages: first, a pragmatic assessment; second, a conceptual assessment. In the pragmatic assessment, the most I expect to achieve is to establish the

reasonableness of my criticism of these philosophers by reference to what I claim are commonly accepted beliefs by citizens in a liberal democracy. This kind of assessment is in principle subject to being tested by empirical research about what would actually be accepted by citizens. In any event, it is through the conceptual assessment that I expect to establish a stronger case for my criticism of these philosophers, on the basis of the categorical strength of the foundations proposed. In applying the two-stage assessment, I saw myself following in the footsteps of others. For example, Kant's arguments in the first section of the *Foundations of the Metaphysics of Morals* are more pragmatic in nature and appeal to the reasoning of ordinary people while in the second section, where he considers he is making the stronger case, his arguments are more theoretical.³⁴

In the end, I will side with Dworkin and Galston in arguing for the superiority of a continuity strategy over a discontinuity strategy in establishing a foundation for ethics in government in a liberal democracy. However, I will also show that both Dworkin and Galston fail in their attempts to work out a reconciliation of the ethical in our private lives and the ethical in the political domain because their versions of a continuity strategy cannot provide the strong foundation required for ethics in government. In Dworkin's case, his conception of continuity is akin to two parts of a whole fitting perfectly together while in Galston's case continuity is based on tolerance within what he calls the "diversity state"³⁵. Nevertheless, political philosophers like Dworkin and Galston are correct in claiming that a link between the normative in the two domains is necessary and that the link is best expressed in terms of a continuity strategy.

Chapter Three also examines the conception of deliberative democracy developed by Amy Gutmann and Dennis Thompson to ascertain what the conception could

contribute to a continuity strategy seeking to link the ethical in our private lives and the ethical in the political domain. According to them, their conception has the advantage of operating in “the middle range of abstraction, between foundational principles and institutional rules.”³⁶ They consider this level to be the land of “middle democracy” where “much of the moral life of a democracy, for good or ill, is to be found.” It is the land of legislators, executives, and administrators; the land of civic associations and schools.³⁷ Although I argue that the barriers to entry to the public forum erected by Gutmann and Thompson would leave us with an impoverished form of continuity between the ethical in our private lives and the ethical in the political domain, their idea of deliberative democracy leads in the right direction.

The aim of Chapter Four is to identify a set of conditions that would have to be satisfied by a continuity-based approach to the foundation of ethics in government in a liberal democracy. I limit myself to working out the general features of a foundation since it is beyond the scope of this dissertation to develop systematically the content of such a foundation. I give the outline of a set of preconditions and of content requirements that must be satisfied to work out successfully the content of a foundation for ethics in government in a liberal democracy. Advocating a continuity strategy, I propose that continuity should be understood as an overlap of the ethical in our private lives and the ethical in the political domain, in contrast, for example, to the form of continuity found in Dworkin and Galston’s proposals. According to this conception of continuity, ethical principles and obligations in our every day life possess a dual status: on the one hand, they represent intermediate-level principles from the point of view of our private lives; on the other hand, they are attributed a foundational value in the political domain and

constitute an ethical imperative at the very heart of liberal democracy. Finally, Chapter Four argues that a continuity strategy requires that the ethical imperative in the foundations of liberal democracy be given priority over other values in the political domain.

To highlight significant features of my proposal, I turn to the work of John Tomasi in *Liberalism beyond Justice*.³⁸ Tomasi believes that political liberalism is a view more radical than most people, including liberals, appreciate.³⁹ The questions relating to the interface between the domains of ethical values and of political values are central to the liberal project.⁴⁰ He argues that for most citizens who would live in a liberal society, it is not sufficient for a liberal society to be only just - that is just in the way that liberalism defines justice.⁴¹ He claims that political liberalism “requires that the boundaries of liberal theory construction be *expanded*, and expanded in nonpublic directions”⁴² such that the institutions created by a *liberal* democratic society always seek “to minimize their own unintended cultural effects.”⁴³ Although I argue that Tomasi does not succeed in adequately addressing the challenge of the interface questions, he does provide a basis in liberalism to pursue the type of continuity that I am proposing.

In the first section of Chapter Five, I develop the broad outlines of a theoretical framework for an ethics program for government in a liberal democracy based on the continuity proposal put forward in Chapter Four. The theoretical framework provides a means of assessing initiatives to institutionalize ethics in government. In the next two sections, I assess two current initiatives to institutionalize ethics in the federal government of Canada. In the first case, I assess a public service-wide initiative on “Values and Ethics.” In the second case, I look at the efforts of the Department of

National Defence to establish a Defence Ethics Program that can serve the ethical needs of its two defence communities: the public service and the Canadian Forces. To perform the evaluation of the strengths and weaknesses of each initiative, I select three important features of the theoretical framework. In each case, I assess how the initiative has dealt with governance; then, whether the initiative has incorporated continuity between the ethical in our private lives and the ethical in the political domain; and finally, whether it gives priority to ethics in government.

In conclusion, the dissertation shows that the “revival of concern about ethics” that has spread to all sectors of society in the last thirty years⁴⁴ has gone forward in the public sector without adequately addressing the issue of the foundations of the *ethics* in the ethics programs for government being implemented. It argues that only a continuity strategy can do full justice to the fact of a plurality of comprehensive doctrines in modern liberal democracies and has the potential of providing the necessary ethical foundation for liberal democracy. The dissertation demonstrates how a continuity approach provides a means for liberalism to naturally incorporate ethics “so that ethics merges with politics,”⁴⁵ and to do so, as Dworkin says, in such a way that it truly makes “all one’s ethical convictions available in politics.”⁴⁶

ENDNOTES

¹ Dennis F. Thompson, *Ethics in Congress: From Individual to Institutional Corruption* (Washington: The Brookings Institution, 1995), p.4.

² Michael Davis, *Ethics and the University* (New York: Routledge, 1999), p.8, and ch. 1, 'The ethics boom, philosophy, and the university.'

³ Gilles Lipovetsky, *Le crépuscule du devoir : l'éthique indolore des nouveaux temps démocratiques* (France : Gallimard, 1992), p.11. The text reads: "La sphère éthique est devenue le miroir privilégié où se déchiffre le nouvel esprit du temps."

⁴ In this dissertation, I adopt Ronald Dworkin's idea of categorical force to refer to the strength of an ethical obligation. In the case of ethics in government, the strength of the ethical obligation is dependent on the proposed conception for a foundation of ethics in liberal government. See Ronald Dworkin, "Foundations of Liberal Equality" in *The Tanner Lectures on Human Values*, ed. Grethe B. Peterson (Salt Lake City: University of Utah Press, 1990), vol. XI (3-119). For example, Dworkin says that a political conception can have categorical force only if its moral principles are "binding categorically, in advance of any agreement about them." (note 13, p.27) The idea of possessing categorical force also has roots in Kant's distinction between hypothetical and categorical imperatives.

⁵ See Bob Woodward, *Shadow: Five Presidents and the Legacy of Watergate* (New York: Simon and Schuster, 1999). "By the time he [Richard Nixon] resigned in 1974, American politics was changed forever because of Vietnam and Watergate." (p.1) "New ethics laws, a resurgent Congress and a more inquiring media altered the prerogatives and daily lives of presidents." (p.2) See also Kenneth Kernaghan, *The Ethics Era in Canadian Public Administration*. (Research paper No. 19), (Ottawa: Canadian Centre for Management Development, 1996), p.5. (NOTE: Watergate refers to the illegal attempt in 1972 to bug a democratic party building in Washington, D.C. - The Watergate. The affair was exposed to the public by the *Washington Post* newspaper and led to the eventual resignation from office on August 9, 1974 of President Richard Nixon.)

⁶ See Thompson, *Ethics in Congress*, p. 1, and endnote 1, p. 191.

⁷ See Thompson, *Ethics in Congress*, p. 3.

⁸ Bob Woodward calls the post-Watergate period a "new world" for U.S. presidents. The presidencies of Ford, Carter, Reagan, Bush, and Clinton "were inhabiting a new world, but often seemed not to recognize it." (p.2) See *Shadow*.

⁹ See Kernaghan, *The Ethics Era in Canadian Public Administration*, p.5. As Michael Davis points out, the "ethics boom" had already started before Watergate with the growth of medical ethics in the early 1960s. See *Ethics and the University*, p. 11.

¹⁰ Davis, *Ethics and the University*, p. 18.

¹¹ In an endnote, Kernaghan states: "In this paper, the term "ethics rules" is used to cover statutes, regulations and guidelines bearing on ethical conduct, including codes of ethics." See Kernaghan, *The Ethics Era in Canadian Public Administration*, p. 24, endnote 12.

¹² See Kernaghan, *The Ethics Era in Canadian Public Administration*, p. 6.

¹³ See Kernaghan, *The Ethics Era in Canadian Public Administration*, p. 6.

¹⁴ See Thompson, *Ethics in Congress*, pp.4-5.

¹⁵ Ian Greene and David Shugarman, *Honest Politics* (Toronto: James Lorimer & Company, 1997), p. 7.

¹⁶ See Kernaghan, *The Ethics Era in Canadian Public Administration*, pp. 5-6. "So Congress is not alone," says Dennis Thompson, as he illustrates in what way the demand for ethics "has affected not only government but much of society." See *Ethics in Congress: From Individual to Institutional Corruption*. Ibid. p.4-5.

¹⁷ William A. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State*, (Cambridge: Cambridge University Press, 1991) William Galston interprets John Rawls's political liberalism as advocating a doctrine of liberal neutrality that is a generalization of Locke's doctrine of religious toleration. (p.261) However, Galston also argues that the version of liberalism adopted by political philosophers like Rawls and Ronald Dworkin is not sustainable precisely because it insists on generalizing religious neutrality to include "all individual conceptions of the good life." (pp.7-8)

¹⁸ John Rawls, *Political Liberalism*. (New York: Columbia University Press, 1993), p. xxiv.

¹⁹ For purposes of this dissertation, I adopt Patrick Dobel's description of a public official as "any individual who holds any position at any level of government or public authority." Patrick J. Dobel, *Public Integrity*, (Baltimore: Johns Hopkins University Press, 1999), p. 1.

²⁰ John C. Tait, chair, *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics*. (Discussion paper) (Ottawa: Canadian Centre for Management Development, 1996), p. vii. See also Treasury Board of Canada Secretariat, *Study: of the Ethics Infrastructure in the Public Administration: The Experience of Several Countries* (Ottawa, April 2002), p. 8.

²¹ Tait, *A Strong Foundation*, pp.4-5.

²² In this dissertation, I make use of both a strict and a common meaning of the terms "moral" and "ethical." In the strict sense, "moral" is limited to religion and religious views while "ethical" refers to secular views. Of course, it is possible for a secular view to serve the same role that religion has served traditionally; for example, a non-religious person could take Kant's philosophical system or Bentham's utilitarianism as the basis for one's comprehensive normative view of life. I naturally use the strict senses of these two terms when the argument requires it. However, the meaning of the two terms do overlap in ordinary usage and, as a result, they often share a common meaning that allows them to be taken as synonyms and used accordingly. Therefore, I follow ordinary usage, when appropriate, to avoid a laboriously sounding text. The context should make it clear when the strict or the common meanings are employed.

²³ Throughout this dissertation, my use of the expression comprehensive doctrine or conception is similar to Rawls's descriptions of both a fully and a partially comprehensive conception: "A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, non-political values and virtues and is rather loosely articulated." However, whereas Rawls argues for a free-standing conception of political liberalism and, hence, draws a strong bold line between political and non-political values and virtues, I argue that the separation between the two spheres is not as categorical as Rawls treats them. See John Rawls, *Political Liberalism*, p. 13

²⁴ I prefer classifying comprehensive views of life that include a normative dimension as either religious or secular views instead of other ways of distinguishing between various comprehensive views. For example, Stephen Macedo divides these views into "comprehensive religious and moral views." However, Macedo's categories do not draw a clear distinction between comprehensive views since there is a vast body of literature that treats religious views as the basis for morality. See Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy*, (Cambridge: Harvard University Press, 2000), p.188.

²⁵ One can do this without treating Kant's philosophy as a religion.

²⁶ I tend to use the term "ethical" whenever I am referring to actions and decisions by public officials in the public domain. However, it should be kept in mind that one aspect of the purposes of this dissertation is to attempt to clarify the precise nature of the "ethical" in the political domain.

²⁷ This does not preclude that in some cases, for example abortion, citizens may well take up positions in the public forum that inevitably are based primarily on their religious beliefs.

²⁸ See Dworkin, "Foundations of Liberal Equality," p. 6.

²⁹ See Dworkin, "Foundations of Liberal Equality," p.3.

³⁰ See Galston, *Liberal Purposes*, p. 6.

³¹ See Galston, *Liberal Purposes*, p.4.

³² Katherine Denhardt, *The Ethics of Public Service: Resolving Moral Dilemmas in Public Organisations*, (New York: Greenwood Press, 1988), p. vii-viii.

³³ I treat the meaning of the expression "political domain" as coextensive with the meaning of the term "public" in the public-private distinction. Nevertheless, I acknowledge that there are important distinctions between institutions in civil society and government that are glossed over by the term "public." However, those differences are not relevant for purposes of this dissertation, since I am ultimately concerned with the nature of ethics in the executive branch of government and the relationship of ethics in this public domain with the ethics invoked in our private lives.

³⁴ Roger J. Sullivan, *An Introduction to Kant's Ethics* (Cambridge: Cambridge University Press, 1994) pp. 29-36.

³⁵ William A. Galston, "Two Concepts of Liberalism," in *Ethics*, no.105, April, 1995, p.524.

³⁶ Amy Gutmann and Dennis Thompson, *Democracy and Disagreement*, (Cambridge: Harvard University Press, 1996), p.5.

³⁷ See Gutmann and Thompson, *Democracy and Disagreement*, p. 40.

³⁸ Tomasi, John. *Liberalism Beyond Justice: Citizens, Society, and the Boundaries of Political Theory*. Princeton: Princeton University Press, 2001.

³⁹ See Tomasi, *Liberalism Beyond Justice*, p. xviii

⁴⁰ See Tomasi, *Liberalism Beyond Justice*, p.128. Tomasi points out that Stephen Macedo makes a similar claim and quotes him as saying that a defence of liberal politics "should have something to say about how the interface between the political and the personal values is negotiated. (...) Managing that interface is, in a sense, *the crucial public issue*." (p.35) (Text from Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community*. Oxford: Oxford University Press, 1990, p.62. Italics are in text.)

⁴¹ See Tomasi, *Liberalism Beyond Justice*. The question, as Tomasi says, is "To what degree can a political liberal society be *a home* to the people it was formally designed to include?" Ibid. p.16. (Italics are in the text.) My reference to liberalism is to traditional types of liberalism, for example those based on a Millian or Kantian philosophy, and the common understanding of political liberalism - that Tomasi takes exception with.

⁴² See Tomasi, *Liberalism Beyond Justice*, p. xvii-xviii. (Italics are in the text.)

⁴³ Ibid., p. 128.

⁴⁴ Dennis F. Thompson, *Ethics in Congress: From Individual to Institutional Corruption* (Washington: The Brookings Institution, 1995), p.4.

⁴⁵ See Dworkin, "Foundations of Liberal Equality," p. 89.

⁴⁶ Ibid., p. 21.

CHAPTER ONE

PUBLIC ADMINISTRATION ETHICS

The main purpose of this dissertation is to provide the outline of a philosophical foundation for ethics programs for government in a liberal democracy. The main theme is that liberal democracy is a way of life that implies not only what Dennis Thompson describes as “the mutual dependency of ethics and democracy”¹ but also the presence and priority of ethics in government.² Throughout, we are concerned with the nature of the relationship between the ethical in our private lives and the ethical in the political domain.

William Galston says in *Liberal Purposes* that he is particularly concerned about “the relationship between liberal polity institutions and practices, on the one hand, and what might be called the moral culture of liberal society on the other.”³ In my case, I am particularly concerned with the relationship between the ethical found in “liberal polity institutions and practices” and the ethical found in the “moral culture of liberal society”.

As can be seen in the quotes from Dennis Thompson and William Galston, the terms “moral” and “ethical” are both used in the literature. In this dissertation, I shall follow ordinary usage in which the two terms share a sufficiently common meaning that they are often used interchangeably. As we shall see, the distinction between the two terms is not black and white. In addition, I will argue that the overlap of meanings between these two terms is not the result of confused thinking on the part of ordinary citizens but rather the indication of something more fundamental at work.⁴

This chapter addresses the nature of ethics in government by exploring how ethics relates to the notion of governance in a liberal democracy. It focuses specifically on the question as it arises in public administration because, more than any other discipline, public administration has been driven by a pragmatic need to address the normative side of government. Public administration's treatment of the role of ethics in government has a direct impact on how public administrators carry on business on a day-to-day basis.⁵

Throughout the twentieth century, public administration has produced a growing body of work on the foundations of public administration ethics. This chapter will present a review of that literature. A firm foundation, if it exists, would allow practitioners to work through issues of ethics in government with confidence and provide criteria by which to evaluate decisions and actions. I approach the question of foundations through the normative question: "How *should* governing be carried out?"

I also address the related and important question: "Who governs?" I shall argue that public administration scholars have provided good and sufficient reasons to expand the membership of those who govern beyond the traditional limited set of elected representatives. Public administrators should be considered as sharing in governance. The extent to which public administrators share in governing impacts on the definition of the scope and substance of ethics programs for government and the purposes these programs are expected to serve.

Although public administration has an important literature on ethics in government, I will show that the literature does not provide a satisfactory answer to the

more fundamental question “How *should* governing be carried out?” It is not for lack of answers, since there are innumerable books and journals related to public administration ethics. Public administration scholars have provided answers that are both useful and informative – and we will seek to benefit from them - but they have failed to address adequately the justification issue: “On what basis are these answers justified?” For that reason, I will conclude that scholars in the field have not been able to provide the discipline with a firm foundation for public administration ethics.

I suggest that the main reason for this failure is the discipline’s inability to work out fully the normative aspect of democracy: public service ethics must be shown to emerge from the meaning of the idea of liberal democracy itself. Public administration has been surprisingly tame in responding to the contemporary tensions within the liberal democratic paradigm, and to the consequences that these unresolved tensions have on our understanding of how government should work in a modern democracy.⁶

In summary, this chapter initiates a study of the nature of an ethics program for government in a liberal democracy by reviewing the way the discipline of public administration has dealt with public administration ethics. On the basis of a review of the work of leading scholars in the field throughout the twentieth century, I identify some of the main reasons why the discipline has not been able to bridge the gap between its pragmatic concerns and the philosophical foundations of public administration ethics. I argue that the primary reason that public administration has been unsuccessful in its efforts is due to its inability to provide a satisfactory justification for the role it gives ethics in the political domain. It assumes and leaves unchallenged too much about the

nature of the relationship between the ethical in both our private lives and the political domains.

As a result of this review, the next two chapters look more closely at the nature of the “mutual dependency of ethics and democracy.”⁷ Thus, Chapter Two examines a discontinuity strategy for dealing with the moral and political tensions within liberalism generated by the interaction of ethics, government, and liberal democracy, as developed in the work of the political philosopher John Rawls. Through his conception of political liberalism, Rawls addresses in depth the tensions within the liberal democratic paradigm. Rawls argues that his theory of political liberalism, illustrated by his conception of justice as fairness, should serve as a foundation for the normative basis of government. My primary interest, however, will not involve Rawls’s two principles of justice developed in *A Theory of Justice* (1971), but rather his conception of political liberalism concentrating on his ideas of an overlapping consensus and public reason, which play an important role in his later work, in particular in *Political Liberalism* (1993). Chapter Three will turn to a study of the continuity strategies proposed by Ronald Dworkin and William Galston for resolving the tensions between the ethical in both our private lives and the political domains. But first, we turn our attention to how public administration has dealt with providing itself a foundation for ethics in government.

The Question of Foundations in Public Administration Ethics

There are at least three good reasons to start a study on the nature of ethics programs for government in a liberal democracy with a study of public administration ethics. First, public administration has a large stake in the outcome of the exercise. Although scholars in disciplines like political science, sociology, psychology, and, of course, philosophy have published works related to important aspects of ethics in government, no discipline has had a more urgent requirement to address the question of the nature and role of ethics in government than public administration. In addition, there already is an important literature that focuses on public administration ethics. Finally, the issues debated in public administration provide valuable insights on the relationship and the tensions that exist between the ethics in our private lives, on the one hand, and the ethics in government in liberal democracy, on the other hand. A foundation for ethics in government requires a satisfactory resolution of these tensions.

I am particularly interested in what public administration has done to provide itself with a foundation for ethics in government on the background of the recent “ethics boom”⁸ caused by the “revival of concern about ethics” that has spread to all sectors of society.⁹ Public administration or public service has a long history in liberal democracies and has played an important role in government. Therefore, it is surprising to note that scholars doing literature reviews in administrative ethics in the last 15 years seem to be voicing a similar message on the issue of public administration ethics. In the opening pages of *The Ethics of Public Service* (1988), Kathryn Denhardt gives the essentials of

this message: "Ethics in public administration suffers from the absence of a theoretical framework (...) No paradigm presently exists to provide a shared understanding of what "ethics" means when applied to the field of public administration."¹⁰ She cites three works produced from 1980 to 1986 by leading public administration scholars who claim to be reporting on the "state of the discipline," Dwight Waldo (1980), James S. Bowman (1983), and John Rohr (1986), and summarises their conclusions in this way: "in six years administrative ethics progressed only from a state of chaos to something "close to chaos" in the eyes of those most involved in the field".¹¹

Similarly, in *Ethics in the Public Service: the Moral Mind at Work* (1999), Charles Garofalo and Dean Geuras claim that their review of the work done in administrative ethics reveals "a major gap in the literature, namely, the absence of an explicit and fundamental ethical basis for administrative thought and action." Diverging slightly from these two assessment, Terry Cooper provides an introduction to the other articles in the *Handbook of Administrative Ethics* (1994) in the form of a survey of the literature on administrative ethics since the late nineteenth century. He concludes from his survey that "the *study* of administrative ethics as an ongoing scholarly enterprise (...) does not predate the 1970s".¹² Although Garofalo and Geuras agree with Cooper that there is a growing body of work in the field of administrative ethics, they claim that "its ethical assumptions and aspirations lack a firm foundation".¹³

These claims are worth investigating, especially the seeming consensus that until recently little attention has been paid to the foundations of public administration ethics. Given the obvious ethical aspect of the impact of so many day-to-day decisions by

government bureaucracies, it is difficult to accept that these decisions could have been taken without being fully justified from an ethical point of view. However, that would seem to be the conclusion that we have to draw from the set of comments above. To understand the nature of these claims, I carry out a literature review of public administration ethics throughout the twentieth century. I do not purport to provide an exhaustive review of the literature, since it should be sufficient for my purposes to limit myself to a sample that is “representative of the works that mark the significant milestones in the emergence of administrative ethics.”¹⁴ In making the selections for the literature review, I shall use as my guides three recent literature reviews done by public administration scholars: Terry L. Cooper, Kathryn Denhardt, and Charles Garofalo and Dean Geuras.¹⁵

My review of the public administration ethics literature during the twentieth century will concentrate on American public administration ethics literature¹⁶ and be carried out by grouping the main contributions of public administration scholars into three historical periods: (1) the early decades: 1880s-1920s, (2) the middle decades: 1930s-1960s, and (3) the final decades: 1970s-2000.¹⁷ By the end of the chapter, I expect to have shown in what way the issue of foundations for public administration ethics is left unresolved by public administration. Nevertheless, our efforts will not have been fruitless. The review will have revealed the importance of looking in depth at the liberal democratic paradigm itself and of searching therein for the key to the foundations of ethics programs for government in a liberal democracy.

The Early Decades: 1880s-1920s

In the first period of our review, from the late nineteenth century to the 1920s, two important contributions to the field of public administration should be singled out: those of Dorman B. Eaton and Woodrow Wilson.¹⁸ Dorman B. Eaton published a study of the British civil service in 1880 that sought to highlight potential applications to the U.S public administration. Eaton's work pointed out the benefits of shifting the basis of appointments to office from purely partisan purposes to a merit-based system. It is generally accepted today that the shift to a merit-based system for the public service in both the U.S and Canada has contributed to ensuring a fairer system of public service employment opportunities.

The second influential contribution was Woodrow Wilson's article on "The Study of Administration" in 1887. Wilson argues that good government means efficient government and that "the field of administration is a field of business." The best way to achieve efficiency in government is to develop a scientific approach to public administration. According to Wilson, the purpose of a science of administration is to provide government with the means of running government more "businesslike."¹⁹ To fully appreciate that it is possible to make government administration more businesslike, Wilson stresses that one must start by accepting that "administration lies outside the proper sphere of politics."²⁰ Although administration should be considered as outside the immediate sphere of politics, it is not totally separate from it. The political sphere deals with: "Who shall make the law, and what shall that law be?" Administration deals

with a separate issue: “How law should be administered.”²¹ Administration is a “detailed and systematic execution of public law” and “every particular application of general law is an act of administration.”²² Wilson argues that an organisation dealing with the “application of general law” and the “systematic execution of public law” in a way that will “insure trustworthiness” is needed to complement the law making activity of politics.²³ If we were to ask Wilson: What constitutes good behaviour for the public servant?, it makes sense that he would answer: “Steady, hearty allegiance to the policy of the government they serve will constitute good behaviour.”²⁴ It is worth noting that Wilson acknowledges that administrators exercise discretion in carrying out their duties, but, according to Terry Cooper, “authority and structural constraints on discretion” were his primary means of ensuring that the goal of good government could be reached.²⁵

Kathryn Denhardt claims that both Eaton and Wilson support solutions for good government that define the “good” in government against the background of a politics/administration dichotomy.²⁶ According to the school of thought that advocates this dichotomy, only the elected representatives govern. They make the laws while administrators limit themselves solely to implementing these laws. As illustrated by the previous quotes from Wilson on public administration, it is clear that he accepts and advocates the dichotomy. In Eaton’s case, more should be said to better appreciate Denhardt’s claim. Eaton’s main contribution to administrative ethics was to champion the implementation of a merit-based system in government. In what way can his contribution involve the indicated dichotomy? Is that a shortcoming? It seems obvious that a merit-based system is normative in as much as it was brought in to replace the spoils system

and is meant to promote “fairness” in the hiring and promoting of personnel. However, the criteria used to identify what counts as “merit” are themselves defined in terms of efficiency and respect for authority and structural controls. This approach to the application of “merit” is perfectly consistent with Wilson’s thinking on public administration and, on closer inspection, actually provides additional safeguards for the boundaries of the politics/administration dichotomy. For example, the “fairness” of the merit system would be accomplished by any process whose outcome possesses the characteristics of efficiency and respect for authority and structural controls. As can be seen, what counts as “merit” and “fairness” in administering the merit system introduced by Eaton depends on how one interprets the link between politics and administration. It is easy to see how the substantive content of a merit system based primarily on the characteristics of efficiency and respect for authority and structural controls may have little to do with a definition of fairness rooted in a some normative theory, like Rawls’s theory of justice. In the end, whatever positive ethical results may be produced by a merit system understood in this way is ethically contingent and lacks a firm normative grounding in theory.

In conclusion, I would agree with Terry Cooper’s general assessment of the early period: the literature demonstrates that the primary focus for public administration advocated by the leading scholars of the day gave little attention to the substantive aspect of administrative ethics.²⁷ These scholars advocated reforms that did not challenge the validity of the politics/administration dichotomy, much less put into question what Galston describes as the delicate balance between the liberal values of the political

domain and the values of the “social preconditions” of liberal democracies.²⁸ They simply assumed that this dichotomy correctly represented the relationship between politics and public administration and any exercise of discretion by administrators was to be understood and constrained within boundaries established to safeguard the dichotomy. As a result, the administrative reforms implemented to improve the working of government are based on unexamined assumptions that must be justified from an ethical point of view since they contribute to “good” government. However, as we saw in the case of the merit system, if “good” for public administration is defined in terms of efficiency and the respect for structural controls, the question of the foundation of the ethics of this “good” is still an open question. We may conclude, therefore, that the nature of the changes in administrative ethics championed by the leading scholars of the early period should be considered at most “procedural reforms” that leave the concerns of the foundation of public administration ethics virtually untouched.²⁹

The Middle Decades: 1930s-1960s

Of the multiplicity of contributions in the period 1930s-1960s, those of four individuals stand out: Wayne A. Leys, Fritz Morstein Marx, Paul H. Appleby and Robert T. Golembiewsky.³⁰

a) Wayne A. Leys

According to Cooper, Leys's article "Ethics and administrative discretion" represents the first influential argument in support of administrative discretion.³¹ Leys believes that the emphasis on authority and structural constraints on discretion advocated by earlier scholars of public administration, like Woodrow Wilson, as the primary means of ensuring good government is inadequate. He argues that administrative discretion is not the result of vagueness and lack of specificity on the part of legislators in drafting legislation, but a necessary aspect of government in modern industrial societies. He describes a necessary and positive role for administrators in the policy making process. As a result, he argues that administrators need to develop wisdom in the exercise of the discretion they possess and that the best normative source for acquiring the required ethical wisdom in public administration is found in philosophy.

In *Ethics for Policy Decisions: The Art of Asking Deliberative Questions* (1952), Leys presents what he considers to be a systematic method of analysis and resolution of ethical problems found in public administration. The method is based on a recourse to ten "organizing ideas" derived from philosophers in the history of philosophy. These "organizing ideas" are useful for solutions to all problems that lie between certainty and "blind trial and error." Leys believes that there are no principles that "can ever eliminate all trial and error from practical judgment." Although there is "no universal wisdom in the sense of an infallible directive," there is a kind of general wisdom found in the ability to "refer to standards that will save men from blind trial and error."³²

For Leys, philosophers have provided us with such standards. To appreciate their contribution, it is important to identify what philosophy does uniquely well. When philosophy is understood as providing answers, it is in competition with science and the arts. On those grounds, it does not do well. Philosophy is at its best, claims Leys, when it is viewed as providing “a set of answerable questions” that can serve as “an organizer of practical thought.”³³ The gap between philosophical ethics and policy can be adequately addressed if philosophy’s questions “serve as pointers and direction-finders, turning our gaze to values in our situation that we might not see otherwise.”³⁴

Leys identifies ten sets of questions that correspond to ten philosophical systems.³⁵ His sets of “critical questions” come under the following headings: Moral Idealism (Plato and Kant), Aristotle’s golden mean, Stoicism (Epictetus and Spinoza), Casuistry, Ethics of Psychologists (Hobbes and Butler), Utilitarianism (Bentham), Hegel’s historical “logic”, Marx’s historical “logic”, Dewey’s Instrumental Thinking, and Semantic Analysis.³⁶ Here are a few examples of these “standards.” For Utilitarianism, one of the questions is “Which policy will result in the greatest possible happiness of the greatest number?” For Casuistry, one of the questions is: “What are the authoritative rules and precedents, the agreements and accepted practices?” For Moral Idealism, one of the questions is: “If there is a conflict of principles, can you find a more abstract statement, a “third principle”, which will reconcile the conflicting principles?”³⁷ Leys claims that these ethical standards can “save men from blind trial and error”.³⁸

In what way do these “standards” or “critical questions” assist administrators in making better decisions? Leys devotes Part Two of *Ethics for Policy Decisions* to a

demonstration of how these “critical questions” could have assisted administrators by reviewing past decisions of administrators. As a result of his analysis, Leys identifies important considerations that would have come to the surface had one or the other of the “critical questions” been asked and that would have been required to justify a policy decision.³⁹ He also gives examples of the form of these omissions, such as being “heedless of consequences” (Utilitarianism) and being “inconsiderate of the wishes of employees” (Ethics of Psychologists). These shortcomings are contrasted with the decisions of other individuals who displayed “uncommon good judgment” because they “remembered to look for value-considerations that others forgot.”⁴⁰

However, in answer to the more fundamental concerns, Leys is less helpful. For example, he does not provide much rationale for his claim that his specific formulation of these “critical questions” adequately represents some or all of the essential aspects of the theories that inspire them. Even if we were to grant him that these “critical questions” capture all essential aspects of these philosophical theories, we are left with a claim that is not defensible. Although Leys would have us believe that none of these theories contribute answers, questions by their very nature frame what will be considered allowable answers. In addition, although these deliberative questions may serve as “pointers and direction-finders,” Leys admits that they do “not save us entirely from a trail-and-error procedure.” Thus, if we are dealing with issues requiring a choice between “several clearly formulated alternatives”, Leys claims that in such situations more than one set of “critical questions” is required. That means that a particular case may require “critical questions” concerning “authoritative rules” (Casuistry), “ends-and-means”, and

consistency-with-principle” (Moral Idealism). If we inquire as to why this particular set of “critical questions” should be more relevant than “critical questions” from other traditions, the best that Leys can offer as justification is that they “*appear to be relevant*.”⁴¹ In other words, there is much more trial and error than Leys acknowledges. As a result, the more fundamental question of justifying the choice of a specific set of questions in the first place is left unanswered. Finally, the issue of why one answer to one set of questions should be a better ethical choice than an answer to another set of questions is not adequately addressed since Leys makes the choice depend only on practical experience.⁴²

In the final analysis, Leys provides an argument in support of administrative discretion but leaves unexplained and unexplored the foundation he seeks for a strong link between ethics and policy making.

b) *Fritz Morstein Marx*

Fritz Morstein Marx’s article in 1949, “Administrative ethics and the rule of law,” represents a second important contribution to public administration ethics during these middle years.⁴³ Marx argues that public administration is best considered as an instrument of politics: “the highest task of public administration is therefore to serve as an effective instrument in attaining the purposes of the political order.”⁴⁴ Legislative controls are the traditional controls used to control this “instrument.” However, says Marx, these types of controls are external controls and are no longer adequate for ensuring responsible action from those who make up public administration.⁴⁵ Marx

claims that it is necessary to change our idea of what constitutes the heart of administrative responsibility. Only a set of controls that includes both internal and external controls can be adequate to ensure that administrators act responsibly.⁴⁶ By internal controls, he means controls internal to public administration as a profession; by external controls, he refers to the traditional legislative and political controls. However, says Marx, internal controls are more important than external ones: “Infinitely more important than compelling administrative officials to live up to minutely defined requirements of control is their acceptance of an ethical obligation to account to themselves and to the public for the *public* character of their actions”.⁴⁷

In this way, Marx defines a role for ethics in public administration as distinct from the more traditional controls of the profession: political oversight and the law. Although ethics may be distinct, it is not to be considered separate from these more traditional controls: “administrative morality (...) acquires its inner logic from the political ideology which the machinery of government is expected to translate into social reality. The core of all administrative ethics lies in the ideas that nourish the political system”.⁴⁸ It is a “logic” appropriate for an “instrument” used in attaining the purposes of the political order of the day. Marx’s instrumentalist approach to public administration reduces the question of public administration ethics to questions of: How should this instrument function? and, what makes an instrument good? As for the issue of the ethical use of this instrument, it is treated as separate from public administration ethics. For Marx, the “proper use of this instrument, under constitutional government, is the prime responsibility of those placed by the electorate in political control.”⁴⁹ Thus, Marx’s

approach leaves unexplained and unexplored the ethical dimension of the political ideology that is to serve as the “inner logic” of administrative morality. As a result, like Leys, Marx does not shed much light on an ethical core in the foundations of a liberal democracy that could serve as the foundation for public administration ethics.

c) *Paul H. Appleby*

Paul H. Appleby, the third scholar being singled out, claims that public administration is political, but in ways that exclude being partisan. Although legislators make the laws governing public programs, according to Appleby, “all these laws together yet require and leave areas of discretion.” To the extent that they exist, these areas of discretion require principles that will govern administrative conduct in them. Yet, in Appleby’s opinion, these principles are lacking.⁵⁰ If such principles were worked out, they would require public administrators to use their discretion in a manner that supports and contributes to making democratic society a reality. Public administrators can do this only by taking action “in terms that respect and contribute to the dignity, the worth, and the potentialities of the citizen.”⁵¹ Although Appleby believes that public administration has limited executive discretion, in terms of its involvement in the development and execution of policy, whatever discretion it does have must take into account the “specialized and localized sentiments and needs” of the citizen.⁵² According to Appleby, an analysis of the realities of government in modern democracies reveals a tension between the responsibilities and prerogatives of the elected representatives and the inevitable exercise of discretion by public administrators. He suggests that this tension

can be reconciled by acknowledging the moral nature of the structure of modern bureaucracies.

Appleby suggests that we can understand the moral values that apply to public administration by studying the phenomenon of the modern organization.⁵³ Such a study reveals that “effective organization” involves, on the one hand, “concentrations of power and responsibility” and, on the other hand, the arrangement of these clusters into “hierarchies.”⁵⁴ By analogy, public administration should be considered the result of “effective organization” in government. The key to the analogy is to understand the link between the concentration of power and responsibility and the hierarchies. For Appleby, the need for delegation in modern liberal democratic governments forces the redistribution of clusters of power and responsibility into hierarchies. Delegation is a basic process that involves “a step-by-step, level-by-level, downward assignment or assumption of additional responsibility, (...) subject to review, control, influence, and revocation at each successively higher level in a centrally identifiable chain of command.”⁵⁵ Appleby calls the hierarchical structures and procedures in government “patterns of responsibility.”⁵⁶ He claims that these “patterns of responsibility” constitute “effective organization” in government and are the moral values that apply to public administration. Appleby interprets the process at work in these “patterns of responsibility” as producing not individual judgement but a kind of group and organisational judgement.

Terry Cooper claims that Appleby’s lasting contribution is to have identified and attempted to resolve the tension between “bureaucracy and democracy,” between public

administration, as bureaucracy exercising a measure of discretion in carrying out its role, and the elected representatives, as a body exercising legitimate power acquired through the democratic political process.⁵⁷ Appleby's "patterns of responsibility" provide him the means for reconciling the administration-politics dichotomy that had been adopted by scholars of the early period like Woodrow Wilson . The dichotomy can be reconciled, according to Appleby, by acknowledging that in modern democracies "it is politics that directs responsibility" and "it is hierarchy that is the formal structure and instrument of responsibility."⁵⁸ Any action taken at a given level of the hierarchy will be consistent with the moral nature of bureaucracy in modern democracies to the extent that it is a consequence of public administration's ultimate interaction with the citizen.⁵⁹ However, Cooper argues, the weakness in Appleby's approach was to stop with the effect of organisational structure on administrative ethics and, thereby, neglect to provide an adequate basis for specific ethical decisions by administrators.⁶⁰

It seems, however, that Cooper has missed a more important weakness in Appleby's recommendation. Appleby's conception of government as modern organization allows him to acknowledge the role of administrative discretion in modern liberal governments and to seek the normative basis of the exercise of that discretion in the strong influence that an organisational context exerts on administrative decision-making. However, he does not fully probe the normative consequences implied by the fact of administrative discretion within democratic government. By simply accepting as givens the existing social, political, and constitutional structures and procedures, Appleby does not provide a justification for what constitutes the ethical exercise of discretion by

public officials. As a result, his efforts at providing “adequate administrative principles governing conduct” in public administration reduce themselves to a description of the existing structures of government bureaucracy in terms of “patterns of responsibility.” The result is an unexamined and unresolved tension between his description of delegation as a “centrally identifiable chain of command” and his claim that administrators exercise some discretion. In addition, by interpreting the notion of “responsibility” in terms of a chain of command, it is difficult to see how Appleby could extract from that interpretation values that would serve as the basis for the autonomous exercise of true discretion.

Appleby may have wanted to argue that the ethical values implicit in the idea of democracy should be considered the proper foundation for administrative ethics,⁶¹ but his description of the government bureaucratic hierarchy as “patterns of responsibility” does not advance our understanding of this foundation. Such a foundation must be both identified and justified if it is to serve as the basis for the ethical values that should govern administrative decision and conduct. In the end, he, like Leys and Marx, does not push his study of governance within liberal democracy to the point of revealing and reconciling the normative tension at the core of the liberal democratic paradigm.⁶²

d) *Robert T. Golembiewski*⁶³

Robert T. Golembiewski’s work is primarily preoccupied with demonstrating that the choice of organizational structures, policies, and practices should be guided by a core set of values.⁶⁴ The traditional approach in public organisations, according to

Golembiewski, is a top-down approach that overemphasises authority, detailed supervision, and routine work done at the lowest levels.⁶⁵ It has been driven by “the fiction of the unity of command in public affairs” in the public sector. This fiction is based on the desire to maintain the “unrealistic notion that “politics” and “administration” are somehow separate.” A more realistic understanding of modern government organisations must acknowledge the inevitable “delegation of wide discretionary power” to administrators who “must, of necessity, determine some part of the purpose [of government policy] and a large part of the means whereby it will be achieved.”⁶⁶

If we accept that the overlap between “politics” and public administration in modern liberal democratic government is significant, we must take a closer look at the organization of the delegation of discretionary power. In such circumstances, the act of organizing and, in particular, the values that should be used to guide the act of organizing are of fundamental importance. Golembiewski maintains that a set of basic values derived from the Judeo-Christian tradition should guide the act of organizing the work environment in government.⁶⁷ To this end, he identifies five values which he considers “key beliefs of the Christian tradition”⁶⁸ that should guide the act of organizing.⁶⁹ The five values are: (1) work must be psychologically acceptable; (2) work must allow the development of individual faculties; (3) work must leave room for self-determination; (4) work must allow the possibility of controlling the environment; and (5) work should be subject to a moral order external to the organisation.⁷⁰ He provides both an historical and an empirical justification for his set of five Judeo-Christian values and for the role he wants to attribute to them.

As Robert Denhardt says, a first weakness with this list is that the first four of the five values are “merely restatements of the findings of applied behavioural science”. To the extent that they are, there is nothing unique about them being present in the Judeo-Christian tradition. However, even if we were to agree that this list is consistent with the Judeo-Christian tradition, Denhardt points out that the list suffers more from its omissions than from its contents. Essential Judeo-Christian values like “mutual love and acceptance, equality and social responsibility, and even “the golden rule”” are not included in the list.⁷¹ Golembiewski does not explain why these obviously Judeo-Christian values, which most Christians would consider to be “key beliefs of the Christian tradition,”⁷² are not on the list.

A more significant weakness in the list, for our purposes, relates to Golembiewski’s fifth value: “both the organization and the individual must be subject to an external moral order”.⁷³ It is important to note that Golembiewski distinguishes between “ethics” and the “moral order”. Ethics, says Golembiewski, “refers to the contemporary standards at any point in time in terms of which men evaluate their conduct and that of men about them”. In contrast, the “moral order” “refers to absolute standards that exist beyond time, standards of the good and the true”. Absolute standards are “unchanging and unchanged”. Golembiewski characterises the fifth value as “the linchpin of the J-C values”. It determines the possible scope of the other four values. As he says: “if the organization is the ultimate measure of man, the first four values could hardly be attained in great measure”.⁷⁴

Golembiewski attempts to justify the fifth value by reference to both history and empirical studies. Thus, he argues that a study of history reveals a pattern of “adjusting our ethical sets so as to approach more closely our knowledge of the moral order”. However, even if we were to grant Golembiewski that, historically, belief in this “moral order”⁷⁵ represents “the key belief of the Christian tradition,”⁷⁶ that fact alone does not imply that belief in a “moral order” of “absolute moral standards that exist beyond time” is shared, or must be shared, by others in our society that are not part of the Christian tradition. In addition, the historical argument is not a strong argument to expect that such a “moral order” should be the one on which all these non-Christians “should” set their course, as he claims. Historical research might demonstrate that the majority of people in our western societies advocated these beliefs but that is certainly not sufficient to justify in a democratic society imposing these beliefs on those who do not share these traditions. Nor does the historical argument provide a strong “normative” basis for justifying the generalized use of this set of five ethical values, or any other set of values, in organisations or in society in general.

Empirical studies, according to Golembiewski, suggest a strong link between all five ethical values and high-output performance in organisations, measured in terms of productivity and employee satisfaction.⁷⁷ Our main concern is with the fifth value, “the linchpin of the J-C values.” Robert Denhardt argues that Golembiewski’s reasons do not support the fifth value; they do not imply that “both the organisation and the individual must be subject to an external moral order.”⁷⁸ Rather, says Denhardt, the fifth value⁷⁹ is justified only in as much as it identifies “those behaviors and relationships that will most

efficiently move the organization toward its goals.” Thus, the research only shows that values are considered important only to the extent that they “contribute to organization effectiveness.”⁸⁰ That means that the ultimate criteria for accepting the fifth value is an organizational goal defined in terms of productive efficiency. However, says Denhardt, both the organizational goal and the value of efficiency depend on an organization’s controlling group,⁸¹ and consequently cannot provide a definitive support for “an external moral order.”

In summary, Golembiewski does not adequately address a fundamental question that his theory must respond to in a democratic society: Why should the set of values he has identified, or any set of values, be imposed on everyone in an organisation or on everyone in society? A review of his work shows that the measure of his key term, the “desirable,” is reduced to issues of “organizational effectiveness” and “useful consequences for administration.” This understanding of the “desirable” is not sufficient – and marginally necessary - to establish that a state of affairs is “moral,” or even “ethical” as defined by Golembiewski; and, it certainly falls short of providing what most people would accept as criteria for what is to be considered “moral” or “ethical”.

Kathryn Denhardt considers that Golembiewski’s significant contribution to public administration ethics is his attempt to show continuity between the political and the moral dimensions of democratic societies. She fully agrees with Golembiewski’s claim that the choice between various management practices and organisational structures should be guided by a set of moral values that are at the heart of our democratic traditions.⁸² Terry Cooper also considers that Golembiewski’s significant and lasting

contribution is his focus on the moral dimension⁸³ of the political sphere, in particular his emphasis on “the moral importance of the organisation context.”^{84 85} However, Golembiewski’s claim that the source of the values in organisations should be the Judeo-Christian tradition is very difficult to defend in modern liberal democracies and his arguments are much too weak to support his claim. In particular, Golembiewski has not adequately addressed the fact of the plurality of comprehensive doctrines that characterize our modern liberal democracies. As we will see in the next chapter when we study the work of John Rawls, democracy itself emerged to a large extent out of the necessity of reconciling the conflicts generated by a plurality of comprehensive religious doctrines. Nevertheless, Golembiewski’s work represents an attempt to show how values rooted in comprehensive doctrines should play an important role in guiding public administration ethics.

Overall, the middle years do not leave us empty-handed. A common theme throughout the period is the importance of starting from the fact of administrative discretion for understanding the role of public administration in government. Leys and Marx are quite explicit in their assessment that the traditional external controls of political oversight and law are no longer adequate. Golembiewski is even more forceful in his conclusions: not only are traditional structural controls on discretion inadequate but also, he claims, those who maintain them cling to the “unrealistic notion that “politics” and “administration” are somehow separate.”⁸⁶ Finally, to the extent that Golembiewski is correct that organisation in the public sector in modern democracies must be based on

the inevitable “delegation of wide discretionary power” to administrators,⁸⁷ the middle years encourage us strongly to re-examine the traditional approach to understanding governance in the public sector.

If we accept the conclusion that traditional external controls of administrative discretion are inadequate then we are immediately faced with the question: “What will provide a basis for responsible and ethical public administration?” Leys’s solution is good as far as it goes. We can address the ethical use of administrative discretion by retaining the lessons of the ethical systems that have been worked out in the philosophies of the western world. One way of making use of these lessons could involve following Leys recommendations and generating a set of “critical questions” based on these philosophies. One positive effect of using such a set of “critical questions” would be to ensure a more complete analysis of issues. Their use would provide some guarantee that most of the important factors of a situation will be included in decision-making. Marx suggests another way of ensuring responsible and ethical use of administrative discretion. He is correct to imply that the core values of public administration ethics should emerge from the “inner logic”⁸⁸ that runs through the political system. In a similar manner, both Appleby and Golembiewski move us in the right direction in as much as they argue in their own way that moral and political practices in government should be guided by a set of normative values found at the heart of our democratic traditions.

Although the middle years have opened the way to a re-examination of the politics/administration dichotomy, they have not addressed seriously the fundamental relationship between the liberal values of the political domain and the values of the

“social preconditions” of liberal democracies,⁸⁹ except for a scholar like Golembiewski who did so only within the limits of empirical studies. In the following chapters, we will focus especially on the liberalism of the political philosophers John Rawls, Ronald Dworkin, and William Galston, who provide different theoretical approaches to reconciling the plurality of comprehensive doctrines in modern democracies with the exigencies of liberal democratic government. We now turn to the last decades of the twentieth century.

The Final Decades: 1970s-2000

Selecting works in the final decades, 1970s-2000, that mark an important and significant contribution in public administration ethics represents a different challenge than the previous decades since we are much closer to the issues that concern us today. My task is somewhat simplified by the fact that contemporary scholars in the field refer to many of same individuals when they single out contributions to the foundations of public administration ethics during this period.⁹⁰ As a result, my own selection of scholars should not be considered overly contentious.⁹¹ In addition, my choice throughout this review has been guided by the leading question of the chapter: “What has public administration done to provide itself with a foundation for ethics in government?” As a result, I have selected contributions that are representative of important schools of thought in public administration and that have as a primary objective to work out the link between ethics and public administration’s role in government. Accordingly, four

different approaches by four public administration scholars are singled out: John Rohr, Kathryn G. Denhardt, Terry L. Cooper, and David K. Hart.⁹²

(a) John Rohr

I argued that a common theme runs through the middle decades: the necessity of starting with the fact of administrative discretion to understand the role of public administration in government. In a sense, John Rohr picks up where we left off with the middle decades. Rohr's primary concern is the ethical exercise of administrative discretion in government because, as he says, "through the extensive discretion that bureaucrats necessarily enjoy in a modern administrative state, they can be said to share the governing process."⁹³

Rohr goes beyond the contributions of the middle decades by dealing directly with the issue of the foundation of public administration ethics. To the extent that public servants can be said to govern – because they exercise administrative discretion – Rohr considers that they incur a special obligation in a democracy.⁹⁴ This special obligation is ethical and, therefore, is expected to determine how the public servant exercises his or her discretionary power.⁹⁵ For Rohr, public servants in a constitutional democracy like the United States should "use their discretionary (i.e. governing) power in a manner that is consistent with the values of the people in whose name they govern."⁹⁶ For him, "the values of the people" are grounded in the American Constitution which he considers as "the supreme symbol of political morality" for the nation.⁹⁷

Rohr argues that a proper foundation for public administration ethics includes two components: the oath of office and the method of “regime values.” Let’s consider more closely each of these two components. The importance of the oath of office in a constitutional democracy is that it confers special duties on the individual by virtue of the fact that the individual occupies a particular office in the bureaucracy that requires him or her to perform a specific role. Thus, in the United States, senior public servants take an oath to uphold the Constitution of the United States as the highest law in the land.⁹⁸ Rohr argues that this fact has significant implications in itself. The oath of office distinguishes and places the related obligations ahead of all other types of interests, including, Rohr points out, “the interests of a particular president or cabinet member.”⁹⁹ One example of the importance of the oath of office is provided by Secretary of State George Shultz’s public criticism of his president’s decision in 1987 to sell arms to Iran. Critics argued that Shultz should have resigned because he failed in his loyalty to his president. Rohr argues that Shultz’s primary duty was to consider his loyalty to the president as just “one of several forces competing legitimately for his moral commitment.” The oath of office meant that Shultz was “not only the president’s man, but also an officer of the law.” He was a person confirmed by the U.S. Senate with statutory duties imposed by Congress. Rohr describes Shultz’s moral commitments as part of “a constitutional morality grounded in American heritage.”¹⁰⁰ Therefore, Rohr argues, Shultz was correct in resisting the pressures brought on him to resign.¹⁰¹

The second component involves Rohr’s method of “regime values” which he describes as a disciplined and systematic approach to reflecting on fundamental

American values.¹⁰² It involves “the study of major Supreme Court decisions on such salient values as freedom, property, and equality.”¹⁰³ Why are these judgements better than others? Rohr argues that these decisions are better than philosophers’ opinions, for example, because they are both institutional and concrete.¹⁰⁴ Supreme Court decisions are institutional because judges are part of an institution and their opinions necessarily insert themselves into a network of jurisprudence that has a history and ensures continuity. They are concrete because judges must apply their learning to concrete situations. These decisions offer “a model of decision making” for the bureaucrat because “not only do the Court’s opinions offer reflection on American values, but they show what these values mean in practice as well.”¹⁰⁵

I suggest that Rohr’s two components are necessary to public administration ethics, but they provide an incomplete foundation for public administration ethics. He is quite right to start with the fact of the extensive discretionary power exercised by public servants in a modern democracy. He also correctly draws out the important ethical consequence of this fact: its exercise should be grounded in “the values of the people.” I certainly have no quarrel with him about considering the Constitution as “the supreme symbol of political morality” nor with his suggestion that a kind of “constitutional morality” is “grounded in American heritage.” In addition, there is much value in giving weight to the related symbol of the “oath of office” within the context of a “supreme symbol of political morality.” Similarly, if we agree that a political morality should be grounded in democratic traditions, then it is wise to give special consideration to Supreme Court decisions.

However, Rohr's legalistic reading of the Constitution imposes unnecessary constraints on the potential scope of treating the Constitution as a "supreme symbol." As a result, all related concepts receive a more narrow legalistic reading. For example, he makes a distinction between types of oaths, each with a different scope, and consequently requiring different types of loyalties. Such a reading makes it difficult to see how a public servant could be bound in any comprehensive way by a political morality grounded in democratic traditions.

Consistent with this approach, Rohr suggests that Supreme Court decisions offer "a model of decision making," the core of what he calls the method of "regime values." However, his justification for granting them such a privilege is rather weak. He claims, for example, that these opinions are better "value indicators" than the writings of philosophers because Supreme Court decisions are institutional.¹⁰⁶ The opinions of judges must of necessity insert themselves into a network of jurisprudence that has a history and ensures continuity in a way, according to him, that the opinions of philosophers do not. This claim is not as obvious as Rohr would like us to think. Philosophers are rarely allowed the luxury of ignoring the "network" of philosophical writings on a subject if they want to be taken seriously. University library shelves are certainly full of philosophy books that insert themselves into a "network" of philosophical writings and this "network" also has a history that ensures continuity.

Rohr further claims that a Supreme Court justice "is disciplined by reality in a way that the philosopher is not" because she must apply her learning to concrete situations before the Court. There is no disputing the face value of this claim. However,

all of the major schools of thought in moral and political philosophy are also “disciplined by reality” in as much as all of them assess reality not only as it is but strive to influence what it should be. In contrast, Supreme Court decisions do not provide much guidance on *which* ethical principle should be applied in situations where a multiplicity of “legal” courses of action are available nor for the ethical foundations of the choice made in such situations. This is especially important in the exercise of discretionary power by the public servant.

Given the important role that Rohr reserves for Supreme Court decisions, it is surprising that he also claims that, in the final analysis, “it is the bureaucrat who must decide just how the moral values (and nonvalues) underlying the Court’s opinions will affect individual decision making.”¹⁰⁷ One immediately wonders why a bureaucrat, at least one who finds herself in such a situation, could not benefit from the insights of the history of philosophy and, in particular, of political and moral philosophy. Rohr admits that “in arguing the normative character of the values of the regime,” he is “avoiding the more important question of the fundamental justice of the regime itself.”¹⁰⁸ Throughout his writings, Rohr appeals to the philosophic tradition, but only to clarify the “regime values” he identifies. He consistently sets apart his recommended treatment of “regime values” from the philosophic tradition that would allow a public servant to understand how a democratic regime could be considered more or less just. Yet, as I will argue when we turn to political philosophers like Rawls and Dworkin, the conception of justice we adopt in a liberal democracy will have very significant consequences on how a public servant understands and exercises his or her discretionary power. For example, someone

like Dworkin, who argues for a moral reading of the constitution,¹⁰⁹ believes that legal decisions related to fundamental rights, at least at the Supreme Court level, are inherently and significantly philosophical. He would claim that Rohr is ignoring fundamental aspects of what legal reasoning involves. Ultimately, we look in vain in Rohr for a justification of the overriding importance that he accords the Constitution of a liberal democracy beyond a thin pragmatic requirement to accept the “discipline of reality” and to obey the dictates of an ethics of the professional role.¹¹⁰ Thus, although Rohr points us in the right direction, his overall argument does not do justice to his more basic insight that the proper foundation of public administration ethics must be found within the context of a political morality grounded in democratic traditions.

(b) Kathryn Denhardt

The second public administration scholar singled out in the final decades is Kathryn Denhardt. She exemplifies one way of taking seriously the idea of a political morality grounded in democratic traditions. In contrast to Rohr, she believes that “the administrator must learn the language of the philosopher.” Only then can “facts be tested and judgments tempered by moral and ethical considerations.” To be responsible administrators, practitioners must possess “the necessary background in the moral foundations of public administration.”¹¹¹ However, after doing a review of the literature on public administration ethics during the twentieth century, she concludes: “ethics in public administration suffers from the absence of a theoretical framework.”¹¹²

Therefore, Denhardt takes on the task of producing a model that satisfies both theoretical and practical requirements. She proposes to produce a framework that is “a compilation of what seems to be shared” amongst public administration scholars since the 1940s by identifying “what each uniquely adds” to our understanding of public administration ethics, both in theory and practice.¹¹³ According to Denhardt, the process produces “a series of statements” – each set of statements being a model - that “culminate in what might be considered the operational (though unstated) framework currently guiding the field”.¹¹⁴ The final “operational framework”¹¹⁵ is really a series of chronological models, with each new version incrementally modifying the previous one in the series.

We can appreciate the strengths and weaknesses of this approach by assessing the contribution of one of these scholars. For example, from the 1960s, Denhardt retains Robert T. Golembiewski’s distinction between ethics as “contemporary standards” and morals as “absolute standards that exist beyond time”. She states that she uses the expression the “moral order” because she is “referring to the absolute standards which are a part of the fabric of our society.” She maintains that consistent use of the concept of the “*moral order of our society*” will reflect the distinction between the term “ethics” which refer to standards that can change and the “moral order” which does not.¹¹⁶

Assuming Denhardt has been successful in incorporating what Golembiewski – and each of the other scholars - “uniquely adds” to our understanding of public administration ethics,¹¹⁷ she has not addressed, much less resolved, important theoretical problems that I argue are left unresolved in their contributions.¹¹⁸ For example, in

Golembiewski's case, we saw that his justification for the distinction between "ethics" and the "moral order" is based on an argument that leaves unanswered a fundamental question: Why should the set of values that he identifies as rooted in the Judeo-Christian "moral order", or any set of values, be imposed on everyone in a democratic society? Yet, Denhardt simply incorporates that distinction into the model without addressing the more fundamental question.¹¹⁹ Denhardt claims: "although there is not total agreement on the nature, source, or content of that moral order, there is *sufficient* agreement to provide the necessary basis for public administration ethics."¹²⁰ However, that agreement is not based on rational theoretical considerations concerning foundations but on practical ones.

Kathryn Denhardt's original stated intention was to produce a model that satisfied both theoretical and practical requirements. I agree with Denhardt that society expects government to be not only efficient and effective but also ethical.¹²¹ As she states, to the extent that "the public administrator does participate in the governance function, then it is very important that administrators know how to think about the moral order of society [and] have some moral foundation on which to make decisions."¹²² However, her efforts are limited to demonstrating that the contributions of public administration scholars could be integrated into a practical and useful model for public administration ethics. In constructing her model, she does not address problematic theoretical issues within the contributions she selects and, as a result, cannot claim to have provided a theoretical justification for her model. For example, it may well be, as Kathryn Denhardt claims, that one can use the idea of a "moral order" to "provide the necessary basis for public

administration ethics”¹²³, but a much stronger theoretical justification is required before we can agree with that claim. In the final analysis, Kathryn Denhardt provides neither a full analysis nor an adequate justification of the issues related to the conceptual foundation of the model she develops for public administration ethics.

(c) Terry L. Cooper

We now turn to the work of Terry L. Cooper, one of the contributions incorporated into Kathryn Denhardt’s model.¹²⁴ Cooper associates himself to a movement that has given renewed recognition to the importance to the concept of virtue. However, he is not a “pure” virtue ethicist.¹²⁵ Cooper believes that a complete model for public administration ethics must include at least three components: “(1) an understanding of appropriate ethical principles, (2) an identification of virtues which are supportive of those principles, and (3) analytical techniques which may be employed in specific situations to interpret the principles.” I would call this a “mixed model” of ethics, one that integrates both principles and virtues. Cooper finds this kind of a “mixed” model in William K. Frankena’s writings.¹²⁶

Cooper argues that Alasdair MacIntyre’s concepts of practices, internal goods, external goods, and virtues, with “revision and development,”¹²⁷ can be adapted to public administration and should be used to conceptualise the second component of his complete model of public administration ethics. “Practices” are “forms of activity.” We can easily recognise many of the activities considered as practices: football, architecture, and writing history. To be a “practice”, an activity must possess a number of characteristics:

produces internal goods, is organised to achieve standards of excellence, socially established, is carried out through human cooperation, involves the use of technical skills exercised within traditions, and possesses coherence and complexity. On that basis, as Cooper points out, the skillful throwing of a football is not a practice since it does not possess most of these characteristics. However, the game of football itself is a practice. In relation to practices, one must distinguish between “internal goods” and “external goods.” “Internal goods” are goods that “can only be realized through participation in a particular practice or one very similar.” What is uniquely important to “internal goods” is the requirement to participate in the practice to produce them. As a result, they cannot be “purchased, stolen, or acquired through persuasion.” In contrast, “external goods are those which can be achieved in many ways other than engaging in a particular practice.” Examples of “external goods” are money, power, position, and status.¹²⁸

Practices must be distinguished from organisations. The goals of organisations are “oriented around achieving and maintaining external goods.” Organisations are structured in terms of dealing with external goods such as money, power, position, and status, goods necessary for their survival and growth. Although most practices depend on organisations for their material support and most organisations depend on practices for their existence, it is obvious that practitioners of practices found in organisations will often be faced with competing requirements. According to Cooper – and MacIntyre – “practices should be primarily oriented toward their internal goods” and, as a result, practitioners “should not allow external goods to have priority over internal goods.” For this purpose, the concept of virtue is especially important. Virtues are “inclinations or

dispositions to act, not just to think or feel in a certain way.” Although we are not born with these dispositions, their acquisition is not the result of behavioural conditioning. They must be cultivated by the individual acquiring them and that requires cognitive activity. Although MacIntyre shares this conception of virtue with other contemporary moral philosophers, he links it to his concept of practice. Accordingly, virtues are character traits that “make it possible for one to engage effectively in a practice (...) while keeping the external goods of its organisation setting in a position of lesser importance.”¹²⁹

Cooper proposes that public administration can benefit from being understood as a practice - rather than a profession, for example - and the characteristics of a practice could serve as the basis for guiding “reflection on the ethical development of the public administrative role.” To the extent that this proposal is adopted, then one of the first and most critical tasks of the discipline is to identify internal goods essential to the practice of public administration. According to Cooper, “the field has achieved neither precision nor clarity about its internal goods.” Any attempt to reflect on these internal goods will have to start with some general awareness of “internal goods” developed over the years by public administration practitioners. Examples of “internal goods” that, one could claim, practitioners of the practice of public administration are generally aware they attempt to achieve are: justice, popular sovereignty, and the enhancement of standards of excellence. In concert with this first step, practitioners will have to determine which virtues are “most likely to advance the internal goods.” These virtues will also have to protect the internal goods from pressure within the organisation to displace them in favor of external goods.

For illustrative purposes, Cooper maps a few sets of internal goods to sets of virtues that would be associated with them: for example, beneficence for citizenry and justice (a set of internal goods) would be associated with benevolence, courage, rationality, fairmindedness, and prudence (a set of virtues).

Given Cooper's "mixed model" of public administration ethics, his suggestions concerning MacIntyre's concepts of practices and virtues occur within a wider context. He argues that four components are needed to describe the larger context for responsible public servant conduct. The first component involves a group of individual attributes: ethical decision-making skills, mental attitude, professional values, and virtues. MacIntyre's concepts belong to this group of individual attributes. However, Cooper argues, ethical behaviour cannot occur in a vacuum. It requires a supportive environment made up of the other three components: organisational structure, organisational culture, and societal expectations.¹³⁰

Although Cooper deals with important issues in public administration ethics, his analysis suffers from a failure to question and provide grounding for underlying assumptions. In particular, Cooper does not provide grounding for his four-component model to conceptualise responsible public servant conduct - individual attributes, organisational structure, organisational culture, and societal expectations. For example, it seems clear that there is some political conception of democracy present in the background of Cooper's discussion, but the four-component model is never systematically related to it. In addition, Cooper does not provide us with an explanation of why a "mixed model" of public administration ethics best meets the needs of his

assumed conception of democracy. As we shall see in succeeding chapters, the problem of foundations for public administration ethics revolves to a large extent around the question of whether there is continuity or discontinuity between the political and the ethical dimension of modern democratic societies. The answer to that question will have an impact on the content of public administration ethics.

Another weakness shows up in Cooper's treatment of MacIntyre's concepts. I have shown that Cooper limited himself to demonstrating that these concepts can be plausibly applied to public administration. Even if we assume that Cooper can perform the necessary "revision and development" of MacIntyre's concepts to apply them to public administration, he still must provide some justification for the application of these concepts to the larger context of public administration. For example, if the "public administration activity" is a practice and if there are other "activities" in government that are also practices – like Defence, how would public administration ethics interface with the ethics of these other activities in government? How would differences between these ethics on the same issues be resolved? How would public administration ethics fit into some ethic for democratic government itself, presumably a higher level activity within which it is embedded? Cooper answers none of these important questions.

Similarly, Cooper does not provide us with a rationale that would justify his selection of a "mixed model" of ethics for public administration ethics beyond his reference to philosophers like William Frankena. For example, Frankena qualifies his "mixed model" as a "mixed deontological" model which "takes as its basic ethical principles those of benevolence and distributive justice (or equality)" to which it adds

“cultivating those traits that tend most fully to express themselves in benevolent and/or just action.”¹³¹ However, how does this ethical model fit into a political theory of liberal democracy? Is there continuity or discontinuity between the ethical in our private lives and the ethical in the political domain? Political philosophers like Rawls, Dworkin, and William Galston – the subjects of the following chapters – address that very question. Cooper does not work this out.

Finally, it is not sufficient to simply import into a justification for a foundation of public administration ethics the ideas worked out by philosophers for their own philosophical position. Even if we were to grant that each of these philosophers has done a good job, Cooper would still have to show how their differences can and should be reconciled. This seems obvious in the case of Frankena’s “mixed deontological model” and MacIntyre’s “ethics of virtue and practices.” Cooper himself acknowledges these differences by saying that MacIntyre’s “conceptualization needs revision and development.”¹³² How much “revision and development” would be needed? It would seem like quite a lot. In a chapter added as a Postscript to the Second Edition of *After Virtue* to deal specifically with criticisms of *After Virtue*, MacIntyre devotes a few pages to rebutting criticisms specifically by Frankena.¹³³ From MacIntyre’s point of view, Frankena represents the voice of “academic orthodoxy”, an “analytic philosopher” who still advocates that there is such a thing as “morality as such.” In contrast to Frankena, MacIntyre says that he defends a “type of historicism” that would treat the history of morality as essential for understanding moral philosophy. As a result, he says: “morality which is no particular society’s morality is to be found nowhere.”¹³⁴ MacIntyre does not

leave to speculation his position in relation to Frankena: "It is, I hope, now clear why Frankena and I disagree. (...) my reflection of the view that analytic philosophy can never provide sufficient grounds for the assertion of any positive standpoint in moral philosophy."¹³⁵ Cooper does not tackle these fundamental differences between the two philosophers and, therefore, does not show how his proposal for public administration ethics would reconcile them.

(d) David K. Hart

David K. Hart is the last public administration scholar that we shall single out in the final decades of the twentieth century. Hart advocates a civic philosophy of character as the proper foundation for administrative ethics.¹³⁶ Civic humanism has its modern roots in the Renaissance and culminates in the Enlightenment. In particular, Hart defends an American version of civic humanism found in the United States at the birth of the nation.¹³⁷ Quoting J.G.A. Pocock, Hart claims that "the debates of the Philadelphia Convention are notoriously the highest point ever reached by civic humanist theory in practice."¹³⁸ Hart defends an interpretation of "the Founders"¹³⁹ that is based on a "virtue-centered paradigm¹⁴⁰ of civic humanism, and its attendant "ethics of character."" He argues that despite their important differences the Founders were "united in their fundamental belief" that all "founding values began with *the absolute sanctity of each individual's life*."¹⁴¹

Hart argues that the value system of the Founders has given way in contemporary United States to the demands of the modern organization that emerged in the nineteenth

and twentieth century. These demands “overwhelm all other considerations, whether of family, religion, art, science, law, or the individual.”¹⁴² They are summarised and synthesised in what he calls “the organizational imperative” which consists of two basic “a priori” propositions. The first proposition is considered “absolute”: *“Whatever is good for the individual can only come from the modern organization.”* The second derives from the first: *“Therefore, all behavior must enhance the health of such organizations.”*¹⁴³

The result, according to Hart, is the reification of organizations with a very detrimental effect on morality within organizations. Whereas the Founders advocated a virtue-centered paradigm, the modern management orthodoxy focuses on a “morality of rules” paradigm. A morality of rules is necessary and sufficient to satisfy the requirements of “the organizational imperative”. For Hart, the suggestion that organizations “do” anything can only mask from view the individuals who are responsible for making decisions and “depersonalizes both the value and moral issues implicit in their conduct.” This criticism applies to “both public and private” managers since the modern management orthodoxy has conquered both domains.¹⁴⁴

Given the state of morality in contemporary organisations, Hart argues that there is a need for a renaissance of the Founders’ ideal¹⁴⁵ not only in government but also in all organisations.¹⁴⁶ The reason for democracy in America in the first place is “the realization of the values upon which it is predicated,”¹⁴⁷ and, as Hart contends, these values are intrinsically individualistic. The countervailing force that Hart offers to the “organizational imperative” is the “individual imperative,” “an ethical individualism

based upon the Founding Values.”¹⁴⁸ The “individual imperative” articulates that purpose in two propositions, parallel to those of the “organizational imperative”: first, “all individuals have the natural right to actualize the potentials of their unique selves throughout the stages of their lives,” and second, “the primary justification of any organization is the extent to which it promotes the actualization of those individual potentials.”¹⁴⁹

If the moral purpose of the Founders should guide all operations of government, it follows that public servants must also be guided by it.¹⁵⁰ We must acknowledge, according to Hart, that public servants are citizens first and public servants second. As a result, professional duties begin with the duties of virtuous citizens.¹⁵¹ Hart identifies four civic obligations as basic to being a virtuous public servant: (a) to encourage civic autonomy; (b) to exercise the rule-enforcing power of the state by seeking compliance through persuasion; (c) to ensure that the civic character of the “technical experts” in modern bureaucracies is trustworthy; and (d) to become civic exemplars.¹⁵²

Ultimately, the critical weakness in his recommendations for a foundation to public administration ethics is the radical individualism that permeates all of his writing. For example, it seems correct on the surface to argue that it is only individuals who make decisions within organizations and that organisations don’t “do” anything. However, this description does not deal adequately with the enduring reality of organisations. For example, the policy decisions that individuals make at one point in time insert themselves into a network of such decisions. The network as a whole takes on a legal reality that can remain long after these individuals have left their position or the organisation. In some

cases, these policy decisions represent organisational promises of future actions or states of affairs. The “individuals” or “organizations” affected by these policy decisions want the “individuals” who subsequently fill those same positions to make decisions that honour these “organizational” decisions. A similar logic applies to the administration of these organisational promises. In addition, if any substantive changes are required to the organisational promises or their administration, it is expected that individuals will not be allowed to act unilaterally and that their decisions on such matters will have to respect organisational procedures. These comments are especially true in government.¹⁵³ Public servants exercise governmental power and that power has many organisational constraints imposed on it that we would not want lifted too easily. The virtue of the administrator may well serve as the normative guide for action but it is not sufficient to provide the kind of protection against individual corruption in all its forms that we need and want in government.

Hart’s analysis suffers from other problems that result from being based on only two exclusive categories of imperatives - the “organizational imperative” and the “individual imperative.” One important weakness of this approach is that it does not deal adequately with the distinction between government and other organisations within society. One of the *a priori* propositions of the “organizational imperative” that Hart criticises is that “*all behavior must enhance the health of such organizations.*” Hart’s imperative does not acknowledge that democracy through its forms of government has a more legitimate claim to doing what is necessary to maintain itself healthy, for example, than do other organisations in society. The “individual imperative” creates other

difficulties. It tends to conflate the private and the public. For example, it is difficult to see how public servants can make distinctions between the justifications they provide for actions in their home based on religious beliefs and the justifications they provide for policy actions in the public sphere that should not be based primarily on religious belief. Hart might respond that public servants must be guided by the “American regime values.” However, the Founders put forward values that require a distinction between state and religion.

In the final analysis, Hart does not provide an adequate justification for the moral imperative at the heart of democracy. He goes further in that direction than the other three scholars whose work we have reviewed by his advocacy of a “virtue-centered paradigm of civic humanism” and the “individual imperative” which he considers to be “an ethical individualism based upon the Founding Values.” However, until the status of democracy’s “moral imperative” is clarified, a foundation for public administration ethics will remain an elusive goal.

Our review of these final decades has not provided us with a firm foundation for public administration ethics, but it has been fruitful. All the scholars reviewed have stressed the need to recognise the fact of administrative discretion as a component of public administration ethics, effectively confirming the legitimacy of the common theme we had identified for the middle years. In both periods, the conclusion is that we must re-examine our understanding of governance in the public sector, in particular the relationship between the political and public administration.

In addition, the literature in the final decades openly tackles the question of the fundamental relationship between the ethical and the political domains. Both Rohr and Hart put forward strong arguments about the importance of starting from the essential features of democracy as a ground for public administration values. Both of them also invoke values rooted in democracy itself, which they call the “American regime values”. Rohr’s suggestions that a constitution should be considered “a supreme symbol of political morality” and that a kind of “constitutional morality” is grounded in a democracy’s heritage have much merit. Similarly, we should heed his recommendation that we give special consideration to Supreme Court decisions of liberal democracies. Although I do not believe that Hart’s radical individualism is defensible, a foundation for public administration ethics must take seriously the implications of his analysis of a “virtue-centered paradigm of civic humanism”. Both Hart and Cooper correctly single out the importance of an ethics of character for public administration ethics. And finally, Kathryn Denhardt’s conclusion that a “practical” model for ethics in government may have to be a composite model will become important when I address the issue of the content of ethics programs for government in a liberal democracy in chapter four.

Conclusion

In this chapter, we reviewed the literature in public administration ethics throughout the twentieth century by focusing on the contributions of individual scholars whose work could be considered representative of significant schools of thought. The

purpose of the review was to identify how the discipline has dealt with the relationship between ethics and governance in a liberal democracy. The review was not expected to give us a firm foundation for public administration ethics, much less for ethics programs for government in a liberal democracy, since we started the review knowing that leading scholars in the field today believe that it currently lacks such a foundation. Kathryn Denhardt, for example, claims: "In addition to the absence of an agreed-upon theoretical framework for administrative ethics, the field has failed to take advantage of the philosophical traditions that should be underpinnings of any study or application of ethics."¹⁵⁴ However, it was expected that the review would contribute positively to the purpose of this dissertation by assisting us in understanding, at a minimum, what must be included in our search for the philosophical foundations and social interpretation of ethics programs for government in a liberal democracy.

One such result is that the literature strongly supports the view that bureaucrats in modern liberal democracies enjoy extensive discretion in performing their duties and, as such, should be considered as sharing in the governing process. This is an important finding for our purposes since it directly affects who should be covered by ethics program for government. To the extent that public servants share in the governing process, special ethical obligations on public servants would emerge from that fact alone. For example, John Rohr says: public servants should "use their discretionary (i.e. governing) power in a manner that is consistent with the values of the people in whose name they govern."¹⁵⁵ Any ethics program for government will have to deal with the "ethical" use of that discretionary power. Another important result of our review is that a practical model for

ethics in government will require that it remain open to a plurality of philosophical traditions, including those of action-based and character-based ethical theories.

The strongest message that emerges from this review concerns the normative dimensions of the idea of democracy. I agree with Kathryn Denhardt that society expects government to be not only efficient and effective but also ethical¹⁵⁶ As a result, we must take a closer look at the basis and the legitimacy of that expectation. To provide a foundation for ethics programs for government in a liberal democracy, including public administration ethics, we must first clarify, and then justify, the status of the “moral imperative” at the heart of democracy. The next chapter interrogates a discontinuity strategy for dealing with the relationship between the ethical in our private lives and the ethical in the political domain by studying John Rawls’s political liberalism. In particular, it will focus especially on his claim that the aim of *Political Liberalism* is a political conception of justice that “can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it.”¹⁵⁷

END NOTES

¹ This is a central theme in Dennis Thompson's *Political Ethics and Public Office*. My treatment of the "mutual dependency" overlaps with his use of the expression. See Thompson, p. 3.

² Although my analysis will limit itself primarily to the executive branch of government, I believe that the basic argument would apply to the other two branches of government in a liberal democracy: the legislative and the judiciary.

³ See Galston, *Liberal Purposes*, p. 6.

⁴ Obviously, there are cases when the context clearly indicates the need to refer to the specific lexical meaning of only one of these terms.

⁵ I am not interested as much in the empirical aspect of the day-to-day decision making as I am in the justifications, stated or implied, that public servants provide for these decisions. As I will argue throughout this dissertation, these justifications are theory laden. If the theory changes, the justifications and the action that result from them also change in significant ways.

⁶ The inability to deal adequately with the justification for public administration ethics helps to explain in part why the notion of neutrality in government continues to play an overriding normative role in some bureaucracies – like Canada's Federal Government – although, as I shall argue, this role does not have a firm ethical foundation.

⁷ As already stated, my treatment of the "mutual dependency" overlaps with Dennis Thompson's use of the expression. See Thompson, *Political Ethics and Public Office*, p. 3.

⁸ See Davis, *Ethics and the University*, p. 8 and ch. 1: "The ethics boom, philosophy, and the university."

⁹ See Thompson, *Ethics in Congress*, p. 4.

¹⁰ See Denhardt, *The Ethics of Public Service*, p. 1.

¹¹ See Denhardt, *The Ethics of Public Service*, p. 2.

¹² Terry Cooper, "The Emergence of Administrative Ethics as a Field of Study in the United States" in *Handbook of Administrative Ethics*, ed. Terry L. Cooper (New York: Marcel Dekker, 1994), p.3 (NOTA: I will refer to this introduction as "The Emergence of Administrative Ethics.") See also his claim: "the serious development of ethics as a field of study within public administration has been underway for only about two decades". (p. iii).

¹³ Charles Garofalo and Dean Geuras, *Ethics in the Public Service: The Moral Mind at Work* (Washington: Georgetown University Press, 1999), p. 2.

¹⁴ Terry Cooper provides a similar justification in his review of the public administration ethics literature. He claims that his selection was "representative of the works that mark the significant milestones in the emergence of administrative ethics as a recognized subject of research, theory building, scholarly publication, and professional education". He gives three criteria that he believes are required to support a claim that a field of study has emerged. First, a group of scholars with a sustained interest in the subject exists. Second, there is a consistent flow of published materials in books, leading journals, and conference sessions devoted to advancing theory. And third, academic courses are instituted in university professional education programs. See Cooper, "The emergence of Administrative Ethics," p. 3.

¹⁵ The three literature reviews are Terry L. Cooper's article in the book he edited *Handbook of Administrative Ethics* (1994), Kathryn Denhardt's *The Ethics of Public Service* (1988), and Charles Garofalo and Dean Geuras's *Ethics in the Public Service: The Moral Mind at Work* (1999). Cooper's review is the only one that covers systematically the period from the end of the nineteenth century to the end of the twentieth century. His main sources are books, articles in the two leading public administration journals (*Public Administration Review* and *Administration and Society*), and sessions at the national conferences of the American Society of Public Administration.

¹⁶ For my purposes, it should be sufficient to limit the review to the American context of liberal democracy.

¹⁷ This division follows that of Terry Cooper's review: the early years (late nineteenth century to 1920s, the period 1930s-1960s, and the period 1970s-early 1990s. Cooper also included a short section on recent work in the field. See Terry Cooper, "The emergence of Administrative Ethics as a Field of Study in the United States," p. 4.

¹⁸ See Terry Cooper, "The Emergence of Administrative Ethics," pp. 4-5.

- ¹⁹ Woodrow Wilson, "The Study of Administration", in *Political Science Quarterly*, vol.2, June, 1887, p.209.
- ²⁰ Ibid. p.210.
- ²¹ Ibid. p.198.
- ²² Ibid. p.212.
- ²³ Ibid. p.213.
- ²⁴ Ibid. p. 216.
- ²⁵ See Terry Cooper, "The Emergence of Administrative Ethics," p.4.
- ²⁶ See Denhardt, *The Ethics of Public Service*, p. 2.
- ²⁷ See Terry Cooper, "The Emergence of Administrative Ethics," pp.4-5.
- ²⁸ See Galston, *Liberal Purposes*, pp. 257-258.
- ²⁹ See Terry Cooper, "The Emergence of Administrative Ethics," pp.4-5
- ³⁰ These are the four singled out by Cooper in his review of the literature. See Terry Cooper, "The Emergence of Administrative Ethics," pp. 4-11. In doing her review of the literature of this period, Kathryn Denhardt incorporates into her composite model the contributions of Wayne Leys and Robert T. Golembiewski. (See further in this chapter)
- ³¹ Wayne A. Leys, "Ethics and Administrative Discretion". *Public Administration Review*. 1943. vol.3. pp.10-23.
- ³² Wayne Leys, *Ethics for Policy Decisions: The Art of Asking Deliberative Questions*. Englewood Cliffs, N.J., Prentice-Hall Inc., 1952. P.354-355.
- ³³ Ibid., p. 10.
- ³⁴ Ibid., p. 11.
- ³⁵ Ibid. p. 9.
- ³⁶ The term "semantic analysis" would seem to refer to what is commonly known as analytic philosophy. Ibid. ch. 11.
- ³⁷ Ibid. pp. 189-191.
- ³⁸ Ibid. p. 354.
- ³⁹ If philosophy can only furnish questions, the facts themselves require empirical justification from a source other than philosophy.
- ⁴⁰ Ibid. p. 354.
- ⁴¹ Ibid. p. 355. (Italics are mine.)
- ⁴² In practical matters, says Leys, we must start with the situation as we find it and, by analysis of the situation, "determine the relevance of ethical inquiries." Ibid. p. 195. Leys claims that there are elements of Dewey's philosophy in his approach. I do not attempt to trace Leys justification to Dewey's philosophy nor do I criticize the implicit instrumental pragmatism that is at work here.
- ⁴³ Fritz Morstein Marx, "Administrative ethics and the rule of law", *American Political Science Review*, vol 43: 1119-1144, 1949
- ⁴⁴ Ibid. p. 1127.
- ⁴⁵ Ibid. p.1134. As Marx argues: "Administrative accountability at best is secured merely in part by the imposition of legal controls. At worst, when these controls become topheavy and formalistic, they may actually aid and abet the growth of a sharply limited view of responsibility."
- ⁴⁶ In 1940, Marx had already claimed that administrators need "a unified conception of duty, moulded by ideological and professional precepts". This point is made by Cooper, who quotes from Marx's *Public Management in the New Democracy*, (Harper and Brothers, New York, (1940) p. 251) in "The Emergence of Administrative Ethics," p. 6.
- ⁴⁷ See Marx, "Administrative ethics and the rule of law," pp. 1134-1135.
- ⁴⁸ See Marx, "Administrative ethics and the rule of law," pp. 1127-1128.
- ⁴⁹ See Marx, "Administrative ethics and the rule of law," p. 1127, n. 19. It is interesting to note that Marx does not make use of an important point made in one of Kant's formulations of the categorical imperative: "Act in such a way that you always treat humanity, whether in your own person or in the person of another, always at the same time as an end and never *simply* as a means" (italics are mine). In that formulation, Kant does not imply that people cannot ever be treated as means. He does, however, argue that in those

circumstances where people are treated as means – for example, when performing purely technical steps in a procedure - they are to be treated “always at the same time as an end”. See Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James Ellington (Indianapolis: Hackett Publishing Company (1981), p.36 (p.429. vol. IV, in the Königlische Preussische Akademie der Wissenschaften edition of Kant’s works)

⁵⁰ Paul Appleby, “Toward Better Public Administration” in *Public Administration Review*, vol VII, 1947, p.94.

⁵¹ Ibid. p.95.

⁵² Ibid. p.98.

⁵³ Paul Appleby, *Morality and Administration in Democratic Government* (New York: Greenwood Press, 1952), p. .2.

⁵⁴ Ibid. p.5.

⁵⁵ Ibid. p.243.

⁵⁶ Ibid. p.219.

⁵⁷ See Terry Cooper, “The Emergence of Administrative Ethics,” p.10.

⁵⁸ See Appleby, *Morality and Administration in Democratic Government*, pp. 250-251.

⁵⁹ Ibid., p. 251. Terry Cooper makes this point about Appleby’s notion of hierarchy: “hierarchy within organizations represents a structure of responsibility that makes administration responsive to popular will”. See Cooper, “The Emergence of Administrative Ethics,” p. 10.

⁶⁰ See Cooper, “The Emergence of Administrative Ethics,” p. 10. Cooper points out that Appleby is mainly concerned with describing responsible action at the top of the administrative hierarchy where it interacts with political officials. I agree with him that Appleby’s recommended mode of conduct for public servants applies equally to all levels of the administrative hierarchy. (*The Responsible Administrator: An Approach to Ethics for the Administrative Role*, 3rd ed. San Francisco: Jossey-Bass Publishers.1990.p.66.) Even granted this wider scope to Appleby’s recommendations, Cooper would still maintain his criticism of Appleby’s failure to deal adequately with specific ethical decisions.

⁶¹ This is Terry Cooper’s assessment of Appleby’s goal. See Cooper, “The Emergence of Administrative Ethics,” p. 10.

⁶² I claim that this is what John Rawls, Ronald Dworkin, and William Galston have attempted to do. I will be addressing each one of these philosophers later in the dissertation.

⁶³ Golembiewski is included, for our purposes, in the middle years because his seminal ideas were formulated in the 1960s. The significance of the ideas put forward by Golembiewski in that timeframe is attested to by Robert B. Denhardt in his comments on Golembiewski’s 1992 retrospective article on the 1960s work. Robert Denhardt claims that “Robert T. Golembiewski’s 1962 article, “Organisation as a Moral Problem,” and his book-length treatment of the same topic, *Men, Management, and Morality: Toward a New Organizational Ethic* (1965), clearly deserve to be called “classics” in the field of public administration.” See Robert B. Denhardt (1992), “An Academician’s Reaction to “Organisation as a Moral Problem” [Comments on Golembiewski’s 1962 article]” in *Public Administration Review*, vol. 52 no.2, p.104. However, I also note that during the next forty years, a large body of empirical research was carried out by Golembiewski and researchers sympathetic to his ideas in the direction pioneered by Golembiewski’s 1960s work.

⁶⁴ Robert T. Golembiewski, “Organization is a Moral Problem: Past as Prelude to Present and Future”, in *Public Administration Review*, vol. 52 no.2, 1992. p.99.

⁶⁵ Robert T. Golembiewski, *Men, Management, and Morality: Toward a New Organizational Ethic*, (McGraw Hill, New York, 1965), p. 66. As Golembiewski says in his 1992 retrospective article “Organization is a Moral Problem: Past as Prelude to Present and Future”, the book itself represents a more lengthy treatment of the basic themes developed in the 1962 article (p.99).

⁶⁶ Robert T. Golembiewski, “Civil Service and Managing Work: Some unintended Consequences”, in *American Political Science Review*, vol 56 (Dec) 1962. p.969.

⁶⁷ Robert T. Golembiewski, “Organization as a Moral Problem”, in *Public Administration Review*, vol 22, 1962. p.52.

⁶⁸ Golembiewski says that the “moral order” refers to “key beliefs of the Christian tradition” and provides “absolute standards that exist beyond time.” See *Men, Management, and Morality*, p.61.

⁶⁹ See Golembiewski, *Men, Management, and Morality*, pp. 63-65. To develop his set of Judeo-Christian values, Golembiewski used a report produced by the Federal Council of Churches in the United States. The council's efforts to think through the Judeo-Christian moral tradition lead it to formulate one goal as the ultimate goal for Christian life, but, more importantly for Golembiewski's purposes, it also included formulating a set of "subordinate goals" relevant to economic life (the "subordinate goals" are found in Howard R. Bowen, "Findings of the Study", in John C Bennett, et al. *Christian Values and Economic Life* (New York: Harper & Row, Publishers, Incorporated, 1954), pp. 47-60).

⁷⁰ See Golembiewski, "Organization as a Moral Problem", pp. 54-57. I have used a combination of the headings and the text explanation to describe the five values. Golembiewski offers this formulation of the five values in a table: (1) "work must be psychologically acceptable, generally non-threatening; (2) work must allow man to develop his faculties; (3) the task must allow the individual room for self-determination; (4) the worker must influence the environment within which he works; and (5) the formal organization must not be the sole and final arbiter of behavior". p. 54

⁷¹ See Robert Denhardt, "An Academician's Reaction," p. 104.

⁷² Golembiewski says that the "moral order" refers to "key beliefs of the Christian tradition" and provides "absolute standards that exist beyond time." See *Men, Management, and Morality*, p.61.

⁷³ See Golembiewski, *Men, Management, and Morality*, p. 65.

⁷⁴ See Golembiewski, "Organization as a Moral Problem," p. 57.

⁷⁵ To avoid a possible misunderstanding, it should be noted that I disagree with Golembiewski's claim that his five values are derived from the Judeo-Christian tradition, and, in particular, his claim concerning Judeo-Christian lineage of the fifth value, the "moral order." For example, on the question of the fifth value, Golembiewski used a report produced by the Federal Council of Churches in the United States to develop his set of Judeo-Christian values. He claims that the fifth value is supported by three "subordinate goals" in the council's list of "subordinate goals" relevant to economic life. The fifth value requiring that "the organization should not be the sole and final arbiter of behavior; both the organization and the individual must be subject to an external moral order" is purportedly supported by "subordinate goals" 5, 9, and 10. "Subordinate goal" 5 is: "*Aesthetic Enjoyment*. The individual should have the opportunity to appreciate aesthetic values in art, nature, and ritual, and through personal relations. Many aesthetic values are attainable through production and consumption". "Subordinate goal" 9 is: "*Freedom*. Freedom is the opportunity to pursue one's goals without restraint." And, "subordinate goal" 10 is: "*Justice*. The Christian law of love does not imply neglect of the self. The individual is to be as concerned about others as he is about himself – neither more nor less." See Golembiewski, *Men, Management, and Morality*, pp. 64-65. There is no question that justice, freedom, and aesthetic enjoyment are important values in a democracy, and we shall certainly return to them in this dissertation. But, it is not at all obvious that these three "subordinate goals" relevant to economic life provide much support for a much stronger claim that there exists a "moral order" in the terms described by Golembiewski, nor that these "subordinate goals" support a separate claim that "both the organization and the individual *must* be subject to an external moral order" (italics are mine).

⁷⁶ The quote applies to absolute standards generally: "The *existence* of these transcendent standards is the key belief of the Christian tradition." See Golembiewski, *Men, Management, and Morality*, p. 61.

⁷⁷ In his 1992 retrospective "Organization is a Moral Problem: Past as Prelude to Present and Future", Golembiewski points out that in the 1960s "only a small (if growing) inventory of evaluation studies" existed and that "applications of the organisational structures and techniques consistent with the J-C ethic could not be motivated by generalizable estimates of success rates, in any reasonable sense of the term." However, in 1992, he claims that "substantial confidence exists about the success rates associated with particular approaches to the relatively specific organizational goals consistent with the J-C ethic." See Golembiewski, "Organization is a Moral Problem: Past as Prelude to Present and Future," p. 101.

⁷⁸ See Golembiewski, "Organization as a Moral Problem," p. 53.

⁷⁹ This applies, of course, to the other four values.

⁸⁰ See Golembiewski, "Organization as a Moral Problem," p.58.

⁸¹ See Robert Denhardt, "An Academician's Reaction," p.105.

⁸² See Katherine Denhardt, *The Ethics of Public Service*, p. 8.

⁸³ For Terry Cooper, Golembiewski's "significant and lasting contribution" is not his "focus on Judeo-Christian values as the normative foundation for administrative ethics" but rather his emphasis on "the moral importance of the organisation context." See Cooper, "The Emergence of Administrative Ethics," p.11.

⁸⁴ See Cooper, "The Emergence of Administrative Ethics," p.11.

⁸⁵ It should be noted that Cooper's assessment of Golembiewski is based on a different purpose than mine. Cooper was conducting a literature review of public administration with the purpose of identifying major contributions to establishing "the study of administrative ethics as an ongoing scholarly enterprise". (p.3) According to him, Golembiewski's focus on Judeo-Christian values "never became a major theme in public administration ethics". (p.11) See Cooper, "The Emergence of Administrative Ethics,"

⁸⁶ See Golembiewski, "Civil Service and Managing Work," p. 969.

⁸⁷ Ibid., p. 969.

⁸⁸ See Marx, "Administrative ethics and the rule of law," pp. 1127-1128.

⁸⁹ See Galston, *Liberal Purposes*, pp.257-258.

⁹⁰ As stated previously, contributions to the foundations of public administration ethics are also contributions to the foundations of ethics programs for government.

⁹¹ However, I recognise that my choice is inevitably partly arbitrary since the discipline itself cannot benefit yet from the objectivity that will be provided by history and by a kind of "natural selection".

⁹² Given my concern with the link between ethics and government, the choice of these scholars is motivated not only by their importance in the field of public administration but also because they represent important contemporary schools of moral philosophy. Thus, John Rohr applies a mainly deontological approach to public administration ethics. Kathryn Denhardt applies a mixed deontological and consequentialist (utilitarian) approach. Terry Cooper argues for a mixed deontological and virtue (MacIntyre's practices) approach, and David K. Hart applies a mainly virtue approach. See, Garofalo and Geuras, *Ethics in the Public Service*, pp.79-82 and 85-90

⁹³ John A. Rohr, *Public Service, Ethics, and Constitutional Practice* (Lawrence: University Press of Kansas, 1998), p. 19. This book represents a good summary of Rohr's philosophical position on public service ethics: "The book brings together twenty of the essays I have written between 1973 and the present [1998]. Although they touch upon a wide variety of themes and topics their common thread is the link I discern between ethics and constitutionalism." (p.xii). Each chapter is headed with various comments by Rohr on either the content or the context of the essay. These comments, along with his Preface, clearly indicate that his basic approach to public service ethics has remained constant throughout the years.

⁹⁴ On the issue of administrative discretion, Rohr claims that his arguments are equally valid in both a parliamentary system like the United Kingdom and a constitutional system like the United States: "The politics/administration dichotomy has, of course, been thoroughly discredited on *empirical grounds* in both the United Kingdom and the United States." p.129. (Italics are mine)

⁹⁵ See Rohr, *Public Service, Ethics, and Constitutional Practice*, p. 19.

⁹⁶ Ibid., p. 23.

⁹⁷ Ibid., p. x.

⁹⁸ Rohr contrasts the oath of the president based on words prescribed by the Constitution and the oath of public servants based on statutes and regulations. The president's oath is to "preserve, protect, and defend" the Constitution, while the public servant's oath generates a more limited obligation, to "support and defend" the Constitution. Thus, there are "important differences in the wording and source of the respective oaths." Rohr argues that, despite these important differences, the overriding importance in both cases is the fact of an oath. See Rohr, *Public Service, Ethics, and Constitutional Practice*, pp. 69-70.

⁹⁹ Ibid., p. 53.

¹⁰⁰ Ibid., pp. 114-115.

¹⁰¹ Rohr contrasts Shultz's case with that of Donald Regan, the president's White House Chief of staff at the time. He points out that the Constitution does not describe a White House Chief of staff and that Regan was not confirmed by the Senate nor imposed statutory duties by Congress. As a result, he argues, although both men were part of the executive branch of government, Regan could be considered "the president's man in a way Shultz could never be." This assessment of the two cases demonstrates the

implications of the central role Rohr gives to the oath of office in his choice of a foundation for public administration ethics. See Rohr, *Public Service, Ethics, and Constitutional Practice*, p. 114. It is interesting to note that Rohr does not address the thornier ethical issue that would arise if Congress were to specify as part of the oath that when faced with competing obligations of office – like Schultz faced – the situation should be resolved in favour of loyalty to the President. To the extent that Congress has the power to define the terms of all oaths of office in this way, then presumably the distinction between the Shultzs and the Regans would disappear.

¹⁰² Rohr states that “the method of “regime values” involves two tasks. The first is to identify American values, and the second is to look for meaningful statements about them.” I limit myself to a description of the second task. See Rohr, *Public Service, Ethics, and Constitutional Practice*, p. 23.

¹⁰³ *Ibid.*, p. 24.

¹⁰⁴ Rohr identifies four characteristics of Supreme Court decisions that make them superior to other opinions for the purpose of reflecting on American values: institutional, concrete, dialectic, and pertinent. *Ibid.*, p. 25.

¹⁰⁵ *Ibid.*, p. 27.

¹⁰⁶ *Ibid.*, p. 25.

¹⁰⁷ *Ibid.*, p. 25. Rohr makes a similar point concerning the implications of the oath of office for senior public servants: “it is obvious that senior executives must interpret the Constitution *on their own* pending judicial resolution of controversial policies.” (p.53) (*Italics are mine.*)

¹⁰⁸ *Ibid.*, p. 22.

¹⁰⁹ I take up Dworkin’s political philosophy in chapter three.

¹¹⁰ Rohr argues that the moral foundation appropriate for public service ethics “must be tailored to the demands of that limited role” rather than including the treatment of the broader issues. *Ibid.*, p. 21.

¹¹¹ See Denhardt, *The Ethics of Public Service*, p. 185.

¹¹² See Denhardt, *The Ethics of Public Service*, p. 1.

¹¹³ See Denhardt, *The Ethics of Public Service*, p. viii.

¹¹⁴ See Denhardt, *The Ethics of Public Service*, p. 4.

¹¹⁵ See Denhardt, *The Ethics of Public Service*, p. 4. Drawing on the work of Thomas Kuhn, Denhardt compares the production of a framework for administrative ethics as akin to the delineation of an “extant paradigm”. A paradigm provides “a field with concrete models, resulting in overt agreement on fundamentals and a commitment to the same rules and standards”. She is claiming, therefore, that the model she proposes will reproduce an extant paradigm operating within the field of contemporary public administration. (p.3-4)

¹¹⁶ See Denhardt, *The Ethics of Public Service*, pp. 31-32. Denhardt then proceeds to show how this constructed model can be considered to be “the operational (though unstated) framework currently guiding the field”. (p.4) The model must satisfy a “test of practicability” which is determined by the environment in which public administration is carried out. (p.36) I will not challenge her argument that the model lives up to practical requirements. As important as the “test of practicability” is, I limit my criticism of her model to something much more important that is not addressed in her justification for the method of constructing the model. See Denhardt, *The Ethics of Public Service*.

¹¹⁷ See Denhardt, *The Ethics of Public Service*, p. viii.

¹¹⁸ It is noted that her model is developed by incorporating the contributions of many of the same scholars that I single out in my review of the literature of public administration ethics in the twentieth century. For example, in addition to Golembiewski, Denhardt incorporates into her model the contributions of Wayne Leys, Terry Cooper’s.

¹¹⁹ Denhardt subjects her model to a “test of practicability”, determined by the environment in which public administration is carried out. (p.36) Her arguments showing that her model passes a “test of practicability” are interesting but do not change the overall weakness, the unresolved issues, in her model. Part of this test involves an analysis of the model in terms of two general approaches to understanding what is “the moral order” of society: deontological (Kant and Rawls) and teleological (Utilitarianism). (pp.44-52) This analysis of the meaning of “moral order” is supplemented by an examination of the notion of “democratic ethos” and its relationship to the “moral order”. (pp.53-57) In both cases, the “test of practicability”

reduces itself to what happens in practice. For example, if administrators are expected, in practice, to adhere to moral principles that are "usually described as universal rules (e.g., truth telling, promise keeping, the sanctity of life)", then, in practice, "it usually won't matter whether one argues that these represent a fundamental moral order or whether they represent valued outcomes by which utilitarians would measure aggregate utility in judging the morality of an act". In a similar way, Denhardt concludes, there is general agreement that "rights, restrictions, and other general guidelines in the Constitution are important", but that "it usually won't matter", in practice, whether that is because "the Constitution is a reflection of our fundamental moral order, or because the Constitution is a means for assuring maximum participation in the development of the moral order". (p.58) See Denhardt, *The Ethics of Public Service*.

¹²⁰ See Denhardt, *The Ethics of Public Service*, p. 73.

¹²¹ See Denhardt, *The Ethics of Public Service*, pp. 133-134.

¹²² See Denhardt, *The Ethics of Public Service*, p. 65.

¹²³ See Denhardt, *The Ethics of Public Service*, p. 73.

¹²⁴ Katherine Denhardt incorporates into her model Cooper's description of the role and the influence of the organisation on individual ethical decision-making. As we will argue, Cooper's philosophical position involves much more and is more complex.

¹²⁵ By a "pure" virtue ethicist, I am referring to Cooper's claim that some scholars in public administration ethics, like Mark Lilla, argue that an ethic of virtue and an ethic of principles are "mutually exclusive options". As we shall see. David K. Hart, the next public administration scholar in our review, is closer to a "pure" virtue ethicist. Terry L. Cooper, "Hierarchy, Virtue, and the Practice of Public Administration: A Perspective for Normative Ethics" in *Public Administration Review*, July-August, 1987. p.320.

¹²⁶ Ibid., p. 321. Cooper claims to find this kind of a "mixed" model in William K Frankena's *Ethics* (Englewood Cliffs: Prentice-Hall, 1973)

¹²⁷ Ibid., p. 321. For my present purpose, it is sufficient to accept Cooper's reading of MacIntyre, since my aim is to identify what Cooper has done to provide public administration with a foundation for ethics in government. Therefore, I will not question his reading of MacIntyre by comparing it to MacIntyre's *After Virtue*. Cooper himself does not give specific page number for most of what he says about MacIntyre's concepts, but limits his references to the relevant pages (pp. 181-225) in *After Virtue*. See Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame: Notre Dame University Press, 1984)

¹²⁸ Ibid., pp. 321-322.

¹²⁹ Cooper points out that MacIntyre shares this conception of virtue with other contemporary moral philosophers: Stuart Hampshire, James D. Wallace, R.E. Ewin, and William Frankena. Ibid., pp. 322-323.

¹³⁰ Terry L. Cooper, *The Responsible Administrator: An Approach to Ethics for the Administrative Role*, 3rd ed. (San Francisco: Jossey-Bass Publishers, 1990), p. 160

¹³¹ See Frankena, *Ethics*, p. 50.

¹³² See Cooper. "Hierarchy, Virtue, and the Practice of Public Administration," p. 321.

¹³³ See MacIntyre, *After Virtue*, pp. 265-269.

¹³⁴ Ibid., pp. 265-266.

¹³⁵ Ibid., p. 269.

¹³⁶ It is interesting to note that in the early 1970s David K. Hart was associated with what was known as the "New Public Administration". This movement based itself on the notion of social equity advocated by John Rawls in a *Theory of Justice* (1971). The relative importance of the movement is illustrated by the 1974 volume of the *Public Administration Review* which published six articles on administrative ethics grouped under the heading of a "Symposium on Social Equity and Public Administration". In one of the articles, "Social Equity and Organizational Man: Motivation and Organizational Democracy", David K. Hart argued that Rawls's two principles of justice should be adopted as foundations for administrative ethics and he worked out some of the implications this would have for public administration. However, the movement does not seem to have had a significant impact on the development of public administration ethics and Hart subsequently moved away from that position to adopt the virtue-centered paradigm of civic humanism presented in this section. I return to Rawls in Chapter Two of the dissertation when I deal with his idea of political liberalism developed in his later writings, and in particular his idea of an overlapping

consensus. I will be analysing the manner in which Rawls's two ideas resolve the tension between morality and politics.

¹³⁷ David K. Hart, "A Partnership in Virtue Among All Citizens: The Public Service and Civic Humanism," in *Public Administration Review*, March/April 1989, pp. 101-105.

¹³⁸ David K. Hart, "Administration and the Ethics of Virtue" in *Handbook of Administrative Ethics* (Terry L. Cooper, ed.) p. 110. (Reference is to J.G.A. Pocock, "Cambridge Paradigms and Scotch Philosophers, in *Wealth and Virtue*, I. Hont and M. Ignatieff, eds., 1983, p. 239.)

¹³⁹ "The Founders" refers to all those who contributed through written dialogue or otherwise to formulation of the constitutional documents produced at the birth of the United States as a nation.

¹⁴⁰ Hart applies the notion of paradigm made popular by T.S. Kuhn in the early 1970s to distinguish between different approaches to ethics. He assesses administrative ethics since the founding of the nation by contrasting the paradigm of ethics for the Founders with the paradigm of ethics for the modern management orthodoxy. (He refers to T.S. Kuhn, *The Structure of Scientific Revolutions*, 2nd ed. (Chicago: University of Chicago Press, 1970))

¹⁴¹ See Hart, "A Partnership in Virtue Among All Citizens," p. 102. (Italics are in the original text.) Hart continues in the text by clarifying the use of the term 'sanctity': "Regardless of how they grounded the assumption of 'sanctity' – whether in the natural law, a moral sense, or deity – it instructed all of their prescriptions for government".

¹⁴² William G. Scott and David K. Hart, *Organizational Values in America*, (New Brunswick: Transaction Publishers, 1989), p. 27.

¹⁴³ *Ibid.*, p. 30. (Italics are in the original text.)

¹⁴⁴ *Ibid.*, p. 37.

¹⁴⁵ According to Hart, moral reasoning is at the centre of the "individual imperative". Accordingly, "the only way to untrack the organizational imperative is through moral reasoning that will lead us to the renaissance of the Founding Values." These values were the basis of the Founders vision in shaping America. *Ibid.*, p. 177. See also, Hart's comments on the same theme: "that ideal must be resurrected" in "A Partnership in Virtue Among All Citizens," p. 104.

¹⁴⁶ "If the Founding Values are true and our national life is predicated upon them, then should not all organizations be governed by them?" Hart and Scott answer in the affirmative and describe a "federal model" that emulates for all organisations the way the Republic is governed. *Ibid.*, p. 173

¹⁴⁷ David K. Hart, "The Virtuous Citizen, the Honorable Bureaucrat, and "Public" Administration" in *Public Administration Review*, March, 1984, p. 112.

¹⁴⁸ See Scott and Hart, *Organizational Values in America*, p. 162.

¹⁴⁹ *Ibid.*, p. 162.

¹⁵⁰ "All operations of government, very much including its administration, must be in consideration of the virtuous citizen." See Hart, "The Virtuous Citizen, the Honorable Bureaucrat, and "Public" Administration," p. 114.

¹⁵¹ For Hart, public servants carry an inevitable dual status: "Their fundamental obligation is that of all citizens: to seek virtue. The professional obligations of the public service must then be built from that foundation." *Ibid.*, p. 116. See also Hart's claim that "virtues are not just psychological traits, helpful in utility maximization, or good interpersonal relationships, or achieving organizational goals. Rather, they are essential aspects of innate human nature: the preoccupation for the attainment of human flourishing and genuine community." In "Administration and the Ethics of Virtue," p. 112.

¹⁵² See Hart, "A Partnership in Virtue Among All Citizens," pp. 103-104.

¹⁵³ All "individual" decisions, at any point in time, occur in some "organisational" context, despite the fact that the context itself was created by "individuals" in the past and is being shaped by "individuals" in the present. In addition, since single decisions do not have much meaning or purpose in a vacuum, that "organisational" context is an integral part of what shapes and constrains the decision itself.

¹⁵⁴ See Denhardt, *The Ethics of Public Service*, p. vii-viii.

¹⁵⁵ See Rohr, *Public Service, Ethics, and Constitutional Practice*, p. 23.

¹⁵⁶ See Denhardt, *The Ethics of Public Service*, pp. 133-134.

¹⁵⁷ See Rawls, *Political Liberalism*, p. 10.

CHAPTER TWO

A DISCONTINUITY STRATEGY - RAWLS

Chapter One showed how scholars of public administration have dealt with the relationship between ethics and governance in a liberal democracy. Since the primary purpose of this dissertation is to search for a philosophical foundation for ethics programs for government in a liberal democracy and since public administration ethics represents an important part of ethics programs for government, it was important to review the work done by that discipline on ethics in government. We knew going into the review that leading scholars in the field believed that public administration ethics currently lacks a firm foundation. We were not surprised, therefore, to find that our review revealed a plurality of theoretical approaches being recommended for public administration ethics. The main weakness that emerged from the review was a common inability by the scholars analysed to provide a satisfactory justification for combining ethical and political theoretical considerations in a way that would establish a firm foundation for ethics in government.

I now turn to the work of political philosophers in search of the elements of a foundation for ethics programs for government. I will concentrate my attention on the works of the political philosophers John Rawls, Ronald Dworkin, and William Galston. Although the work of these three political philosophers presents liberal philosophical positions on the proper relationship between the ethical in our private lives and the ethical in the political domain, there are significant differences in their liberalism. My aim is to

stay within the liberal tradition to work out elements of a foundation for ethics programs for government. The tradition is sufficiently complex to ensure diversity of views and sufficiently rich to expect from it a fruitful exercise. In addition, the main body of work of the three political philosophers that I have selected has appeared in the last thirty years of the twentieth century. The limits this choice imposes on the scope of the study are justified since, as I argued in Chapter One, little attention has been given until recently to the foundations of ethics in politics.

Dworkin has suggested that there are two basic strategies for dealing with the relationship between the ethical in our private lives and the ethical in the political domain: one is based on discontinuity, while the other is based on continuity. Endorsing this Dworkin terminology¹, I will explain in what way Rawls can be considered to adopt a discontinuity strategy concerning the relationship between the ethical in both spheres, and how Dworkin and Galston can be considered to both pursue a continuity strategy concerning that relationship.² As for the difference between the continuity strategies of Dworkin and Galston, it will be seen to lie in the amount of overlap each claims to allow between the ethical in both spheres, with Galston arguing for a greater overlap than Dworkin.

While this chapter critically examines Rawls's discontinuity strategy, the next chapter examines the continuity strategies of Dworkin and Galston. In the end, I will argue that none of these political philosophers provides us with a completely satisfactory foundation for ethics in government. However, we will see that each one contributes some important element that should be part of a possible foundation for ethics in government. Once the elements of a possible foundation have been identified, I will then

be in a position to explore in Chapter Four their implication for the purposes and the content of ethics programs in government.

Political Liberalism and Justice as Fairness

The publication of John Rawls's *A Theory of Justice*³ in 1971 is considered a milestone in political philosophy in the twentieth century. As Peter Berkowitz says: "It is well known that a single work published in 1971, John Rawls's *A Theory of Justice*, has been largely responsible for the elevation of a particular conception of liberalism." Speaking from a vantage point of nearly thirty years later, Berkowitz claims that "a decisive measure of the impact of Rawls's work is that the family of criticisms of liberalism that sprang up in the 1980s understood liberalism – even when not explicitly addressing that work – in roughly the way Rawls did."⁴

I am particularly interested in understanding what in Rawls's later work has set in motion a concerted dialogue amongst liberal political philosophers on the proper relationship between the ethical in our private lives and the ethical in the political domain. This dialogue inevitably deals with the issue of the foundations of this relationship. As a result, I focus on his conception of political liberalism and the claims it makes concerning the proper relationship between the ethical in both spheres. I assess Rawls's claims mainly through the criticism of the liberal political philosophers Ronald Dworkin and William Galston.

Since I propose to examine Rawls's views on the proper relationship between the ethical in our private lives and in the political domain, it would seem natural to give an

important place in this chapter to his *A Theory of Justice*. I do not focus on *Theory* for a number of reasons. The most important is Rawls's claims in *Political Liberalism* that "in *Theory* a moral doctrine of justice general in scope is not distinguished from a strictly political conception of justice."⁵ The transition from the period of *A Theory of Justice* to *Political Liberalism* represents Rawls endeavours to work out the implications of this distinction. One of the results of this effort is that Rawls specifies in his later work that "justice as fairness" is but one of a "family of political conceptions of justice" that make up the content of what he now calls "public reason."⁶ Notwithstanding this shift in theory, I acknowledge that Rawls also stresses that all the essential elements of *Theory* and the arguments that support them "are still in place" after the shift and, therefore, are presupposed throughout *Political Liberalism*.⁷

To better understand the status of justice as fairness in political liberalism, let us consider how Rawls himself distinguishes *A Theory of Justice* from *Political Liberalism*. To compare the two works, he draws attention to their aims.⁸ What is the aim of *A Theory of Justice*? In working out an answer to the question, Rawls first reviews European history and points out that religious doctrine had served as the professed basis of society in the Christian world for centuries prior to the Reformation. However, history also informs us that it became necessary to have a political conception of justice to serve as the basis of society when comprehensive⁹ religious doctrines¹⁰ could no longer fill that role. As a result, starting with the Reformation and the religious conflicts that followed, religious doctrine was gradually replaced by a set of liberal democratic principles that emerged as the modern professed basis for society.¹¹ In addition, the comprehensive

philosophical and moral theories that have been put forward as a possible replacement for the professed basis of society have not been successful in filling this role.

It is with this background in mind that the aim of *A Theory of Justice*, according to Rawls, was to argue for justice as fairness as a conception of justice that could be shared by citizens “as a basis of a reasoned, informed, and willing political agreement”. However, in his later writings and in particular in *Political Liberalism*, Rawls cast justice as fairness in a different role. It had now become just one political conception of justice amongst others¹² that can express the “shared and public reason” of citizens and serve as the professed basis for society. In assessing the results of the work done in the period of *A Theory of Justice*, Rawls considers that what he developed then should be considered a practical demonstration of what a liberal political conception of justice should look like.¹³

In contrast, the aim of *Political Liberalism* is to explore the conditions that allow a political conception of justice to serve as the professed basis of society in the first place.¹⁴ According to Rawls, this requires “a political conception of justice as a freestanding view.” As a “freestanding view”, a political conception of justice should be neither presented as, nor derived from, reasonable religious, philosophical, and moral comprehensive doctrines. In other words it literally stands “free” from all other comprehensive doctrines.¹⁵ In this way, *Political Liberalism* can be considered to go beyond *A Theory of Justice* since it clearly distinguishes a “moral doctrine of justice general in scope” from “a strictly political conception of justice”¹⁶ and since it seeks to establish a political conception of justice that is truly a “freestanding view.”

As a result of these considerations, my analysis of Rawls’s work will focus primarily on the period of his work referred to as that of political liberalism. This will

not preclude references to justice as fairness when necessary. The contrasting aims of *A Theory of Justice* and *Political Liberalism* lend support to this approach. More importantly, it is in the period of political liberalism that Rawls develops a justification for his claim that a political conception of justice must be a “freestanding view.” This feature in particular of a political conception of justice draws our attention to the “discontinuity” nature of Rawls’s strategy for dealing with the proper relationship between the ethical in our private lives and in the political domain.¹⁷

The Three Main Ideas of the Discontinuity Strategy in Political Liberalism

In this section, I analyse three main ideas of political liberalism: the idea of an overlapping consensus, the priority of the right and ideas of the good, and the idea of public reason. I show how these three ideas demonstrate a “discontinuity” strategy for dealing with the proper relationship between the ethical in our private lives and in the political domain. Although I acknowledge some of the benefits of these ideas and, in a later chapter, retain some of the lessons learned from Rawls’s political liberalism, I conclude that in the end the discontinuity strategy of political liberalism suffers from weaknesses that do not allow it to provide a firm foundation for ethics programs for government in a liberal democracy.

Before we can critically assess political liberalism as a strategy that defends a certain discontinuity between the ethical in our private lives and in the political domain, we must first understand in what way it exhibits discontinuity. By analysing each of the three main ideas of political liberalism, I will clarify in each case what is involved in the

idea and then in what way it demonstrates discontinuity. Thus, in “the idea of an overlapping consensus,” we will see how Rawls situates and distinguishes political liberalism in relation to comprehensive doctrines. By affirming the “Priority of the Right and Ideas of the Good,” political liberalism further reinforces its independence with respect to comprehensive doctrines. Finally, the “freestanding” and discontinuous nature of political liberalism is fully realized in the “idea of Public Reason.”

(a) The Idea of an Overlapping Consensus

To understand the idea of an overlapping consensus, let's first restate that Rawls argues that comprehensive religious, philosophical, and moral doctrines cannot serve as the professed basis for modern liberal democratic societies. We must accept at the start, he claims, certain facts about the political culture of a democratic society. The most important of these facts is that of a pluralism of reasonable comprehensive religious, philosophical, and moral doctrines which Rawls claims is a “permanent feature” of the political culture.¹⁸ Given that fact, the problem then becomes what could fill the role of the professed basis for modern liberal democratic societies. The idea of an overlapping consensus is part of the solution.¹⁹ It is “the idea of social unity founded on an overlapping consensus on a political conception of justice.”²⁰ The content of the overlapping consensus is made up of political principles and ideals covering the basic structure of society²¹ as a whole.²² However, the political conception of justice itself is limited to what he calls “the domain of the political” and its values.²³

What is the relationship between the content of the overlapping consensus and comprehensive religious, philosophical, and moral doctrines? To answer that question,

we must understand that Rawls assumes that citizens as citizens hold “overall views” that can be analysed into two distinct parts. In one part of their overall view, citizens affirm the *publicly recognized* political conception of justice while, in the other part, they hold a full or partial comprehensive doctrine.²⁴ Accordingly, Rawls argues, “all those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides.”²⁵ Although the expression “start from within” might lead us to conclude that Rawls is really admitting that the political conception of justice is derived from the comprehensive views, he is not. Rather, he describes the overlapping consensus as the result of uncovering “a sufficiently inclusive concordant fit among political and other [non-political] values.”²⁶

In what way can a “fit” be described as starting “from within” citizens’ own comprehensive views and as drawing on the religious, philosophical, and moral grounds these views provide and, at the same time, not be a “fit” that reveals a political conception of justice derived from these same comprehensive views? We can gain an insight into the answer to this question by reviewing the general description of the process that Rawls provides of the political, social, and psychological forces that could bring about an overlapping consensus. In his description, the process to bring about an overlapping consensus occurs in two stages: the first stage ends when a constitutional consensus is reached; the second stage ends with an overlapping consensus.²⁷

The whole process is driven by the fact of a reasonable pluralism. In the first stage, historical events provide the motivation for incorporating some liberal principle, for example the principle of toleration following the Reformation, into “existing political institutions.” Rawls argues that a liberal principle would be accepted under certain

conditions because it would be perceived “as providing the only workable alternative to endless and destructive civil strife.”²⁸ As time passes and the fact of reasonable pluralism and its consequences gain a firm footing in society, a certain urgency to adopt liberal principles is generated. An example of this outcome is the adoption of principles specifying basic political rights and liberties into a constitution. This act comes to be seen as necessary because it represents a means of formally securing these liberal principles and of taking them “off the political agenda.”²⁹

Rawls acknowledges that his description of the sequence of events in the first stage depends on an important assumption concerning the nature of the comprehensive doctrines held by citizens. He assumes that “the comprehensive doctrines of most people are not fully comprehensive.”³⁰ To appreciate the significance of this point, it is necessary to understand Rawls’s distinction between fully and partially comprehensive conceptions: “A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, non-political values and virtues and is *rather loosely articulated*.”³¹ The assumption that most citizens hold partial comprehensive doctrines with values that are “*loosely articulated*,” is necessary to create the “scope for the development of an independent allegiance,” independently, that is, of their comprehensive views. Given this assumption, Rawls claims: “many if not most citizens come to affirm the principles of justice incorporated into their constitution and political practice *without seeing any particular connection*, one way or the other, between those principles and their other views.” In other words, citizens “first” experience the good these principles produce and then “affirm them on

that basis". Thus, Rawls concludes, it is on this way that a constitutional consensus is ultimately realized and not on the basis of comprehensive religious, philosophical, and moral doctrines. If "later" some incompatibility should arise between the principles of justice and citizens' comprehensive doctrines, Rawls believes that citizens "might very well adjust or revise these doctrines rather than reject those principles."³²

The second stage of the process begins once a constitutional consensus is in place. The liberal principles that provide a basis for a constitutional consensus also impose obligations. One obligation requires that political groups "explain and justify their preferred policies to a wider public" in order to have these policies approved. This requirement "makes it rational for them to move out of the narrower circle of their own view." Given the fact of reasonable pluralism and that comprehensive religious, philosophical, and moral doctrines cannot serve as the basis for justifying their preferred policies, citizens are lead "to formulate political conceptions of justice" that can provide a common basis for arguing the advantages for others of their preferred policies.³³ These political conceptions of justice, says Rawls, go beyond the political principles that provided a basis for the constitutional consensus itself by incorporating principles that cover the basic structure of society as a whole. For example, some principles "establish certain substantive rights" for everyone such as liberty of conscience, freedom of thought, and fair equal opportunity.³⁴ These additional liberal principles are justified by the political conception of justice itself and not by citizens' comprehensive views.

Here, as in the stage one process, Rawls's analysis relies on the assumption that most citizens hold partial comprehensive doctrines. Once again, it is the "*loosely articulated*" character of the partial comprehensive doctrines that creates a space for an

independent allegiance to the political conception of justice. If we reason in a manner similar to that used by Rawls in stage one, we could say that citizens “affirm” a political conception of justice “*without seeing any particular connection, one way or the other,*” between the political conception and their other comprehensive views.³⁵ However, once citizens give their allegiance to the political conception, they incur obligations to act on it. To the extent that citizens act on the basis of their independent allegiance to the political conception of justice and to the extent that they experience repeated success as citizens by so doing, they create the conditions that allow an overlapping consensus to ensue.³⁶ When an overlapping consensus on the political conception finally occurs, the second stage is completed.

By taking action solely on the basis of their independent allegiance to the political conception of justice, citizens acknowledge the normative value of the overlapping consensus. As a result, says Rawls, an overlapping consensus on a political conception of justice must be considered to be not only political but also “itself a moral conception.”³⁷ One explanation for this result is that the political values that gain citizens’ allegiance are considered “very great values and not easily overridden.”³⁸ Although Rawls stresses that allegiance to these values and the political conception of justice is gained independently of citizens’ comprehensive religious, philosophical, and moral doctrines, he also argues that the sheer weight of the importance of these values implies that each citizen should be able to relate these values to their own comprehensive doctrine.³⁹ The requirement to relate the political conception of justice to comprehensive doctrines is important because, says Rawls, it lends support to the acceptance of the political conception of justice⁴⁰ and gives it, thereby, motivational force.

The description of these two stages leading to the formation first of a constitutional consensus and then of an overlapping consensus makes it clear that Rawls is arguing for an independent process to explain the formation of these two types of consensus. What is important for our purposes is not the empirical and historical nature of Rawls's description, but rather the emphasis that he places on the manner of gaining allegiance to the constitutional consensus and the political conception of justice. The allegiance is gained independently of citizens' comprehensive religious, philosophical, and moral doctrines. It is gained on the basis of liberal principles found in citizens' independent part of their "overall views," separate from the full or partial comprehensive doctrines that they hold,⁴¹ and perceived as "the only workable alternative."⁴²

In summary, our analysis has identified three important features of an overlapping consensus on a political conception of justice: first, the political conception is a moral conception worked out for the political institutions of a democratic society; second, allegiance and acceptance of the political conception does not presuppose accepting any particular comprehensive doctrine; and third, it is not formulated in terms of any comprehensive doctrine but "in terms of fundamental ideas viewed as latent in the public political culture of a democratic society."⁴³ At the same time, it is claimed that a citizen's comprehensive view provides support to the acceptance of the political conception of justice. On the basis of our analysis of an overlapping consensus, it would seem to claim that Rawls adopts a discontinuity strategy to explain the relationship between the ethical in our private lives and the ethical in the political domain. Now we turn to the second main idea in political liberalism to see in what way it exhibits discontinuity.

(b) The Priority of the Right

A fundamental tension exists within important versions of liberalism between the roles allocated to conceptions of the Right and those allocated to conceptions of the Good. Lecture V in *Political Liberalism* deals with “The Priority of Right and Ideas of the Good”. Although Rawls has argued the priority of the Right over the Good throughout the body of his work, Lecture V presents five ideas of the good used in justice as fairness. Rawls says that he presents these ideas to demonstrate “how their use accords with the priority of the right.” An important purpose of the lecture is to try to remove the “misunderstandings” about political liberalism that claim that it cannot use any ideas of the good at all, except ideas that are purely instrumental or ideas that are rooted in personal preference.⁴⁴

By presenting the ideas of the good used in justice as fairness, Rawls is responding to critics who claim that the good must have a more foundational role in liberalism than they claim he accords it. His counter argument seems to be that political liberalism does affirm the importance of a certain good within political liberalism. In addition, it allows Rawls to contrast these ideas with ideas of the Good found within comprehensive doctrines and to reinforce his argument concerning the priority of the Right over comprehensive conceptions of the good. This feature of the Rawlsian position further strengthens his case that political liberalism is a freestanding view. However, it also reinforces my claim that he is pursuing a discontinuity strategy.

Rawls says that scope is a central consideration to understanding the difference between political liberalism and comprehensive doctrines on the issue of the Good. The political conception of justice presented by political liberalism is for a specific subject,

the main institutions of political and social life, and not for the whole of life.⁴⁵ Thus, although Rawls acknowledges that any conception of justice must draw on ideas of the good, he makes it clear that these ideas must be “political ideas” that belong to a political conception of justice.⁴⁶ That means, says Rawls, that these ideas must satisfy the two criteria that allow them to be considered “political ideas”: first, they “do not presuppose any fully (or partially) comprehensive doctrine,” and, second, these ideas either are or could be “shared by citizens regarded as free and equal.”⁴⁷

The five ideas of the good found in justice as fairness that satisfy these conditions are: goodness as rationality, primary goods, permissible comprehensible conceptions of the good, political virtues, and a well-ordered (political) society.⁴⁸ Further, Rawls claims, these ideas “are built up in a sequence starting with goodness as rationality” and ending with a well-ordered (political) society.⁴⁹ Since my primary purpose in this section is to understand in what way these ideas of the good exhibit discontinuity, it will suffice to examine the first and the last of these ideas of the good: goodness as rationality and a well-ordered (political) society.

Rawls claims that any “workable political conception of justice” must accept “rationality as a basic principle of political and social organisation.” The idea of goodness as rationality is not to be understood as part of some comprehensive moral doctrine, such as Kant’s moral philosophy or utilitarianism. Rather, it is a “form of political liberalism.”⁵⁰ Goodness as rationality is to be understood as a basic principle of political and social organisation. It implies that all participants in “political discussion of questions of right and justice” are to be assumed as endorsing certain basic values: human life and the fulfilment of basic human needs and purposes are to be treated as “in

general good.” Finally, it implies that citizens “have, at least in an intuitive way, a rational plan of life.”⁵¹ However, all of these considerations on the idea of goodness as rationality are to be understood as being affected within a context of the main institutions of political and social life and, on that basis, able to be affirmed independently of comprehensive doctrines.

The idea of a well-ordered political society is considered an intrinsic good.⁵² A society that is well-ordered by a conception of justice, says Rawls, is considered “the most desirable conception of unity available to us.” Such a society has three features: everyone in the society accepts “the very same principles of justice”; its basic structure is publicly known to satisfy those principles; and citizens of the society have a “sense of justice” that enables them to understand and to act from those principles.⁵³ To the extent that the principles of justice are established independently of comprehensive doctrines and citizens take action in a public forum based primarily on these principles, then the idea of a well-ordered political society represents an intrinsic good.

Rawls argues that each of the five ideas of the good in justice as fairness “accords with the priority of the right”⁵⁴ by explaining why they represent “significant intrinsic goods internal to political life” and are fully independent of comprehensive doctrines.⁵⁵ Rawls concludes his discussion of the five ideas of the good by stating that justice as fairness is “complete as a political conception.”⁵⁶ It is a political conception supported by an overlapping consensus and “a moral conception affirmed on moral ground”.

In conclusion, the idea of the priority of the right further strengthens my contention that Rawls adopts a discontinuity strategy on the proper relationship of the ethical in both our private lives and the political domain. For example, the discussion of

justice as fairness and its five ideas of the good was intended to demonstrate how their use accords with the priority of the right in any liberal conception of justice. In fact, Rawls has identified goods in political liberalism that compete with the goods of comprehensive views, and that also have priority over these other goods when considered within the context of any political deliberation on questions of rights and justice. Finally, these ideas of the good provide a further refinement of why an overlapping consensus on a political conception of justice is “itself a moral conception.”⁵⁷

*(c) The Idea of Public Reason*⁵⁸

We will now look at the idea of public reason, the third main idea in political liberalism. As in the case of the preceding two ideas, our aim is to show how the idea of public reason exhibits a discontinuity strategy for explaining the relationship between the ethical in our private lives and in the political domain. Rawls contends that the fact of reasonable pluralism forces onto the public scene the question of the conditions for a “public basis of justification” when dealing with fundamental political issues.⁵⁹ He proposes that his conception of public reason captures well what is required.

I will start by clarifying what is involved in public reason and the conditions that it imposes on political conceptions of justice. Rawls considers his account of the content of public reason as one of political liberalism’s important “innovations.”⁶⁰ Since that content is “given by a family of political conceptions of justice,” there are many forms of liberalism. To belong to the family, the content of each of these political conceptions must possess three essential features: first, it must provide “a list of certain rights, liberties, and opportunities”; second, it assigns a “special priority to those rights, liberties,

and opportunities, especially with respect to the claims of the general good and perfectionist values”; and third, it has “measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms.” One will observe that the differences in the forms of liberalism result from the different ways each defines, orders, and balances their political principles and values. One consequence of this plurality of liberalisms is that there are also “many forms of public reason specified by a family of reasonable political conceptions.”⁶¹

Rawls further specifies three conditions that all of these reasonable political conceptions must satisfy to be part of a family of liberal political conceptions of justice: first, they apply to the basic structure of society; second, they are “presented independently from comprehensive doctrines of any kind”; and third, they are “worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime.”⁶² The second and third conditions stress the freestanding quality of political conceptions of justice.

The requirement that they be “presented independently from comprehensive doctrines of any kind” is necessary, says Rawls, to distinguish public reason based on liberal political conceptions of justice from “secular reason”, defined as “reasoning in terms of comprehensive nonreligious doctrines.”⁶³ What Rawls is stressing above all is the independence of public reasoning in relation to other forms of reasoning: “it proceeds entirely within a political conception of justice.” Thus, “to engage in public reason is to appeal to one of these political conceptions (...) when debating fundamental political questions.”⁶⁴ This rules out any appeal to comprehensive doctrines in the public forum other than in terms of public reason. Nevertheless, Rawls does define a special role for

comprehensive doctrines. Citizens, for example, may well be motivated primarily by reasons rooted in their own comprehensive doctrine to bring to the public political forum policies issues; however, to defend them in a public forum, they must “give properly public reasons” in support of the policies they would want adopted. This requirement is rooted in Rawls’s distinction between public reason and the “background culture.” “Comprehensive doctrines of all kinds – religious, philosophical, and moral – belong to what we may call the “background culture” of civil society. This is the culture of the social, not of the political,”⁶⁵ says Rawls. This distinction has important repercussions on what happens in the public forum and imposes stringent conditions on the types of reasons that may be invoked when dealing with basic political questions.⁶⁶

Another important characteristic of public reason is that it applies only to questions of fundamental political justice dealt with in the public political forum. Rawls divides this forum into three parts: first, the work of the judges of a supreme court; second, the work of government officials such as senior executives and legislators; finally, candidates for office and campaign managers.⁶⁷ In addition, only two kinds of issues of fundamental political justice belong to the public political forum: “constitutional essentials and matters of basic justice.”⁶⁸ By “constitutional essentials”, Rawls means the “political rights and liberties” that are to be included in a “written constitution” for a regime that possesses a high court charged with interpreting the document, such as Canada’s Supreme Court. By “matters of basic justice,” Rawls means questions on such things as basic economic and social justice “not covered by a constitution.”⁶⁹

In conclusion, Rawls provides public reason with a separate and independent basis for dealing with issues that must be addressed in the public forum. Public reason is

separate and independent in many important ways. It must rest solely on a political conception of justice. It must not allow reasons that are drawn from secular reason or, for that matter, from any comprehensive doctrine. All of these other “reasons” operate in the “background culture.” Public reason is the only legitimate basis for deliberation in the public political forum. The public forum as defined by political liberalism is not densely populated. It contains special roles reserved for a relatively small proportion of the total population of a nation: judges, certain government officials, and candidates for office. Finally, public reason applies only to a limited subject matter: “constitutional essentials” and “matters of basic justice.” On the basis of all of these features of public reason, we can conclude that Rawls is pursuing a discontinuity strategy concerning the proper relationship between the ethical found in the “background culture” and the political domain, while defending a certain understanding of “moral” obligation found within political liberalism.

Strengths and Weaknesses of Rawls’s Discontinuity Strategy

Now that we have clarified what is involved in each of the three main ideas of political liberalism and established in what way they demonstrate a discontinuity strategy for addressing the relationship between the ethical in our private lives and the ethical in the political domain, we can turn to an assessment of the results. Naturally, my assessment of the strengths and weaknesses of *Political Liberalism* is limited to its potential contribution to fulfilling the purpose of this dissertation: to examine philosophical foundations of ethics programs for government in a liberal democracy. I

carry out the assessment in two parts. First, I speculate on the kind of ethics program political liberalism could support. This pragmatic exercise is meant to ascertain if such a program could satisfy what I claim should be included in minimal expectations for ethics programs in government, by reference to a sample set of “ethical” values. Although I conclude that political liberalism contains within itself elements to support a partial ethics program for government in a liberal democracy, I also argue that it cannot satisfy the minimal expectations represented by the sample set of “ethical” values. In the second part, I assess the potential of political liberalism to provide a firm ethical foundation to the political domain from the point of view of criticisms advanced by Ronald Dworkin and William Galston. Their criticisms provide a basis for explaining why political liberalism could not serve as an adequate basis for ethics programs for government in a liberal democracy.

(a) An Ethics Program Based on Political Liberalism.

What would an ethics program for government look like if it were based on political liberalism? One way to identify and assess the kinds of constraints that political liberalism would place on an ethics program for government is to test speculatively the meaning and the scope that it would impose on a sample set of five “ethical” values that I assume should be included in any such program. Before preceding any further, I will give a brief description of my use of each value and how each applies to public officials. I also note immediately that throughout this dissertation I adopt Patrick Dobel’s description of a public official as “any individual who holds any position at any level of government or public authority.”⁷⁰

My sample set of five ethical values includes honesty, responsibility, accountability, loyalty, and integrity. The first value, honesty, requires that government be truthful in its dealings with the people. In the negative, being honest also requires that public officials as public officials not cheat or steal.⁷¹ As for responsibility, the second value, it implies that public officials assume the duties and the obligations of the position they accept to fill. Whatever form the agreement of office⁷² may take – an oath, a promise, a contract, etc. – the public official accepts to frame his or her judgement within the boundaries of the office they hold. Responsibility also implies that public officials are “enmeshed, to a greater or lesser extent, in the moral consequences of their actions.”⁷³ Being accountable, the third value, is closely related to responsibility. Accountability involves accepting that whatever action one takes as a public official will be subject to an appraisal based on some normative standard.⁷⁴ The fourth value, loyalty, is a relational value that requires faithfulness to one’s allegiances. The object of one’s loyalty can be a person or an organisation. For a public official, it involves, in addition to fidelity to duty, a positive concern for and a level of identification with the object of one’s loyalty. Thus, it would imply his or her willingness to place the welfare of a person, an organization, or the nation above one’s own interests.⁷⁵ Integrity, the final value, plays a special role in relation to other values. In *Integrity*, Stephen Carter says that integrity requires three steps: “*discerning* what is right and what is wrong”; “*acting* on what you have discerned”; and “*saying openly*” the reasons for your actions.⁷⁶ Patrick Dobel claims that integrity involves the capacity to “link belief to practice” and, in the case of public officials, “integrity sustains the promises that bind people as moral agents to the responsibilities of office.”⁷⁷ I believe that R.W. Hepburn captures the most essential

characteristics of integrity when he says that it is rooted in one's sense of unity and identity and requires that we "give precedence to" moral values and obligations in the face of all other factors.⁷⁸

I will assume that citizens in any liberal democracy would acknowledge this set of values as paradigmatic "ethical" values that should be practiced by public officials in the executive branch of government.⁷⁹ These values are paradigmatic in the sense that most people share a set of general lexical meanings of these values common enough to allow day-to-day use of these values with minimal ambiguity. In ordinary communication, whether in the private or the public sphere, the use of these values does not usually require extensive clarification, as illustrated above in my short treatment of each value.⁸⁰ In addition, most people could be expected to assign them "ethical" worth.

As we have already seen, political liberalism requires that an overlapping consensus be understood "in terms of fundamental ideas viewed as latent in the public political culture of a democratic society."⁸¹ Rawls claims that the ultimate source of these ideas is the political culture in which they are "latent" and that citizens have come to affirm the fundamental ideas in a political conception of justice "without seeing any particular connection, one way or the other", between the political conception and their other views.⁸² Given these two propositions, in what way is any value of the set of "ethical" values - honesty, responsibility, accountability, loyalty, and integrity - part of the overlapping consensus. To be part of the overlapping consensus, these values must be shown to be fundamental values latent in the public political culture.

Both empirically and conceptually, it seems reasonable to believe that citizens as citizens would expect government in a liberal democracy to exhibit honesty,

responsibility, accountability, loyalty, and integrity. To the extent that this is the case, it would justify the inclusion of the set of “ethical” values in a Statement of Ethical Values that could form part of an ethics program for government. Given the constraints imposed by Rawls’s overlapping consensus, these “ethical” values could not, however, be formulated in terms of comprehensive religious, philosophical, and moral doctrines. One effect of this constraint is to reduce the scope of possible interpretations of these “ethical” values available to us when deliberating in the public forum. For example, the duties that could flow from the “ethical” obligation of honesty could not be justified in terms of Kant’s moral theory since it is a comprehensive moral theory. Given these constraints, we could argue that their “moral” status could be demonstrated in a manner similar to that used by Rawls for establishing that the overlapping consensus on a political conception of justice is a “moral conception.”⁸³ On this basis, we would claim that this set of “ethical” values should be considered “moral” because they are latent in the political culture and in as much as most citizens would accept these ethical values as part of the political conception of justice, they would have an obligation to act on these values in the public domain.

Since the “moral” status of the set of “ethical” values depends on the nature of the overlapping consensus, let us look closer at the justification for their inclusion. Rawls is clear that only “political” values can be part of the political conception of justice. For “political” values to be considered at the same time “moral” values, they must be “political” values that have gained the independent allegiance of citizens. They can gain this allegiance, says Rawls, because they are “very great values and not easily overridden.”⁸⁴ In a similar manner, we could claim that the ethical values of honesty,

responsibility, accountability, loyalty, and integrity are political values with a “moral” status that can be ascribed to government because they are “very great values and not easily overridden”. It is difficult to imagine that they would not gain the allegiance of citizens as citizens. Conversely, citizens as citizens could be expected to refuse to allow other citizens to fill roles in government if these other citizens insisted on retaining the right to opt out of the obligations that flow from the allegiance to these basic values. A moment of reflection reveals that the consequences of allowing government officials to *opt out* is tantamount to allowing public officials to be dishonest, irresponsible, not accountable, disloyal, and to lack integrity and it is not plausible to argue that the citizens of a liberal democracy would accept such a process.⁸⁵

To this point, the argument has focused on how these “ethical” values could be “moral” values within political liberalism. However, we must also examine in what way they can and should be “political.” It must be admitted that, at first sight, they do not appear to be “political.” In his discussion of the priority of the right, Rawls argues that the distinction between a “political” conception of justice that is also “moral” and other conceptions is based on “a matter of scope”. Being “moral” allows a political conception of justice to avoid being *simply* political, as with a mere “*modus vivendi*.” The political conception contains “political” values and virtues that apply only to the basic structure of society whereas these other moral conceptions - comprehensive or partially comprehensive - contain not only “political” but also non-political values and virtues meant to apply to the whole of life.⁸⁶ If we stipulate that the values of honesty, responsibility, accountability, loyalty, and integrity are applied only to the basic structure of society, then we satisfy political liberalism’s scope constraint. We can conclude on

this basis that the set of values could be justified as a set “moral” obligations and duties in the political sphere defined by political liberalism.

We will take a closer look at the nature of scope in political liberalism given the important role that it plays in determining how “moral” values can be considered “political.” In his analysis of the meaning of the priority of the right, Rawls discusses five ideas of the good used in justice as fairness to show that a political conception in a democracy must contain within itself “sufficient space” to ensure that “ways of life fully worthy of citizen’s devoted allegiance” can be sustained.⁸⁷ In a society “well ordered” by an overlapping consensus, says Rawls, citizens have “many final ends in common.” The metaphor of “space” is appropriate since the political conception excludes from bringing into the public forum the reasons supporting final ends if these reasons are rooted in citizens’ comprehensive doctrines. These limits extend, of course, to the means that can be used to pursue these final ends if they too are justified by reasons rooted in citizens’ comprehensive doctrines. Rawls has argued that political liberalism can only legitimately safeguard “sufficient space” if it is neutral in relation to the good in permissible conceptions of the good.⁸⁸

Rawls also argues that to be neutral does not mean that political liberalism should be or can be “procedurally neutral” in relation to these conceptions since it distinguishes between permissible and non-permissible conceptions of the good. As Rawls points out, political liberalism cannot be considered procedurally neutral - in the sense that it uses no ideas of the good at all except ideas of the good that would have a “purely instrumental” use. This consequence is also implied by his discussion of the five ideas of the good found in justice as fairness.⁸⁹ Political liberalism considers conceptions of the good as

“permissible conceptions” of the good that can be pursued in a modern democratic society⁹⁰ only if they “respect the principles of justice.” As a result, Rawls acknowledges, for example, that fundamentalist religious doctrines might claim that democracy “leads to a culture contrary to their religion,” but political liberalism is justified in stating “simply that such a doctrine is politically unreasonable.”⁹¹ Rather than being procedurally neutral, says Rawls, political liberalism possesses a “neutrality of aim” in the sense that “the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it.”⁹²

On the basis of “neutrality of aim”, how could my set of five “ethical” values could be considered “political” specifications that guarantee “impartiality” for actions of the state in relation to comprehensive doctrines?⁹³ Being “responsible” as a public official implies, as I have claimed, that he or she assumes all of the duties and obligations of office. Thus, the public official would have the obligation to ensure, for example, that only actions that do not favor any particular comprehensive doctrine are sanctioned by the state. The related value of “accountability” would then be specified in terms of demonstrating to those who have entrusted the public official with this responsibility how he or she has carried out the responsibility. Thus, these “ethical” values could be considered “political” in the sense that they contribute to maintaining what Rawls calls the state’s “neutrality of aim.” For example, a public official could argue that the practice of having troops stand to attention on a parade square while a chaplain – usually Christian – blesses the troops is unacceptable because it does not respect “neutrality of aim.” Thus, the requirement that a public official not “do anything intended to favor or

promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it”⁹⁴ would be a defining factor in shaping the distinct meanings these values would have in the domain of the political.

We have shown how the sample set of “ethical” values could satisfy the conditions necessary to be considered both “political” and “moral” within a context defined by political liberalism. However, political liberalism places additional important constraints on any ethics program for government – whether it contains my set of “ethical” values or some other set of “ethical” values. It should not be forgotten that for Rawls “the idea of public reason specifies at the deepest level the basic and moral political values that are to determine a constitutional democratic government’s relation to its citizens and their relation to one another.”⁹⁵ As we have pointed out, public reason necessarily applies to decisions taken in the public political forum by government officials ⁹⁶. The nature and the role of public reason in political liberalism will have an impact on a foundation for an ethics program for government in a liberal democracy.

The concept of public reason imposes two specific constraints on any ethics program that affect the use we could make of the sample set of “ethical” values. The first constraint is a scope constraint that determines who can be considered to be directly affected by the authority and the obligations of an ethics program for government. It deals with the question: Who makes up the public political forum? It would seem that this forum has very few members since Rawls singles out only “senior executives and legislators” amongst all those who work in government.⁹⁷ By implication, the rest of the personnel do not appear to be directly included in the ranks of those who are members of the public political forum. The legitimacy of this constraint is debatable in the light of

the Chapter One, in which it was shown that public administrators contribute to the act of governing in many important ways.

The second constraint is related to the first and helps explain why Rawls specifies such a small set of officials in government as members of the public forum. Rawls limits the subject matter of public reason in the public political forum to only two kinds of matters concerning fundamental political justice: “constitutional essentials and matters of basic justice.”⁹⁸ All other matters of government are not directly included in the public political forum, although they may well be affected indirectly by what occurs there.

What impact would these two constraints have generally on an ethics program for government, and, in particular, on the use of the values in my sample set of “ethical” values included in such a program? To begin with, very few people in government seem to come directly under the obligations imposed by an ethics program based on public reason. It might be thought that Rawls could overcome this problem by arguing that the content of an ethics program based on public reason has wide application and, as such, does apply to all personnel in the executive branch of government. For example, he could support this claim on the basis of the obligation of reciprocity since it applies to all citizens. The fundamental organizing idea of justice as fairness is, after all, “a society as a fair system of cooperation over time.” It is those fair terms, says Rawls, which “specify an idea of reciprocity.”⁹⁹ Although the idea of reciprocity in Rawls does indeed refer to the way relationships between citizens ought to be carried out, the specific constraints he places on its meaning would not allow it to justify a claim that an ethics program based on public reason applies generally to public officials. As he says, reciprocity is “a relation between citizens in a well-ordered society expressed by its public political

conception of justice.”¹⁰⁰ However, that just brings us full circle to the starting point since it is on the basis of what Rawls calls a well-ordered society and its political conception of justice that he specifies what constitutes the public political forum and its members, and that does not include all citizens.

It might seem that Rawls could extend the application of an ethics program based on public reason to public officials by invoking his notion of a duty of civility, an obligation that he considers to be part of any political conception of justice. The duty of civility is a moral obligations imposed on everyone as citizen since it flows from the ideal of citizenship. It is at the heart of the legitimate exercise of all political power in a democracy. Thus, when citizens put forward policies in the public forum, they should be guided by the duty of civility that requires them “to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason.”¹⁰¹ As a result, it would seem that in as much as the duty of civility is part of public reason, then an ethics program for government, including one containing my sample set of “ethical” values, would apply to everyone in the executive branch since they too, as citizens, would be required to explain how the principles and policies they use for decision-making “can be supported by the political values of public reason.” However, things are not that simple. Rawls says that we must distinguish how the ideal of public reason applies to citizens from how it applies to officers in government. Membership in this latter category is limited to those who speak in “official forums”, such as, for example, legislators “on the floor of parliament” and “in a special way to the judiciary.”¹⁰² Thus, although it would seem that the duty of civility could justify wide application in government of the “moral” obligations flowing

from an ethics program, there are other factors to be considered when such programs are based on public reason.

The obligations in an ethics program based on public reason would seem to be fully justified if and only if public officials are dealing with the “political rights and liberties” that are included in a “written constitution” or with “matters of basic justice” that concern questions on such things as basic economic and social justice “not covered by a constitution.”¹⁰³ Here, it might be thought that some argument could be made along the line of John Rohr’s claims that “regime values” play a central role in public administration. Given that Rawls considers the US Supreme Court as an exemplar of public reason,¹⁰⁴ the argument might follow Rohr’s advice to public administrators that they look to interpretations of the constitution provided by the US Supreme Court for guidance in the application of the “regime values.”

It seems more accurate, however, to expect that political liberalism would treat these public administration subjects as questions that are not strictly speaking part of “political rights and liberties” and “matters of basic justice.” The idea of public reason implies that there are some important issues originating in the “background culture” that are left out of public reason but that must still be dealt with by government. Examples of these “other” issues could come from policy areas dealing with issues such as conflict of interest, quality of life, and gender integration. The values of an ethics program – including “ethical” values from the sample set such as honesty, loyalty, and integrity – might well be invoked when dealing with these “other” types of matters. However, any use of these “ethical” values would raise the question of the justification of their use by government personnel since these matters are outside the strict scope of public reason.

To the extent that they are not within the scope of public reason, they do not benefit from the justification provided for public reason.

If the set of ethical values, for example, are not fully justified as a requirement for government in a liberal democracy, their use becomes optional. However, this conclusion would be totally unacceptable. Citizens as citizens in a liberal democracy do not want their government to be dishonest, irresponsible, not accountable, disloyal, and to lack integrity in dealing with these “other” matters. There is nothing optional here.¹⁰⁵ Nor is there anything optional about public officials applying these “ethical” values when dealing with issues related to conflict of interest, quality of life, and gender integration. That means that the only other source of justification within political liberalism for the values in an ethics program would be found in the “background culture.” Yet, the whole thrust of Rawls’s political liberalism is that such a justification cannot impose public political obligations. Thus, the constraint of scope seems to leave us with an unresolved problem of dealing “morally” – in a “political” sense - with matters that are not strictly speaking part of “political rights and liberties” and “matters of basic justice.” Yet, I suggest, most citizens in a political democracy would consider matters related to conflict of interest, quality of life, and gender integration in government as “political” in nature.

Supposing we assume that Rawls could somehow deal adequately with the above criticism, we still have to contend with two additional constraints that political liberalism would impose on the legitimate application of “ethical” values in an ethics program for government. The first of these constraints requires that the meaning ascribed to the “ethical” values in an ethics program must be in terms of political liberalism’s impartiality, its “neutrality of aim”. The second constraint affects the scope of possible

interpretations of each one of these “ethical” values, since they could not be expressed in terms of comprehensive doctrines.

These two constraints make it very difficult to use “ethical” values in deliberation beyond the surface definitions of “ethical” values. The difficulty is compounded by the fact that comprehensive doctrines have contributed greatly to our common understanding of most of our “ethical” values. If we attempted to formulate a meaning for my sample set of five “ethical” values independently of their roots in comprehensive doctrines, we are sure to significantly distort their accepted meaning by citizens as citizens. For example, ‘honesty’ has paradigmatic meanings endorsed by most citizens as citizens that have both deontological and consequential roots. The claim that “the government may not lie to the people” provides an example of its deontological roots. This aspect of its meaning is illustrated by the fact that no politician would run for office on the platform: “I will ensure once in power that government does a better job of lying to all of you!” The following claim provides an example of honesty’s consequential roots: “in certain circumstances, like times of war, the government may deceive the enemy that threatens the continued existence of the nation by disseminating false information, although such deception has the unintended effect of also deceiving the people.” It would seem that we could not use, strictly speaking, either of these interpretations to understand or formulate the “political” meaning of honesty unless we excluded overtly any reference to their roots.

In summary, it seems reasonable to conclude that political liberalism could provide a basis for defining a limited content an ethics program applicable to a limited group of public officials within the executive branch of government in a liberal

democracy. In addition, the sample set of paradigmatic “ethical” values - honesty, responsibility, accountability, loyalty, and integrity - could be included in a Statement of Values as part of this ethics program. However, the result ethics program for government would be a strongly constrained and impoverished ethics program. To the extent that I have correctly assessed the kind of ethics program that could be based on political liberalism, then such an ethics program would certainly fall very short of addressing important and fundamental expectations of citizens concerning the ethical behaviour of all public officials in government in a liberal democracy.

(b) Liberal Critics of Political Liberalism.

We have taken a critical look at Rawls’s political philosophy in search for a philosophical foundation for ethics programs in government in a liberal democracy. In the first part of this section, we concluded that an ethics program based on political liberalism would appear to be an impoverished ethics program. We will now turn to two liberal political philosophers, Ronald Dworkin and William Galston, to understand why Rawls’s discontinuity approach could give such disappointing results. Although I will return to these two philosophers in the next chapter when I analyse the alternatives to a philosophical foundation for ethics programs in government that they offer on the basis of a continuity strategy, here I am mainly concerned with their analyses of the strengths and weaknesses of Rawls’s discontinuity strategy.

(b.1) Ronald Dworkin.

In the “Foundations of Liberal Equality”, Dworkin writes that his purpose is “to find the ethical foundations for liberalism.”¹⁰⁶ To do so, he focuses on a fundamental

distinction that liberalism draws between the personal and the political perspectives.¹⁰⁷ Given this distinction, the challenge of liberalism, says Dworkin, is to find ethical foundations that reconcile the two perspectives.¹⁰⁸

Dworkin argues that there are two different strategies for reconciling the two perspectives.¹⁰⁹ One is based on discontinuity between the two perspectives and is illustrated in Rawls's political philosophy. Indeed, by comparing Rawls's work to his own efforts in the Tanner Lectures, Dworkin characterises Rawls's discontinuity strategy as "a foundational defense of liberalism."¹¹⁰ The second strategy is based on continuity and is found in Dworkin's theory of liberal equality – and, as I shall argue in the next chapter, in Galston's liberalism. Our main concern here is Dworkin's analysis of the strengths and weaknesses of Rawls's discontinuity strategy.¹¹¹

Dworkin distinguishes a conception being able to gain "consensual force" based on "the widest possible agreement" from one gaining "categorical force" based on its moral foundation. For example, only a moral foundation could justify liberals insisting that "political decisions be made on liberal principles now, even before liberal principles come to be embraced by everyone, if they ever will be."¹¹² As we have seen in the previous section, Rawls argues that political liberalism must be considered "itself a moral conception"¹¹³ to the extent that citizens act on the basis of their independent allegiance to the political conception of justice. Dworkin concedes that Rawls's version of the contract theory is "a moral version."¹¹⁴ Thus, the central focus of Dworkin's assessment of Rawls is whether the results of the discontinuity strategy can gain "categorical force."

On what basis could political liberalism gain "categorical force"? The issue here is important because it is not merely a matter of being persuasive but rather of having the

kind of force that can serve as the foundation for moral obligation. We have seen that, according to Rawls, one of the three conditions that all reasonable political conceptions must satisfy to be part of a family of liberal political conceptions of justice is that a political conception of justice must be “worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime.”¹¹⁵ Dworkin asks: “can a political conception of justice gain categorical force as well as consensual promise when its central principles are “latent”?”¹¹⁶

Given my focus on political liberalism, I present Dworkin’s answer to this question in two steps: first, I look at his answer as it applies to justice as fairness; then, I consider how his answer could be extended to political liberalism itself. This two-step approach is necessary if we take into consideration the shifts in theory from *A Theory of Justice* to *Political Liberalism*. However, the second step will also take into consideration that Rawls makes it clear that all the essential elements of *Theory* – in particular justice as fairness - and the arguments that support them “are still in place” and, therefore, are presupposed throughout *Political Liberalism*.¹¹⁷ A two-step approach is further justified if we consider that, in *Political Liberalism*, Rawls presents five ideas of the good used in justice as fairness to remove misunderstandings about political liberalism.¹¹⁸

In *Taking Rights Seriously*, Dworkin deals specifically with Rawls’s justice as fairness. He argues in that earlier work that the social contract and the original position in *A Theory of Justice* are “the product of a deeper political theory that argues for the two principles *through* rather than *from* the contract”¹¹⁹ and the original position. Dworkin argues that Rawls’s constructivism “treats intuitions of justice not as clues to the

existence of independent principles, but rather as stipulated features of a general theory to be constructed.”¹²⁰ To the extent that Dworkin’s reading of justice as fairness is correct, that is, to the extent that the social contract and the original position are at “a halfway point in a deeper theory,” justice as fairness acquires its “categorical force” from the deeper theory itself. Given Dworkin’s interpretation of Rawls’s constructivism, justice as fairness acquires its “categorical force” from the intuitions of justice captured by the device of the original position. It is in that sense that a political conception of justice could be said to gain “categorical force” as well as consensual promise when its central principles are “latent.”

Although Rawls concedes that the original position is a “model of representation for liberal societies,”¹²¹ he rejects Dworkin’s claim that justice as fairness rests on a “deeper theory.”¹²² In fact, Rawls considers Dworkin’s own theory on a par with other comprehensive theories and, therefore, as part of the background culture.¹²³ In addition, he makes it clear in *Political Liberalism* that justice as fairness itself is just one political conception of justice amongst others that can express the “shared and public reason” of citizens.¹²⁴

Given this turn of events, we might wonder if political liberalism has escaped the grip of Dworkin’s earlier critique. In a note to the *Tanner Lectures*, Dworkin says that some critics have indicated that Rawls’s political liberalism, in particular his idea of an overlapping consensus, “shows that he has actually rejected discontinuity.” However, Dworkin does not make a case in the note for extending his attribution of discontinuity to Rawls’s political liberalism and ends it by leaving it open whether the discontinuity strategy would apply to Rawls’s political liberalism. In addition, as we have just seen,

Dworkin's claim that Rawls's theory incorporates a discontinuity approach is based mainly on his assessment of Rawls's constructivism as an artificial approach to constructing political theories of justice using the paradigm of a contract.

Thus, I return to the question. Has political liberalism progressed sufficiently beyond justice as fairness, beyond presenting a view that is a "model of representation of liberal societies", to acquire "categorical force" on a basis independent of a specific political conception of justice such as justice as fairness? In the previous section dealing with "The Three Main Ideas of the Discontinuity Strategy in Rawls," I argued, for reasons different from Dworkin's, that Rawls has adopted a discontinuity strategy for reconciling the ethical in our private lives and the ethical in the political domain. I will consider these arguments as a sufficient basis for legitimately extending Dworkin's criticism of the discontinuity strategy in Rawls's justice as fairness to Rawls's political liberalism.¹²⁵ I will argue that political liberalism has not succeeded in escaping the brunt of Dworkin's earlier critique despite Rawls's reworking of his liberalism and, as a result, that political liberalism itself cannot gain the "categorical force" that Dworkin claims eludes justice as fairness.

The basis of Dworkin's critique of justice as fairness rests on an understanding of liberalism as a political conception that can have categorical force only if its moral principles are "binding categorically, in advance of any agreement about them."¹²⁶ Thus, Dworkin contends that the categorical force of the principles reached in any agreement is derived from the categorical force of the moral principles that participants to the agreement bring with them into the negotiating forum. Such an interpretation of the idea of categorical force works well when applied to the original position, and it may well be

the insight that led Dworkin to consider that there must be a “deep theory” that ultimately justifies justice as fairness.

In what way could justice as fairness and political liberalism be sufficiently different such that the former can be criticized for its discontinuity approach if it lacks reference to a “deep theory” and the latter could not. One development that could be singled out is that political liberalism has progressed to a higher level of abstraction than justice as fairness and, as a result, that it has now purged itself of all that is not “political”, something, Rawls claims, had not been clearly done in *A Theory of Justice*.¹²⁷ With that in mind, let us consider again Rawls’s overlapping consensus. We have seen that he assumes that citizens as citizens hold overall views that can be divided into two distinct parts: in one part, they affirm the publicly recognized political conception of justice; in the other, they hold a full or partial comprehensive doctrine.¹²⁸ Although Rawls does not single out one political conception of justice as superior to another – he now speaks of a family of liberal conceptions of justice, he insists that allegiance and acceptance of the political conception itself does not presuppose accepting any particular comprehensive doctrine and, in particular, that the political conception is not formulated in terms of any comprehensive doctrine but “in terms of fundamental ideas viewed as latent in the public political culture of a democratic society.”¹²⁹ Rawls has done a good job of burning the bridges between the two distinct parts of citizens overall views. He has also, thereby, deprived the comprehensive part of the possibility of contributing “categorical force” to the other.

Given a higher level of abstraction claimed by political liberalism, on what basis could the “latent” fundamental ideas to which it points to in the public political culture

gain their categorical force? This answer is not as straightforward as Rawls would have us believe. For example, there are some in a democratic society who believe that the only reason a fundamental idea like freedom of thought has categorical force is that “thinking” itself is understood as fundamental to what it means to be human. However, for these individuals, what it means to be human is traced back to some comprehensive doctrine. The process that guarantees the *freedom of* thought would be useless if thinking itself were not valued. Similarly, there are some who believe that what gives freedom of religion its categorical force is that the meaning and value of religious belief is found only within some comprehensive doctrine. The process of arriving at and living by such beliefs would not need any protection if religious beliefs were not valued.

Rawls might respond that it is not specifically thinking or religion that acquire categorical force but rather that freedom itself has categorical force. Then the question becomes how does he justify the selection of the specific freedoms *of* thought and *of* religion rather than *of* something else, like freedom *of* leisure? In a liberal democracy, not all freedoms *of* are considered equally valued. One must appeal to arguments based on the nature of whatever is involved in the freedom *of* to justify valuing one freedom *of* over another. Thus, religion, for example, could not have any categorical force as a “fundamental idea viewed as latent in the public political culture of a democratic society” separate from its value within some comprehensive doctrine. The problem Rawls faces is that he cannot allow any appeal to comprehensive doctrines as the foundation for the categorical force of these freedoms. And, it adds nothing to the argument to state, as Rawls does, that each citizen should – but not must - be able to relate these values to their

comprehensive doctrine.¹³⁰ The only potential source of categorical force for these values is the bare fact that they are “latent” in the political culture.

The net result is that the “categorical force” of the “latent” fundamental ideas is left unexplained and unjustified at the level of political liberalism. Rawls cannot fall back on justice as fairness since he has declared it only one amongst others of reasonable political conceptions of justice. However, if Rawls did invoke justice as fairness, as he does in his discussion of the priority of the right in political liberalism, it is not clear that he could escape Dworkin’s criticism concerning the source of the categorical force Rawls claims for the latent ideas contained in a political conception of justice. To paraphrase Dworkin’s earlier comment, we are left with the impression that political liberalism is the product of a deeper political theory that argues for political conceptions of justice “*through* rather than *from*” political liberalism.¹³¹ I conclude, therefore, that Dworkin’s argument against justice as fairness can be extended to political liberalism and that “latency” cannot be the ultimate source of the “categorical political force” for a discontinuity strategy.

In summary, Rawls’s discontinuity strategy both at the level of justice as fairness and of political liberalism cannot reconcile the personal and the political perspectives, identified by Dworkin as the fundamental challenge of liberalism. And, by implication, Rawls’s discontinuity strategy cannot provide an adequate foundation for the relationship between the ethical in our private lives and the ethical in the political sphere.

(b.2) William A. Galston.

Whereas Dworkin focused on “latency” to argue that Rawls’s version of liberalism lacks a firm foundation and can at best be considered an intermediate level, “a halfway point in a deeper theory,” Galston concentrates on “latency” to argue that Rawls has left too much out of the foundation. In other words, Galston takes seriously Rawls’s contention that a political conception of justice must be “worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime”¹³² and argues that there is much more there than Rawls gives credit to.

One source of meaning for the latency of Rawls’s “fundamental ideas,” says Galston, is that they are based on an interpretation of American public beliefs. However, if we accept this as a source, Rawls’s political conception of the moral person as free and equal¹³³ “does violence not only to a reasonable account of the “moral point of view” but even to the most plausible description of the shared understanding of America’s public culture.”¹³⁴ Galston puts forward two different arguments in support of this claim. The first criticizes the methodology Rawls uses for developing a conception of justice. The second argument demonstrates the unacceptable shortcomings of the results produced by Rawls’s strategy.

Galston believes that there are serious problems with the way Rawls defines the context for constructing a political conception of justice. It “excludes knowledge of differing conceptions of the good from the original position (...) as a core element of America’s collective self-understanding that should shape the principles of justice we adopt.”¹³⁵ Of course, Rawls could respond to this criticism by reminding Galston that his method is meant to produce “an ideal-based view” and that one must think “of justice as

fairness as working up into idealized conceptions certain fundamental ideas such as those of the person as free and equal, of a well ordered society.”¹³⁶

Galston could concede this point to Rawls and still retain the impact of his criticism. He argues that by excluding knowledge of differing conceptions of the good from the forces that shape the resulting political conceptions of justice – even if they are “an ideal-based view” - political liberalism unjustifiably puts at risk the very existence of some of those conceptions of the good. Rawls does not disagree with this consequence nor does he think that it has a crippling effect on his liberalism. In fact, he endorses Isaiah Berlin’s view that there is “no social world that does not exclude some ways of life that realize in special ways certain fundamental values.”¹³⁷ And, the quotation adds: “that there is no social world without loss is rooted in the nature of values and the world.”¹³⁸

However, Rawls’s statements here simply reinforce Galston’s point. If, as Rawls claims, I am to consider myself as a person who is free and equal in virtue of possessing the requisite degree of the two powers of moral personality,¹³⁹ I would be aware of the risk to some of these potential ways of life as a result of exercising these powers. Under Rawls’s rules, I would be aware that one of the ways of life that could be put at risk could be mine and I would be aware of this threat going into a forum designed to allow me to identify the political principles of a political conception of justice.¹⁴⁰ Galston’s criticism applies not only to the original position in *A Theory of Justice* but also to *Political Liberalism* since Rawls clearly states in the latter that our “considered judgements” – such as “slavery is unjust” - are used as provisional fixed points to be organized into “a conception of justice by the principles that issue from a reasonable procedure of

construction.”¹⁴¹ If that were the case, why would I agree to submit myself to any forum – real or idealized - that would produce a form of “cooperation” that may put at risk my way of life, a way of life, says Galston, expressed in a fundamental conception of the good that could be mine?¹⁴² It is clear that from the point of view of history, Galston’s criticism is supported by the way history records that the founders of the United States drew up its constitution. In fact, the whole point of the deliberations that lead to the ultimate wording of the American Constitution was to ensure the viability of diverse ways of life in a democratic nation.

Galston reaches the same conclusion - that Rawls has left too much out of the foundation - by assessing Rawls’s political liberalism from the point of view of the effects of public reason. One could assume that public reason is taken to be an interpretation of the public beliefs of the United States. If that were the case, Galston asks: Why would I agree to any set of principles that may, after the fact, systematically exclude “values that give my life its core meaning and purpose”?¹⁴³ Galston’s criticism extends this point: even if I am lucky enough to have my way of life survive into the post “Original Position” phase, I may still have to bear too great a cost at the hands of Rawls’s public reason. To appreciate the strength of this criticism, we need only consider again what Rawls calls “the proviso.” Recall that Rawls concedes that reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, “provided the proviso is met.” The proviso, however, is really meant to ensure that “the nature and the content of justification in public reason itself” is not changed by this concession. One may appeal to reasonable comprehensive doctrines,

provided that the “justification is still given in terms of a family of reasonable political conceptions of justice.”¹⁴⁴

Given the pre-emptive and muzzling effect of the proviso, Galston concludes that those who seek liberal principles of justice would not agree to a decision procedure that they know in advance leads to the possibility that “giving priority to the requirements of social cooperation [as defined in political liberalism] will compel individuals to make sacrifices of their core commitments and of aspects of their character that they regard as basic to their identity and integrity.”¹⁴⁵ The issue is not that after the fact I may be able to reconcile these principles with “values that give my life its core meaning and purpose.” The issue is that after the fact, once I have reached the “idealized conceptions” promised by political liberalism, I do not know the extent to which the proviso will have effectively deprived me of the capability to adequately satisfy some of “values that give my life its core meaning and purpose.” As a result of the proviso, political liberalism renders my ability to satisfy these values totally dependent on what it allows me to express in a public forum, and that can only be in terms of principles of justice that were formulated in a forum that excluded important aspects of these values from the start. This outcome is true no matter what my comprehensive doctrine or doctrines may be. As a result of this second argument, Galston claims that once we become aware of what political liberalism would have us sign on to, we would certainly insist on going back to the starting point and be given the opportunity to refuse to participate in the process that Rawls proposes.

If we take seriously, says Galston, Rawls’s contention that a political conception of justice must be “worked out from fundamental ideas seen as implicit in the public

political culture of a constitutional regime,”¹⁴⁶ we must conclude that Rawls has left too much out of the foundation. Echoing our conclusion based on Dworkin’s criticism of the discontinuity strategy in Rawls, Galston’s analysis of the weaknesses in political liberalism also allows us to conclude, for different reasons, that the discontinuity strategy imbedded in Rawls’s liberalism would not be deemed acceptable by citizens once the actual and potential costs that it produces are made more evident to them. Galston’s conclusion further reinforces my claim that political liberalism could not provide a strong foundation for an ethics program for the executive branch of government in a liberal democracy and that any ethics program for government based on it would be too strongly constrained and impoverished.

Conclusion

This chapter examined the potential of Rawls’s political liberalism to provide us with the philosophical foundations of ethics programs for government in a liberal democracy. It was reasonable to start with Rawls given the importance of Rawls’s body of work in the twentieth century and given that his project clearly addresses the relationship between the ethical in our private lives and the ethical in the political domain. The stated aim of *Political Liberalism* is a political conception of justice that “can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it.”¹⁴⁷

The analysis of political liberalism was based on my claim that it represented a discontinuity strategy for reconciling the ethical in our private lives and the ethical in the

political domain. We concluded that political liberalism could provide a basis for a limited type of ethics program for government. However, by reference to a sample set of generally accepted “ethical” values - honesty, responsibility, accountability, loyalty, and integrity – I argued that the result of developing an ethics program based on Rawls’s political liberalism would be a strongly impoverished program. One possible explanation for this disappointing result is provided by Ronald Dworkin’s assessment of Rawls’s justice as fairness, which I extended to political liberalism, as a liberalism that lacks a firm foundation because it can at best be considered an intermediate level, “a halfway point in a deeper theory.” Another possible explanation for this result is offered by William Galston who argues that Rawls leaves too much out of the foundation by excluding from it all comprehensive conceptions of the good and, thereby, depriving political liberalism of any effective role they could serve in this foundation.

In the next chapter, we shall continue our search for the philosophical foundations of ethics programs for government in a liberal democracy by considering alternative approaches to reconciling the ethical in our private lives and the ethical in the political domain proposed by two other liberal political philosophers. In contrast to Rawls, Ronald Dworkin and William Galston defend a foundation for liberalism that adopts a continuity strategy for reconciling the relationship between the ethical in both spheres.

END NOTES

¹ There are some differences between Dworkin's and my uses of the terms: he applies these strategies to the categories of the personal and the political perspectives while I apply them to the categories of the ethical and the political. As I proceed, I will explain the implications of the commonalities and the differences of these respective applications.

² See Dworkin, "Foundations of Liberal Equality."

³ John Rawls, *A Theory of Justice*, (London: Oxford University Press, 1971)

⁴ Peter Berkowitz, *Virtue and the Making of Modern Liberalism* (Princeton: Princeton University Press, 1999), p.22.

⁵ See Rawls, *Political Liberalism*, p. xv.

⁶ Rawls, John, "The Idea of Public Reason Revisited" in *John Rawls: Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard University Press, 1999), p. 581. I shall treat the idea of public reason more in detail later in the chapter.

⁷ See Rawls, *Political Liberalism*, p.7.

⁸ The discussion of the contrast in aims between *Theory* and *Political Liberalism* is found in *Political Liberalism*. See Rawls, *Political Liberalism*, pp.9-11.

⁹ In comparing *Theory of Justice* with *Political Liberalism*, Rawls says: "the distinction between a comprehensive doctrine and a political conception is unfortunately absent from *Theory*." See Rawls, *Political Liberalism*, p.177 note 3.

¹⁰ Rawls says that "a moral conception is general if it applies to a wide range of subjects, and in the limit to all subjects universally. It is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. (...) Many religious and philosophical doctrines aspire to be both general and comprehensive." See Rawls, *Political Liberalism*, p.13.

¹¹ *Ibid.*, pp. xxiv-xxv.

¹² Rawls is rather explicit on this point: "Recall that, in the domestic case, the content of public reason is given by the family of liberal principles of justice for a constitutional democratic regime, and not by a single one." See John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), p. 57. In an interesting footnote on this point, Rawls says in "The Idea of Public Reason Revisited": "I do think that justice as fairness has a certain special place in the family of political conceptions, as I suggest in *Political Liberalism*, lecture IV, sec. 7.4. But this opinion of mine is not basic to the ideas of political liberalism and public reason." See Rawls, "The Idea of Public Reason Revisited," p. 582 n. 27.

¹³ "The aim of justice as fairness", says Rawls, "is practical." (p.9) To explain the meaning of the idea of a political conception of justice, Rawls says: "a political conception of justice has three characteristic features, each of which is exemplified by justice as fairness", one of which is that it "is presented as a freestanding view." (11-12) See Rawls, *Political Liberalism*.

¹⁴ "Political liberalism looks for a political conception of justice that we hope can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it." See Rawls, *Political Liberalism*, p.10.

¹⁵ *Ibid.*, pp. 10-11.

¹⁶ *Ibid.*, p. xv.

¹⁷ On the use of the term "discontinuous", it is noted that Rawls says: "As an account of political values, a freestanding political conception does not deny there being other values that apply, say, to the personal, the familial, and the associational; nor does it say that the political values are separate from, or *discontinuous* with, other values." (Italics are mine) (p. 10) I acknowledge that Rawls will indeed argue that these "other values" are part of the background culture. My use of the term "discontinuity" to characterise Rawls's strategy of dealing with the proper relationship between the ethical in our private lives and in the political domain is not meant to apply at that level, but rather to the very level that allows Rawls to claim that the political is arrived at independently of comprehensive doctrines. As he states: "Political liberalism tries, then, to present an account of these values as those of a special domain – the political – and hence as a freestanding view". See Rawls, *Political Liberalism*, p. 140.

¹⁸ *Ibid.*, p. 36.

¹⁹ In speaking of the stability of the a basic structure of society founded on a political conception of justice, Rawls says: the question is “whether in view of the general facts that characterize a democracy’s public political culture, and in particular the fact of reasonable pluralism, the political conception can be the focus of an overlapping consensus.” Ibid., p. 141.

²⁰ Ibid., p. 145.

²¹ “By the basic structure I mean a society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next.” In addition, in *Political Liberalism*, Rawls takes the basic structure of society to be “a modern constitutional democracy”. Ibid., p. 11. See also Rawls, *Theory of Justice*, no. 2.

²² Ibid., p. 164.

²³ Ibid., p. 38.

²⁴ Ibid., p. 38. On the distinction between fully and partially comprehensive conceptions, Rawls provides the following descriptions: “A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, non-political values and virtues and is rather loosely articulated.” (p.13)

²⁵ Ibid., p. 147.

²⁶ Ibid., p. 158.

²⁷ Ibid., p. 158.

²⁸ Ibid., p. 159.

²⁹ Ibid., p. 161.

³⁰ Ibid., p. 168.

³¹ Ibid., p. 13. (Italics are mine)

³² Although the quotations come from p.160 , the discussion of this point extends over pp. 159-163. See Rawls, *Political Liberalism*. (Italics are mine)

³³ Ibid., p. 165.

³⁴ Ibid., p. 164. Rawls also makes it clear here that all the essential elements of *Theory of Justice* and the arguments that support them “are still in place”. For him, “an overlapping consensus requires that its political principles and ideals be founded on a political conception of justice that uses the fundamental ideas of society and persons illustrated by justice as fairness.” (p.164)

³⁵ Ibid., p.160. (Italics are mine)

³⁶ Ibid., p. 168.

³⁷ Ibid., p. 147.

³⁸ Ibid., p. 169.

³⁹ Of course, it must be appreciated that the political conception and its political values may be the same for each citizen, but “each comprehensive view is related to the political conception in a different way.” (p.171) Rawls works out three possible relations between comprehensive views and a political conception – to Kant’s doctrine, to the utilitarianism of Bentham and Sidgwick, and to a pluralist account of values – to illustrate how citizens could do it. (pp. 169-170) See Rawls, *Political Liberalism*.

⁴⁰ To be sure, Rawls leaves us with a tension between the requirement to relate these values to our comprehensive doctrines and his description of the independent emergence of an overlapping consensus. However, he is convinced that the reasons for acceptance of the political conception of justice are there to be found within the comprehensive doctrines. “Now to state the main point: in the overlapping consensus consisting in the views just described, the acceptance of the political conception is not a compromise between those holding different view, but rests on the totality of reasons specified within the comprehensive doctrine affirmed by each citizen.” Ibid., pp. 170-171.

⁴¹ Ibid., p. 38.

⁴² Ibid., p. 159.

⁴³ Ibid., p. 175.

⁴⁴ Ibid., pp. 173-174.

⁴⁵ Ibid., p. 175.

⁴⁶ Rawls also emphasises that this requirement does not exclude comprehensive conceptions of the good, but it does impose constraints on their use in the basic structure. “The particular meaning of the priority of the right is that comprehensive conceptions of the good are admissible, or can be pursued in society, only if

their pursuit conforms to the political conception of justice (does not violate its principles of justice).” Ibid., p. 176 note 2.

⁴⁷ Ibid., pp. 175-176.

⁴⁸ Ibid., p. 176.

⁴⁹ Ibid., p. 207.

⁵⁰ Ibid., pp. 176-177 note 3.

⁵¹ Ibid., p. 177.

⁵² Ibid., p. 207.

⁵³ Ibid., pp. 201-202.

⁵⁴ Ibid., pp. 173-174.

⁵⁵ Ibid., p. 208.

⁵⁶ Ibid., p. 207.

⁵⁷ Ibid., p. 147.

⁵⁸ My treatment of Public Reason will be mainly focused on “The Idea of Public Reason Revisited” in *John Rawls: Collected Papers*. This focus is based on Rawls’s claim that this “essay is my most detailed account of why the constraints of public reason, as manifested in a modern constitutional democracy based on a liberal conception (an idea first discussed in *Political Liberalism* in 1993), are ones that holders of both religious and nonreligious comprehensive views can reasonably endorse.” See Rawls, *The Law of Peoples*, p. vi.

⁵⁹ See Rawls, *Political Liberalism*, p. xix. In “The Idea of Public Reason Revisited”, Rawls puts it this way: “They need to consider what kind of reasons they may reasonably give one another when fundamental political questions are at stake.” See Rawls, “The Idea of Public Reason Revisited,” p. 574.

⁶⁰ “The innovations, if any, in my account of public reason are possibly two: (...) the second is that the content of public reason be given by the political values and guidelines of a political conception of justice.” See Rawls, *Political Liberalism*, pp. 253-254.

⁶¹ See Rawls, “The Idea of Public Reason Revisited,” pp. 581-582. He also stresses in the same paragraph that “justice as fairness, whatever its merits, is but one” such reasonable political conception.

⁶² Ibid., pp. 583-584.

⁶³ Ibid., p. 583.

⁶⁴ Ibid., p. 584.

⁶⁵ See Rawls, *Political Liberalism*, p. 14.

⁶⁶ See Rawls, “The Idea of Public Reason Revisited,” pp. 591-592. Rawls calls this requirement “the proviso”. We shall return to this notion later in the chapter.

⁶⁷ Ibid., p. 575.

⁶⁸ Ibid., p. 575.

⁶⁹ Ibid., p. 575 note 7. See also Rawls, *Political Liberalism*, pp. 227-230.

⁷⁰ Dobel, Patrick J., *Public Integrity* (Baltimore: Johns Hopkins University Press, 1999), p. 1.

⁷¹ In his chapter on “Coda: The Insufficiency of Honesty”, Stephen Carter argues that honesty is different than integrity (I provide Stephen Carter’s definition of integrity further in my text). His definition of honesty combines the idea of “telling everything we know” with Sissela Bok’s definition of lying as “any intentional deceptive message which is stated.” (Sissela Bok, *Lying: Moral Choice in Public and Private Life* (New York: Vintage Books, 1989 (1978)) p. 13.) See Stephen L. Carter, *Integrity*, (New York: HarperCollins, 1996), p. 52. Refer also to the lexical entries for “honest” and “honesty” in *The Concise Oxford Dictionary of Current Usage*, 8th edit. Oxford: Clarendon Press, 1990, or *Webster’s New World College Dictionary*, 3rd edit. New York: MacMillan, 1996.

⁷² By “office”, I refer to “any position at any level of government or public authority”, as stipulated in Dobel’s definition of public official. See Dobel, *Public Integrity*, p. 1.

⁷³ See Dobel, *Public Integrity*, p. 214.

⁷⁴ For example, Michael Pritchard says that accountability involves “broadly speaking, the moral appraisals we make of ourselves and others.” However, Pritchard specifies that these appraisals are “blame- and praise-related” – (following Jonathan Bennett’s definition in “Accountability”, in *Philosophical Subjects*, edited by Zak Van Straaten, Oxford: Oxford University Press, 1980. pp. 14-47.) I do not adopt that definition. See Michael S. Pritchard, *On Becoming Responsible* (Lawrence: University Press of Kansas, 1991), p. 39.

⁷⁵ Much of my description of “loyalty” is drawn from Brian Schrag, “The Moral Significance of Employee Loyalty” in *Business Ethics Quarterly*, Vol. 11, No.1. January, 2001, especially pp. 44-47.

⁷⁶ See Carter, *Integrity*, p.7. (Italics are in the original.)

⁷⁷ See Dobel, *Public Integrity*, pp. xii-xiii.

⁷⁸ Refer lexical entry for “integrity” written by R.W. Hepburn in *The Oxford Companion to Philosophy*, Oxford: Oxford University Press, 1995.

⁷⁹ Although I am not attempting to identify a complete set of ethical values for government, I assume that this small sample set would be part of a more complete set of ethical principles and values that citizens expect government as a whole to respect, including the executive branch.

⁸⁰ Of course one can provide a much more extensive treatment of these values, especially if one must provide an explanation for evaluations or judgements based on one of these values. For example, Stephen Carter devotes a whole book to integrity.

⁸¹ See Rawls, *Political Liberalism*, p.175.

⁸² *Ibid.*, p. 168.

⁸³ *Ibid.*, p. 147.

⁸⁴ *Ibid.*, p. 169.

⁸⁵ The point here is not whether some or most citizens in fact believe that some or most public officials exhibit these faults, but rather whether citizens would want them to.

⁸⁶ *Ibid.*, p. 175

⁸⁷ *Ibid.*, pp. 174-175

⁸⁸ “Permissible conceptions of the good” are conceptions “that respect the principles of justice” in the political conception. *Ibid.*, p. 192. The boundaries of the “space” are also spelled out to a certain extent by the ideas of the good contained within the political conception.

⁸⁹ *Ibid.*, p. 191 and note 22.

⁹⁰ *Ibid.*, p. 193. Although political liberalism rules out non-permissible conceptions of the good, as Rawls points out, permissible conceptions of the good themselves may be “unable to endure in a society securing the familiar equal basic liberties and mutual toleration.” (p.198)

⁹¹ See Rawls, “The Idea of Public Reason Revisited,” p. 613.

⁹² See Rawls, *Political Liberalism*, pp. 192-193. This includes not addressing “the moral topics on which those doctrines divide”. *Ibid.*, p. xxviii.

⁹³ *Ibid.*, p. xxviii.

⁹⁴ *Ibid.*, p. 193.

⁹⁵ See Rawls, “The Idea of Public Reason Revisited,” p. 574.

⁹⁶ *Ibid.*, p. 575. Although Rawls divides this forum into three parts, supreme court judges, government officials, and candidates for office and their campaign managers, our concern here is solely with the group government officials.

⁹⁷ *Ibid.*, p. 575. See also Rawls, *Political Liberalism*, pp. 215-216.

⁹⁸ See Rawls, “The Idea of Public Reason Revisited,” p. 575.

⁹⁹ See Rawls, *Political Liberalism*, pp. 15-16.

¹⁰⁰ *Ibid.*, p. 17.

¹⁰¹ *Ibid.*, p. 217.

¹⁰² *Ibid.*, pp. 215-216

¹⁰³ See Rawls, “The Idea of Public Reason Revisited,” p. 575 note 7. See also Rawls, *Political Liberalism*, pp. 227-230.

¹⁰⁴ See Rawls, *Political Liberalism*, p.231.

¹⁰⁵ John Mark Mattox makes a similar point when he says: “governments (at least democratic ones) are rarely, if ever, regarded as having the right to deceive those subject to them, even if the deception is for an ostensibly good aim.” See “The Moral Limits of Military Deception,” in *Journal of Military Ethics* (2002) 1(1), p. 5.

¹⁰⁶ See Dworkin, “Foundations of Liberal Equality,” p. 3.

¹⁰⁷ *Ibid.*, p.,12.

¹⁰⁸ Although Dworkin draws a distinction between ethics and morality, that distinction does not affect, for my purposes here, the weight of Dworkin’s comments on the discontinuity strategy. I shall return to Dworkin’s distinction in the next chapter. For Dworkin’s distinction see p. 9. He also argues that the

distinction between the two perspectives “is mirrored in the distinction between political philosophy and ethics” (p.13) See Dworkin, “Foundations of Liberal Equality.”

¹⁰⁹ Ibid., p. 17.

¹¹⁰ Ibid., p. 24.

¹¹¹ I acknowledge that Dworkin’s distinction between the personal and the political perspectives represents a recasting of Rawls’s own distinction between political liberalism as “political” and comprehensive doctrines as belonging to the “background culture”. However, what is important for my purposes is that both these distinctions overlap sufficiently to justify applying Dworkin’s criticism of a discontinuity strategy to Rawls’s political liberalism. In addition, I contend that there is an overlap between these two sets of categories and my categories of the ethical and the political. For example, I suggest that we could restate the challenge of liberalism in the terms of the distinction that I am using: as an attempt to reconcile the ethical and the political. To the extent that sufficient overlap exists between these three sets of categories, the points of Dworkin’s criticism of the weaknesses of the discontinuity strategy apply to all three distinctions, e.g. Dworkin’s, Rawls’s, and mine.

¹¹² Ibid., p.,25.

¹¹³ See Rawls, *Political Liberalism*, p. 147.

¹¹⁴ Ibid., p.,26.

¹¹⁵ See Rawls, “The Idea of Public Reason Revisited,” pp. 583-584.

¹¹⁶ Ibid., p. 32.

¹¹⁷ See Rawls, *Political Liberalism*, p.7.

¹¹⁸ Ibid., pp. 173-174.

¹¹⁹ Ronald Dworkin, *Taking Rights Seriously*, (Cambridge: Harvard University Press, 1978), p. 169. Italics are in the text.

¹²⁰ Ibid., p. 160.

¹²¹ See Rawls, *The Law of Peoples*, pp. 30-32. See also John Rawls, *Political Liberalism*, pp. 22-28, in particular note 28.

¹²² “Justice as Fairness: Political not Metaphysical” in *John Rawls: Collected Papers*, Ibid. note 19, pp.400-401.

¹²³ See Rawls, *Political Liberalism*, p. 211 note 42. In the Tanner Lectures, Dworkin acknowledges that Rawls rejects the interpretation of the original position and the social contract that he ascribes to him. Ronald Dworkin, “Foundations of Liberal Equality” in *The Tanner Lectures on Human Values*, Ibid. note 9, p.19.

¹²⁴ See Rawls, “The Idea of Public Reason Revisited,” p. 582 n. 27.

¹²⁵ See Dworkin, “Foundations of Liberal Equality,” p. 19 note 9.

¹²⁶ See Dworkin, “Foundations of Liberal Equality,” p. 27 note 13.

¹²⁷ Rawls had claimed that “in *Theory* a moral doctrine of justice general in scope is not distinguished from a strictly political conception of justice”. See Rawls, *Political Liberalism*, p. xv.

¹²⁸ Ibid., p. 38. On the distinction between fully and partially comprehensive conceptions, Rawls provides the following descriptions: “A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, non-political values and virtues and is rather loosely articulated.” (p.13)

¹²⁹ Ibid., p. 175.

¹³⁰ Ibid., p.171.

¹³¹ See Dworkin, *Taking Rights Seriously*, p. 169. Italics are in the text.

¹³² See Rawls, “The Idea of Public Reason Revisited,” pp. 583-584.

¹³³ See John Rawls, “Justice as Fairness: Political not Metaphysical” in *John Rawls: Collected Papers*, Ibid., p. 408 (pp.397-408).

¹³⁴ See Galston, *Liberal Purposes*, p. 159.

¹³⁵ Ibid., p. 159.

¹³⁶ See Rawls, “Justice as Fairness: Political not Metaphysical,” p. 400 note 19.

¹³⁷ Quoted in Galston, *Liberal Purposes*, p. 146, and see Rawls, “The Priority of the Right and Ideas of the Good”, p. 462. See also Rawls, *Political Liberalism*, p.197.

¹³⁸ See Rawls, *Political Liberalism*, p. 197 note 32. See also Rawls, “The Priority of the Right and Ideas of the Good,” p. 463 note 24.

¹³⁹ See Rawls, "Kantian Constructivism in Moral Theory," pp. 312-313.

¹⁴⁰¹⁴⁰ I have referred to a "forum" rather than the "original position", given that Rawls treats the "original position" as just one way amongst others "to identify" the political principles and guidelines. See Rawls, "The Idea of Public Reason Revisited," p. 581

¹⁴¹ See Rawls, *Political Liberalism*, p. 124. See also Rawls point about the idea that conceptions of citizen and of a well-ordered society "are embedded in, or modeled by, the constructivist procedure". (p. 103)

¹⁴² See Galston, *Liberal Purposes*, p. 146.

¹⁴³ *Ibid.*, p. 147.

¹⁴⁴ See Rawls, "The Idea of Public Reason Revisited," pp. 591-592.

¹⁴⁵ See Galston, *Liberal Purposes*, p. 149. Here, Galston subscribes to Bernard Williams's criticism of Rawls and concludes that Rawls provides no basis for the unification of his public understanding of moral personality with our nonpublic aims and attachments. See Bernard Williams, "Persons, Character, and Morality", in *The Identities of Persons*, Amelie Oksenberg Rorty, ed. (Berkeley: University of California Press, 1976), pp. 210 and 215.

¹⁴⁶ See Rawls, "The Idea of Public Reason Revisited," pp. 583-584.

¹⁴⁷ See Rawls, *Political Liberalism*, p. 10.

CHAPTER THREE

CONTINUITY STRATEGIES

This chapter continues the analysis of strategies for reconciling the relationship between two basic components of liberalism, the ethical in our private lives and the ethical in the political domain. I concentrate mainly on continuity strategies proposed by Dworkin and Galston. My aim is to see whether the theories put forward by these political philosophers provide a satisfactory foundation for ethics in government. In the end, I will conclude that they do not, although each author identifies important elements that should be included in any foundation for ethics in government. I then consider what other elements would be essential to a foundation for public ethics in a liberal democracy. For that purpose, I look at the work of Amy Gutmann and Dennis Thompson on deliberative democracy. The chapter ends with a summary of “lessons learned” from the first three chapters in which I identify what should be retained from our review of the public administration ethics literature and the political philosophers assessed. With these lessons in hand, I will propose in Chapter Four a set of ethical conditions necessary for interpreting the ethical foundations of ethics programs for government in a liberal democracy, and, in particular, for the executive branch of government.

Ronald Dworkin and Liberal Equality

In the “Foundations of Liberal Equality”, Dworkin claims that “liberalism needs foundations in ethics”¹ and that his purpose is “to find the ethical foundations for liberalism.”² He considers that recent communitarian criticisms of liberalism represent a formidable challenge to liberalism when they are directed at the ethical foundations of liberalism. The criticisms point out an apparent conflict between “the most fundamental political claims of liberalism” and “our most compelling personal convictions about the character of a worthwhile life.” Accordingly, says Dworkin, the search for the foundations of liberalism should begin “in this apparent conflict between liberal politics and ordinary ethics.”³

Liberalism, says Dworkin, draws a fundamental distinction between the personal and the political perspectives.⁴ The personal perspective refers to how individuals choose to live their personal lives. For most people, the political perspective of liberalism contains at a minimum three “rough and unrefined political ideas”: equality, liberty, and tolerance.⁵ As a result, a fundamental challenge of liberalism is how to reconcile the two perspectives.⁶ Such reconciliation is exactly what we need if we are to provide a foundation for ethics programs in government that takes seriously the ethical beliefs of public officials.

Dworkin suggests that there are two different strategies for reconciling the two perspectives: discontinuity and continuity.⁷ One approach is based on justifying a certain discontinuity between the two perspectives and this strategy was illustrated in Chapter Two by Rawls’s political liberalism. Consistent with the social contract tradition, Rawls’s

discontinuity approach requires citizens as citizens to set aside - bracket – their most profound substantive ethical convictions. They are to consider the comprehensive doctrines of their personal perspectives as belonging to the background culture and as being supplanted by a political perspective when involved in political activity or decision.⁸ As I argued in that chapter, a discontinuity approach does not provide a satisfactory foundation for ethics programs in government.

The other strategy is based on working out the continuity between the two perspectives. It is illustrated by Dworkin's theory of liberal equality, presented in this section, and Galston's theory of liberal purposes, presented in the next section.

(a) Continuity, Challenge, and Critical Interests in Dworkin's Liberalism

Dworkin develops the idea of a continuity strategy mainly in the "Foundations of Liberal Equality" in *The Tanner Lectures on Human Values* (henceforth, referred to as the *Tanner Lectures*).⁹ A continuity strategy assumes that "ethics and politics are intertwined."¹⁰ It provides a means of showing "how liberalism develops naturally from ethics so that ethics merges with politics, the personal into the political perspective."¹¹ A continuity strategy assumes at the start "that all one's ethical convictions are available in politics" and that liberal politics follow "from giving full effect to the most comprehensive and philosophical convictions among them."¹² It provides a basis for constructing a "*liberal ethics*", in the sense that those convictions that allow individuals to be "congenial to liberal political principles" are shown to be convictions that "already form the central part of how many of us imagine living well." Dworkin claims "it appeals to people (...) who want their politics to match their convictions about what it is

to live well, rather than requiring them to set these convictions aside, to check them at the voting-booth door.”¹³

It is worth noting that Dworkin is well aware that there are difficulties faced by a continuity strategy that a discontinuity strategy can avoid outright. If a continuity strategy is to offer a basis to reconcile the personal and the political perspectives, it must somehow integrate the three “rough and unrefined” liberal political ideas - equality, liberty, and tolerance¹⁴ - with the ethical commitments in our personal lives. However, liberalism expects government, for example, to be “in some sense neutral among different conceptions people have about how to lead their lives.”¹⁵ A discontinuity strategy can easily explain the neutrality to deal with the potential conflict between the personal and the political perspectives is achieved. For that strategy, there is no conflict between the two perspectives, since neutrality is built in as an axiom of a political perspective that is “distinct and discontinuous” from the personal perspective. Such an explanation is not available to a discontinuity strategy. It must explain how political neutrality is continuous with the ethical commitments in our personal lives, “how political neutrality grows out of ethical commitment directly, without an intervening contract or joint social construction.”¹⁶

Let’s start with a brief outline of Dworkin’s solution in the *Tanner Lectures* for reconciling the personal and the political perspectives. For Dworkin, we adopt a personal perspective when we are involved in making decisions about our own life. The central ethical issue of the personal perspective involves the question of the value of our own life. We adopt a political perspective when we are involved in the decision-making of a political community acting collectively.¹⁷ A liberal political conception is normative to

the extent that it defines and orders systematically the three basic ideas of a liberal conception of democracy: equality, liberty, and tolerance. A continuity strategy searches for “normative integrity” between the personal and the political perspectives.¹⁸

Dworkin focuses first on the personal perspective since his aim is to show “how liberalism develops naturally from ethics so that ethics merges with politics, the personal into the political perspective.”¹⁹ If the central issue of the personal perspective is what constitutes living a good life, he asks: “what kind of goodness does a good life have?” To answer this question, he distinguishes between volitional and critical interests, between having or achieving what in fact we want and what we should want.²⁰ He argues that anyone seeking “a liberal ethics as a foundation for liberal politics must concentrate on critical as distinct from volitional well-being.”²¹ Although ethical instincts and intuitions constitute people’s critical interests, they also give rise to worries and puzzles. Dworkin identifies five sets of worries and puzzles in the form of “philosophical issues about the character of ethics”: the problem of the significance of one’s life; the nature of ethical values as transcendent or indexed; the connection between ethics and morality; the question of whether components of one’s life are additive or constitutive; and finally, the question of whether the unit of ethical value is entirely personal or communal.²²

Dworkin suggests that people make use of one of two models for understanding their critical well-being: he calls them the impact and the challenge models. According to the impact model, we should assess the value of one’s life by the impact it has on the world. Alternatively, the challenge model proposes that we should assess the value of our life by how well we have met the challenges life presents us with. Dworkin argues that the challenge model would be the preferred model for liberals by demonstrating how the

impact model cannot deal adequately with the five sets of concerns about the character of ethics while the challenge model can.²³

To show us how “ethics merges with politics, the personal into the political perspective,”²⁴ Dworkin invites us to follow the steps of an hypothetical thought experiment performed by “ethical liberals,” a group of people whose personal perspective starts with the challenge model and its implications for ethics. These “ethical liberals” want to identify what “principles should govern their community’s political life.” This group, says Dworkin, would adopt a conception of liberalism that he calls “liberal equality.” The four main features of liberal equality are: it requires a resource-based rather than a well-being-based conception of justice; it is egalitarian; it is tolerant; and it compensates for circumstances and not personality. If Dworkin succeeds in showing that people would choose “liberal equality” - a political conception of justice - based on a personal ethical perspective favouring the challenge model, he is justified in claiming that the personal and the political perspectives are continuous.

The role of the challenge model is to show “how liberalism develops naturally from ethics,”²⁵ or, in Dworkin’s terms, how liberal equality develops naturally from a challenge model of our critical well-being. However, as seen in our brief outline of Dworkin’s continuity strategy, one’s critical well-being can also be interpreted in terms of an impact model. Therefore, we start our study of Dworkin’s continuity strategy by seeking a better understanding of the impact and challenge models.

According to Dworkin, our basic “ethical instincts and impulses reflect two different and in some respects antagonistic ways of conceiving the source and the nature of the value a life can have for a person whose life it is”: the impact and the challenge

models of ethical value. Although we commonly draw on both these models depending on the circumstances,²⁶ they are “interpretations of ethical experience” that serve only “to organize the convictions or intimations of ethical value which most of us do have into a coherent picture.”²⁷ Both models are based on “convictions they assume we already have.”²⁸ Their function is to make more sense of these convictions when they are considered all together. Thus, although Dworkin prefers the challenge model to the impact model, his preference is based on his belief that the challenge model allows us to better reconcile the various convictions that we do have – convictions about ethics and liberal democracy. In addition, the challenge model also serves as the basis for showing how a continuity strategy can reconcile the personal and the political perspectives.

The impact model makes the ethical value of a person’s life “entirely dependent on and measured by the value of its consequences for the rest of the world.” Thus, “if I think the world is better for a great work of art then, according to the model of impact, I must think the life of its author a better life to have lived for his having painted it.”²⁹ The challenge model, an alternative view, rejects the idea that our lives should be assessed only on “the value that objective states of affairs of the world can have.”³⁰ It rejects the idea that the condition for a good life is that “lives go better only in virtue of their impact on” the world around us.³¹

The challenge model starts from the idea that “living a life is itself a performance.” We assess how well we have met the challenge of living life by looking at the achievements, the events, and the experiences in our lives to see how skillfully we have accomplished this performance.³² Since both models assume that we already have ethical convictions about how to live, the point of the challenge model is not to judge

these convictions. Rather, it suggests that we will “understand our ethical life better” if we see these convictions as “opinions” about how we can skillfully carry out the performance of living.³³

Since we are searching for the foundations for an ethics program for government, our main interest in Dworkin focuses on his claim that liberalism – a political perspective – “develops naturally from ethics”³⁴ – a personal perspective. We are particularly interested in how his continuity approach will explain the transition from the personal perspective to the political perspective through the challenge model. One of the key ideas of the challenge model that bridges the two perspectives is the idea of a parameter of a good life, and in particular, that justice is a parameter of a good life.

To clarify how the idea of a parameter of a good life fits into Dworkin’s continuity strategy, we consider the question of the significance of our individual lives. The challenge model rejects the impact model idea that we should assess how well we have lived based on whether we have added something of value to the world, as if the world were a “repository” of “objective value.”³⁵ That’s because the ethical values of a good life are not a function of “the independent value of states of affairs” in the world but are a function of “living in a way responsive and appropriate to one’s culture and other circumstances.” To illustrate his point, Dworkin draws an analogy between art and living well. For example, an artist like Duccio set a new course for Italian painting at the beginning of the fourteenth century in his treatment of the retable³⁶ of the Maesta for the Cathedral of Sienna. By drawing Italian painting out of the Byzantine tradition, he was “living in a way responsive and appropriate to one’s culture and other circumstances.”

For all of us, says Dworkin, as it was for Duccio, the act of “defining what it is to live well” is itself an integral part of our personal challenge.³⁷

A parameter is a factor that helps define a state of affairs because it is integral to it, yet, at the same time, it can take on different values as the circumstances change.³⁸ There are two kinds of parameters: hard and soft parameters. Hard parameters are conditions so essential to success that “if they are violated the performance is a total failure.” In contrast, soft parameters are necessary but if violated the value of the performance is reduced but not declared null. For example, says Dworkin, in competitive ice-skating, assigned figures are treated like soft parameters and a performance that contains deviations from them is “not absolutely fatal.” In fact, if a performance is brilliant, it could score sufficient artistic points to defeat a technically correct but too non-expressive performance. Likewise, for most of us, “parameters that define success in living a life are all soft.”³⁹

Many of our ethical parameters “define” the challenge that we should face. They are “normative” in the sense that “a life not permitted that challenge is for that very reason a worse one.”⁴⁰ To the extent that living well requires us to be responsive to circumstances and that these circumstances are part of what constitutes a good life for us, then “some aspects of our circumstances must count as normative parameters of living well.”⁴¹ On the challenge model, “some of the circumstances” of our particular lives should count “as parameters that help define what a good performance of living” is for us, while other circumstances are to be considered as “limitations on the quality of the life” we can have.⁴²

Resources form part of our circumstances. Under the impact model, they would be considered only limitations on our ability to produce an effect that could make a difference in this objective world. However, says Dworkin, the resources made available to us “cannot count only as limitations.”⁴³ To live well, says Dworkin, we must assign ourselves the “right challenge in living” and that requires us to stipulate “right resources”⁴⁴ as a parameter and not as a limitation.⁴⁵ Resources can be considered parameters in an account of justice that stipulates: “a good life is a life suitable to circumstances in which resources are justly distributed.”⁴⁶ On this account, individuals decide “what share of resources each should have by deciding what parameters it is appropriate for each to accept as defining the character of a life good for him.”⁴⁷

It should be obvious that on the challenge model justice cannot be a “hard parameter,” otherwise one transgression of justice would somehow irrevocably ruin a life. Although it follows that someone “supported by unjust wealth cannot succeed fully” in living “a life suited to someone in a just community,” he or she may achieve a life “greater than anyone could in a more just state.”⁴⁸ Thus, a resource-based account of justice treats resources as a “soft parameter.”⁴⁹ However, soft parameters do have boundaries since “injustice, just on its own, is bad for people.” From the point of view of the challenge model, a resource-based account of justice is “normative.” If someone is “denied what justice entitles,” he or she leads “a worse life just for that reason.”⁵⁰

Up to now, the discussion of the continuity strategy has concentrated on the personal perspective and could create the impression that the political perspective is in danger of collapsing into the personal perspective. It is obvious that Dworkin is not advocating such a result since, as he states, liberalism expects government to be “in some

sense neutral among different conceptions people have about how to lead their lives.”⁵¹ Let’s take for example the set of five ethical concepts for public officials that I introduced in my treatment of Rawls in Chapter Two - honesty, responsibility, accountability, loyalty, and integrity. If we were to limit ourselves to the continuity approach as it has been described to this point, we might think that each of these ethical concepts would have to be interpreted only from the personal perspective to be applied in the public forum. However, all of this is plainly contrary to the spirit of the liberalism that Dworkin defends since his liberalism seeks to explain “how political neutrality grows out of [personal] ethical commitment directly.”⁵² It seeks to explain why treating justice as a parameter contributes to showing how a political perspective “develops naturally from ethics.”⁵³

One way to address this requirement is to draw a distinction within the personal perspective that justifies, on the one hand, some form of state neutrality, while, at the same time, prevents the political from being absorbed into the personal perspective. In this vein, Dworkin distinguishes between first and third person ethical integrity. In the first person, says Dworkin, each one of us makes choices that contribute to a good life in accordance with a personal standard of ethical integrity: “my life cannot be better for me in virtue of some feature or component I think has no value.”⁵⁴ The challenge model acknowledges and gives priority to this personal standard by stipulating, “a life that never achieves that kind of integrity cannot be critically better for someone to lead than a life that does.”⁵⁵

Because a liberal state should be committed to protecting this kind of integrity, Dworkin claims: “if politics is to be continuous with ethics, it must be continuous with

ethics in the first person.”⁵⁶ However, things are very different when we are dealing with considerations about “what life is best for someone else.” A liberal state, says Dworkin, cannot be neutral in relation to people’s ethical convictions concerning other people’s lives.⁵⁷ Therefore, it is only when a liberal state fully respects the requirements of first person ethical integrity that one can say: “political neutrality grows out of [personal] ethical commitment directly.”⁵⁸

Another way to address the same issues is to ask whether or not state paternalism can ever be legitimate: is it “proper for the state to try to make people’s lives better by forcing them to act in ways they think make their lives worse”?⁵⁹ Given the importance of intention and individual choice in the challenge model, it would seem that a liberal state that accepts the challenge model could not legitimately justify, for example, compulsory education – a form of state paternalism. By analogy with an example from family life, Dworkin illustrates that a form of limited paternalism would be consistent with the challenge model. Thus, a child may be forced to learn and practice music as a result of his parents’ conception of third person ethical integrity – they know what is best for him. However, such a child, according to Dworkin, is “very likely later to endorse the coercion by agreeing that it did, in fact, make his life better”. In any case, Dworkin claims, whether or not this endorsement does come, the child “has lost little ground in a life that makes no use of his training.” Thus, the challenge model could support a limited form of state paternalism, based on the use of third person ethical integrity in specific types of circumstances: the paternalism must be “sufficiently short-term and limited that it does not significantly constrict choices if the [personal] endorsement never comes.”⁶⁰ In all such cases, the ultimate justification for the state’s actions is that it operates in the

context of state neutrality with regard to – and thus be continuous with – choices made in the first person.

The *Tanner Lectures* reach their conclusion about the role of government in a liberal democracy by interweaving ideas drawn from the challenge model for interpreting our critical self-interests, the distinction between first and third person ethical integrity, and Dworkin's resource-based conception of justice. On this basis, Dworkin defines "the proper role of government in helping people to lead good lives" as limiting itself to setting "the right stage" by bringing about circumstances "as they should be." It is only by working with a conception of justice that accepts these limits on the role of government that government can respect the right of people to "decide which role is for them the right one."⁶¹

The role that Dworkin defines for a liberal government in the *Tanner Lectures* is consistent with his earlier writings on liberalism in which he defined a liberal as someone who holds the theory that government must be "neutral" on the question of the good life: "political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life."⁶² As stated in the *Tanner Lectures*, government is neutral to the extent that it limits itself to setting "the right stage." For that reason, a liberal democracy is buttressed by a scheme of civil rights whose purpose is to determine those political decisions that should be removed "from majoritarian political institutions altogether."⁶³ These rights "function as trump cards held by individuals" to enable them "to resist particular decisions", even if these decisions were reached in democratic institutions "that are not themselves challenged."⁶⁴

Dworkin argues that the “ultimate justification” for these rights is a fundamental right of each to equal concern and respect.⁶⁵

The same role for government is presented in writings following the *Tanner Lectures*. For example, in *Freedom's Law*, Dworkin proposes a “moral reading” of the principles in the American Constitution. According to this reading, many of the Constitution’s clauses are meant to “refer to abstract moral principles and incorporate these by reference, as limits on government’s power.”⁶⁶ It follows, Dworkin argues, that the American Bill of Rights commits the United States to treating its citizens with “equal moral and political status.”⁶⁷ The government does this by treating them all with “equal concern” and by respecting whatever individual freedoms are indispensable to that end, “including but not limited to” the freedoms specified in the Constitution.⁶⁸ The rights serve to protect citizens against violation of this fundamental right.⁶⁹ In a similar vein, Dworkin states in *Sovereign Virtue*: “This book argues that equal concern requires that government aim at a form of material equality that I have called equality of resources.”⁷⁰ For these same reasons, Dworkin would claim that liberalism should be neutral on first person ethics and that it cannot be neutral on third person ethics.

My purpose in referring to Dworkin’s earlier and later works is to demonstrate consistency in his writings. As a result, I want to imply that what I have said about a continuity strategy in Dworkin based on the *Tanner Lectures* is valid for his other major work and that my assessment of that strategy also applies to this body of writings. Thus, we can read in the *Tanner Lectures* that “politics is an extension of ethics”⁷¹ in a liberal democracy – that liberal politics is continuous with our critical well-being.⁷² This claim is rooted in and develops ideas found in the writings that preceded it, in particular *Taking*

Rights Seriously. There, he argues that democracy imposes on government the obligation “not only [to] to treat people with concern and respect, but with equal concern and respect.”⁷³ This same obligation is present in *Freedom’s Law* where, based on a “moral reading” of the American Constitution, Dworkin argues that the politically decided Constitutional clauses refer to abstract moral principles already present in the convictions that form the core of the ethical personal perspective. As a final example, the idea of continuity between ethics and liberal politics found in *The Tanner Lectures* is maintained in *Sovereign Virtue*, which contains a revised and shortened version of *The Tanner Lectures*.

We have now completed our description of Dworkin liberalism. By drawing a distinction within the personal perspective, Dworkin was able to establish in what way liberalism can be said to grow out of ethics. We saw why Dworkin claims that the condition for a liberal government to be ethical gravitates towards his idea of a resource-based conception of justice. Finally, since justice is a parameter of a good life, we have moved full circle from ethics to liberalism and back to ethics, and thereby, towards the desired ethical foundation of liberalism.

(b) Assessing Dworkin’s Liberalism

One of the main features of Dworkin’s conception of liberalism is that it adopts a continuity approach that assumes at the start “that all one’s ethical convictions are available in politics.”⁷⁴ Dworkin believes he has found in his continuity strategy “the ethical foundations for liberalism.”⁷⁵ As a result, he proposes a conception of liberalism that he claims can provide us with a basis for constructing a “*liberal ethics*,” one that

gives full effect to convictions held by individuals that are “congenial to liberal political principles,” rather than requiring these individuals “to set these convictions aside, to check them at the voting-booth door.”⁷⁶

I agree with Dworkin that the significant ethical values of our personal lives must somehow carry forward into the political dimension of our lives. A continuity strategy offers a good means of linking the ethical and political perspectives and of explaining why the ethical perspective of liberalism should be found in the personal perspective. For example, the right to freedom of conscience or the right to security of person refer to normative values that are important in our personal lives. Thus, the existence of rights is a necessary component of liberal democracies whose purpose is in part to ensure that citizens can resist majoritarian policies that do not respect certain basic liberties and freedoms. Dworkin correctly points out that liberal democratic governments have an obligation to “set the stage,” to foster circumstances that allow individuals to enjoy the fruits of democracy. As a corollary of this obligation, a continuity strategy can explain how, through its public officials, government can and should be “neutral” in how it treats individuals.

However, there are important shortcomings to Dworkin’s conception of liberalism based on the continuity strategy that he develops. One of the most important weaknesses is the specific conception of continuity that he puts forward. There are at least two ways to interpret continuity between the personal and the political perspectives. In one case, continuity means that ethical values rooted in the personal perspective are in some way carried into and applied in the political domain. For example, being honest and truthful are ethical values that are usually considered important in constituting what is a good life

for us and for others. To rephrase this point in negative terms, we would say: a life that I might live or that someone else might live that would require a person to be continually dishonest, deceitful, and lying could not be considered a better life. In this sense of continuity, ethical values such as honesty and truthfulness are considered important and should be practiced in the personal perspective, but in addition, I would suggest that most people would claim that they should also be applied in the public domain. We are all obligated to practice them in the personal and the public domains whether or not any one of us is fully convinced personally that such practice always results in a *better* life.⁷⁷

Dworkin is, however, proposing a different meaning of the idea of continuity. I suggest that Dworkin's proposal for continuity is best described as a 'good fit' between separate and related domains. This sense of continuity seeks to find a seamless transition from the personal to the political perspectives. I will illustrate what I mean by 'good fit' by reference to the building and assembly of prefabricated homes. Prefabs are often built in two parts: each part contains well-known rooms and spaces that serve specialized functions in a house: for example, kitchen, living room, bedroom areas. Once each part is finished, it is transported over roads to the site where the house is to be erected, and assembled there. If the design of a prefab were to include large cracks, or worse, large spaces, between the two prefab parts, we would not usually consider the resulting product adequate, especially in our Canadian winters. A 'good fit' of the two assembled parts is essential and would be a necessary condition of such construction contracts. In addition, a 'good fit' increases the probability that the prefabs can serve ultimately as the means for creating a 'home.'

According to this interpretation of continuity, Dworkin's challenge model of the good life provides a general model of what makes up a 'good fit' between the personal and the political perspectives. To accomplish the 'good fit', Dworkin distinguishes between first and third person ethical integrity within the personal perspective. He argues that legitimate continuity between the personal and political perspectives in liberalism is limited to first person ethical integrity.⁷⁸ There is, however, no legitimate continuity between the two perspectives based on third person ethical integrity since it involves what would be good for others.

One way to assess a model is to work out some of its consequences and to ascertain if they would be acceptable to most of us. It could seem that one of the consequences of the challenge model is that neither the state, nor anyone through the state, could legitimately impose on others an obligation to practice some ethical value as good for them if they don't want to since, if we take the challenge model too literally, "life cannot be better for me in virtue of some feature or component I think has no value."⁷⁹ That conclusion would seem to hold even if it involves an individual – leaving aside children, for the moment – who might have come to the conclusion that a life of continuous dishonesty, deceitfulness, lying, and excessive psychological control of family members is the better life.

These restrictions on state action seem excessively prohibitive. For example, if a young adult has a history of being outside the law, the state should do what it can to reintegrate that individual into society, including teaching the individual the values that contribute to a healthy society. In democratic societies, the state not only practices retribution in such cases but also rehabilitation on the rationale that all of society gains,

including the individual himself or herself, if the individual becomes a better citizen. In the same vein, forming productive and responsible citizens is one of the main purposes of state imposed minimum education requirements in a liberal democracy. Education is considered important and necessary for a strong and healthy society. However, the importance of education is not limited to the acquisition of reading, writing, arithmetic and other skills, but is also due, in large part, to the belief that it improves the quality of life of the individuals receiving it. Thus, educational programs sanctioned by the state should be education that not only provides information but also teaches values that are necessary for and improve the lives of citizens in society.

Of course, it could be said that I'm painting a caricature of Dworkin's position since he advocates a limited form of state paternalism. As he says, the challenge model does not rule out compulsory education.⁸⁰ Let's take a look at his idea of legitimate state paternalism. Dworkin argues that any state action, including all cases of state paternalism, must be "sufficiently short-term and limited" and "not significantly constrict choices" of the individual.⁸¹ State action must satisfy these two requirements because, ultimately, state paternalism is acceptable only if based on and justified by a individual's critical interests. It is the individual – in the first person - who, under the challenge model, must decide that "life cannot be better for me in virtue of some feature or component" unless he or she thinks it has value.⁸² Thus, the type of state paternalism that Dworkin supports is consistent with his more general position that continuity between the personal and the political perspectives cannot be based on what individuals – including government - consider to be good for others.

However, Dworkin's idea of acceptable paternalism is a pale rendering of what would be considered a healthy state paternalism, one that takes seriously the need for actions designed for the well-being of a democratic society and its members. Richard Arneson has argued against Dworkin's argument that state action must "not significantly constrict choices." As Arneson points out, both the individual and society are involved in a process of discovery of what constitutes the good: society, in its roles of providing "fair shares of opportunity for a good life" by bringing about the "best determination" of arrangements that will contribute to it; and the individual, who must try to discover what is the good life for him or her. Of course, both could make mistakes. For example, if society offered children the opportunity to have sex with adults "true opportunities for the good life are not provided." This assessment is not altered if we defer to the judgement of the individual.⁸³ In a similar vein, I have argued that a state sponsored educational system – whether a public school system or a state authorized private school system – provides an example of a healthy state paternalism that goes beyond Dworkin's two constraints. There is no doubt that the type of state paternalism that Dworkin supports is consistent with his claim that continuity between the personal and the political perspectives is based on first person ethical integrity and not on attempts at third person – other-centered – ethical integrity. However, the type of state paternalism acceptable to Dworkin still leaves us with the conclusion that the restrictions imposed by Dworkin's challenge model on state action seem excessively prohibitive.

How could Dworkin respond to this criticism? How else could he deal with the claim that it is unacceptable to prevent the state in a liberal democracy from attempting to change beliefs in individuals who affirm and act on the basis of negative ethical values –

like dishonesty and lying – as the basis for a better life? He could argue that a continuity strategy allows the state to invoke the requirements of justice. Such an argument would call upon a “resource-based conception of justice”⁸⁴ and claim that liberal equality requires an egalitarian distribution of resources, whether it is dealing with education, with individuals that have adopted set of negative ethical values like the one in our example, or any other sphere of society falling within the legitimate purview of state action.⁸⁵ However, in Dworkin’s liberalism, liberal equality can only support the distribution of impersonal resources, which involves only things like “land, raw materials, houses, television sets and computers, and various legal rights.”⁸⁶ And, his conception of impersonal resources implies that there can be no direct relationship possible between these resources and the ethical values held and practiced by individuals in the personal sphere – the sphere of first person ethical integrity.

Given Dworkin’s understanding of justice, we could rephrase the question as follows: how would a resource-based conception of justice allow the state to deal with an individual who came to the conclusion that a life of continuous dishonesty, deceitfulness, lying, and abusive control of family members is the better life? It would seem that Dworkin’s concept of liberal equality provides the following answer to that question: laws “prohibiting activities or ways of life some people might wish to take up” are justified if they are “necessary to protect an egalitarian distribution of resources.”⁸⁷ Thus, a liberal state can justify taking coercive action against an individual who would consistently act on a belief that the better life can only obtained by leading a life of dishonesty and deceit if such actions are required to protect an egalitarian distribution of resources such as “land, raw materials, houses, television sets and computers, and various

legal rights.”⁸⁸ However, it is the values that an individual possesses, values that are integral to his or her idea of the better life - whatever that life may be - that motivate and justify his or her actions. These values also motivate and justify our actions related to the distribution of resources, and not the other way around. Dworkin’s resource-based conception of justice would not provide a firm basis for the state to legitimately attempt to change the values of such an individual.

As a result, an appeal to a resource-based conception of justice would still leave unanswered my criticism that the constraints imposed by Dworkin’s challenge model on state action seem excessively prohibitive. The issue here is not whether the state should improve the way it sets the stage – to use Dworkin’s metaphor - but rather, whether the state is justified in assisting the individual to live a better life through educating that individual on the values he or she will use in creating the role they wish to perform on the stage. Thus, it seems that society through the state is not justified in intervening to modify the ethical values that inform a citizen’s decision-making. The prohibition is in accord with Dworkin’s conception of first person ethical integrity and his resource-based conception of justice.

I have claimed that Dworkin’s resource-based conception of justice would not allow the state to contribute directly to the shaping of ethical values in individuals. Yet some schools of thought in the psychology of moral development argue that situational and environmental factors play an important role in shaping our moral values.⁸⁹ Their insights have already been used to justify and develop state sponsored initiatives for the well-being of members of society that include, amongst others, providing assistance and support for cases of battered spouses, for adults who were sexually abused as children,

and for military personnel who have suffered post-traumatic stress. In most of these cases, the rehabilitation needed requires that values that are important in a healthy democracy be brought into play – either because the individuals are learning for the first time that some values have a much larger scope than they ever thought they did or because they have to relearn the strength and the significance of some values in society because these values have been assailed by traumatic experiences. Individuals in such cases need a therapy to deal with their demons that includes values considered important for a healthy democratic society. In addition, such values are also important to rebuild a positive self-image and to strengthen a sense of self-worth.

State intervention in these types of cases implies more than just setting the stage or the mere distribution of impersonal resources. It also involves the distribution of what Dworkin would consider personal resources. Personal resources may not be something that can be counted, but they can be shared with others and they can be developed and improved. For example, health care givers must bring into play important human values if they are to provide support to a person who has been a victim of the stresses of workplace harassment. The human values themselves and how they are brought into play by the health care givers cannot be reduced to impersonal factors like time, equipment, and technical experience. In addition, state intervention cannot always be considered to be “sufficiently short-term and limited” and “not significantly constrict choices”⁹⁰ of the individual, as required by Dworkin, since interventions in the type of cases mentioned above, for example, are often long-term and do constrict choices.

Dworkin’s continuity strategy and challenge model provide only a limited basis for continuity between the moral development of individuals - or, as was just discussed,

rehabilitation - and legitimate state action for that purpose in the public sphere. Dworkin rests the whole enterprise of an individual's moral development on the idea that the exercise of one's freedom, once "the stage" has been properly set by the state, will somehow produce the ethical values necessary to support a healthy liberal democracy. This is how he accomplishes the stated aim of liberalism in the *Tanner Lectures*: a liberalism "giving full effect to the most comprehensive and philosophical convictions" we possess.⁹¹ Since the only role for the state is "setting the stage" through a resource-based approach to justice, any attempt by the state to provide some form of moral development - or rehabilitation - whether or not it is a consequence of democracy itself seems unjustified.

This is an unexpected result for a conception of liberalism that presents itself as a conception that will show how "ethics merges with politics, the personal into the political perspective."⁹² Thus, from a pragmatic point of view, the specific conception of continuity that Dworkin proposes suffers from its inability to justify state action in areas like mental health care, for example, that have become recognized in our society as requiring state intervention.

The point here is not to criticize Dworkin primarily on the basis of work done in the psychology of moral development, but rather to argue the more general point that Dworkin's liberalism provides a very limited basis for state initiatives involving either the moral development or the rehabilitation of individuals, despite the fact that such initiatives have come to be seen as generally necessary and justifiable. Thus, my criticism of Dworkin's continuity strategy - and of his liberalism - is not that the state should or should not ensure that citizens reach a certain stage of moral development - on

that score, I agree with Dworkin - but rather that the continuity strategy, as he conceives it, and his liberalism, does not allow the state sufficient room for action in fostering the acquisition of ethical values necessary for a healthy democracy.

Let's summarize the analysis to this point. It is generally accepted that the state in a liberal democracy has a responsibility to foster values that ensure a healthy liberal democratic society. To foster a respect for law and order, for example, is one way to contribute to that responsibility. However, my disagreement with Dworkin is not limited to how the state should carry out that responsibility, for the disagreement extends, more importantly, to the philosophical foundation that justifies what the state does or does not do in that regard. It is my contention that Dworkin's specific conception of continuity prevents the state from effectively performing its proper role by placing overly stringent limits on what the state can do in the sphere of building values. In Dworkin's conception of continuity, the link between justice and first person ethical integrity is considered continuous because justice is treated as a parameter of a good life for each one of us. However, since impersonal resources – the only kind that can be distributed under Dworkin's resource-based conception of justice – includes only things like “land, raw materials, houses, television sets and computers, and various legal rights”, there is no direct relationship possible between these resources and the ethical values held by individuals since these values belong to the sphere of first person ethical integrity. In Dworkin's scheme, the state is only in the business of setting the stage through the distribution of impersonal resources. That implies that the distribution of resources by the state is intended to have no direct bearing on the ethical values held by individuals. That is why I have described Dworkin's conception of continuity as a ‘good fit’

conception. It distinguishes, but also separates, first person ethical integrity - where an individual's ethical values reside - from a resource-based conception of justice. The separation is not absolute since justice is treated as a parameter of a good life, but the bond between the two is akin to a narrow one-way bridge that would link a small island to a large body of land. This type of continuity has far-reaching effects. It deprives the state of the right to purposefully influence the development of democratically desirable values that should form part of an individual citizen's ethics and forces it to justify its policy mainly on the basis of a resource-based conception of justice. However, the state has a responsibility to initiate programs designed to provide its citizens not only with impersonal resources but also with resources that Dworkin considers of a personal nature. Examples of such programs are government-sponsored assistance to battered spouses and to military veterans of armed conflict that include in many cases specialists in health care. That's why I have argued that Dworkin's conception of continuity has far-reaching consequences that make it a poor candidate for providing ethical foundations for liberal democracy.

There is a second way to assess Dworkin's continuity strategy. In his assessment of Rawls's theory of justice⁹³, Dworkin argues that the theory could not gain categorical force based on its moral foundation. It is reasonable, therefore, to submit Dworkin's continuity strategy to the same task of demonstrating on what basis it could gain categorical force. I will argue that an analysis of the specifics of the moral foundation of Dworkin's version of continuity shows a weak basis for categorical force. In the first part of this section, I argued that Dworkin's 'good fit' continuity strategy produces

unacceptable consequences. In this part, I will argue that a 'good fit' type of continuity imposes significant limits on the potential categorical force of the strategy.

If "ethics merges with politics, the personal into the political perspective,"⁹⁴ what is the moral foundation on which Dworkin's continuity strategy could claim categorical force? If Dworkin provides a satisfactory answer to this question, then our search for the moral foundation of an ethics program for government in a liberal democracy is complete and we can start working out applications. However, first, we must establish just how strong a foundation Dworkin's liberalism could provide for the moral obligations imposed on public officials in the public domain - what he calls categorical force.

There are two ways to establish the categorical force of a continuity strategy. One way involves focusing on the content of the continuity strategy. In proposing the challenge model in the *Tanner Lectures*, Dworkin stresses that it is totally based on convictions we are assumed to "already have."⁹⁵ That would imply that the categorical force of the continuity between the personal and the political perspectives depends partly on the categorical force that these convictions already possess when Dworkin organizes them into a coherent whole.

Given Dworkin's claims that "politics is an extension of ethics"⁹⁶ in a liberal democracy, we might expect to be mainly concerned with ethical values rooted in the personal perspective. Dworkin does indeed distinguish convictions relating to ethical values from convictions relating to a liberal political conception of democracy. For example, liberal political convictions involve at a minimum the three basic ideas of a liberal conception of democracy: equality, liberty, and tolerance.⁹⁷ If "politics is an extension of ethics,"⁹⁸ the categorical force of convictions rooted in the personal

perspective might have the special role of informing our understanding and interpretation of the ideas of equality, liberty, and tolerance. On this reading of Dworkin, the source of the categorical force of these three ideas would not start from within the political perspective, but, rather, from within the personal perspective that informs it. In other words, the categorical force of the ethical values in the personal perspective would be the gage for the ethical fibre and the categorical force of the political values that underwrite the decision-making of a political community acting collectively.

However, Dworkin considers ethical integrity in the first person as radically distinct from ethical integrity in the third person – other-centred and subject to state action in the public domain. This separateness becomes critical in the execution of the strategy, especially in the public domain. Since government actions are based on what is good for others, then we cannot justify government action by invoking values that are part of ethical integrity in the first person. Although the central ethical issue of the personal perspective involves the question of the value of our own life, ironically, the basis for the categorical force of some of our most important ethical convictions - the ones that we invoke in the public domain – are prevented from being justified from the point of view of the personal perspective, requiring rather a foundation in the political perspective of Dworkin's political philosophy.

Where then is the moral foundation for action in the public forum on which Dworkin's liberalism could claim categorical force? On what basis can it recognize certain ethical convictions as having the categorical force necessary to have a certain priority in collective decision-making? Although the challenge model defended in the *Tanner Lectures* and *Sovereign Virtue* provides a framework for the personal and

political perspectives, the categorical force of the convictions invoked in the public forum is defended elsewhere. In the Tanner Lectures, Dworkin refers us to his earlier work *Taking Rights Seriously* when he says: “liberals insist on the sanctity of a certain set of familiar individual rights to liberty” and they treat these rights “as *trumps* over other considerations”.⁹⁹ To establish the categorical force of government action, we must turn to the political perspective worked out in Dworkin’s political philosophy.

In *Taking Rights Seriously*, Dworkin considers that his political philosophy belongs to the family of rights-based theories because it assumes at least one right as fundamental.¹⁰⁰ Such theories, says Dworkin, place the independence of the individual and his or her actions at the centre of the theory’s foundations.¹⁰¹ He argues for a liberal conception of democracy that ultimately rests on a concept of equality¹⁰² and advocates that the fundamental right of each citizen governed by a liberal conception of equality is “the right of each to equal concern and respect.”¹⁰³ In addition, Dworkin argues that all other particular rights – including the various rights to specific liberties – are derivative from that right “taken to be fundamental and axiomatic.”¹⁰⁴ Individuals possess the fundamental right to equal concern and respect simply because they are “human beings with the capacity to make plans and give justice.”¹⁰⁵

Thus, to establish the categorical force of the moral foundation for action in the public forum, we must turn in part at least to the categorical force of the rights attributed to human beings and articulated in his political philosophy. Dworkin distinguishes between someone’s legal rights and moral rights.¹⁰⁶ The fundamental right to equal concern and respect is a moral right. That rights can have moral status has important implications in Dworkin’s theory. Although the legal rights depend on the specific laws

that have been passed, moral rights are the background upon which to interpret the laws put in place to protect them.¹⁰⁷ On Dworkin's view, certain moral rights have been "made into legal rights by the [U.S] Constitution."¹⁰⁸ On this interpretation, the usual constitutional rights, such as the rights to freedom of religion, freedom of expression, and freedom of association, represent claims – moral claims- against the government.¹⁰⁹ His point is that the Constitution "injects an extraordinary amount of political morality into the issue of whether a law is valid."¹¹⁰ On the basis of what he calls the moral reading, Dworkin goes so far as to declare that "in our society a man does sometimes have the right (...) to disobey a law (...) whenever that law wrongly invades his rights against the Government."¹¹¹ In the introduction to *Freedom's Law*, Dworkin articulates the consequences of this interpretation of moral rights: "the moral reading proposes that we all – judges, lawyers, citizens – interpret and apply the abstract clauses [of the United States Constitution] on the understanding that they invoke moral principles about political decency and justice."¹¹² These moral principles represent for Dworkin basic convictions that citizens can and should invoke in the public forum to make moral claims against the government.

Given Dworkin's political philosophy, how does his rights-based theory – as a political perspective - fit within his conception of continuity? To answer this question, it will be useful to illustrate the relationship between his rights-based theory and his conception of continuity by reference to the notion of government neutrality. In *Taking Rights Seriously*, Dworkin argues that most government legislation cannot be neutral since it defines and implements the majority's view of what constitutes the common interest on issues relating to social, economic, and foreign policy.¹¹³ Similarly, the

challenge model claims that the government cannot be neutral on third person ethical integrity. The challenge model agrees with the earlier position, but it lays the foundation for a certain type of government neutrality aimed at first person ethical integrity.

However, given the power of the majority, it is important, says Dworkin, to avoid the tyranny of the majority. *Taking Rights Seriously* argues that moral rights made into law represent the individual's protection against government if, as it defines and implements the majority's view, it should wrongfully infringe on spheres of his or her life that are protected by specific rights.¹¹⁴ Put another way, the institution of rights "represents the majority's promise to the minorities" – and, I would add, to all individual members of 'the majority' who might at times disagree with specific government policies – "that their dignity and equality will be respected."¹¹⁵ As would be expected, Dworkin's challenge model is consistent with his political philosophy whereby an individual is fully justified to require that a liberal democratic government remain neutral on first person ethical integrity, to the extent possible, and he or she has recourse to rights – as trumps - to ensure that it does.

Thus, Dworkin's political philosophy – a rights-based theory – maps well onto his conception of continuity between the personal and political perspectives. If the categorical force of the moral foundation for action in the public forum lies in part in his rights-based theory and if the rights-based theory is integrated as is into the political perspective of his conception of continuity, then the categorical force of Dworkin's conception of continuity is found partly in the personal perspective - worked out in the challenge model, and partly in the political perspective – worked out ultimately in his rights based-theory.

The result, however, is not to give “full effect to the most comprehensive and philosophical convictions” we possess¹¹⁶, but rather, as I shall argue, to limit the effect of some of those convictions by marginalizing them in a public forum. If we consider Dworkin’s continuity strategy and challenge model strictly from the point of view of the public forum, the categorical force of convictions that are invoked in that forum for purposes of decision-making and action is mainly derived from his rights based-theory. In the public forum, therefore, the categorical force of the continuity strategy and challenge model is mainly derived from the categorical force of the rights-based theory itself. This conclusion has important implications for public officials and their ethical obligations in the public forum, since, on Dworkin’s account, public officials are involved in the definition and implementation of the majority’s view of what constitutes the common interest.

Let’s take a closer look at Dworkin’s rights-based moral foundation for action in the public forum. He considers the concept of equality to be the cornerstone of that foundation and understands equality as the fundamental right of each citizen “to equal concern and respect.”¹¹⁷ What is meant by this formulation of the fundamental right? When Dworkin says that those who govern must treat citizens with “concern”, he means that they must treat them “as human beings who are capable of suffering and frustration.” However, this reading of “concern” only requires that those who govern must define and implement the majority’s view, while, at the same time, ensuring that they minimize harm to individuals. When he says that those who govern must treat citizens with “respect”, he means that they must treat them “as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived.”¹¹⁸ This

reading of “respect” implies that those who govern must define and implement the majority’s view of what constitutes the common interest in such a way that it is consistent with first person ethical integrity.

I can agree with Dworkin that the moral obligation to treat others with “equal concern and respect” is fundamental, and yet disagree with his particular view of what constitutes such treatment. It must be remembered that he defines “the proper role of government in helping people to lead good lives” as limiting itself to setting “the right stage” by bringing about circumstances “as they should be.”¹¹⁹ All of this is driven by a resource-based conception of liberal justice. However, the result is not much of a moral foundation for the moral obligations of public officials as they carry out the acts of defining and implementing the majority’s view of the common interest. Although public officials could be provided with some direction on values required for setting the right stage, they would not receive much guidance on what constitutes defining and implementing the majority’s view of the common interest ethically. Dworkin admits that his challenge model – and I have argued, his rights-based theory - leaves open important normative questions in the public forum: for example, the question of how much the government should do to keep alive forms of life some people have found of great value or the question of how far it is appropriate for government to provide education to its citizens on the virtues of competing lives open to them.¹²⁰ However, the answers to questions like these involve important issues in the public forum and convictions invoked by officials in public decision-making.

It is reasonable to claim, as some people do, that continuity between the personal and political perspectives implies the capacity to apply similar ethical values in both

perspectives. It is obvious that Dworkin's conception of continuity does not support such expectations. Dworkin's strategy offers a rights-based theory buttressed by a resource-based conception of justice that specifies limits to government policies and a challenge model that places first person ethical integrity at the centre of an individual's life. However, his proposed foundation does not provide a very firm basis for interpreting and justifying such values as honesty, responsibility, accountability, loyalty, and integrity. My objection to Dworkin does not involve the instrumental role of these values in setting the right stage, but rather their ordinary meaning and justification, i.e. what truly gives them categorical force. It is ethical obligations such as these that a public official should invoke in elaborating, interpreting, and applying public policy that is not specifically rights related.¹²¹

In the end, we are led to a conclusion similar to the one Dworkin reached in his assessment of Rawls's theory of justice¹²². Dworkin's continuity strategy and challenge model cannot gain the required categorical force in the public forum based on its moral foundation, whether we take it to be the rights-based theory or first person ethical integrity in the personal perspective. The decision-making of public officials in the public forum involves, by definition, third person – other-centred - ethical integrity. On Dworkin's version of continuity, the moral foundation for their ethical obligations in that forum cannot appeal to ordinary values that are deemed to properly belong to first person ethical integrity. Honesty as telling the truth and integrity as consistently giving priority to ethical values cannot be done justice if they are treated as solely justified in the "third person." Nor can public officials' ethical obligations in the public forum be based solely on the idea of individual moral rights – understood as claims against the government.

Dworkin cannot make good his promise that “ethics merges with politics, the personal into the political perspective,”¹²³ because, as I have argued, his ‘good fit’ interpretation of continuity ultimately cannot provide categorical force for many significant ethical obligations in the public forum.

There is a second way to attempt to establish the categorical force of the continuity strategy. Rather than focusing on content and its potential consequences, it assesses what we could call the form. For example, in *The Tanner Lectures*, Dworkin claims that the continuity strategy involves a coherence approach. According to this approach, the challenge model should not be understood as providing a justification for the convictions we already have but, rather, as organizing “the convictions or intimations of ethical value which most of us do have into a coherent picture.”¹²⁴ On this understanding, the continuity strategy would gain categorical force as a function of how well it does in making sense of our convictions as a result of the way it groups together and distinguishes these convictions. Thus, for continuity strategy’s categorical force to be greater than rival views, it must capture our intuitions about ethics “in a more satisfactory way than rival views.”¹²⁵

How could continuity as ‘good fit’ establish categorical force based on coherence? My previous example of prefabricated homes offers a way to illustrate a potential answer to the question. To say that an completed prefab has a ‘good fit,’ it is not sufficient to simply claim that the two prefabricated parts of a house have be assembled well. Once the assembly is finished, although each part contains separate spaces, the new owners of the prefab will probably expect, for example, that all the

spaces are well integrated and that there is some ease and logic in passing from one space to the other. As a consequence, most people would say that there is not a 'good fit' between the living spaces in the design of a house if there is no direct inside passage from the kitchen area into the living room and dining room areas. Thus, if people had to physically go outside of the house to get from one of these spaces to the other, they would probably claim that there was a bad fit between these spaces, especially if they live in a part of the country that has plenty of snow and sub-zero temperatures in winter. In this case, continuity in the design of these spaces requires that a 'good fit' include the efficient and effective integration of all the spaces in the house.

In a similar way, the challenge model offers us much more than simply two separate parts linked together. It pays particular attention to the nature of the interaction between the personal and the political perspectives. For example, it shows that justice in the political perspective is a parameter of the personal perspective. It also argues that the moral and legal rights of individuals in the political perspective provide them with recourse to protect themselves against government policies that would infringe on areas of the personal perspective protected by these rights. In this way, the continuity strategy with its challenge model gains categorical force because convictions that fall within the respective perspectives fit well together. In a manner similar to all the pieces of a jigsaw puzzle assembled to reproduce some representation, the challenge model assembles our convictions in such a way that they lend mutual support to each other in determining what it is for each of us to live well.

However, establishing the categorical force of the continuity strategy by appealing to coherence can, at best, be an intermediate result. Let's continue with the example of

the prefabricated homes. The 'good' fit description we have just given leaves aside critical questions like what constitutes a 'good' design for the living spaces themselves in the prefab. The design of living spaces can be 'good' in two different ways. In one case, the design of spaces is 'good' if it deals well with the differences between, for example, a bedroom and a kitchen. The design of the two living spaces must incorporate variations in characteristics that should occur when we pass from designing a bedroom to designing a kitchen. In addition, 'good' design of these living spaces ensures that there is a smooth passage from the kitchen to the dining room.

The design of these living spaces can be considered 'good' in a second way. A 'good' design of spaces can, and must, also consider what integrates the spaces together into a whole. In this sense of 'good' design, the idea of residence and what is required for a 'good' residence becomes important. It requires giving due consideration to factors like overall functionality. Thus, designing residences meant to be bachelor apartments makes different demands on the design than designing three bedroom bungalows. The overall design and the more detailed designs for the individual spaces are considered 'good' if they respect the types of residences involved. In addition, a critical aspect of a 'good' design for a residence is that it provide the basics of what constitutes a home, giving due consideration to factors like aesthetics. Without the integrating values that are part of the concepts of a residence and a home, all of the living spaces assemble together could not provide what is necessary to constitute a 'residence,' and ultimately to become a 'home.' This meaning of a 'good' integrated design is to be distinguished from the type of integration that the new homeowner must bring to the prefab to make it a 'home.' For example, the architects and the builders must let the design be shaped by values that are

shared amongst potential homeowners if they are to produce prefabricated homes that will have the necessary market appeal. Although it is still true that only the homeowners themselves can create a 'home,' a 'good' integrated design for prefabs must already possess characteristics that fit the potential homeowners values from the point of view of functionality and aesthetics.¹²⁶

Dworkin's appeal to coherence does not address the second sense of a 'good' integrated design. He has dealt well with the differences between the personal and the political perspectives, but he has not dealt with the shared values that can serve as the integrating values. Dworkin's critique of Rawls's justice as fairness was based on an understanding of liberalism as a political conception that can have categorical force only if its moral principles are "binding categorically, in advance of any agreement about them."¹²⁷ To the extent that categorical force is sought by appealing to coherence, then we are justified in asking Dworkin the same question he puts to Rawls's theory of justice: "can a political conception of justice gain categorical force (...) when its central principles are "latent"?"¹²⁸ If the challenge model only offers us a design that fits well the personal to the political perspective, it would seem that the categorical force of its continuity strategy based on appealing to coherence could, at best, be the categorical force of an intermediate result.

Let us summarize the essential points of Dworkin's claim that his version of a continuity strategy provides a conception of liberalism that allows people "to match their convictions about what it is to live well" to their politics.¹²⁹ The challenge model suggests a way to look at life from the personal perspective that organizes all of our important moral convictions about what it means to "live well." In addition, a resource-

based conception of justice suggests a way to conceive of liberal justice that not only organises our convictions about justice in the public domain but also explains how justice can serve as a parameter of what it is to “live well.” Finally, a rights-based political theory provides the political domain with the means necessary to protect certain spheres of the personal perspective, spheres that are necessary to be able to “live well.”

There are important points in this summary that involve much more than a strict appeal to coherence. For example, if people were to truly “match their convictions about what it is to live well” to their politics,¹³⁰ they would be appealing somehow to the foundations of these convictions that include values that apply to both themselves and others. However, as we have seen, Dworkin separates the personal from other-centred, third person convictions.¹³¹ His discussion of the nature of these two types of convictions cannot be considered itself an appeal to coherence. Thus, in this case, Dworkin cannot claim that he has constructed a view that gains its categorical force solely based on coherence by making “political morality seem continuous with rather than discontinuous with”¹³² our personal ethics.

However, Dworkin’s appeal to a resource-based conception of justice and a rights-based political theory are also in many ways well beyond a strict appeal to coherence. As I have argued, Dworkin defends the superiority of his resource-based conception of justice and his rights-based political theory on the basis of the categorical force of the convictions involved. The political perspective identified in his continuity strategy simply incorporates, unmodified, the conception of justice and the rights-based political theory. Thus, to the extent that the categorical force of the continuity strategy depends on categorical force provided by the political perspective, then it also partly

derives its categorical force from the convictions that are invoked to justify the rights-based political theory. As a result, the categorical force of the continuity strategy is not derived from a coherence approach but from the convictions that make up the political perspective.

In addition to these criticism of the categorical force based on coherence internal to Dworkin's conception of continuity, there are important convictions about what we believe should carry weight in the political domain that don't fit neatly into either of Dworkin's two perspectives. His conception of the continuity forces these convictions to the sidelines of the political perspective where they are marginalized and have little standing in public decision-making. For example, some liberals – like William Galston¹³³ - believe that convictions about the value of life, the normal development of our basic human capacities, or the application of common ethical values should be important not only in the personal perspective but also in the political perspective. Dworkin's liberalism either marginalizes them or, at best, relegates them to the personal perspective. Yet that is exactly what a coherence approach should not do since it is supposed to limit itself to organizing our convictions. To the extent that a coherence approach no longer simply organizes our political convictions but selects and screens some out and to the extent that it attributes more weight to some political convictions than it does to other political convictions, then it is no longer simply a coherence approach. To justify these actions, Dworkin necessarily appeals to the categorical force of some convictions considered more fundamental. He does this, for example, when he claims that the fundamental right of each citizen governed by a liberal conception of equality is “the right of each to equal concern and respect.”¹³⁴

As a result, we must conclude that the Dworkin's version of the continuity strategy cannot gain the categorical force it needs in the public forum simply through a coherence approach, especially if it is to fulfil its aim of "giving full effect to the most comprehensive and philosophical convictions" we possess.¹³⁵ In addition, as soon as Dworkin appeals to his rights-based theory or first person ethical integrity in the personal perspective as elements of its moral foundation to gain the required categorical force in the public forum, he is no longer putting forward a conception that is strictly speaking a coherence approach.

In conclusion, Dworkin's liberalism offers an impoverished conception of continuity between the personal and the political perspectives. We have reached this conclusion concerning Dworkin's continuity strategy as a result of assessing it in accordance with three different criteria. Thus, we looked at some of the practical consequences of the strategy and concluded that some of them are unacceptable. We also assessed the strategy based on its ability to provide categorical force for its claims from the point of view both of its content and of its form. We understood the content to refer to the convictions themselves and the form to refer to a coherence approach. In both cases, we found that Dworkin's version of continuity could not provide sufficient categorical force for its claims.

I have argued that the main difficulty of Dworkin's strategy lies in the understanding of continuity that he puts forward. For example, his conception of continuity establishes a distinction between first person and third person ethical integrity within the personal perspective that is too restrictive and categorical. The distinction is

carried into the political perspective and serves as the basis for Dworkin's argument that the state can and should be neutral in relation to ethical integrity in the first person. However, one of the consequences of this distinction is that ethical values rooted in first person ethical integrity cannot be invoked in dealing with collective decision-making and action in the public forum, notwithstanding the importance these values may have in dealing with other-centred – third person- issues. In addition, Dworkin's version of continuity links the personal and the political perspectives in such a way that it limits the role of government to applying a resource-based conception of justice.¹³⁶ But, I have argued, a resource-based conception of justice leaves public officials without a firm foundation for such things as ordinary moral obligations in public decision-making.

There is an alternative interpretation of continuity that I will develop in the next chapter. It interprets continuity as the overlap and the application of values found in both the personal and the political perspectives. On this version of continuity, we could still retain many of Dworkin's insights found within his version of continuity strategy. For example, continuity as the overlap would also provide a means of showing "how liberalism develops naturally from ethics so that ethics merges with politics, the personal into the political perspective."¹³⁷ In addition, continuity as the overlap would also retain the assumptions that "ethics and politics are intertwined"¹³⁸ and "that all one's ethical convictions are available in politics."¹³⁹ An overlapping interpretation of continuity would also prove most useful in providing a foundation for the ordinary ethical obligations of public officials. This is especially important, since I agree with Dworkin that it is part of "the job of governing" that different departments of government must "'define' moral rights through statutes and judicial decisions, that is, to declare officially

the extent that moral rights will be taken to have in law.”¹⁴⁰ Such a continuity strategy would still search for “normative integrity” between the personal and the political perspectives.¹⁴¹

Although Dworkin does not choose an overlapping understanding of continuity, his liberalism is not, however, without important virtues. As I have already pointed out, it does identify necessary elements that should be included in a foundation for ethics for government in a liberal democracy. In addition, a continuity strategy should provide a foundation for constructing a “*liberal ethics*”, in the sense that those convictions that allow individuals to be “congenial to liberal political principles” are shown to be convictions that “already form the central part of how many of us imagine living well.”¹⁴² I would also reserve a special role for individual rights in constructing a public ethics. And rights must retain something akin to the force of “trumps”, as Dworkin says, to ensure that state policies do not infringe on spheres of an individual’s personal life that are protected by these rights.

While I can agree to a large extent with Dworkin’s description of the concept of “*liberal ethics*,” I also disagree with important distinctions he introduces into his conception of liberalism. For example, I can agree with him that “living well” and treating people with “equal concern and respect” are necessary components of a continuity strategy between the personal and the political perspectives and, at the same time, argue that these concepts involve much more than Dworkin is willing to recognize. In addition, public officials are justified in invoking ethical values in their decision-making, like the ones in my set of five values - honesty, responsibility, accountability, loyalty, and integrity - as necessary means of ensuring the fair distribution of impersonal

resources and the protection of individual rights. However, in this case too, I would argue that these values involve more than Dworkin's liberalism can legitimately recognize.¹⁴³

In the end, I have to conclude that Dworkin does not accomplish his aim of "giving full effect to the most comprehensive and philosophical convictions" we possess.¹⁴⁴ This result is unacceptable from the point of view of a public ethics and its impact on the decision-making of the public officials in the public forum. Dworkin's version of a public ethics would not provide public officials with a firm foundation on which to justify the many common ethical values they should invoke in the workplace.

In the next chapter, I suggest that an overlapping understanding of continuity is more promising in building a liberal public ethics, since it starts with the idea that many of our common ethical convictions should be treated as paradigmatic and necessary to both the personal and the political perspectives. However, before we work out the implications of that idea, we will look at a proposal put forward by William Galston for a liberalism that attempts to overcome the shortcomings that we have identified in both Rawls and Dworkin and, by so doing, offers important and essential elements that must be included in any foundation for a liberal ethics.

William Galston and Liberal Purposes

Galston agrees with Dworkin that Rawls's discontinuity strategy cannot deal adequately with contemporary criticisms of the liberal state, in particular when those criticisms are directed at the ethical foundations of liberalism.¹⁴⁵ As we have seen, Rawls

assumes that citizens as citizens hold overall views that can be divided into two distinct parts: in one part, they affirm the publicly recognized political conception of justice and, in the other part, they hold a full or partial comprehensive doctrine.¹⁴⁶ He further insists that the political conception itself does not presuppose accepting any particular comprehensive doctrine and, in particular, that it is not formulated in terms of any comprehensive doctrine but “in terms of fundamental ideas viewed as latent in the public political culture of a democratic society.”¹⁴⁷ However, Galston parts company with Dworkin on what constitutes an adequate ethical foundation of liberalism. In particular, he is critical of Dworkin’s view that the liberal state must be “neutral” on “the question of the good life” and that “political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life.”¹⁴⁸

Galston, Dworkin, and Rawls agree that liberalism must give full weight to the fundamental ideas “latent in the public political culture of a democratic society.”¹⁴⁹ However, Galston sides with Dworkin in arguing that an adequate interpretation of these fundamental ideas must reflect a much closer relationship between liberal political institutions and practices and “the moral culture of the liberal society”¹⁵⁰ than Rawls is willing to admit to. He shares Dworkin’s quest for a liberalism that “develops naturally from ethics so that ethics merges with politics.”¹⁵¹ Thus, Galston’s “guiding intuition” in developing his theory is a belief in “the dependence of sound politics on sound culture.”¹⁵² It has led him to a liberalism that includes liberal goods, liberal virtues, and diversity in the liberal state. Thus, Galston would agree with Dworkin that a continuity strategy assumes that “ethics and politics are intertwined.”¹⁵³ Galston’s theory of

liberalism strives to reflect a public political culture that takes its moral dimension seriously.

However, whether it is Dworkin's insistence that government must be "neutral" and limit itself to setting "the right stage" or Rawls's discontinuity approach, Galston argues that both have committed the error of justifying the liberal state by attempting to dispense "with all specific conceptions of the good."¹⁵⁴ Liberalism, writes Galston, "rests on a distinctive conception of the human good."¹⁵⁵ It starts with the idea that a liberal political culture "contains within itself the resources it needs to declare and defend a conception of the good and virtuous life."¹⁵⁶ As a result, he believes that only a liberalism that gives full weight to fundamental ideas of liberal goods, liberal virtues, and diversity, "latent in the public political culture of a democratic society" can hope to adequately respond to the contemporary needs of liberal democracies.¹⁵⁷

(a) Liberal Goods, Liberal Equality, and Liberal Virtues

In *Liberal Purposes*, Galston proposes a conception of liberalism that has three interdependent parts: liberal goods, liberal justice, and liberal virtues.¹⁵⁸ First and foremost, says Galston, liberalism is "committed to a distinctive conception of the human good, a conception that undergirds the liberal conception of social justice."¹⁵⁹ As for liberal justice, it is centred on the idea of liberal equality seen as a "mediating principle," necessary for "moving from the good of individuals to collective determinations."¹⁶⁰ Finally, liberal virtues refer to convictions, motivations, and traits of character that are required of liberal citizens to sustain liberal institutions and practices.¹⁶¹ To understand Galston's liberalism, we must take a closer look at what each part entails.

Galston's account of liberal goods is focused on a conception of the individual human good that attempts "to capture the best intuitions of well-being that underlie liberal social orders."¹⁶² Although his list contains seven liberal goods, his main purpose is not to establish a definitive list but rather to demonstrate that "liberalism cannot do without some account of human well-being."¹⁶³ The seven liberal goods are: life, normal development of basic capacities, fulfillment of interests and purposes, freedom, rationality, society, and subjective satisfaction. Each one of these goods is valued intrinsically and fundamentally by citizens in a liberal democracy. Each of these goods should be considered "an indispensable element of each individual's good."¹⁶⁴

Although the general meaning of many of the goods on the list could be considered straightforward, some terms would benefit from a few comments to ensure Galston is not misunderstood. In what sense is *freedom* "an indispensable element of each individual's good"? Galston gives three reasons why we value it: first, as the absence of constraints, it has instrumental value and is necessary to realize our interests and purposes; second, it is necessary for our self-determination; and third, it allows us to be responsible agents by taking action in accordance with our beliefs.¹⁶⁵ What does Galston mean by *society*? As an intrinsic good for the individual, he writes that it refers primarily to "the network of significant relations we establish with others" rather than to the idea of society in general. Finally, the liberal good *subjective satisfaction* refers to the positive psychological states we associate with our experiences. Thus, for example, we prefer pleasure to pain and security to fear.¹⁶⁶

The goods on the list also possess important common features. For example, each of these liberal goods satisfies what Galston calls a set of "background conditions" that

are an integral part of what makes up a liberal democracy.¹⁶⁷ Thus, each of these goods must be understood as “deeply secular” and “of this world”.¹⁶⁸ Each should represent an independently defined end and cannot be solely a means for one of the other goods.¹⁶⁹ Each one of these goods possesses at once “ultimacy and contestability.”¹⁷⁰ The list, taken as a whole, presents the human good as “plural” and, as a consequence, implies that an account of liberal goods “cannot be reduced to a single common measure.” There is neither “simple and unique hierarchy” nor any “lexical ordering” among the goods on the list.¹⁷¹ At the same time, liberal goods can and must provide a minimal unity to liberalism.¹⁷² They can be plural yet possess minimal unity because, says Galston, they should be understood as “broad generalizations” of pervasive and enduring features of human beings and not as universal truths.¹⁷³

The second core component of Galston’s liberalism is the idea of liberal justice. Liberal equality is the basic principle of liberal justice and represents the means of moving from the individual to the collectivity. In a liberal democracy, writes Galston, liberal equality is “the commitment to give each individual’s good equal weight in the determination of social policy.” However, this commitment is to be taken as a negative and not as a positive imperative. For example, liberal equality specifically implies that “no social policy can be sustained if its justification gives unequal weight to the good of different individuals within society.”¹⁷⁴

Liberal justice requires a means of ensuring access to liberal goods that not only acknowledges a special status for individual choice but also accommodates the two imperatives of need and of desert.¹⁷⁵ In Galston’s scheme, needs have priority over desert. Needs are legitimate claims individuals can make on society “simply by virtue of

fellow membership in a political community.”¹⁷⁶ Thus, to the extent that each individual’s good is given equal weight in a liberal democracy, then citizens have equal legitimate claims on goods and services “defined as essential.”¹⁷⁷ The distribution of goods and services on the basis of the need for them is justified because they are judged essential “in relation to the good as a set of end states.” Thus, in the case of a liberal good like life, more resources are usually required – and justified - to preserve the life of premature babies than full-term babies. The same is true in the case of the normal development of capacities, another liberal good, where handicapped people normally require more resources and accommodation to develop their capacities than most individuals who are not similarly challenged.¹⁷⁸ Liberal equality means that “the full development of each individual – however great or limited his or her natural capacities – is equal in moral weight to that of every other.”¹⁷⁹

On the other hand, opportunities that fall outside the sphere of need should be distributed in a liberal democracy through “desert-based competition.” Galston considers this expression equivalent to “equality of opportunity.”¹⁸⁰ Although equal opportunity can be defended in four different ways –on efficiency, on desert, on personal development, and on personal satisfaction¹⁸¹ –individually or collectively, none of these arguments, says Galston, are definitive. In fact, an overzealous approach to implementing equal opportunity can easily create “threats to liberal freedom, diversity, and security.” Equal opportunity can be kept in balance only by being defined within a conception of liberalism that is guided by a multiplicity of basic goals, each of which is allowed to “come into conflict with one another.”¹⁸²

A set of liberal virtues is the third core component of Galston's liberalism. In addition to liberal goods and liberal justice, it is equally important to ensure that these two components are "effective in the actual life of liberal communities."¹⁸³ I follow Galston in presenting his case for liberal virtues in two steps. Since there is a strand of liberalism that claims that virtue has no place in politics, it is important, says Galston, to start by showing that the liberal state does not and need not exclude virtues. Only then can one consider more closely the nature of the political culture "needed to sustain liberal institutions," a culture that would foster essential liberal virtues.¹⁸⁴

There exists within liberalism, says Galston, a fundamental tension between virtue and self-interest. That tension predates liberalism and can be traced as far back as Aristotle. Aristotle saw that "political life must be seen in large measure as a means to the attainment of virtue, understood as an end in itself." Yet, Aristotle was also well aware that there were others for whom the relationship of politics to virtue was reversed. In these other cases, virtue was considered a means to the ends provided by the political community. These ends could be commercial prosperity or, as in Sparta, military victory.¹⁸⁵ Galston claims that these two different interpretations of virtue are reflected, to a certain extent, in two main schools of thought in liberalism. One school - of which Hobbes is a major representative - deals with the tension between virtue as an end in itself and virtue as a means to an end by simply "denying the very existence of intrinsic virtue." It argues that virtue is "purely instrumental to nonmoral goods that constitute the true ends of liberal politics." A second school of thought - of which John Stuart Mill is a major representative - argues that in a liberal state "the same virtues are both ends and means", they are both an "intrinsic good" and "supportive of the liberal polity."¹⁸⁶

Siding with the second school of thought, Galston argues that some virtues are instrumental to the preservation of liberal communities while others are intrinsic to liberalism. He identifies four categories of instrumental virtues: a category of general virtues and three specialized categories of virtues required by the three dominant liberal spheres of society, economy, and polity.¹⁸⁷ The general virtues are required of every political community: courage, law-abidingness, and loyalty. The general virtues of a liberal society focus on individualism and diversity. Independence, a disposition to be responsible for one's self, is a virtue that serves individualism. The family is the critical arena where the exercise of responsibility in the form of self-restraint and of going beyond one's own interests is fostered. Tolerance is the virtue necessary to protect diversity. The virtues of a liberal economy divide into virtues associated with economic roles (entrepreneurial virtues) and virtues associated with modern market economies. Finally, the virtues of politics divide into general political virtues (transparency in government), virtues of citizenship (respect for the rights of others), and virtues of leadership (patience and persuasion).¹⁸⁸

Galston also claims that the liberal tradition identifies three liberal virtues that involve "intrinsic individual excellence." The first liberal intrinsic virtue is expressed in Locke's idea of "rational self-direction". It involves the "capacities for deliberative self-guidance and self-control."¹⁸⁹ The second intrinsic virtue is traced back to Kant's idea of acting "in accordance with the precepts of duty." It involves Kant's requirement that each one of us respect at all times "the rational moral element in himself and in *all* other men."¹⁹⁰ Galston finds the third virtue, "self-determination", in the work of philosophers like John Stuart Mill and Ralph Waldo Emerson. This virtue represents an adaptation of

the Romantic idea of “the full flowering of individuality.” It involves the idea that “one’s *dignity* resides in being, to some important degree, a person of one’s own creating, making, choosing.”¹⁹¹

At a certain level of generality, says Galston, these three intrinsic liberal virtues reveal a common core: “all lead to a vindication of the dignity of every individual and to the practice of mutual respect.” Despite their common core, an inevitable tension is generated between them. For example, the “deliberative outcomes” of Lockean rational self-direction contrast with the “a single course of action” usually prescribed by Kantian duty, while self-determination often requires the individual to go beyond both. Galston claims that to attempt to reduce the tension between these three intrinsic virtues by privileging one over the other two, as the “preferred standard,” is to do violence to the intrinsic value of that virtue itself.¹⁹² It is preferable, he says, to accept a certain level of “indeterminacy” in the relationship amongst these three virtues within liberal democracy. The best that democracy should attempt to do is to provide “an arena within which each may be realized” since all three represent “overlapping but distinct conceptions of individual excellences.”¹⁹³

If we assume that liberal virtues are not innate, as Galston does,¹⁹⁴ then one can inquire into the extent to which “formal institutions and informal processes of American society [are] engendering the virtues a liberal polity requires.”¹⁹⁵ This raises the issue of the role and limits of civic education. To understand what is involved in civic education, says Galston, we must distinguish two very different kinds of education. “Philosophical education,” he claims, seeks truth and develops “the capacity to conduct rational inquiry.”¹⁹⁶ “Civic education,” on the other hand, involves “the formation of individuals

who can effectively conduct their lives within, and support, their political community.”¹⁹⁷ It is “more rhetorical than rational” and requires a “moralizing history” filled with “a pantheon of heroes who confer legitimacy on central institutions.” This type of education is justified, according to Galston, because “it is unrealistic to believe that more than a few adult citizens of liberal societies will ever move beyond the kind of civic commitment engendered by such a pedagogy.”¹⁹⁸ In contrast to philosophical education, civic education is and should be “education within, and on behalf of, a particular political order.”¹⁹⁹ For that reason, civic education includes teaching “the virtues needed to sustain the liberal state.” Obvious candidates are law-abidingness, courage, loyalty, tolerance, independence, and respect for the rights of others.²⁰⁰

(b) Assessing Galston’s Liberalism

In the previous section, I assessed Dworkin’s continuity strategy from both a pragmatic and a theoretical point of view. I will also adopt a two-part procedure to assess Galston’s liberalism. On the pragmatic side, I will examine the practical consequences of his liberal purposes for institutionalizing ethics in government to ascertain if it is generally acceptable and if it has any important limitations. On the theoretical side, I will assess his liberalism’s ability to gain categorical force for ethics in government.

In my criticism of Dworkin, I argued that his resourced-based conception of justice implied unacceptable consequences: it made it difficult to justify state action designed to teach values necessary for sustaining and improving the quality of life in society for individuals. Galston does not encounter that difficulty since he claims that liberalism contains within itself a conception of the virtuous individual that includes both

instrumental and intrinsic virtues. On his account, the state is more than justified in fostering essential liberal virtues in its citizens. Thus, state sponsored initiatives are justified if they encourage the development of the virtues contained in the four categories of instrumental virtues: general societal virtues and the specific virtues that support the three major liberal spheres - society, economy, and polity.²⁰¹ For example, Galston considers it important for the liberal state to foster general traits of character like courage, law-abidingness, and loyalty.²⁰² In addition, a liberal state is justified in contributing to the development of intrinsic liberal virtues like self-direction, action in accordance with duty, and self-determination.²⁰³ The ultimate justification for developing virtues in an individual is the effect they are expected to have on the actions performed by the individual. Thus, at a minimum, Galston's liberalism would seem to provide a justification for public officials to invoke in their decision-making ethical values similar to the ones contained in my sample set of five ethical values - honesty, responsibility, accountability, loyalty, and integrity.

A difficulty does emerge, however, if we consider more closely how Galston's liberalism expects to engender these virtues. At first, it seems reasonable to distinguish philosophical education's quest for truth and civic education's objective of forming effective conduct. To a certain extent, I can concede Galston's claim that few individuals "embrace the core commitments of liberal society through a process of rational inquiry."²⁰⁴ However, there are other problems with this argument. Our theoretical understanding of what is the truth can evolve over time and is not indifferent to what occurs at the practical level. Conversely, the practical level is continually shaped by the results of the theoretical "process of rational inquiry." A sound civic education should

ensure that it respects the reciprocal effect that a “quest for truth” and an “effective conduct” have on each other.

To illustrate, let’s consider the notion of the dignity of human beings. Kant places at the centre of his philosophy the imperative to respect for the dignity of human beings.²⁰⁵ The principle of respecting the dignity of human beings continues to be valid in the twenty first century. Yet, our understanding in the western world of what constitutes the dignity of human beings has undergone significantly modifications since Kant’s time. For example, consider the rationales put forward for changes in the treatment of human beings as reflected in the Constitution of the United States, starting from the declaration of independence, which included slavery and a different political status for men and women, up to the American civil rights movement in the twentieth century. Similarly, in the twentieth century, we have witnessed the effects of generalising the imperative to respect the dignity of human beings in the institutionalization of the notion of crimes against humanity, motivated to a large degree by the world’s reaction to the atrocities of the Nazi regime during WWII.²⁰⁶ Thus, we could claim that our changing understanding of what the concept of the dignity of human beings, and its implications, has served to reinforce Kant’s theoretical claims that we must respect the dignity of human beings by treating them as ends and never treating them merely as means.²⁰⁷ However, whether we accept a Kantian philosophy or not, it is certainly true that our understanding of the dignity of human beings has been modified by historical experience and has modified, in turn, the theoretical implications of the concept for us in the twenty-first century.

A second difficulty arises from Galston's claim that there exists an ongoing "clash between rational inquiry and civic education."²⁰⁸ I agree with him that a civic education aimed at helping children to accept the core commitments of liberal society requires a pedagogical approach that is "more rhetorical than rational." However, the need for and the success of this type of pedagogy is more a requirement of developmental psychology than of the ongoing "clash between rational inquiry and civic education." Although I can even concede that this type of approach is also useful in teaching principles to adults, I see little reason to accept Galston's more general conclusion that this type of education is justified because "it is unrealistic to believe that more than a few adult citizens of liberal societies will ever move beyond the kind of civic commitment engendered by such a pedagogy."²⁰⁹ This assessment of adult citizens is definitely questionable.

It does, however, signal a different type of problem with Galston's idea of civic education. If we were to assume that Galston is correct and take his claim at its face value, how could we allow adult citizens to exercise their basic right of dissent in a liberal democracy? If we pushed Galston's conception of civic education to its limit, it would seem to make little sense to value the political decisions of the majority in a liberal democracy. Why should we value the opinions of a majority that is made up of individuals whose understanding of democracy is limited to a civic education based mainly on "a pantheon of heroes who confer legitimacy on central institutions,"²¹⁰ but who don't seem to benefit much from the quest for truth through "a process of rational inquiry?"

In summary, our pragmatic assessment of important elements of Galston's liberalism leads to the conclusion that his conception of civic education suffers from

important shortcomings and, as such, is less useful to public officials than other elements of his liberalism would allow it to be. On the one hand, the state is more than justified in fostering virtues in its citizens, yet, on the other hand, his conception of a civic education, which is “by definition education within, and on behalf of, a particular political order,”²¹¹ leaves us with a form of civic education that verges too close to unenlightened indoctrination. At its worst, it could produce results that fall far short of the very virtues that civic education is meant to foster. Although Galston argues that liberalism contains within itself a conception of the virtuous individual that includes both instrumental and intrinsic virtues, his account of how the state could foster and maintain ethical virtues runs into difficulties.

I now turn to the question of whether Galston’s liberalism could gain sufficient categorical force to provide a firm foundation for ethics in government. Let’s start by speculating how Galston could respond to my criticism of his conception of civic education. He could argue that the specific content of the civic education is not what is important here, but rather the requirement for the liberal state to be “far more actively involved in reproducing the conditions necessary to its own health and perpetuation.”²¹² That means that a liberal democratic society is constituted “by a substantive, if parsimonious, moral framework to which all (morally serious) individuals can consciously assent and faithfully adhere.”²¹³ In addition, the moral framework and the need to foster conditions necessary for the health and perpetuation of the liberal state are “fully consistent” with liberalism’s “commitment to freedom and diversity.”²¹⁴ We can specify the content of civic education because “we can empirically define a list of “liberal

virtues,” each of which is required to sustain some aspect of liberal institutions.²¹⁵ Of course, such an empirical exercise would not be definitive and the specific content of civic education should be changed to reflect a better understanding of the enduring and relevant “features of public culture.”²¹⁶ Thus, Galston would conclude, liberalism’s need to produce “conditions necessary to its own health and perpetuation” is perfectly consistent with a conception of civic education that is “by definition education within, and on behalf of, a particular political order”²¹⁷

In this response, the moral framework and the need to foster conditions necessary for the health and perpetuation of the liberal state represent a means for Galston’s liberalism to gain categorical force. They provide what he has called “fixed points” in his earlier work *Justice and the Human Good*. There are many ideas in this earlier work that would allow Galston to explain how his version of liberalism could gain sufficient categorical force to provide a firm foundation for ethics in government. In this work, for example, he argues that utopian thought is “the most appropriate procedure for political philosophy.”²¹⁸ Utopian thought is well suited to specify and provide a justification for “a comprehensively good political order.” Goodness, in this case, is based on “the desirability of the way of life” practised by the individuals within political order.²¹⁹ Coherence theories represent a different approach for political philosophy. However, says Galston, this approach inevitably reaches an impasse because coherence theories “cannot move beyond formalism without incorporating some fixed points that perform the same function as basic statements in scientific inquiry.”²²⁰ In other words, coherence theories in political philosophy cannot generate on their own the categorical force they need to be acceptable. As a corollary, it seems clear that Galston considers his liberalism

as a form of utopian thought and that it must be able to generate sufficient categorical force to provide liberalism with a firm ethical foundation.²²¹

There are different ways Galston can provide his liberalism with “fixed points.” For example, he takes up T.M. Scanlon’s suggestion that a moral theory should combine “suitably defined moral goods” with important features of consequentialist theory. For Scanlon, these goods “often figure in moral argument as independently valuable states of affairs. (...) [And] their value does not rest on their being good things *for* particular individuals. They are, rather, special morally desirable features of states of affairs.”²²² Accordingly, Galston presents in *Justice and the Human Good* a theory of liberal justice that is goal-based and maximising.²²³ In a parallel way, he presents in *Liberal Purposes* a theory of liberalism that includes both a theory of the human good and the need for the liberal state to reproduce “the conditions necessary to its own health and perpetuation.”²²⁴ To put it in his terms, we could say that his conception of civic education is meant to be a means justified within a “goal-based” liberalism and that it “maximizes” the liberal state’s ability to ensure its own health and perpetuation.

Thus, an important theoretical argument that could provide categorical force for a public ethics within Galston’s liberalism is based on “features of public culture” that are “supportive” of liberalism. The “fixed points” that would provide categorical force to his liberalism should be found in these “features of public culture.” History shows that liberalism emerged in the Western world as a way to lead civil society out of the political mess generated by religious quarrels.²²⁵ Galston claims that up until fairly recently juridical liberalism, “which focused on the exercise of liberty and the limits of government,” had maintained itself in balance with the “social preconditions” that

allowed the founding of a liberal democratic society. Until recently, most liberal theorists had “assumed that civil society needed virtue and that publicly effective virtue rested on religion.”²²⁶

However, says Galston, in the span of one generation only – the last thirty years – that balance has been “disrupted” in favor of a liberalism that advocates a “public neutrality on the widest possible range of individual choices,” which includes not just religious faiths but also “irreligion.”²²⁷ One of the main targets of Galston’s criticism here is John Rawls’s political philosophy. But Galston criticises all conceptions of liberalism that advocate the “widest possible” public neutrality. Thus, his criticism extends to Dworkin. In chapter two, I reached similar conclusions to Galston in as much as my criticism of Rawls’s discontinuity strategy argued that Rawls’s political liberalism did not allow the “background culture” to provide strong “support” for a public ethics. In addition, I drew a similar conclusion in this chapter concerning Dworkin’s version of continuity, interpreted as “good fit” between the personal perspective with its challenge model and the political perspective with a rights-based theory.

Galston says that the relevant “features of public culture” are to be found in our traditions. He draws a distinction between “intrinsic” and “functional” features of a public culture. An appeal to “intrinsic” features is an appeal to “sentiments” expressed in statements of the form “X is unnatural” or “X is ungodly.” These features, says Galston, tend to be taken as absolute standards against which anything can be judged and on the basis of which state coercion can be exercised. Liberalism must avoid “intrinsic traditionalism.” On the other hand, those who appeal to “functional” features appeal to “moral principles and public virtues or institutions needed for the successful functioning

of a liberal community.” When Galston claims that some “features of public culture” are “supportive” of liberalism, he is referring to “functional” features. To the extent that these functional features are truly supportive of a liberal democracy, then, says Galston, “a rational basis exists for liberal public policy that endorses and helps sustain that aspect of the tradition.”²²⁸

However, the arguments Galston presents that could attempt to substantiate his claim that some “functional” features of the public culture can serve as “fixed points” and be truly “supportive” of a liberal democracy are inadequate to gain the necessary categorical force. His arguments fall into two categories: some of his arguments are based on the political history of the United States while others are based on sociological studies.²²⁹ Examples from political history include Thomas Jefferson’s claim that religion is “a supplement to law in the government of men.” Jefferson’s claim, says Galston, is also expressed well in the words of George Washington: “...reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles.”²³⁰ Examples from sociological studies include the results of a follow-up study, done in the 1980s, to the Middletown study of the 1920s indicating that people in Muncie, Indiana, are “dramatically more religious than they were sixty years ago.”²³¹ These examples, and others, from political history and sociology are offered in support of his conclusion: “For most Americans, religion provides both the *reasons* for believing liberal principles to be correct and the *incentives* for honouring them in practice.”²³²

As important as these disciplines are, they cannot provide the kind of categorical force required to sustain a fundamental commitment to ethical values in the public forum.

Suppose we grant Galston the reasonableness of the points he makes based on political history and sociological studies, all we really have is a reasonable incentive to search for reasons to justify a supportive role for religion and for classical moral philosophy. It may well be that the examples from political history and sociology are examples of people maintaining attitudes for weak or wrong reasons. Thus, what was really required in these cases was enlightenment and time to allow these people to set aside their misguided practises. In fact, was that not the case for slavery and racism in the United-States. For example, slavery was partially justified by arguments that blacks were inferior beings. However, when the reasons provided were successfully challenged by arguments demonstrating the equality of blacks within a more encompassing conception of humanity, attitudes and laws were changed.²³³

Of course, Galston is fully aware of the limits of both history and sociology in providing categorical force to philosophical arguments. In *Justice and the Human Good*, he says: “history cannot by itself validate principles. The movement of history (...) may be from the more desirable to the less; the proverbial dustbin may contain much of enduring worth.”²³⁴ Given Galston’s own assessment of history, it is not unreasonable for us to claim that his argument is still missing something important to provide his version of liberalism the categorical force it needs for us to choose it and to reject a liberalism that advocates the “widest possible” public neutrality.

Part of the reason why Galston does not seem to make a better case for his liberalism seems to be related to different meanings he ascribes to the concept of “supportive.” There are two ways to understand what Galston means by a liberalism based on “features of public culture” that are “supportive” of liberalism: a strong and a

weak sense of “supportive.” In the strong sense, supportive means “needed for” as in “needed for the successful functioning of a liberal community.” In this sense of supportive, the link to religion and classical philosophy is somehow necessary and essential for “the successful functioning of a liberal community.”²³⁵ There are many indications throughout *Liberal Purposes* where the strong sense of supportive seems to be invoked. For example, Galston says: “religion can undergird key liberal values and practices.”²³⁶ In the weak sense of supportive, the link may be important, but it is not necessary and essential. Indications of this weaker sense are found, for example, in Galston’s closing statement to *Liberal Purposes* in which he says that his proposed liberalism advocates that religion and classical philosophy “can support a liberal polity in important ways” but it must “deny that liberalism draws essential content and depth from these sources.”²³⁷

It might be argued that “supportive” should be interpreted only in the sense of serving as a means to an end. This interpretation would seem consistent with Galston’s claim that, until recently, most liberal theorists had “assumed that civil society needed virtue and that publicly effective virtue rested on religion.”²³⁸ However, this instrumental interpretation would certainly not do justice to Galston’s liberalism. For example, if we assume that the “features of public culture” are considered as means to an end and that one of these ends is to allow the liberal state to reproduce “the conditions necessary to its own health and perpetuation,”²³⁹ then some “features” are not only means but also enter into the definition of what constitutes a successfully functioning liberal state. In addition, it is not clear how we could justify treating religion, for example, solely as a means to the end of reproducing the conditions necessary for the health and perpetuation of the liberal

state if in some instances that might also imply that religion must do so at the expense of reproducing the conditions necessary for its own health and perpetuation.

Further, these points concerning an instrumental interpretation of “supportive” leave untouched a more fundamental issue within Galston’s liberalism found in tension between the two understandings of “supportive” in *Liberal Purposes*. On the one hand, “liberalism contains *within itself* the resources it needs to declare and to defend a conception of the good and virtuous life.”²⁴⁰ On the other hand, according to Galston, “for most Americans, religion provides both the *reasons* for believing liberal principles to be correct and the *incentives* for honouring them in practice.”²⁴¹ However, it is not clear philosophically, why, if “liberalism contains *within itself* the resources it needs to declare and to defend a conception of the good and virtuous life,”²⁴² it should strive to preserve a strongly “supportive” role for religion, classical philosophy, or, I might add, any other comprehensive doctrine.²⁴³

Galston may justifiably claim for historical and sociological reasons that some “features of public culture” appeal to “moral principles and public virtues or institutions needed for the successful functioning of a liberal community.”²⁴⁴ These sources provide good practical reasons why, for example, liberal politics “*can* protect – and substantially accommodate – the free exercise of religion.”²⁴⁵ However, as I have already indicated, these arguments do not provide us with the kind of philosophical arguments that would justify why liberal politics *should* do it.²⁴⁶ More generally, we do not have adequate philosophical arguments for using resources that are not demonstrably “*within*” liberalism as Galston has presented it. Until the tension between what is “*within*” and what is not

“within” liberalism is adequately addressed, Galston’s proposals for liberal goods, liberal justice, and liberal virtues are still in need of “fixed points” to anchor them.

In more recent writings, Galston’s notions of the “diversity state”²⁴⁷ and “value pluralism” address some of the concerns I have expressed about the idea of “supportive.” They provide an indication of arguments that could provide a moral anchor to his liberalism. The “diversity state” is an extension of the liberalism he develops in *Liberal Purposes* and is based on an account of liberalism that “gives diversity its due.”²⁴⁸ A “diversity state,” says Galston, requires “public principles, institutions, and practices that afford maximum feasible space for the enactment of individual and group differences, constrained only by the requirement of liberal social unity.”²⁴⁹ Liberalism is “about the protection of diversity, not the valorization of choice.”²⁵⁰ Galston may agree with Will Kymlicka that an important task that liberals face in every country is “finding ways to liberalize a cultural community without destroying it,”²⁵¹ but he disagrees with him on the approach.²⁵² Liberal societies can find ways that refrain from reducing diversity “without ceasing to be liberal.”²⁵³ For Galston, when looking “within” liberalism for “fixed points,” one must look at diversity. Galston also distances himself from the Kantian and Millian versions of liberalism that are based on “autonomy and individuality as specification of the good life.” Quoting Charles Larmore, he argues that these versions of liberalism are unacceptable because they are “not adequate solutions to the political problem of reasonable disagreement about the good life.”²⁵⁴

It is not surprising, then, that an important philosophical underpinning of the “diversity state” is “value pluralism,” which claims that “what we (rightly) value in our lives turns out to be multiple, heterogeneous, not reducible to a common measure, and

not hierarchically ordered with a single dominant value or set of values binding on all persons in all circumstances.”²⁵⁵ Accordingly, to take diversity seriously is to take traditions and “features of public culture” seriously. The idea of “value pluralism” would seem to be the important and relevant feature of functional traditionalism that can serve to identify “moral principles and public virtues or institutions needed for the successful functioning of a liberal community.”²⁵⁶ To the extent that “value pluralism” is correct, says Galston, then liberalism’s commitment to protecting diversity would be at the same time a commitment to protect liberal democracies’s link to the religious roots of pluralism. One example of the liberal consequences of value pluralism is found in the 1990 U.S. Supreme Court decision that “lowered the burden of proof that the government had to discharge to enact laws that have the effect of restricting the free exercise of religion.”²⁵⁷ Galston points out that the revised “constitutionality test” that the decision introduced triggered a “public furor that led to the enactment of a new statute” that effectively reinstated more stringent requirements on government.²⁵⁸ These points about diversity and value pluralism are meant to show how one might argue that Galston’s liberalism “contains *within itself* the resources it needs”²⁵⁹ to support, in the strong sense, “the successful functioning of a liberal community.”²⁶⁰

However, we are still left with an important unresolved issue within the “features of public culture” – its “value pluralism” - that are “supportive” of liberalism. As we have seen, Galston distinguishes between, on the one hand, liberalism that focuses on “the exercise of liberty and the limits of government,” and on the other hand, “social preconditions” that allowed the founding of a liberal democratic society. In this case, the liberal state’s ability to ensure its moral core depends on maintaining the two in

balance.²⁶¹ However, in the case of the diversity state and value pluralism, Galston seems to be arguing that there is more involved here than simply keeping two separate features of the public culture in balance. Yet it is not clear what that more is. As a result, a certain indeterminacy is carried into the description he provides us of the “diversity state”: it is a state that requires “public principles, institutions, and practices that afford maximum feasible space for the enactment of individual and group differences, *constrained only by* the requirement of liberal social unity.”²⁶² This description raises important questions. What is the moral basis on which we could recognise the priority of “the requirement of liberal social unity” such that it is justified to impose any constraints? What is the relationship between the “diversity state” and “value pluralism, on the one hand, and this “liberal social unity,” on the other hand? Does “liberal social unity” possess the moral status necessary to justify government action that would contribute to the well-being of its citizens? These questions do not receive straightforward answers in Galston.

It seems that Galston has done a good job of bolstering the diversity side of the equation without providing sufficient arguments to reinterpret the unity side. Thus, in his own way, he too seems to have contributed to creating an imbalance between a liberalism that focuses on “the exercise of liberty and the limits of government” and the “social preconditions” that allowed the founding of a liberal democratic society. As a result, it seems unreasonable to accept without further arguments that the features of the public culture identified by Galston are necessary and sufficient for the liberal state.

In summary, Galston's liberalism falls short of providing us with the kind of firm "fixed points" that would support a strong link between the components of his liberalism – including the "diversity state" and "value pluralism" - and the relevant "features of public culture" that should provide a firm ethical foundation for "liberal social unity." He claims that until recently liberalism had assumed that "civil society needed virtue and that publicly effective virtue rested on religion."²⁶³ He presents arguments advocating that liberalism should continue to protect its religious roots. However, he does not argue convincingly how religion – or any other comprehensive doctrine - has or could produce effects that are essential for the liberal state's social unity. In the end, we are left with a claim for an ethical foundation of liberalism that has not yet been justified in such a way that it possesses the kind of categorical force required of such a foundation. Galston's liberalism falls short, in Dworkin' terms, of giving full effect in liberal politics to our most comprehensive and philosophical convictions.²⁶⁴

Additional Essential Elements of the Dependency of Ethics and Democracy

In this section, we examine a conception of deliberative democracy developed by Amy Gutmann and Dennis Thompson that will contribute to our quest for an understanding of the strong "mutual dependency of ethics and democracy."²⁶⁵ In addition, before moving on to the final section on "Lessons Learned," we will review the claim by Charles Garofalo and Dean Geuras that they have developed a unified model of ethics for the public sector that combines the essential elements of four objective ethical theories: intuitionism, teleology, deontology, and virtue theories.²⁶⁶

Amy Gutmann and Dennis Thompson have put forward a conception of deliberative democracy that they claim “puts moral reasoning and moral disagreement back at the centre” of everyday public life by fully recognising the significance of the practices of moral argument that prevail in the public domain.²⁶⁷ Deliberative democracy identifies the characteristics of moral arguments as we find them in “actual political debate” and considers that those characteristics should “provide the basis for developing the normative principles” with which to assess the debates on moral issues.²⁶⁸ Gutmann and Thompson believe that deliberative democracy is justified in adopting this approach since the public domain is the land of “middle democracy” where “much of the moral life of a democracy, for good or ill, is to be found.” It is the land of legislators, executives, and administrators; the land of civic associations and schools.²⁶⁹

Officials and citizens functioning in middle democracy need a framework for dealing with moral issues, and in particular, for dealing with persistent moral disagreement.²⁷⁰ Deliberative democracy, say Gutmann and Thompson, provides such a framework by responding to the “here and now” needs of these individuals.²⁷¹ The framework is constituted by six principles²⁷² that should be considered “as much a family of general dispositions as a set of specific obligations”.²⁷³ Three principles are procedural: reciprocity, publicity, and accountability. Three principles are substantive: basic liberty, basic opportunity, and fair opportunity.²⁷⁴ Although the other principles are neither derived from it nor subordinated to it, reciprocity is considered the “lead principle”. It “shapes the meaning of publicity and accountability and also influences the interpretation of liberty and opportunity.”²⁷⁵ Reciprocity is founded on the capacity of citizens “to seek fair terms of social cooperation for their own sake”²⁷⁶ and contains at its

core the value “mutual respect.”²⁷⁷ Mutual respect is more than mere tolerance since it “requires a favorable attitude toward, and constructive interaction with, the persons with whom one disagrees,” including disagreement on fundamental moral issues.²⁷⁸

Gutmann and Thompson argue that these principles emerge from the practices of moral argument that prevail in the public domain. They are the principles of “middle democracy,” principles that “operate in the middle range of abstraction, between foundational principles and institutional rules.”²⁷⁹ To understand that these principles are principles of deliberative democracy, Gutmann and Thompson argue that one must not confuse these principles of deliberation with deliberation itself: “Our conception accords the principles of deliberative democracy value independent from deliberation itself, while recognising that well-conducted deliberation is necessary to help interpret and specify those principles.”²⁸⁰

I agree with Gutmann and Thompson that it is not the value of deliberation in itself that is problematic²⁸¹ but I contend that there is a problem with justification they provide for the moral worth of the deliberative principles they claim should guide deliberation. These problems are related to the difficulty we have already encountered of explaining how principles can gain categorical force when they are latent in the public domain. For example, Gutmann and Thompson state that the content of their principles is developed using a method akin to Rawls’s “reflexive equilibrium.” It requires deliberators “to move back and forth between general principles and considered judgments about particular circumstances, successively modifying each in light of an appraisal of the other.”²⁸² Although Gutmann and Thompson acknowledge that their method “owes much to” the methods of philosophers like Rawls,²⁸³ they claim that for

deliberative democracy “the principles operate in the middle range of abstraction” and not at the foundational level.²⁸⁴ As they point out, “Rawls does not offer his theory as a solution to moral disagreements in what we call middle democracy” but, rather, offers principles for “the basic structure of society.”²⁸⁵ However, it does not matter whether the principles are offered for “the basic structure of society” or for “middle democracy,” a problem remains concerning the basis of the moral worth of the principles themselves. That problem is not resolved by describing a procedure that involves a back-and-forth movement that modifies their content.²⁸⁶

The shortcomings related to gaining categorical force for the moral worth of the principles are also illustrated in Gutmann and Thompson’s treatment of the “primarily moral” and the “primarily empirical” requirements for the deliberative principle of reciprocity. Gutmann and Thompson claim that the choice of their set of principles – and their conception of deliberative democracy – rather than some other set principles, does not depend on the results of empirical studies.²⁸⁷ They argue that their set of six deliberative democracy principles has independent value.²⁸⁸ According to the “moral” requirement of the lead deliberative principle of reciprocity, “when citizens make moral claims in a deliberative democracy, they appeal to reasons or principles that can be shared by fellow citizens (...).” The reasons or principles will be considered “shared” only to the extent that citizens accept “to press their public claims in *terms accessible to their fellow citizens*.”²⁸⁹ As it turns out, however, the effect of the “moral” requirement is very much dependent on the demands of the “empirical” requirement since it is this second requirement that provides the criteria for determining when claims have been expressed in “*terms accessible to their fellow citizens*.” They are accessible if, during

deliberation, any and all empirical claims made in moral arguments satisfy both “the standards of logical consistency” and “reliable methods of inquiry that themselves should be mutually acceptable.”²⁹⁰ On the basis of the two requirements for the deliberative principle of reciprocity, Gutmann and Thompson conclude that “any claim fails to respect reciprocity if it imposes a requirement on other citizens to adopt one’s sectarian way of life as a condition of gaining access to the moral understanding that is essential to judging the validity of one’s moral claim.”²⁹¹ In addition, they also claim that reciprocity requires that the reasons invoked in moral arguments must be “recognizably moral in form and *mutually acceptable in content*.”²⁹²

Although I can agree with the first conclusion, I suggest that we do not have to agree with the very different and much more demanding second conclusion requiring that reasons invoked must be “*mutually acceptable in content*.”²⁹³ For example, an individual need not believe in or accept the Catholic doctrine of transubstantiation to understand its role and meaning within the context of the Catholic religion and to understand its importance for Catholics. More generally, public policies could be agreed to by both believers and non-believers that accommodate many of the needs of Catholics based primarily on reasons provided by Catholics for the importance of their practices without invoking the more demanding requirement that these reasons be “mutually acceptable in content” in the sense in which Gutmann and Thompson define mutually acceptable. The requirement to provide reasons in “*terms accessible to their fellow citizens*” imposes unnecessarily narrow constraints on reciprocity – and, as a result, on the other five deliberative principles. Thus, in a manner different from Rawls, Gutmann and Thompson’s conception of deliberative democracy prevents, to a large extent,

religious comprehensive doctrines from having an effective role in the public forum.²⁹⁴ However, demanding reasons in “*terms accessible to their fellow citizens*” as defined by Gutmann and Thompson also weakens the potential contributions of most of the major secular comprehensive doctrines. It brings them much closer to Rawls’s political liberalism than they probably want to be. Finally, Gutmann and Thompson do not provide deliberative democracy with the means to explain the ethical basis on which each citizen will know that a reason is “acceptable in content” in the first place.

In summary, Gutmann and Thompson’s conception of deliberative democracy has much to offer us, although it has serious limitations. On the one hand, their six deliberative principles do indeed indicate normative and ethical conditions that should be satisfied by a public ethics in a liberal democracy. I can agree with them on the importance of deliberation in a liberal democracy. I can agree with their claim that the principles of reciprocity, publicity, and accountability “restrain the more expansive claims of liberty and opportunity” while encouraging “a more conciliatory response to the legitimate claims of competing values.”²⁹⁵ I can agree with them that in a liberal democracy citizens should “remain open to the possibility of respecting reasonable positions with which they disagree.”²⁹⁶ Finally, I agree with the importance that should be given to “the middle range of abstraction, between foundational principles and institutional rules.”²⁹⁷ However, I can’t agree with them on what constitutes a “reasonable” public position, and that turns out to be the critical point. Thus, the overly demanding restrictions they impose on reciprocity - their lead principle – impact on the interpretation and the application of all six deliberative principles. Their idea of what is “reasonable” affects not only how we interpret the content of “the middle range of

abstraction” but also just how “conciliatory” and “open” one can be in the public forum. Although Gutmann and Thompson’s conception of deliberative democracy would leave us with a scarce ethical content for a strong foundation for ethics in government, it does provide us with necessary elements of a framework that would contribute to explaining the strong bond and the mutual dependency between the ethical in our private lives and the ethical in the political domain.

Before moving on to the next section in which I initiate the process of working out an alternative proposal for explaining the mutual dependency of the ethical in our private lives and in the political domain, I pause to return to public administration and consider the claim of Charles Garofalo and Dean Geuras that they have produced a unified model of ethics for the public sector. Recall that, in chapter One, we saw that Kathryn Denhardt claimed that “ethics in public administration suffers from the absence of a theoretical framework,”²⁹⁸ and we assessed the model for public service ethics that she proposed as a remedy. We agreed with her that society expects government to be not only efficient and effective but also ethical.²⁹⁹ We also agreed that to the extent that “the public administrator does participate in the governance function, then it is very important that administrators know how to think about the moral order of society [and] have some moral foundation on which to make decisions.”³⁰⁰ However, we argued that she did not succeed in her efforts because, essentially, her model was constructed with pieces that contained important unquestioned and problematic assumptions.

Charles Garofalo and Dean Geuras seem to overcome our criticism of Denhardt’s model since they develop their unified model of ethics starting with major ethical

theories.³⁰¹ They identify eight philosophical ethical theories that they claim could contribute to a “firm foundation” for establishing “moral legitimacy” in governance.³⁰² They classify these ethical theories as either “subjective” or “objective.” A subjective ethical theory is defined as any theory that requires “the rejection of universally valid objective standards of ethics and value.”³⁰³ The four main modern philosophical movements that represent subjectivist theories are existentialism, phenomenology, critical theory, and postmodernism.³⁰⁴ However, they claim, these subjective ethical theories are unable to serve as a foundation for public administration ethics mainly because these theories reject the possibility of establishing “universally valid objective standards.” As a result, they are prevented from providing a firm basis for decision-making in the public sector since the public sector has an obligation to refer to objective standards.³⁰⁵

The four representative objectivist groups of ethical theories are intuitionism, teleology, deontology, and virtue theories.³⁰⁶ G.E. Moore is considered representative of intuitionist theories,³⁰⁷ Kant of deontological theories,³⁰⁸ and utilitarianism is treated as representative of teleological theories.³⁰⁹ In the case of virtue theories, they refer to Aristotle and a number of public administration character-based theorists.³¹⁰ Garofalo and Geuras claim that a model based on these theories could provide “the underlying moral foundation for the reconciliation of bureaucracy and democracy.”³¹¹

Garofalo and Geuras argue that the objective ethical theories provide important insights into ethics but “none encompasses ethics in its entirety.”³¹² In particular, human beings “display all of the characteristics discussed by the ethical theorist” in the four objective ethical theories.³¹³ All four theories “discuss aspects of a human being, but each discusses only a single aspect.”³¹⁴ In fact, they argue, any attempt to subsume all of

ethics under “one limited theory,”³¹⁵ leaves unanswered important questions to which the theory does not have adequate answers, answers that are inevitably provided by one of the other objective ethical theories. The common thread running through all of these theories is a conception of the nature of human beings. Therefore, Garofalo and Geuras conclude, these four theories could be unified on that basis.³¹⁶

The immediate problem we encounter with this proposal is that Garofalo and Geuras do not work out what an acceptable conception of the nature of human beings would entail. However, even if we assume that they are correct and that all four objectivist ethical theories can be unified around a conception of “human nature,” then we must certainly revisit the legitimacy of excluding the contributions of the subjective ethical theories from the model. Recall that Garofalo and Geuras rejected subjective ethical theories because they were theories that required “the rejection of universally valid objective standards of ethics and value”³¹⁷ If a conception of “human nature” becomes the basis for unifying contributions from ethical theories, then the justification for the exclusion of subjectivist ethical theories has changed. Existentialism, phenomenology, critical theory, and postmodernism, all have extensive literatures on what it means to be human and to live in this world. As a result, the contribution of these philosophical theories to our understanding of “human nature” would probably have to be incorporated or addressed, whether or not the theory itself presumably rejects “universally valid objective standards of ethics and value.” To rule out these subjectivist theories, as Garofalo and Geuras do, would weaken the model since it would give us an incomplete picture of “human nature.”³¹⁸

Another problem with the unified model put forward by Garofalo and Geuras is that it does not really address the relationship between the ethical in our private lives and the ethical in the political domain, nor consider how that relationship could impact on a potential foundation for public administration ethics. They claim to be providing a “firm foundation” for establishing “moral legitimacy” in governance,³¹⁹ yet, in the end, they provide us with nothing more than a unified model that has instrumental value. Essentially, they reduce the problem of ethics for the public official to a problem for the right tool, a tool that can allow the moral agent to approach “management and policy issues with coherence, clarity, and conviction.”³²⁰ However, to the extent that a public official is involved in governance, much more is required.

In summary, Garofalo and Geuras also argue that we must recognise that public administration has a role in governance and that there exists a corresponding need to develop “a normative framework for a bureaucratic role in governance.”³²¹ However, our assessment of their model is consistent with our conclusion in Chapter One. Their attempt to provide a “firm foundation” for “moral legitimacy” in governance fails because they side step the primary challenge.³²² As Dworkin points out, the challenge in the search for the foundations of liberal democracy should begin in the “apparent conflict between liberal politics and ordinary ethics.”³²³ Garofalo and Geuras put forward a proposal to overcome various unsuccessful attempts to apply ethical theories in the public forum, but they do not follow up with an in depth analysis of how their unified model resolves the “apparent conflict between liberal politics and ordinary ethics.”³²⁴

Lessons Learned: Chapters One, Two, and Three

It is time to take stock of what we have accomplished so far to better appreciate where that could lead us. In Chapter One, we addressed the nature of ethics in government in a liberal democracy by examining how the discipline of public administration had dealt with the relationship between ethics and governance. Public administration argued forcefully that the function of governing, the exercise of legitimate public authority, should be understood as a continuum, with the largest share of governance assigned to elected representatives and a significant, albeit smaller share, carried out by the other public officials in the executive branch of government.³²⁵ However, Chapter One also argued that public administration had not been able to provide its discipline with a firm foundation for public administration ethics mainly because it had not forcefully re-opened the question of the relationship between the ethical in our private lives and the ethical in the political domain.

In Chapter Two, we assessed how Rawls deals with the claim that “ethics and politics are intertwined.”³²⁶ He argues that they are indeed “intertwined,” but only on the proviso that we understand the ethics in question as part of an overlapping consensus on a political conception of justice³²⁷ and not as part of comprehensive doctrines found in the background culture.³²⁸ According to Rawls, individuals may start out by affirming the political conception “from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides,”³²⁹ but they don’t stay there. He advocates disconnecting the political conception from comprehensive doctrines as the only means for establishing a firm and freestanding foundation for political liberalism.³³⁰

However, it is not necessary to have discontinuity between two things in order for each to be autonomous and, as a result, freestanding. Rawls indirectly acknowledges this point when he says: “the public conception of justice should be, *so far as possible*, presented *as independent of* comprehensive religious, philosophical, and moral doctrines.”³³¹ On the other hand, he clearly claims in his description of the first stage leading to a constitutional consensus, that “many if not most citizens come to affirm the principles of justice incorporated into their constitution and political practice *without seeing any particular connection*, one way or the other, between those principles and their other views. It is possible for citizens first to appreciate the good those principles accomplish (...) and then to affirm them on that basis.”³³² We can grant Rawls the claim that people may not be “*seeing any particular connection*” between the ethical content of their comprehensive doctrines and the ethical content of a political conception without going the extra step and claiming that there is discontinuity between the two.³³³ There is a difference between saying that comprehensive doctrines can no longer “serve as the professed basis of society” and saying that their content is not connected in some essential way to “the various fundamental ideas drawn from the public political culture of a democratic society.”³³⁴ We can retain the one and discard the other. Accordingly, I suggest that we retain Rawls’s insight that an overlapping consensus on a liberal political conception could arise from fundamental ideas drawn from the public political culture. At the same time, it is recognised that we must reinterpret the nature of an overlapping consensus such that it can explain how fundamental ideas are connected in essential ways to the comprehensive doctrines of individuals.

In Chapter Three, I argued that Dworkin's resource-based conception of justice and rights-based theory of political philosophy were inadequate to fulfil his stated purpose of finding ethical foundations for liberalism.³³⁵ However, I agree with him that moral rights made into law represent the individual's protection against the potential tyranny of the majority and of the government in power. He expresses the point well when he says the institution of rights "represents the majority's promise to the minorities that their dignity and equality will be respected."³³⁶ In addition, there is much value in the interpretive framework that he proposes for the scheme of rights: "the moral reading proposes that *we all* – judges, lawyers, citizens – *interpret and apply* the abstract clauses [of the United States Constitution] on the understanding that they *invoke moral principles* about political decency and justice."³³⁷

Dworkin's main point is that the moral dimension of moral rights made into law is not set aside once the law is in place. The distinction he makes between a concept and a conception illustrates how moral principles should inform the interpretation of the moral rights expressed in some law. "Suppose", he says, "I tell my children simply that I expect them not to treat others unfairly." His purpose is not that his children should treat others in accordance with any "specific conception of fairness" that he himself or any one else may put forward, but rather that they should be "guided by the concept of fairness." An appeal to the concept of fairness is an appeal "to what fairness means."³³⁸ I suggest that, in a similar way, an appeal to a right is not simply an appeal to the letter of the right but also, at the same time, an appeal to the moral principles that underlie that right. As a result, I believe it is important to retain Dworkin's idea of a moral reading in the sense

that *any* moral right expressed in some law requires moral principles that inform their interpretation.

In Chapter Three, I also argued that Galston could not provide us with the ethical foundations for liberalism that we sought. In particular, I focused on his attempt to ensure a role for comprehensive doctrines by demonstrating, for example, that religion could be supportive of liberalism. In the case of religion, his main philosophical argument was based on an analysis of Locke's concept of toleration.³³⁹ I argued that he did not succeed in his attempt because the issue is not "whether toleration and mutual respect are important values" but, rather whether they can serve as a basis for a public ethics that must guide collective decisions, not only on matters that can be dealt with on their own merits but also on very controversial matters.³⁴⁰

On the other hand, I agree with Galston that the functional features of the public culture can provide "fixed points" needed to lay an ethical foundation for liberalism. Thus, liberalism cannot do without some account of the human good and this account is plural.³⁴¹ Another "fixed point" involves acknowledging that some virtues are intrinsic to the preservation of liberal communities while others are instrumental to liberalism.³⁴² In addition, liberalism must be based on respecting "the dignity of every individual" and "the practice of mutual respect."³⁴³

Finally, I argued that Gutmann and Thompson's conception of deliberative democracy has much to offer us, although it has serious limitations for our purposes. I agree with them that we should treat these principles as operating in "the middle range of abstraction, between foundational principles and institutional rules."³⁴⁴ However, I can't agree with them on what constitutes a "reasonable" position in the public forum, and that

turns out to be the critical point. Their definition of “reasonable” imposes overly demanding restrictions on reciprocity - their lead principle – that impact on the interpretation and the application of all six deliberative principles. Notwithstanding, I suggest that their six deliberative principles, modified by an expanded sense of “reasonable,” identify important ethical conditions that should be satisfied by a public ethics in a liberal democracy.

In conclusion, our study of Rawls, Galston, Gutmann, and Thompson has made us keenly aware that modern liberal democracies are characterized by the fact of pluralism amongst comprehensive doctrines. However, as our discussion of the continuity strategies of Dworkin and Galston and the discontinuity strategy of Rawls has shown, the role of comprehensive moral theories in governance is not straightforward. Galston, Gutmann and Thompson would agree with Garofalo and Geuras that any attempt to subsume all of ethics in the public forum under one comprehensive theory leaves unanswered important questions to which the theory does not yet have adequate answers and for which answers must inevitably be provided by principles drawn from some other comprehensive theory.³⁴⁵ In that light, I suggest that the most critical insight in our search for a firm ethical foundation for liberalism has been provided by the idea of “value pluralism” that permeates Galston’s work. It suggests a continuity strategy that can provide not only the kind of ethical foundation for modern liberal democracies that possesses a truly healthy respect for the fact of pluralism amongst comprehensive doctrines, but that can also reach down to the foundational level.

The lessons learned from the first three chapters identify necessary, but not sufficient, conditions for working out the ethical foundations of ethics programs for government in a liberal democracy and, in particular, for the executive branch of government. Governance in a modern liberal democracy should be treated as distributed along a continuum that represents a legitimate distribution of discretionary power, in decreasing amounts, from elected representatives to lower level public officials. In addition, I suggest that we must reinterpret the nature of the overlap arising from fundamental ideas drawn from the public political culture in such a way that it provides a means of connecting the ethical in our private lives and the ethical in the political domain. For that purpose, Dworkin's idea of a moral reading of principles written into a constitution presents us with a model of an interpretative framework that could potentially serve as a basis for linking the ethical in the two domains. Finally, but not least, we must give full weight to Galston's advocacy that liberalism needs some account of the human good - in the plural - and of the virtues that will preserve and sustain the liberal state.

END NOTES

¹ See Dworkin, "Foundations of Liberal Equality," p. 6.

² Ibid., p. 3.

³ Ibid., p. 15.

⁴ Ibid., p. 12.

⁵ Ibid., pp. 9-10.

⁶ The distinction between the two perspectives, says Dworkin, "is mirrored in the distinction between political philosophy and ethics". That means that the challenge of liberalism could also be described as how to reconcile the ethics of the personal perspective with the political philosophy of the political perspective.

Ibid., p. 13.

⁷ Ibid., p. 17.

⁸ Ibid., p. 21.

⁹ Dworkin's position in the "Foundations of Liberal Equality" in *The Tanner Lectures on Human Values* is maintained in his subsequent work. In particular, chapter 6 in *Sovereign Virtue: The Theory and Practice of Equality* is a revised and shortened version of *The Tanner Lectures* that retains the essential arguments of the lecture for the purposes of *Sovereign Virtue*. The arguments about continuity and discontinuity strategies are not included in this version but are implied by what is retained. As Dworkin states in his Introduction to *Sovereign Virtue*: "These aims [of the book] are contrary in spirit to two of the most powerful contemporary influences on liberal theory – the political liberalism of John Rawls and the value pluralism of Isaiah Berlin (....) Rawls's social-contract device is designed to insulate political morality from ethical assumptions and controversies about the good life. But this book's argument (...) hopes to find whatever support its political claims may claim not in any unanimous agreement or consent, even hypothetical, but rather in the more general ethical values to which it appeals – to the structure of the good life described in chapter 6 (...)." (p.5) In addition, *The Tanner Lectures* criticisms of discontinuity strategies is largely illustrated by reference to Rawls's liberalism. For that reason, I will use *The Tanner Lectures* as the basis of my analysis of Dworkin's treatment of continuity and discontinuity strategies, giving references to both works when appropriate. See *Sovereign Virtue*, Cambridge: Harvard University Press, 2000.

¹⁰ See Dworkin, "Foundations of Liberal Equality," p. 21.

¹¹ Ibid., p. 89.

¹² Ibid., p. 21.

¹³ Ibid., p. 20.

¹⁴ Ibid., pp. 9-10.

¹⁵ Ibid., p. 20.

¹⁶ Ibid., p. 42. See also *Sovereign Virtue*, p. 5.

¹⁷ Ibid., p. 12.

¹⁸ Ibid., p. 46.

¹⁹ Ibid., p. 89.

²⁰ Ibid., pp. 42-43.

²¹ Ibid., p. 46. See also *Sovereign Virtue*, pp. 242-245.

²² Ibid., pp. 47-53. See also *Sovereign Virtue*, pp. 245-250.

²³ Ibid., p. 113. Dworkin says: "the challenge model captures intuitions which most almost everyone has about ethics. It captures them in a more satisfactory way than rival views about the nature of the ethical value do, and it resolves puzzles and dilemmas in these intuitions that they cannot."

²⁴ Ibid., p. 89.

²⁵ Ibid., p. 89.

²⁶ Ibid., p. 53.

²⁷ Ibid., p. 54.

²⁸ Ibid., p. 58.

²⁹ Ibid., pp. 55-56. See also *Sovereign Virtue*, pp. 251-253.

³⁰ Ibid., p. 55. See also *Sovereign Virtue*, pp. 251 and 253-254.

³¹ Ibid., p. 57.

³² Ibid., p. 57.

³³ Ibid., p. 58.

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- ³⁴ Ibid., p. 89.
- ³⁵ Ibid., p. 60.
- ³⁶ Note: a "retable" is a frame enclosing decorated panels above the back of an altar.
- ³⁷ Ibid., pp. 62-64.
- ³⁸ This use of the term "parameter" is also consistent with the mathematical meaning of the term: "a quantity constant in the case considered but varying in different cases". see lexical entry for the term in the *Concise Oxford Dictionary of Current English*, eight edit. Oxford: Clarendon Press. 1990.
- ³⁹ Ibid., p. 70. See also *Sovereign Virtue*, pp 260-263.
- ⁴⁰ Ibid., p. 69.
- ⁴¹ Ibid., p. 72.
- ⁴² Ibid., pp. 66-67. Dworkin claims that most of the discrimination we need between circumstances that count as parameters and those that count as limits are "carried in our culture". (p.68)
- ⁴³ Ibid., p. 72.
- ⁴⁴ A more complete development of the role of resources in Dworkin's liberalism is presented in the next sub-section as part of an assessment of his liberalism.
- ⁴⁵ Ibid., p. 72. See also *Sovereign Virtue*, p. 264.
- ⁴⁶ Ibid., p. 72. Dworkin proposes a method to ensure a "just" distribution. He suggests that a just distribution is one that provides "equality of resources". This objective could be accomplished in a two-phase procedure in the following way. In the first phase, all resources are distributed among all of the people through a kind of ideal auction in which everyone receives "an equal number of auction tokens." After multiple rounds of the auction, the resources each person has are considered to be that person's "just" share of the total available. In the second phase, it is recognised that people control two types of resources: personal and impersonal. Only impersonal resources can be bartered in the auction held in phase one. People are born with personal resources like physical and mental health, strength, and talent, and these are unevenly distributed at birth. However, these characteristics of the mind and the body cannot be auctioned. Thus, a liberal equality approach, requires some sort of "compensatory strategies" to offset as much as possible – though never completely – "inequalities in personal resources and in luck." One such compensatory program could be modeled on "hypothetical insurance markets." Government could design "redistributive schemes" that "mimic these insurance-driven programs" and that could be financed by general taxation. (pp.36-37)
- ⁴⁷ Ibid., pp. 101-102.
- ⁴⁸ Ibid., p. 75. Dworkin gives as examples the work of Michelangelo financed by the Medici and the life of a child saved by medicine made available only through his parents' "unjust wealth."
- ⁴⁹ Ibid., p. 75. See also the discussion on "Justice as Parameter" in *Sovereign Virtue*, pp. 263-267.
- ⁵⁰ Ibid., p. 73.
- ⁵¹ Ibid., p. 20.
- ⁵² Ibid., p. 42.
- ⁵³ Ibid., p. 89.
- ⁵⁴ Ibid., p. 77.
- ⁵⁵ Ibid., p. 80.
- ⁵⁶ Ibid., p. 110.
- ⁵⁷ Ibid., pp. 112-113.
- ⁵⁸ Ibid., p. 42.
- ⁵⁹ Ibid., p. 77. Dworkin focuses on "critical" paternalism and not on "volitional" paternalisms, since the challenge model considers that "critical interests", and not "volitional interests", are a valid ground for ethics.
- ⁶⁰ Ibid., pp. 78-79. By introducing the requirement for an endorsement, Dworkin is saying that liberal parents would in this way respect the child's first person ethical integrity. It could also show how the parents' actions can be interpreted as exercising a kind of neutrality in relation to the child's first person ethical integrity.
- ⁶¹ Ibid., p. 98.
- ⁶² Dworkin, Ronald. *A Matter of Principle*. Cambridge: Harvard University Press. 1985. pp. 191-192. Note: ch. 8 "Liberalism" originally appeared in *Public and Private Morality*, Stuart Hampshire, ed. (Cambridge: Cambridge University Press, 1978)
- ⁶³ Ibid., pp. 197. (Also in Dworkin, "Liberalism")

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- ⁶⁴ Ibid., pp. 198. (Also in Dworkin, "Liberalism")
- ⁶⁵ Ibid., pp. 198. (Also in Dworkin, "Liberalism")
- ⁶⁶ Dworkin, Ronald. *Freedom's Law*. Cambridge: Harvard University Press. 1996. p.7.
- ⁶⁷ Ibid., p. 7.
- ⁶⁸ Ibid., p. 7-8.
- ⁶⁹ See Dworkin, *A Matter of Principle*, p. 197. (Also in Dworkin, "Liberalism")
- ⁷⁰ See Dworkin, *Sovereign Virtue*, p. 3.
- ⁷¹ See Dworkin, "Foundations of Liberal Equality," p. 115.
- ⁷² See also Dworkin, *Sovereign Virtue*, p. 245.
- ⁷³ See Dworkin, *Taking Rights Seriously*, Appendix: "A Reply to Critics," pp. 272-273. See also Dworkin, "Liberalism," in *A Matter of Principle* where he writes that democracy "enforces the right of each person to concern and respect as an individual." p. 196.
- ⁷⁴ See Dworkin, "Foundations of Liberal Equality," p. 21.
- ⁷⁵ Ibid., p. 3.
- ⁷⁶ Ibid., p. 20.
- ⁷⁷ Nothing here denies the psychological difficulty produced in someone who does not believe that practising a certain ethical value give him, or her, a better life.
- ⁷⁸ Recall that ethical integrity means that a person lives out of the conviction "that no other life he might live would be a plainly better response to the parameters of his ethical situation rightly judged." See Dworkin, "Foundations of Liberal Equality," p. 80.
- ⁷⁹ Ibid., p. 77.
- ⁸⁰ Ibid., p. 86. See also *Sovereign Virtue*, p. 274.
- ⁸¹ Ibid., p. 86.
- ⁸² Ibid., p. 77.
- ⁸³ Arneson, Richard J. "Welfare Should be the Currency of Justice," in *Canadian Journal of Philosophy*, Vol 30, no. 4, Dec. 2000, pp. 516-517. Arneson has criticized Dworkin's arguments on paternalism from the point of view of welfarism, "the idea that in a theory of distributive justice the relevant measure of the opportunities and resources and liberties made available to an individual is the welfare or well-being or utility (I am going to use the terms interchangeably) that accrues to her from this allotment of goods or that the allotment enables her to achieve." (p.502) I single out Arneson's argument against Dworkin's claim that overriding an individual's autonomy cannot improve his or her life. According to Arneson, autonomy should be regarded "as an instrument for achieving well-being and also as a partial constituent for well-being but not as value that takes priority over well-being." (p.518) Although society has an obligation to judge what is good for its members, says Arneson, that "does not rule out the possibility that each individual is obligated to make her best judgments after critical reflection about what constitutes her good. (...) The responsibility of society to make determinations about the good according to its own best lights no more obviates the responsibility of the individual to do the same for herself than the responsibility of society to care for children obviates the responsibility of parents to care for their own children." (p.517) However, the main points made by Arneson's argument are consistent with my claim that Dworkin's liberalism does not allow for an acceptable level of state paternalism. Arneson has also written an interesting article on "Paternalism, Utility, and Fairness" in which he argues against John Stuart Mill's rules of no paternalism and no enforced charity and against Joel Feinberg's non-utilitarian arguments against paternalism. See *Revue Internationale de Philosophie*, 3/1989, no. 170. pp. 409-437.
- ⁸⁴ See Dworkin, "Foundations of Liberal Equality," p.93.
- ⁸⁵ As Dworkin says: "If people see their own personal ethical convictions in a certain light, as modeled by the challenge conception of ethics, then they can also come to see how these convictions are parasitic on justice; why they must therefore accept a resource-based conception of justice." (p.118 See Dworkin, "Foundations of Liberal Equality." (see also, pp.36-38)
- ⁸⁶ Ibid., p. 37.
- ⁸⁷ Ibid., p. 38.
- ⁸⁸ Ibid., p. 37.
- ⁸⁹ Examples of work done in this area are provided by psychologists like James Rest and Linda Klebe Trevino who have extended the work of Lawrence Kohlberg, (see J.R. Rest and D. Narvæz, eds., *Moral Development in the Professions: Psychology and Applied Ethics* (Hillsdale, NJ: Lawrence Erlbaum Assoc., 1994) and (see Linda Klebe Trevino, "Ethical Decision-Making in Organizations: A Person-Situation

Interactionist Model.” in *Academy of Management Review*, vol. 11, 1986, pp. 601-617.) (Refer also to the work of Thomas M Jones, “Ethical Decision-Making by Individuals in Organizations: An Issue-Contingent Model”, *Academy of Management Review*, vol. 16, April, 1991, pp. 366-395.) Dworkin’s conception of setting the stage is much too narrow if we consider, for example, the results of the research done by these schools of thought. The state contributes to shaping the circumstances of our lives in many more ways than his resource-based conception of justice could justify. To the extent that theories about the impact of situational and environmental factors on psychological development is correct, the state significantly influences our psychological development whether we like it or not, and whether the state admits to it or not. Legislation and government policies, for example, shape the work environment. They affect not only impersonal resources like wages and hours of work, but also influence working conditions that include such things as quality of life issues.

⁹⁰ It could be argued that compulsory education in our liberal democracies not only respects those conditions, but that it actually increases choices. Dworkin does not actually make this point. He does claim, however, that experience shows that compulsory education is likely to be endorsed in a genuine way when it is “sufficiently short-term and non-invasive and not subject to other, independent objection.” See Dworkin, “Foundations of Liberal Equality,” p.86.

⁹¹ Ibid., p. 21.

⁹² Ibid., p. 89.

⁹³ Refer to chapter two above.

⁹⁴ See Dworkin, “Foundations of Liberal Equality,” p. 89.

⁹⁵ Ibid., p. 58.

⁹⁶ Ibid., p. 115.

⁹⁷ Ibid., p. 10.

⁹⁸ Ibid., p. 115.

⁹⁹ Ibid., p. 9. The text reads: “Liberals treat these rights, in a phrase I have used elsewhere, as *trumps* over other considerations.” (Italics are in the original) The “elsewhere” in the text refers mainly to *Taking Rights Seriously* where he fully develops the idea of rights as trumps.

¹⁰⁰ See Dworkin, *Taking Rights Seriously*, p.171. Dworkin distinguishes three types of political theories: rights-based, duty-based, and goal-based. As the name implies, each theory considers something as fundamental: for rights-based, some right is considered fundamental; for duty-based, some standard is considered fundamental; and for goal-based, some goal is considered fundamental. Whatever is considered fundamental becomes the basis within that theory for explaining what the other types of theories consider fundamental. For example, Dworkin considers “the right of each to equal concern and respect” as fundamental. If that right implies another right, that individuals have a right not to be lied to, then the duty others have not to tell lies is derived ultimately from the fundamental “right of each to equal concern and respect.” In contrast, Dworkin points out that in a duty-based theory, like the one found in Kant’s moral philosophy, a standard like the moral law would be fundamental and the duty no to tell lies would be derived ultimately from that law. (pp.171-172)

¹⁰¹ Ibid., p. 172.

¹⁰² Recall that the three basic ideas of liberalism, according to Dworkin, are equality, liberty, and tolerance. Dworkin places more weight on equality and distinguishes himself from political philosophers like Locke and Mill, for example, whom he considers place more weight on liberty. Ibid., p. 182.

¹⁰³ Ibid., pp. 272-273.

¹⁰⁴ Ibid., p. xv. In the section ‘A Reply to Critics’, Dworkin defends the primacy of this fundamental right against the criticism of “myopia”. James Nickel claims that Dworkin’s fundamental right is not really fundamental since it is too close to “rights against the majority in a democracy” and “wholly ignores... rights against any form of government, like the right, for example, not to be tortured.” (p.355)

¹⁰⁵ Ibid., p. 182. In the text, Dworkin is drawing conclusions about Rawls’s theory of justice. However, the description also applies to Dworkin’s own theory since he is arguing that Rawls’s theory of justice really rests on the “right of each to equal concern and respect” taken as fundamental, and this is the right considered fundamental in Dworkin’s theory. (refer p. xii)

¹⁰⁶ Ibid., p. 184.

¹⁰⁷ See Dworkin, *Freedom’s Law*, p. 2.

¹⁰⁸ See Dworkin, *Taking Rights Seriously*, p. 190. Although Dworkin is referring here to the United States Constitution, his comments are valid for any liberal democracy that has a constitution that contains equivalent protection of rights and freedoms clauses.

¹⁰⁹ Ibid., p. 184 and p. 191.

¹¹⁰ Ibid., p. 215.

¹¹¹ Ibid., p. 192.

¹¹² See Dworkin, *Freedom's Law*, p. 2.

¹¹³ See Dworkin, *Taking Rights Seriously*, p. 205.

¹¹⁴ Dworkin identifies three types of grounds that government could invoke to legitimately limit the case that will be considered part of "the definition of a particular right." One type of reason involves showing that the values protected by the original right are not at stake in the case. A second type requires showing that including certain types of cases – considered marginal to the right involved – would unduly affect a competing right. Finally, it might be shown that defining the right in a specific way would involve costs to society that are not incremental but "far beyond the cost paid to grant the original right". Ibid., p. 200.

¹¹⁵ Ibid., p. 205.

¹¹⁶ See Dworkin, "Foundations of Liberal Equality," p. 21.

¹¹⁷ Ibid., p. xii.

¹¹⁸ Ibid., pp. 272-273.

¹¹⁹ See Dworkin, "Foundations of Liberal Equality," p. 98.

¹²⁰ Ibid., p. 98.

¹²¹ In making this statement, I am ruling out the fact that all ethical issues could somehow be rephrased in terms of Dworkin's rights-based theory. My point here is that common ethical values like the ones in the set of ethical values that I have used previously – honesty, responsibility, accountability, loyalty, and, even, integrity (in the sense I use it) – are not justified as such, except possibly instrumentally, by Dworkin's rights-based theory; nor, do I believe, could they be in a straightforward manner.

¹²² Refer to my chapter two.

¹²³ See Dworkin, "Foundations of Liberal Equality," p. 89.

¹²⁴ Ibid., p. 54.

¹²⁵ Ibid., p. 113.

¹²⁶ All examples and analogies have their limits. In my example of prefabricated homes, I'm distinguishing between what is generally considered to be required to be necessary for a residence and a home in our society from the idea, for example, that the poor may do with very little to create a 'home'.

¹²⁷ See Dworkin, "Foundations of Liberal Equality," p. 27 note 13. See my chapter two for the details of Dworkin's criticism of Rawls's justice as fairness.

¹²⁸ Ibid., p. 32.

¹²⁹ Ibid., p. 20.

¹³⁰ Ibid., p. 20.

¹³¹ In addition, the challenge model itself does not leave wholly untouched the convictions we have about what constitutes a good life. Dworkin himself admits that those who have liberal political convictions would make more sense of their convictions in the political perspective if they interpreted their religious beliefs, found in the personal perspective, on the basis of viewing life as a challenge. But, more importantly, it excludes all such convictions from playing a role in the ethics applied in the public forum, except to the extent that they are reinterpreted in terms of a resource-based conception of justice. Ibid., p. 119.

¹³² Ibid., p. 6.

¹³³ See Galston, *Liberal Purposes*, pp. 173-177. I shall be dealing with Galston next in this chapter.

¹³⁴ See Dworkin, *Taking Rights Seriously*, pp. 272-273.

¹³⁵ See Dworkin, "Foundations of Liberal Equality," p. 21.

¹³⁶ Dworkin's liberalism also advocates that individuals have rights to assist them in ensuring that government limits itself to setting the stage justly and that it not interfere with their choices of how they want to perform on that stage.

¹³⁷ See Dworkin, "Foundations of Liberal Equality," p. 89.

¹³⁸ Ibid., p. 21.

¹³⁹ Ibid., p. 21.

¹⁴⁰ See Dworkin, *Taking Rights Seriously*, p. 197.

¹⁴¹ See Dworkin, "Foundations of Liberal Equality," p. 46.

¹⁴² Ibid., p. 20.

¹⁴³ It should be noted that the issue here is not simply that employees can and should use ethical values like honesty, responsibility, accountability, loyalty, and integrity. It is rather that the scope of the meaning and the nature of the justification for these ordinary ethical values require an ethical foundation greater than that offered by Dworkin's liberalism. Thus, my objection to Dworkin is that his liberalism impoverishes these ordinary ethical values because it overly constrains the basis for defining and justifying their ethical import.

¹⁴⁴ See Dworkin, "Foundations of Liberal Equality," p. 21.

¹⁴⁵ See Galston, *Liberal Purposes*, p. 301. Galston devotes chapters 6 and 7 to a criticism of Rawls's political liberalism. He criticises "Rawls's attempt to construct a 'political' liberalism that is morally committed on essentials while remaining (or so Rawls supposes) substantially neutral concerning the human good." p.19.

¹⁴⁶ See Rawls, *Political Liberalism*, p. 38.

¹⁴⁷ Ibid., p. 175.

¹⁴⁸ See Dworkin, *A Matter of Principle*, pp. 191-192. See also Galston, *Liberal Purposes*, pp. 80-81.

¹⁴⁹ See Rawls, *Political Liberalism*, p. 175. Galston says: "the Socratic practice of moral and political philosophy I espouse takes community beliefs as its necessary point of departure." See Galston, *Liberal Purposes*, p. 16.

¹⁵⁰ See Galston, *Liberal Purposes*, p. 6.

¹⁵¹ See Dworkin, "Foundations of Liberal Equality," p. 89. Galston claims that he is proposing an account of liberalism "that can relieve many thoughtful individuals of the need they now feel to choose between liberal principles and their own moral experience." William A. Galston, *Liberal Purposes*. Ibid. p17.

¹⁵² See Galston, *Liberal Purposes*, p. 6.

¹⁵³ See Dworkin, "Foundations of Liberal Equality," p. 21.

¹⁵⁴ See Galston, *Liberal Purposes*, p. 301. Of course, Galston's criticism in the text quoted applies to all defenders of the liberal state who would do so by trying to dispense with all specific conceptions of the good.

¹⁵⁵ Ibid., p. 8. In chapter four of this book, Galston argues that Rawls, Dworkin, and most contemporary liberal theorists may claim to do without a substantive theory of the good but "covertly rely on a triadic theory of the good". They all assume the following: (a) the worth of human existence, (b) the worth of the fulfillment of human purposes, and (c) the worth of rationality as a chief constraint on social principles and social actions. (p.92)

¹⁵⁶ Ibid., p. 304.

¹⁵⁷ For example, Galston says: "if self-styled liberals cannot accommodate, and recognize their partial dependence on, the moral restraints espoused by ordinary citizens, liberalism cannot regain in practice the general acceptance needed to guide public life in a constitutional democracy." Ibid., p. 18.

¹⁵⁸ My analysis of Galston's moral and political philosophy is mainly derived from *Liberal Purposes: Goods, virtues, and diversity in the liberal state*.

¹⁵⁹ See Galston, *Liberal Purposes*, p. 18 and chapter 8.

¹⁶⁰ Ibid., p. 182 and chapter 9.

¹⁶¹ Ibid., pp. 18 and 212, and chapter 10.

¹⁶² Ibid., p. 173. Galston notes that he uses the terms "the human good" and "well-being" interchangeably." (p.166)

¹⁶³ Ibid., pp. 173-174.

¹⁶⁴ Ibid., p. 175.

¹⁶⁵ Ibid., p. 175.

¹⁶⁶ Ibid., pp. 176-177.

¹⁶⁷ Ibid., p. 173.

¹⁶⁸ Ibid., pp. 166-167.

¹⁶⁹ Ibid., pp. 169-170.

¹⁷⁰ Ibid., p. 171.

¹⁷¹ Ibid., p. 172.

¹⁷² Ibid., p. 167.

¹⁷³ Ibid., pp. 168-169.

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- ¹⁷⁴ Ibid., p. 182. He gives as an example that this would exclude a social policy that implemented the Hindu caste belief that "the well-being of each Brahmin is thirty times as important as that of each Untouchable." (p.183)
- ¹⁷⁵ Ibid., p. 191.
- ¹⁷⁶ Ibid., p. 184. In making this point, Galston refers us to Michael Walzer's *Spheres of Justice* (New York: Basic Books, 1983), ch. 3.
- ¹⁷⁷ Ibid., p. 191.
- ¹⁷⁸ Ibid., p. 184. Here, Galston is critical of contemporary liberals who would base the justification for the distribution of resources based on some conception of means. In particular, he singles out Dworkin's "equality of resources". However, as we have seen, Dworkin is aware of and does address the issue of handicapped people by distinguishing between impersonal and personal resources. According to his resources based conception of justice, the state can impose only an egalitarian distribution of impersonal resources. However, liberal equality justifies the state in providing compensation for inequalities in personal resources, whether these are physical or mental.
- ¹⁷⁹ Ibid., p. 192.
- ¹⁸⁰ Ibid., p. 191. Galston actually calls it "desert-based competition", but as he says, it is better known in American political thought as "equality of opportunity." I have used that expression rather than his preferred term "desert-based competition." Desert-based systems are also known under the heading of merit-based systems. In chapter one, I presented the contribution of Dorman B. Eaton to the development of ethical considerations in the development of the American public service. His 1880 study of the British civil service contributed greatly to shifting the basis of appointments to public office in the United States federal and states governments from purely partisan purposes to a merit-based system.
- ¹⁸¹ Ibid., pp. 198-204.
- ¹⁸² Ibid., p. 211.
- ¹⁸³ Ibid., p. 211.
- ¹⁸⁴ Ibid., pp. 211-212.
- ¹⁸⁵ Ibid., pp. 217-218.
- ¹⁸⁶ Ibid., p. 218.
- ¹⁸⁷ Galston argues that there are two methods of identifying and justifying a set of instrumental liberal virtues. In his chapter on liberal virtues, he says that he is mainly providing a "sketch" of "a catalog of instrumental liberal virtues" and he considers them "empirical hypotheses about connections between individual character and social institutions." However, he also claims that his theory of the good could serve as "an independent basis for a range of instrumental liberal virtues" and would yield "complementary results Ibid., pp. 227-228.
- ¹⁸⁸ Ibid., pp. 220-227. For my purposes, it was not necessary to list all the virtues that Galston describes.
- ¹⁸⁹ Ibid., p. 229. Galston is quoting Rogers Smith's description of the Lockean idea of self-direction found in Smith's *Liberalism and American Constitutional Law*, (Cambridge, Mass., Harvard University Press, 1984), p. 200.
- ¹⁹⁰ Ibid., p. 229. Galston quotes Judith Shklar's discussion of the Kantian requirement to respect humanity in us and in others. (Note: italics are in original text.) Shklar argues that building on the implications of this requirement leads to "a thoroughly democratic liberal character". See her *Ordinary Vices*. Cambridge, Mass., Harvard University Press, 1984, p.233.
- ¹⁹¹ Ibid., p. 230. (Note: italics are in original text.) Galston is quoting George Kateb's rendering of the Emersonian tradition in "Democratic Individuality and the Claims of Politics", *Political Theory* -12, 1984, p.343.
- ¹⁹² For example, Galston claims that Kant, and Rawls after him, attempts to resolve the tension between these three virtues by subordinating "the rational pursuit of individual life plans to the social requirements of the moral right." Ibid., p. 231.
- ¹⁹³ Ibid., p. 231.
- ¹⁹⁴ Ibid., p. 232. The chapters on liberal virtues and civic education (chapters 10 and 11) make it clear that Galston does not consider liberal virtues innate.
- ¹⁹⁵ Ibid., p. 241.
- ¹⁹⁶ Ibid., p. 242.
- ¹⁹⁷ Ibid., p. 243.
- ¹⁹⁸ Ibid., p. 244.

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- ¹⁹⁹ Ibid., p. 243.
- ²⁰⁰ Ibid., pp. 245-246. Galston is presenting here the virtues we discussed earlier in the section taken from the four categories of instrumental virtues: general virtues and the virtues required by the three dominant liberal spheres of society, economy, and polity. See also pp. 220-227.
- ²⁰¹ Ibid., pp. 227-228.
- ²⁰² Ibid., p. 221.
- ²⁰³ Ibid., pp. 229-231.
- ²⁰⁴ Ibid., p. 243.
- ²⁰⁵ This is true whether we stress the idea of the moral law or of the kingdom of ends in Kant's philosophy.
- ²⁰⁶ Both examples demonstrate how the fundamental imperative to respect the dignity of human beings can be violated. The American civil rights movement focused on the imperatives of the equal rights for all citizens and how the law could be used to circumvent these fundamental rights. The atrocities of the Nazi concentration camps, for example, demonstrated that some acts against individuals and groups should be considered crimes against humanity itself, underlining the idea of a shared and common humanity.
- ²⁰⁷ I am referring here to Kant's formula of the end in itself in the *Grounding for the Metaphysics of Morals*: "The practical imperative will therefore be the following: Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means." This translation comes from the *Grounding for the Metaphysics of Morals*, translated by James W. Ellington, Cambridge: Hackett Publishing Co., 1981, p.36. (See also, p.429 of the Königlische Preussische Akademie der Wissenschaften edition of Kant's work.)
- ²⁰⁸ See Galston, *Liberal Purposes*, p. 243.
- ²⁰⁹ Ibid., p. 244.
- ²¹⁰ Ibid., p. 244.
- ²¹¹ Ibid., p. 243.
- ²¹² Ibid., p. 6.
- ²¹³ Ibid., p. 296.
- ²¹⁴ Ibid., p. 6.
- ²¹⁵ Ibid., p. 212.
- ²¹⁶ In reference to his list of seven elements that constitute a liberal conception of the individual human good, Galston says that he does not expect his account "to be accepted without further ado" and that he will be "satisfied if it promotes discussion leading to a more nearly adequate view." This comment obviously carries over to the liberal virtues, especially to those that are instrumental for liberal goods. Ibid., p. 173.
- ²¹⁷ Ibid., p. 243.
- ²¹⁸ William A. Galston, *Justice and the Human Good* (Chicago: University of Chicago Press, 1980), pp.13-14. He considers that utopian thought is the political branch of moral philosophy.
- ²¹⁹ Ibid., p. 15.
- ²²⁰ Ibid., pp. 37-38. In using the expression "fixed points", Galston refers to Rawls's description of his method of reflective equilibrium in which he distinguishes two types of initial moral intuitions or opinions: "those of which we are (somewhat) unsure and the "fixed points", which we will not abandon and to which, therefore, all proposed general principles must be accommodated." (p.37) See also Rawls, *A Theory of Justice*, pp. 19-20, 319, 579-580.
- ²²¹ It is interesting to note that Galston and Rawls are not that far apart on the idea that political philosophy involves utopian thought. In his later writings, Rawls says that "political philosophy is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social conditions." See Rawls, *The Law of Peoples*, p. 11.
- ²²² See Galston, *Justice and the Human Good*, p. 142. (Italics are in the original text.) Quoted from Scanlon's article, "Rights, Goals, and Fairness," in Hampshire, Stuart, ed. *Public and Private Morality*. Cambridge: Cambridge University Press, 1978. Pp. 99-100.
- ²²³ Ibid., p. 142.
- ²²⁴ Ibid., pp. 6 and 18.
- ²²⁵ John Rawls makes a similar point in *Political Liberalism* when he says that "the historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries." See Rawls, *Political Liberalism*, p. xxiv.
- ²²⁶ See Galston, *Liberal Purposes*, pp. 257-258.

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- ²²⁷ Ibid., p. 258.
- ²²⁸ Ibid., pp. 280-281.
- ²²⁹ Ibid., p. 278.
- ²³⁰ Ibid., p. 264. These quotations are found in Walter Berns, *The First Amendment and the Future of American Democracy*. Chicago: Gateway, 1985. ch. 1.
- ²³¹ Ibid., p. 278.
- ²³² Ibid., p. 265. Italics are in the original text.
- ²³³ This is not to deny that there are still today people who believe in white supremacy, like, for example, the members of the Ku Klux Klan.
- ²³⁴ See Galston, *Liberal Purposes*, p. 16.
- ²³⁵ Ibid., p. 280.
- ²³⁶ Ibid., p. 279.
- ²³⁷ Ibid., p. 304.
- ²³⁸ Ibid., pp. 257-258.
- ²³⁹ Ibid., p. 6.
- ²⁴⁰ Ibid., p. 304. Italics are in the original text.
- ²⁴¹ Ibid., p. 265. Italics are in the original text.
- ²⁴² Ibid., p. 304. Italics are in the original text.
- ²⁴³ Galston, however, would not use Rawls's term. I use the term here to refer to any philosophy that could be considered "supportive" of liberalism and liberal virtues. It is noted that Galston has developed in detail his idea of the human good in *Justice and the Human Good*. In that book, Galston clearly states: "not only my stance but also my method of argument is Aristotelian." However, he claims that his position is not to be considered "a slavish transcription of Aristotle" nor an "updated Aristotelianism," but rather, "an attempt, inspired by Aristotle." That means that he believes that "many of our experiences and intuitions" are Aristotelian, although "our ruling ideas are anything but Aristotelian." See *Justice and the Human Good*, pp. x-xi.
- ²⁴⁴ See Galston, *Liberal Purposes*, pp. 280-281.
- ²⁴⁵ Ibid., p. 279. I have added italics.
- ²⁴⁶ For example, in *Liberal Purposes*, Galston takes up Locke's liberal doctrine of religious toleration and presents it as defining "the appropriate relation between religion and the civil order." (p.259) He also claims that this Lockean doctrine was "the orthodox view among the American founders". (p.263 and pp. 259-263. My point here is not whether or not liberalism should continue to practice a Lockean type of toleration, but rather the nature of the link between comprehensive doctrines and a liberalism that "contains within itself the resources it needs to declare and to defend a conception of the good and virtuous life" (p.304). Ibid.
- ²⁴⁷ The "Diversity State" is developed mainly in "Two Concepts of Liberalism" in *Ethics*, 105, April, 1995, pp. 516-534 and his notion of "value pluralism" is presented in "Democracy and Value Pluralism" in *Social Philosophy and Policy Foundation*, 2000, pp.255-268.
- ²⁴⁸ See Galston, "Two Concepts of Liberalism," p. 524. As he says, a liberal state is "a community organized in pursuit of a distinctive ensemble of public purposes." (p.524)
- ²⁴⁹ Ibid., p. 524.
- ²⁵⁰ Ibid., p. 523.
- ²⁵¹ Ibid., p. 522. For Will Kymlicka, see *Liberalism, Community, and Culture* (Oxford: Oxford University Press, 1989), p. 170.
- ²⁵² According to Galston, who quotes Chandran Kukathas, Kymlicka considers choice and critical reflection as dominant public values. (p.522) However, says Galston, "to place an ideal of autonomous choice at the core of liberalism is in fact to narrow the range of possibility available within liberal societies." (p.523) See "Two Concepts of Liberalism."
- ²⁵³ Ibid., p. 523.
- ²⁵⁴ Ibid., pp. 523-524
- ²⁵⁵ Galston identifies "value pluralism" as a view defended by Isaiah Berlin and adopted in different versions by an important array of philosophers, like Stuart Hampshire, Thomas Nagel, Martha Nussbaum, Bernard Williams, and John Kekes. A footnote provides useful bibliographical information on these thinkers and others. See Galston, "Democracy and Value Pluralism," p. 255.
- ²⁵⁶ See Galston, *Liberal Purposes*, p. 280.

- ²⁵⁷ Galston refers us to "*Employment Division v. Smith*, 110 S.Ct. 1595 (1990). See Galston, "Democracy and Value Pluralism," p. 265, n. 24.
- ²⁵⁸ See Galston, "Democracy and Value Pluralism," pp. 265-266. In footnote 25, p. 266, Galston acknowledges that the "*Religious Freedom Restoration Act*" of 1993 was subsequently ruled unconstitutional by the U.S. Supreme Court.
- ²⁵⁹ See Galston, *Liberal Purposes*, p. 304. Italics are in the original text.
- ²⁶⁰ Ibid., p. 280.
- ²⁶¹ Ibid., pp. 257-258.
- ²⁶² See Galston, "Two Concepts of Liberalism," p. 524. Italics are mine.
- ²⁶³ See Galston, *Liberal Purposes*, pp. 257-258.
- ²⁶⁴ See Dworkin, "Foundations of Liberal Equality," p. 21.
- ²⁶⁵ Dennis Thompson, *Political Ethics and Public Office* (Cambridge: Cambridge University Press, 1987) p.3.
- ²⁶⁶ See Garofalo and Geuras, *Ethics in the Public Service*, p. 3.
- ²⁶⁷ See Gutmann and Thompson, *Democracy and Disagreement*, p. 361.
- ²⁶⁸ Ibid., p. 13. The emphasis on "actual political deliberations" is fundamental to the conception put forward by Gutmann and Thompson. For example, they acknowledge that their "lead principle" reciprocity "owes much to the conceptions developed by Rawls and Scanlon, especially, the fundamental idea of the fair terms of social cooperation." What sets deliberative democracy apart, however, is that Gutmann and Thompson "give greater emphasis than they do to actual political deliberation", and, as a result, "draw different implications with respect to the content of the principles of justice." (p.373. n.1.)
- ²⁶⁹ Ibid., p. 40.
- ²⁷⁰ Ibid., p. 197.
- ²⁷¹ Ibid., p. 5. Gutmann and Thompson draw a distinction between the aims of much of the work in philosophy which is concerned with securing "foundations for moral principles – at the level of the most fundamental and general philosophical justification" and the every day world of politics where there is a need to "find the basis on which to justify collective decisions here and now in the *absence* of foundational knowledge." (pp.4-5.)
- ²⁷² Ibid., pp. 197-198.
- ²⁷³ Ibid., p. 52.
- ²⁷⁴ Ibid., p. 12. Although a chapter is devoted to clarifying the meaning and implications of each principle, I will limit myself here to just a few comments. In discussing publicity (Chapter Three), Gutmann and Thompson take up the other side of the coin, secrecy. In their presentation of accountability (Chapter Four), they start from the requirement for "universal accountability" in a deliberative democracy, and follow up with the questions of "who gives reasons" and "to whom" should the reasons be given. (p.128) In dealing with liberty (Chapter Seven), they address the scope of liberty and its impact on state paternalism. In taking up basic opportunity (Chapter Eight), they point out that in deliberative democracy theory "liberty takes priority over opportunity", but that in actual political deliberation "opportunity often comes first." The main reason seems to be that citizens seem to enter most debates assuming the their basic liberties are guaranteed. Basic opportunity is mainly concerned with ensuring an "adequate level of basic opportunity goods" (p.273), which includes health, education, security, income, and work. Whereas, fair opportunity (Chapter Nine) is mainly concerned with the regulation of "the distribution of opportunity goods." (p.307)
- ²⁷⁵ Ibid., p. 52.
- ²⁷⁶ Ibid., p. 52.
- ²⁷⁷ Ibid., p. 79.
- ²⁷⁸ Ibid., p. 79.
- ²⁷⁹ Ibid., p. 5.
- ²⁸⁰ Stephen Macedo, edit., *Deliberative Politics: Essays on Democracy and Disagreement* (New York: Oxford University Press, 1999), p. 266.
- ²⁸¹ Gutmann and Thompson deal with criticism on the value deliberative democracy assigns to deliberation in their reply to critics. (pp.246-261) As Gutmann and Thompson acknowledge, "virtually all of our commentators see some value in deliberation" but one group has reservations the central role they propose for deliberation (p.246), while another group thinks that the role of deliberation should be extended (p.261) Found in Stephen Macedo, edit., *Deliberative Politics: Essays on Democracy and Disagreement*. Ibid.

²⁸² Gutmann, Amy and Dennis Thompson. *Democracy and Disagreement*. Ibid. p.5. Norman Daniels, one of the philosophers Gutmann and Thompson refer us to concerning the method, offers a good description of the method of "wide reflexive equilibrium." The method requires an individual to move back and forth between three sets of beliefs: considered moral judgments, moral principles, and a set of relevant background theories. An individual collects a set of "initial judgements" in which the individual has reasonable confidence. Alternative sets of moral principles that exhibit "varying degrees of "fit" with the moral judgments" are considered. However, the aim is "not simply to settle "for the best fit of principles with judgments" since that would yield "only a narrow equilibrium." The last step in the initial cycle is to work out which "arguments can be construed as inferences from some set of relevant background theories." The working "back and forth" continues until the individual "arrives at an equilibrium point" for the three sets of belief. (See Norman Daniel, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (Cambridge: Cambridge University Press, 1996), p. 22.)

²⁸³ See Gutmann and Thompson, *Democracy and Disagreement*, p. 5 and p. 363, n.1.

²⁸⁴ Ibid., pp. 4-5.

²⁸⁵ Ibid., p. 35. It is interesting to note that G. A. Cohen has argued that "no defensible account of what the basic structure is allows Rawls to insist that the principles which apply to it do not apply to choices within it." See "Where the Action is: on the Site of Distributive Justice," *Philosophy and Public Affairs*, Winter, 1997, vol. 26, no. 1, p. 5.

²⁸⁶ It is interesting to note that Norman Daniels's appropriation of Rawls's methodology seems to suffer from the same weakness. He agrees with Ronald Dworkin that Rawls has a "deep theory" on which the contract argument in A Theory of Justice rests, but he disagrees that the "fundamental right of persons to "equal respect and consideration"" represents that deeper theory. Instead, Daniels finds Rawls's "Archimedean point" in a set of component theories: theories "of the person, of the role of morality in society, and of procedural justice." Thus, he does not answer the specific question concerning what constitutes the basis of the moral value of the content of the principles that result from this back and forth movement. (See Daniel, *Justice and Justification*, p. 48.)

²⁸⁷ Gutmann and Thompson state: "we focus on what we believe must be prior to any empirical investigation of this kind: the clarification of the character of deliberation itself, the conditions and content that are necessary to determine to what extent adequate deliberation is taking place in democratic politics." See *Democracy and Disagreement*, p. 7.

²⁸⁸ Norman Daniel calls this the "independence constraint" of "wide reflexive equilibrium." See Daniel, *Justice and Justification*, p. 23.)

²⁸⁹ See Gutmann and Thompson, *Democracy and Disagreement*, p. 55. Italics are mine.

²⁹⁰ Ibid., p. 56.

²⁹¹ Ibid., p. 57.

²⁹² Ibid., p. 57. Italics are mine.

²⁹³ Ibid., p. 57. Italics are mine.

²⁹⁴ Philip L. Quinn's argument against political liberalism applies to Gutmann and Thompson: "Religious believers who are now American citizens should not acknowledge prima facie obligations to be sufficiently motivated by or even to have and be willing to offer adequate secular reasons for advocating or supporting restrictive laws or policies. Nor should they affirm a duty of civility according to which they may not appeal to their comprehensive religious doctrines to justify answers to questions about constitutional essentials or basic justice unless they satisfy some restrictive proviso." See "Political Liberalism and their Exclusions of the Religious" in *Proceedings and Addresses of the American Philosophical Association*, November, 1995, vol. 69 n. 2, p. 50.

²⁹⁵ Ibid., p. 355.

²⁹⁶ Ibid., p. 354.

²⁹⁷ Ibid., p. 5.

²⁹⁸ See Denhardt, *The Ethics of Public Service*, p. 1.

²⁹⁹ Ibid., pp. 133-134.

³⁰⁰ Ibid., p. 65.

³⁰¹ See Garofalo and Geuras, *Ethics in the Public Service*, p. 12. Garofalo and Geuras specifically claim that the proposals of both Katherine Denhardt, critically presented in chapter one of this thesis, and John Burke leave undeveloped "the underlying moral foundation for the reconciliation of bureaucracy and democracy."

³⁰² Ibid., p. 182.

³⁰³ Ibid., p. 23.

³⁰⁴ Ibid., p. 23.

³⁰⁵ Ibid., p. 29. For example, they consider that the existentialist's insistence on radical ethical freedom for each individual renders it "dangerous to use" "as a basis for decisions made in public organisations." This radical freedom would allow those in public roles to "use political power for private values, regardless of whether they are consistent with those of the public and its charges." (pp.25-27) Phenomenology improves on existentialism because it leaves open the possibility of shifting the focus from the individual to the group, stressing the ability for consensus building within groups through the ability to share the same "intersubjective world." However, phenomenology's weakness, according to Garofalo and Geuras, is that it can only "describe a process but cannot provide the reasons" that justify the process itself. They claim that it is the justification of the process that is most important in the context of collective decision-making. According to them, the weakness of both existentialism and phenomenology is that they make the "correctness" of a decision dependent on "how many people make it": one person for existentialism and a group for phenomenology. However, the "correctness" of a decision in the context of collective decision-making should be based on "the strength of the reasons behind it." (pp.28-29) Habermas is considered the main representative of contemporary critical theory. They argue that Habermas's critical theory contains an irresolvable tension between practical discourse, as an ideal speech situation that demands the removal of asymmetries of power, and other values in his critical theory that are preconditions of practical discourse, such as equality or the assumption of rationality and autonomy that each participant in practical discourse must reciprocally accord each other. (pp.34-36) Finally, the work of Richard Rorty is considered representative of a postmodernist position, the fourth type of subjective ethical theory. Garofalo and Geuras summarize the main lines of Rorty's argument as follows: (1) "All human inquiry, thought and belief occurs in language"; (2) "All language is entirely culturally determined"; therefore, (3) "There is no objective human inquiry, thought or belief." (p.43) One of the main weaknesses of postmodernism is its inability to provide a firm ethical basis for collective decision-making in a liberal democracy. Precisely because it "reduces objectivity to solidarity" with one's group (p.47), it has the unwanted consequences of cultural relativity. Postmodernism is doomed to inevitable failure because its basic premises require the "rejection of all objective truth and rationality." (p.52)

³⁰⁶ Ibid., p. 3.

³⁰⁷ Ibid., pp. 57-59.

³⁰⁸ Ibid., pp. 63-79.

³⁰⁹ Ibid., pp. 59-63. Although Jeremy Bentham and J.S. Mill are discussed in reviewing Utilitarianism, the main discussion deals with generally accepted positions of utilitarians and with the distinction between act and rule types of utilitarianism.

³¹⁰ Ibid., pp. 84-93. The public administration ethics scholars reviewed are David Hart, J. Patrick Dobel, Terry L. Cooper and Kathryn G. Denhardt. (p.85)

³¹¹ Ibid., p. 12.

³¹² Ibid., p. 129.

³¹³ Ibid., p. 124.

³¹⁴ Ibid., p. 125.

³¹⁵ Ibid., p. 124.

³¹⁶ Ibid., p. 125.

³¹⁷ Ibid., p. 23. I do not consider it necessary for my purposes to assess the arguments put forward by the authors concerning their interpretation of subjective ethical theories. I leave that for others in other forums.

³¹⁸ Although I do not assess the arguments put forward by the authors, there is no doubt that these arguments do not close off the discussion between advocates of the four competing objectivist ethical theories – or, for that matter, of the four competing subjective theories – and the claim of each group of advocates that it offers a better basis for a comprehensive and unified approach to ethics.

³¹⁹ See Garofalo and Geuras, *Ethics in the Public Service*, p. 182.

³²⁰ Ibid., p. 182.

³²¹ Ibid., p. 181.

³²² Of course, this conclusion is consistent with the conclusion reached in Chapter One where we reviewed a century of the literature on public administration ethics: the main reason for the absence of a foundation

for public administration ethics is due to the discipline's failure to show that a public ethics must emerge from the meaning of the idea of liberal democracy itself.

³²³ See Dworkin, "Foundations of Liberal Equality," p. 15.

³²⁴ Ibid., p. 15.

³²⁵ However, one should not conclude that the share of the non-elected public officials is not significant.

As Dennis Thompson points out: "Because of the scale of modern government and its cumulative influence through time, these marginal choices are often no less morally significant than the more memorable decisions of national security or public safety." See *Political Ethics and Public Office*, p. 7.

³²⁶ See Dworkin, "Foundations of Liberal Equality," p. 21.

³²⁷ Ibid., p. 147.

³²⁸ Ibid., pp. 10, 14, 144 and 175.

³²⁹ Ibid., p. 147.

³³⁰ Ibid., pp. 12 and 40.

³³¹ Ibid., p. 144. Italics are mine.

³³² Ibid., p. 160. Italics are mine.

³³³ Ibid., p. 14.

³³⁴ Ibid., pp. 24-25, n.27.

³³⁵ Ibid., p. 3.

³³⁶ See Dworkin, *Taking Rights Seriously*, p. 205.

³³⁷ See Dworkin, *Freedom's Law*, p. 2. Italics are mine.

³³⁸ See Dworkin, *Taking Rights Seriously*, pp. 134-135.

³³⁹ See Galston, *Liberal Purposes*, pp. 259-263. See also Macedo, *Deliberative Politics*, p. 251.

³⁴⁰ Amy Gutmann and Dennis Thompson make a similar point in response to Galston's criticism of their theory of a deliberative democracy based on Locke's idea of toleration. "Our disagreement with Galston is not about whether toleration and mutual respect are important values but about precisely when citizens should agree to disagree rather than decide a controversial matter collectively on its merits, and how this disagreement can most justifiably be settled in politics." Found in Macedo, *Deliberative Politics*, p. 251.

³⁴¹ See Galston, *Liberal Purposes*, pp. 174-177..

³⁴² Ibid., pp. 228-229.

³⁴³ Ibid., p. 231. I note that this core goes beyond mere toleration.

³⁴⁴ See Gutmann and Thompson, *Democracy and Disagreement*, p. 5.

³⁴⁵ Rawls deals with the same problem; however, he offers a discontinuity solution to the problem.

CHAPTER FOUR

A PROPOSAL FOR INTERPRETING THE ETHICAL FOUNDATIONS OF LIBERAL DEMOCRACY

The task before us now is to argue for an alternative way of reconciling the tensions between the ethical in our private lives and the ethical in the political domain in a liberal democracy. This task is fundamentally the same as that of all the political philosophers whose work we have analysed in this dissertation. Thus, like Rawls, we are in search of the conditions for a conception that can serve as the professed basis of society, and that means that it must somehow be “freestanding.” Like Dworkin, we want to identify ethical foundations for liberal democracy that follow “from giving full effect to [our] most comprehensive and philosophical convictions.”¹ Like Galston, our “guiding intuition” is to develop a proposal that fully reflects “the dependence of sound politics on sound culture.”² Like Gutmann and Thompson, this proposal must put forward a conception of liberal democracy that will put “moral reasoning and moral disagreement back at the centre” of everyday public life by giving proper weight to the significance of the practices of moral argument that prevail in the public domain.³ Finally, like the public administration ethics scholars, including Garofalo and Geuras, one of our expected results is to provide a firm foundation for “*moral* legitimacy” in governance.⁴

Of course, it is beyond the scope of this dissertation to work out the specific content of a foundation for a public ethics. Mine is a more modest enterprise. I seek the conditions that must be satisfied to allow that task to be carried to fruition. More

specifically, I am interested in how these conditions contribute to reconciling the tensions between the ethical in our private lives and the ethical in the political domain as they operate in the executive branch of government.⁵

In the first three chapters, I critically examined various proposals for reconciling the tensions between the ethical in our private lives and the ethical in the political domain in a liberal democracy and concluded, in each case, that the proposed solutions are inadequate. In Chapter One, I started by reviewing a century of literature on the foundations of public administration ethics. Although, the review of the literature did not present us with a firm foundation for public administration ethics, it did show that scholars in public administration persistently insisted that public administrators exercise discretionary power more and more in our modern democracies. On that basis, I concluded that public administration successfully challenged the idea that public administrators do not play any significant part in governance. Chapters Two and Three critically examined strategies for explaining the nature of “the mutual dependency of ethics and democracy.”⁶ Chapter Two presented the strengths and the weaknesses of John Rawls’s political liberalism interpreted as a discontinuity strategy for dealing with the tensions between the ethical in our private lives and the ethical in the political domain. In particular, it singled out the shortcomings of treating the plurality of comprehensive doctrines as belonging only to the “background culture.” Chapter Three presented two continuity strategies, one proposed by Ronald Dworkin and the other by William Galston. Both argued that “ethics and politics are intertwined”⁷ and, in their own way, attempted to show how “liberalism develops naturally from ethics so that ethics merges with politics.”⁸ In the end, I argued that each of these three proposals fell short in

varying degrees of what was required for a strong foundation for ethics in government. In Chapter Three, I also singled out the six deliberative principles of Amy Gutmann and Dennis Thompson's conception of deliberative democracy, in particular their role as intermediate level principles.

As I reviewed the literature on the foundations of public administration ethics and the strategies put forward by Rawls, Dworkin, and Galston, I naturally highlighted the weaknesses that prevented each one from providing a firm foundation for ethics in government in a liberal democracy. However, I was cognisant throughout that each one had identified important ideas that must be addressed in such a foundation. Thus, I agree with Dworkin that "liberalism needs foundations in ethics"⁹ and that a continuity strategy offers the best means of providing such a foundation. It provides the best means of explaining why the perceived "conflict between liberal politics and ordinary ethics" is really only "apparent."¹⁰ On the other hand, I claim that the nature of continuity must be interpreted differently from Dworkin's understanding of it. I also claim that to make a continuity strategy work we must take seriously important insights of Rawls's discontinuity strategy. Throughout the dissertation, my guiding hypothesis is that ethics programs for government in a liberal democracy require a philosophical foundation based on an understanding of liberal democracy as a way of life that implies not only "the mutual dependency of ethics and democracy"¹¹ but also the presence and priority of ethics in government. Given the results of the first three chapters, we might well wonder whether we can identify a basis for a strong bond between the ethical in our private lives and the ethical in the political domain.

In this chapter, therefore, I start by showing that to adequately explain the relationship between the ethical in our private lives and the ethical in the political domain we must first understand that relationship in terms of an overlapping continuity between the two domains. I then argue that a conception of continuity as overlap provides a basis for explaining how ethical principles latent in the political culture can possess a dual status. From the point of view of comprehensive doctrines in our private lives, they are intermediate level ethical principles, while, from the point of view of the political domain, they represent foundational political ethical imperatives. Finally, I argue that the ethical imperative at the heart of liberalism must have priority in the political domain. Throughout this chapter, I advance the idea that governance involves the ethical use by public officials of legitimate discretionary power.

On the basis of the set of conditions for a public ethics worked out in this chapter, I propose in the next chapter an interpretative theoretical framework for institutionalizing ethics in government. Because such a theoretical framework can also serve as the basis for assessing ethics programs for government in a liberal democracy, I will then select three main elements of the theoretical framework as criteria to assess two current initiatives to institutionalize ethics within the Canadian federal government.

Continuity as Overlap

Our analysis of the failure of various proposals in the first three chapters to explain the nature of “the mutual dependency of ethics and democracy”¹² was based in each case on showing that they represented an inadequate formulation of the relationship

between the ethical in our private lives and the ethical in the political domain. Although I have indicated that a continuity strategy seems to hold the most potential for reconciling the tensions between these two domains, I have argued that Dworkin's idea of continuity, understood as a good fit of two separate domains, does not provide a strong foundation for ethics in the political domain. I have also argued that Galston's idea of continuity understood as "support" is too weak but that his concept of a diversity state and of value pluralism points us in the right direction.

To work out the implications of understanding the overlap of the ethical in our private lives and the ethical in the political domain as continuity, we need some idea of the nature of the overlap and the challenge we face. Dennis Thompson comes close to identifying the nature of the challenge when he says: "In both the content and method, then, the political ethics of public office lies between politics and ethics as conventionally conceived."¹³ For Thompson, the challenge is to demonstrate that "it is possible to steer a course between them [politics and ethics], and even to use the forces of each to keep the course steady."¹⁴ However, as I argued in Chapter Three, Dennis Thompson and Amy Gutmann develop a deliberative democracy approach to steering a course between politics and ethics that leaves us hanging in "the middle range of abstraction, between foundational principles and institutional rules."¹⁵ I suggest that we will be more successful if we treat continuity as an overlap between the ethical in our private lives and the ethical in the political domain, an overlap that can provide a firm basis for a public ethics, and as a result, for ethics programs for government in a liberal democracy.

To lead the way, I turn to the work of John Tomasi in *Liberalism beyond Justice*.¹⁶ Tomasi believes that political liberalism is a view more radical than most people,

including liberals, appreciate.¹⁷ His claim is well illustrated in what seems like an odd question for a liberal. He asks: “Would I, as a liberal citizen, want to live in a society where democratic justice has been legitimately achieved?”¹⁸ He acknowledges that those who are inclined to a liberal view would probably have the quick answer: Yes! Of course, those who are not liberals have the quick answer: No!¹⁹ However, his answer is a surprising “*I have no idea*.”²⁰ The reasons for his answer lie in what he considers to be central to the liberal project: the interface questions between the domains of ethical values and political values.²¹ According to Tomasi, most liberal citizens would avoid answering that question if they reflected on the full implications of a “Yes!” response because liberalism has not yet dealt adequately with the interface questions.²² In other words, Tomasi is claiming that for most citizens who would live in a liberal society it is not sufficient for a liberal society to be *only* just, understood in terms of liberalism’s definition of justice.²³ As a result, he concludes that political liberalism “requires that the boundaries of liberal theory construction be *expanded*, and expanded in nonpublic directions.”²⁴

Why is the interface between the domains of ethical values and political values so important? How does it arise? Tomasi claims that most liberals acknowledge that liberalism cannot be neutral in its effects because liberalism cannot avoid producing unintended social effects. These unintended effects, says Tomasi, “are likely to form a pattern” that could be called “a distinctively liberal curriculum.”²⁵ For example, rights-based forms of thinking “unintentionally encourage those forms of thinking in all domains of reason, including ones where such ways of thinking are transformative beyond what the bare attainment of political autonomy requires.”²⁶ Thus, political

regimes “unavoidably generate a distinctive ethical background culture” and necessarily have an effect on the wider culture of their society. Tomasi compares the ethical background culture to a map of meaning that could be used by citizens.²⁷ Tomasi concludes that political institutions in a liberal democracy exercise an educative function that goes well beyond the strict requirements of allegiance to the regime and inevitably impacts on the worldview of its citizens.²⁸

To illustrate what he means by the effects of the ethical background culture, Tomasi refers us to William Galston’s comparison of this effect to a current in a river. Paraphrasing Galston, Tomasi points out that strong vessels may well be able to overcome the “reflective, individualizing effects of the liberal background culture (...) But the current nonetheless exerts an influence on the course of life taken by each and every citizen.”²⁹ He argues that liberals have dealt with these kinds of concerns, and the criticisms based on them, by “decoupling their responsibility for the consequences of the projects they intend as liberals from other foreseeable but unintended consequences of the projects that they as liberals pursue.”³⁰ However, decoupling in this manner also avoids a central question that liberalism is obligated to deal with: “To what degree can a political liberal society be *a home* to the people it was formally designed to include?”³¹

Tomasi claims that political liberalism takes a more demanding view of the situation than traditional liberalism. It acknowledges, says Tomasi, liberalism’s responsibility to deal with “unintended spillovers.”³² However, for political liberalism to take seriously the requirement to reserve a space for the diversity of “socially constructive practices” of worldviews, a new element must be included in a conception of justice for a liberal society. This new liberal imperative directs “social institutions to

seek always to minimize their own unintended cultural effects.”³³ Expanding political liberalism’s conception of justice would also make it necessary to expand our understanding of the “good political liberal citizen.” Tomasi describes this citizen as “a person who is skillful at the art of exercising her rights.” For Tomasi, that means that a skillful person “reads the impersonal justice-based rules of her society *from* the perspective of her own commitments and patterns of attachment.”³⁴ Tomasi calls these commitments “compass concepts.” They are “identity-based concepts by which individual liberal citizens steer whenever their political autonomy is engaged.”³⁵ Thus, on the basis of an expanded conception of justice, a political liberal society can be *a home* to all of the people it was formally designed to include. The exercise of rights would occur within the ethical background culture generated by the liberal political regime.

However, Tomasi remains firmly rooted within the discontinuity strategy of Rawls’s political liberalism.³⁶ As a result, he does not deal with the arguments against Rawls’s political liberalism set out in Chapter Two, in particular, that “latency” cannot be the ultimate source of “categorical political force” for a discontinuity strategy. Thus, our criticisms of Rawls’s discontinuity strategy also apply to Tomasi.³⁷

Nevertheless, Tomasi’s acknowledgement that a liberal regime necessarily generates an ethical background culture is of special interest to us here. His description of the nature of the ethical background culture reflects his attempts to derive necessary ethical concepts – “compass concepts” – for life within a liberal democracy, although, strictly speaking, the ethical concepts are not within the political domain as defined by political liberalism. His efforts demonstrate the importance of the interface questions between political values and the ethical values required for successful living in a liberal

democracy. Most importantly, Tomasi identifies some of the consequences for liberal democracy of the intended and the *unintended* effects – the *spillover* consequences - of a liberal regime. I contend that, by so doing, he inserts an ethical obligation at the heart of liberalism in the form of a “new element” that is made necessary and essential for any liberal conception of justice. It requires that social institutions must “*always* minimize their own unintended cultural effects.”³⁸ One could say that Tomasi stretches the discontinuity strategy of political liberalism to the point where it is nearly continuous. Tomasi’s efforts point to a set of liberal concepts that are ethical and necessary for liberal democracy, but also distinct from the strictly political principles of political liberalism.

I suggest that we reinterpret Tomasi’s claim, based on a discontinuity strategy, that a liberal regime generates its own ethical background culture from the point of view of a continuity strategy.³⁹ Such a reinterpretation would allow the ethical background culture to become in part integral to the political domain. In addition, the important values, principles, and practices found in the ethical background culture would be available to form the basis for a public ethics. That means that to the extent there is continuity, the interface with what is ethical in the background culture is not generated solely on the basis of liberal political ideas. As Tomasi points out in his discussion of “compass concepts,” a person skillful in the art of exercising their rights “reads the impersonal justice-based rules of her society *from* the perspective of her own commitments and patterns of attachment.”⁴⁰ Of course, my conception of continuity goes beyond the limits Tomasi imposes on his notion of “compass concepts” since his arguments are based on the discontinuity approach of political liberalism.

Before proceeding further, it is useful to clarify what is excluded from continuity understood as an overlap. Thus, I am not referring to a simple overlap between two domains, one called the political and the other called the ethical. Such an application of the concepts of continuity and of overlap would raise questions difficult to answer. For example, what does the term domain mean that something called the ethical domain could be said to overlap with something else called the political domain? What is the nature of the values, principles, and practices in the overlap area of the ethical and the political domains? Are they a mixture of ethical and political, or both? This approach would also raise questions concerning the relative weighted to be attributed to the values, principles, and practices in the political and ethical domains. For all of these reasons, continuity understood as an overlap is not referring to a simple overlap between a political and an ethical domain.

I now return to Gutmann and Thompson's set of six principles of deliberative democracy to clarify what I mean by an overlapping interpretation of continuity. Their principles are surely central to the liberal project and are required to deal adequately with the interface questions between the ethical in our private life and the ethical in the political domain.⁴¹ An overlapping interpretation of continuity would accept their claim that these six principles emerge from the practices of moral argument that prevail in the public domain. However, I would want to go beyond the strong barriers to entry into the public forum that Gutmann and Thompson erect for many as a result of the way they define what counts as "reasonable" in the public forum.

My disagreement with Gutmann and Thompson is not so much with the content of their principles, which, I grant, I consider too narrow, as it is with their interpretation of

the interaction - or lack of interaction - between these principles and the foundational level. If we consider their claim that “the principles operate in the middle range of abstraction” and not at the foundational level,⁴² it seems natural to ask about the relationship, if any, between these principles and the foundational level. Gutmann and Thompson seem to want to pre-empt the question of the relationship between these principles and the foundational level. For example, they claim that their principles “offer a more defensible way of reaching mutually justifiable policies than do the principles of utilitarianism, libertarianism, or egalitarian alone.”⁴³ This claim, however, is a foundational claim.⁴⁴ When they argue that all these theories rely “on principles determined independently of democratic deliberation” while deliberative democracy invokes principles which are “themselves developed through deliberation,”⁴⁵ they are no longer limiting themselves to the “middle range.” As Russell Harding has correctly pointed out: “While Gutmann and Thompson present extended discussions of their three principles – reciprocity, publicity, and accountability – they do not address the odd move to direct moral assessment of the institutions independently of what the institutions do other than to follow these procedural principles.”⁴⁶ Although Gutmann and Thompson argue that they have succeeded in excluding the foundational level from their conception of deliberative democracy, I suggest that they have not. Thus, it is reasonable to ask what is the nature of the relationship between their “general principles” and the foundational level.

As I did for Tomasi, I suggest that we reinterpret the elements operating in Gutmann and Thompson’s “middle range” as the product of an overlapping process resulting from interactions between the foundational level and concepts latent in the

public culture of society. How would we conceive the ethical principles operating in the “middle range” to allow for continuity between the “middle range” and the foundational level? We can resolve this difficulty by assigning a dual status to the ethical elements in the overlap between the ethical in our private lives and the ethical in the political domain. In this way, if we consider the ethical principles and obligations in the public forum solely from the point of view of the ethical in our private lives, they would be intermediate level principles.⁴⁷ On the other hand, if we consider these same principles solely from the point of view of the ethical in the political domain, they would be foundational. I develop each one of these aspects of the overlap in the next two sections.

Intermediate Level Ethical Principles

In this section, I examine in what way ethical principles in the public forum could be understood as intermediate level ethical principles. One way to understand the relationship of the intermediate level to the foundational level is in terms of a process similar to Rawls’s “reflexive equilibrium,” in which individuals move back and forth between a general understanding of ethical principles and foundational considerations, successively modifying each in light of an appraisal of the other. In contrast to Rawls, however, I claim that the ideas latent in the culture of a democratic society include both intermediate level principles and the principles of comprehensive doctrines.⁴⁸ The result of these interactions is to produce ethical principles that have both intermediate and foundational level ethical characteristics.

I will illustrate how this works with the ethical value ‘honesty.’⁴⁹ In what way can this ethical value have both intermediate and foundational level characteristics? It is generally accepted that a common meaning of honesty in the public domain involves the requirement that we be truthful in our dealings with others.⁵⁰ It is easy to see how this common meaning of honesty in the public domain can be considered an intermediate level ethical principle when we consider that we usually call upon some “comprehensive doctrine” whenever we must justify the way we should exercise that obligation.⁵¹ For example, an individual calls upon a deontological theory, like Kant’s, whenever he or she insists that honesty represents an absolute duty to be truthful in all cases. On the other hand, an individual calls upon a utilitarian type theory whenever he or she insists that honesty represents an obligation that should be applied in most cases where the results produce the greatest welfare for most people, but may be set aside in certain cases when it does not.

Let us stop for a moment to consider if individuals hold none, one, two, or more comprehensive doctrines. If we look closely at the moral concepts invoked in moral arguments as they occur in the public forum, including actual political debate, we will find that their ultimate justification and meaning usually refer back to comprehensive doctrines. I am, of course, adapting for my purposes Rawls’s idea of a “partially comprehensive doctrine.” Accordingly, to the extent that individuals hold such doctrines, they will hold only a number of, but by no means all, values and virtues of a specific doctrine and these will be rather loosely articulated. In addition, I can see no reason to believe that we hold only one comprehensive doctrine - secular or religious - or even two comprehensive doctrines – secular and religious.

I suggest, therefore, that few of us function consistently in all aspects of our public life⁵² with only one comprehensive doctrine. For many of us, the moral value and meaning of an ethical obligation like honesty as truth-telling, for example, is probably based on a combination of religious beliefs – for some, it could be stories and moral obligations from the Bible – and one, two, or more, secular ethical theories. It is not so much a question of inconsistency as a question of the fact of a plurality of comprehensive doctrines latent in the public culture. In essence, as individuals in the public forum, we attempt to maintain integrity in the set of comprehensive doctrines that we hold and, as individuals in our private lives, we do this by assigning a kind of lexical order to our comprehensive doctrines. Even the lexical order can change in response to circumstances in our lives.

Liberal democracy accentuates the impact of the fact of a plurality of comprehensive doctrines by insisting that the individual be placed at the centre of the public domain. Individuals in a liberal democracy deal with this diversity by sharing a kind of overlapping understanding of the meaning of ethical principles, which in the case of honesty is common enough to support truth-telling. However, if they have to justify in the public forum the requirements of honesty – including constraints on it - given a specific set of circumstances in life, each one will specify his or her understanding of honesty in terms of the most appropriate fundamental comprehensive doctrine that informs that understanding. In everyday public life,⁵³ citizens use a definition of honesty that is the result of a kind of “reflective equilibrium” between comprehensive doctrines held by individuals and principles operating at an intermediate level of abstraction.

Ethical values like honesty exhibit paradigmatic characteristics.⁵⁴ That means that the meaning of honesty is based on a kind of paradigm indicating how the term should be used in a public forum. This paradigm provides us a functional definition that is not reducible to a dictionary definition, although it is usually consistent with it. In addition, the paradigmatic nature of ethical values like honesty implies that by definition ethical values remains open⁵⁵ to be informed by comprehensive doctrines operating at the foundational level – although that exercise is carried out only when the need to do so is triggered in deliberation. Gregory Reichberg makes a point similar to mine in his discussion of the ethical reflection on war and peace in the Western tradition: “Because the philosophical background of our contemporary discourse often remains unacknowledged, the ensuing debate frequently becomes more tangled than would have been the case had the participants possessed a better self-awareness of the traditions which inform their thinking.”⁵⁶ On the other hand, it is obvious that my description of an overlapping consensus on paradigmatic principles operating at the middle level of abstraction is completely different from Rawls’s overlapping consensus on “fundamental ideas viewed as latent in the public political culture of a democratic society.”⁵⁷

It is also easy to see how my conception of the intermediate level of abstraction is significantly different from Gutmann and Thompson’s middle level of abstraction. As I have argued, their conception of deliberative democracy imposes restrictions on what is “reasonable” that severely constrains the contributions of reasonable comprehensive doctrines to ethics in the political domain. However, my disagreement with their interpretation of the role of reasonable comprehensive doctrines goes much further when we consider the question of the foundations of their “general principles.” For example,

Dennis Thompson's interpretation of judgements about particulars is that they "do not always embody a single theoretical principle; and they may not be logically deductible even from a set of principles. But they do impart general significance to the particulars to which they refer." As a result, Thompson concludes, "political ethics consists of judgements or criteria for making judgements, not particular rules or general theories."⁵⁸ Thus, for Thompson – and for Gutmann – their six principles receive their meaning and validity from being found in political judgements. The fact that they are found in moral arguments as they occur in "actual political debate" provides the basis for developing these normative principles and, then, to use them to assess the debates on moral issues.⁵⁹ In this way, Gutmann and Thompson give their deliberative principles a measure of independence that allows them to virtually marginalize "foundational" theories. One could say that they adopt a partial strategy of discontinuity in dealing with the tensions between the ethical in our private lives and the ethical in the political domain despite the fact that these tensions also have significant effects on the interface between the two domains.

What Gutmann and Thompson do not acknowledge is the basis on which the "moral" position adopted by each party to a moral disagreement is "moral" in the first place. It is each party's reference to some comprehensive doctrine or doctrines that serves as the basis for considering an issue "moral." To the extent that we are called upon to justify in what way our application of an obligation like honesty, for example, is ethical, we will ultimately refer to some comprehensive doctrine or doctrines. Although, as I will argue later in this section, there is a bias in a public forum for secular comprehensive doctrines, the ultimate justification may in certain circumstances require

reference to non-secular, religious comprehensive doctrines. In other words, any disagreements that may arise on an issue that citizens already consider to be a “moral” issue based on some comprehensive doctrine or doctrines that they hold cannot somehow be used to justify a conclusion – as Gutmann and Thompson do - that sets aside the comprehensive doctrines that imparted to the issue its “moral” meaning and worth in the first place.

Gutmann and Thompson incorrectly imply that citizens can reach “second-order agreements” that somehow do not receive their justification and ultimate ethical import from an individual’s “first-order moral beliefs.”⁶⁰ For example, in their discussion on abortion, Gutmann and Thompson argue that pro-life and pro-choice advocates have found a policy “on which their principles converge” when they both accept a standard that requires that restrictions on first and second trimester abortions “not impose an “undue burden” on a woman’s liberty.” In fact, the two groups have set aside the primary disagreement, whether one can separate the right to life for a foetus by denying the foetus the status of a person,⁶¹ and moved on to a different and distinct issue, that “undue burden” can be interpreted as a choice between two lives by pro-life advocates and as a reasonable limitation on a woman’s basic liberty by pro-choice.⁶² Aside from the obvious conclusion that they are not necessarily agreeing to the same thing, my point is that in both cases the agreement is still founded on an individual’s comprehensive doctrine or doctrines. It is these doctrines that provide the ultimate justification for accepting these supposedly self-standing “second-order agreement.” But more importantly, these doctrines also provide the basis for giving moral worth to any solution accepted by each participant to their disagreement.

In contrast to Gutmann and Thompson, I argue that ethical judgements in the public forum, what I would call political ethical judgements, require the use of paradigmatic concepts that have roots in comprehensive theories and that these theories “impart general significance” to these concepts. That means that for each of us the common definitions of intermediate level principles like honesty, responsibility, accountability, loyalty, and integrity - the set of ethical values I have used in previous chapters – possess a kind of paradigmatic meaning that necessarily remains open to be informed by the comprehensive doctrines that we hold.⁶³ Their paradigmatic nature implies that the meaning of any one of these ethical concepts is probably not reducible to the meaning provided for it by one or other of our comprehensive theories.⁶⁴

Foundational Ethical Principles in the Political Domain

According to the model I am proposing, ethical principles in the political domain have a dual status. Even if I am granted that ethical principles can be considered as intermediate level principles in relation to comprehensive doctrines at the foundational level, why should ethical values like honesty, for example, be considered to have foundational characteristics in the political domain in addition to their middle level status? Let me start by pointing out again that no politician would get elected on a platform of: “Elect me and you will get the biggest liar in parliament.” This is probably true in any regime where individuals are given a choice in who will constitute their government. It is, however, particular true in a liberal democracy where citizens require government to be truthful in its dealings with the people. The issue is not that we have or

don't have real expectations that our politicians will in fact tell us the truth all the time. Nor that honesty is distinctly "liberal." The issue is that we conceive of liberal democracy as a system of government that depends on citizens being able to make informed public choices, that such choices are only possible if based on truthful information, and therefore that such informed choices would not be possible if there was no ethical imperative for honesty at the heart of democracy.

These comments on honesty bring us to the more fundamental question of whether there is an ethical imperative embedded in the foundations of liberal democratic politics and, if there is, what status it has in relation to other imperatives, be they economic, political, or other. If we consider the political philosophers reviewed in this dissertation, I don't think there is any question in their case whether there is an ethical imperative embedded in the foundations of liberal democratic politics. Rawls, Dworkin, Galston, Gutmann, and Thompson, all have argued that liberalism contains an ethical imperative. The issue of contention is not whether there is an ethical imperative embedded in the foundations of liberal democratic politics but, rather, the nature of that imperative and its priority in relation to other imperatives in the political domain.

Dennis Thompson captures well the complexity of our problem in his discussion of legislative ethics. "Ethics," he says, "is not the primary goal of government in the way that national defense, economic prosperity, or public welfare are." Ethics, according to him, serves to establish standards that are "supposed to facilitate the making of good policy; they are in this respect *a means to an end*."⁶⁵ However, he is quick to add: "It is not an ordinary sort of means. It is a necessary means to good government." In fact, Thompson goes even further and says, "Ethics is not only a means. Honest government

is *a good in itself*.”⁶⁶ The “ultimate aim” of legislative ethics⁶⁷ “is to promote the integrity of legislators and the legislative process.”⁶⁸ Thus, for Thompson, ethics is both a means to an end and a type of good in itself. It would seem, therefore, that Thompson accepts that there is an ethical imperative embedded in the foundations of liberal democratic politics and that the imperative is very important.⁶⁹

My proposal to give a dual status to ethical principles seems to fit well with Thompson’s claim that ethics is both a means to an end and a type of good in itself. Thompson argues that the reason citizens establish and maintain democratic government is that they want government to pursue its primary goals, like national defense, economic prosperity, or public welfare.⁷⁰ In that context, “the primary purpose of legislative ethics is to sustain institutional conditions in the legislature that promote the integrity of the democratic process.”⁷¹ Thus, legislative ethics may be “a necessary means to good government” for Thompson but it does not seem to be a necessary element of his definition of the primary goals of democratic government except indirectly, procedurally.

As a result, my proposal that paradigmatic public ethical principles have a dual status diverges from Thompson’s conception on important points. For example, on the question of political ethics as a means, I suggest that whenever one formulates reasons for choosing one option over another as the best means of accomplishing a legitimate goal for a liberal democracy, one does so by invoking, when pushed, ethical principles. On this reading, the substantive ethical content of the means is separate and distinct from “the integrity of legislators and the legislative process,”⁷² which Thompson claims is the “ultimate aim” of legislative ethics. In addition, as I have argued, the ethical principles invoked by a multiplicity of legislators – to stay within Thompson’s example - will in

most cases certainly refer to a plurality of comprehensive doctrines. The same comment can be made on his points concerning political ends. For example, some may argue that the decision of the Americans to use military intervention against Iraq to respond to the 1990 Iraqi invasion of Kuwait was justified because it was mainly based on the political goal of restoring Kuwait's sovereignty. The justification for this political end could be expressed in terms of deontological, utilitarian, social contract, or other comprehensive doctrine principles. Others, on the other hand, may link the political goal to an economic goal. But they would still provide a justification, when required, in terms that would probably be clearly traceable to utilitarian, social contract, or other comprehensive doctrine principles. My point is that in all cases, ethical principles rooted in some comprehensive doctrine are invoked to justify the ethical validity of the action taken. Thus, contrary to Thompson, I have argued that comprehensive doctrines are always present in the background of our arguments, ready to be called in to lend support to the justification of both political means and political ends.

My disagreement with Thompson runs deeper still. It involves the very source of political ethics. Surprisingly, Thompson and I have the same starting assumption since he claims: "In their most general form, the contents of the ethical principles of public and private life have a common foundation." However, Thompson claims, "the principles are too general to guide conduct in the complex circumstances of legislative life." Given that legislative ethics "originates in institutional circumstances," the principles have to be "translated" to usefully serve that purpose. The translation is necessary to reflect the reality in which legislative ethics operates. But, once these common foundational principles are translated into principles for public life "they often recommend conduct

that is distinct from, sometimes contrary to, the conduct appropriate for private life.”⁷³ Thus, by appealing to a strong sense of “originates in institutional circumstances,” Thompson claims that “the content of legislative ethics differs from that of personal ethics.”⁷⁴ In contrast, I argue for a weaker sense of “originates” and emphasise that comprehensive doctrines continue to inform both legislative ethics and personal ethics. Although Thompson’s approach to political ethics could be considered consistent with a consequentialist-utilitarian doctrine – defining what is ethical in terms of non-ethical goods – in itself, that would already be a normative choice that affects not only the choice of means but also the understanding of political goals.

The fact that conduct in legislative life may be different from conduct in private life does not imply that the conduct in both cases will not, or should not, be assessed from the same “common foundation.” Rather than conclude that the content of legislative ethics has somehow been freed from the common foundation in the process of translation – which if it were true, would not be a translation, but a transformation – a better way to interpret the result is to consider that legislative ethics is made up of intermediate level paradigmatic principles that serve to both define political goals and guide the behaviour of legislators. In this case, Rawls is more respectful of the “common foundation” by insisting that we must start with the fact of a plurality of comprehensive doctrines in modern liberal democracies. However, rather than argue as Rawls does that a liberal political conception of democracy can only be a freestanding conception if it is freestanding in a strong sense of freestanding – that is completely independent from comprehensive doctrines - I contend that a liberal political conception of democracy could be freestanding in a weaker sense. I can agree with Rawls that such a political

conception cannot be formulated solely in terms of any one comprehensive doctrine. However, it makes sense to imagine that the “common foundation” - a plurality of comprehensive doctrines – could be constituted by a set of paradigmatic intermediate level ethical principles and obligations.

I suggest, therefore, that an overlapping consensus on a common set of paradigmatic ethical principles and obligations attests to the presence of an ethical imperative at the very foundation of liberal democracy. I agree with Rawls that an “overlapping consensus” in a liberal democracy cannot limit itself to only one political conception of justice and that it involves a family of political conceptions of justice.⁷⁵ Although I agree with him that each member of the family of liberal political conceptions of justice contains a kind of moral imperative incorporated into the “overlapping consensus,” I suggest that this ethical imperative requires citizens as citizens to work with paradigmatic intermediate level ethical principles and obligations. That means that when arguing their case in a public forum citizens are required to express the meaning and ethical value of their moral values and principles in paradigmatic terms that operate at an intermediate level of abstraction. In this way, citizens in a liberal democratic can ensure that governance in a liberal democracy will be assessed from an ethical perspective while fully respecting the demands of their own comprehensive doctrines.

To illustrate the distinction I am making here, let’s review Rawls’s description of the first stage of the process that would bring about an overlapping consensus. We can agree with his claim that historical events provided the motivation for incorporating some liberal principle, for example the principle of toleration following the Reformation, into “existing political institutions.” Rawls argues that a liberal principle would be accepted

under certain conditions because it would be perceived “as providing the only workable alternative to endless and destructive civil strife.”⁷⁶ With the passage of time, according to Rawls, the fact of reasonable pluralism and its consequences would gain a firm footing in society and create a certain urgency to adopt liberal principles. As an example of this outcome, Rawls points to the adoption of principles specifying basic political rights and liberties into a constitution. However, there is no need to draw the conclusion Rawls does that the liberal principles no longer have necessary bonds with comprehensive doctrines. For example, in the case of toleration, Gutmann and Thompson correctly point out in their criticism of Galston’s reliance on toleration that, by itself, it is not enough since it is only “a form of agreeing to disagree.” Their own idea of mutual respect, for example, demands more: “It requires a favorable attitude toward, and constructive interaction with, the persons with whom one disagrees.”⁷⁷

The historical events that Rawls refers to do not justify the inference that individuals, somehow, create liberal principles from nothing. On the contrary, these events provided individuals with the motivation they needed to search for a solution that combined purely “political” principles with ethical principles expressed at an intermediate level of abstraction and that only in this way could they hope to obtain a “workable alternative to endless and destructive civil strife.”⁷⁸ Galston makes a similar point in his interpretation of the historical events. As we saw in Chapter Three, Galston argues that, up until fairly recently, a liberalism “which focused on the exercise of liberty and the limits of government” had maintained itself in balance with the “social preconditions” that allowed the founding of a liberal democratic society.⁷⁹ Thus, instead of claiming with Rawls that reasonable liberal political conceptions cannot be formulated

in terms of any comprehensive doctrine but, rather, “in terms of fundamental ideas viewed as latent in the public political culture of a democratic society,”⁸⁰ I suggest just the opposite. The ideas “latent in the public political culture of a democratic society” include a set of paradigmatic intermediate level ethical values and principles, like my set of five ethical values - honesty, responsibility, accountability, loyalty, and integrity, that are necessarily informed by and, ultimately, formulated in terms of comprehensive doctrines.

Let me illustrate what I mean by the dual status of paradigmatic intermediate level ethical principles with Gutmann and Thompson’s principle of reciprocity, the lead principle in their six deliberative principles. More specifically, I’ll focus on the requirement of mutual respect that they incorporate into their principle of reciprocity. According to Gutmann and Thompson, mutual respect requires “a favorable attitude toward, and constructive interaction with, the persons with whom one disagrees” - including disagreement on fundamental moral issues.⁸¹ In the model I’m proposing, mutual respect is considered a political foundational principle and would imply that individuals in liberal democracies must carry out their public interactions with each other within the constraints of an overriding democratic ethical imperative. As a political foundational principle, mutual respect would require that any selection of political means or ends be, at a minimum, perceived to be ethically acceptable not only from the point of view of the selection process but of its substance. Thus, to respect the fact of a plurality of comprehensive doctrines, a liberal ethical imperative would require that the justification for the ends and for the means chosen to accomplish those ends must be formulated in terms that operate at intermediate level ethical principles.

However, in contrast to Gutmann and Thompson's conception of deliberative democracy, I suggest that the demands of mutual respect include the possibility that, in some cases, the only way to do justice to one's public claims is to explain them in terms of some comprehensive doctrine. In fact, as John Tomasi points out in his discussion of cultural minorities, "there are nonliberal forms of respect for individuals that even liberals might use as justification for their actions and policies."⁸² The need for such an approach comes through clearly in the 1982 *Regina vs. Jack and Charlie* case heard in the British Columbia Court of Appeal. The defence stated, "Elizabeth Jack, the wife of the appellant Anderson Jack, had been visited by the spirit of her great great grandfather asking that she obtain raw deer meat which was to be burned in a religious burning ceremony. The appellants and Elizabeth Jack are members of the Saanish people who are part of the Coast Salish tribe." The defence argued that the appellants were not subject to prosecution under the Wildlife Act for hunting deer out of season because "they shot and killed the deer for use in a religious ceremony" and this ceremony "had been practised by their people for thousands of years." To apply the act to them in these circumstances represented "a denial of their freedom of religion." The appeal judge stated that a person indeed "had a right to a religious belief with which the State could not interfere but that person could not claim the unrestricted right to any practice which he claimed flowed from that belief." To clarify his point, he referred to the possibility that someone in Canada might want to take up the ancient Aztec religion and practice human sacrifice. In such a case, "the State has a legitimate interest in restricting" such practices "if it amounted to "a breach of the peace" or interfered with "public or private rights" or otherwise amounted "to an illegal act."⁸³

As can be ascertained from the above summary, the appeal judge had no problem accepting that the meaning and the ethical value of the practice could only be explained in terms of the Saanish comprehensive belief. Nor did he indicate that he could not understand the explanation provided because it was explained in terms of that belief. He also did not question the legitimacy for a Canadian as a Canadian to perform the act of hunting the deer for the purpose indicated. And the issue was not to pit membership in the Coast Salish tribe against Canadian citizenship. The issue was to assess a practice that *flowed from* a belief and was rooted in a comprehensive doctrine. It was by reference to principles that related to “a breach of the peace” or interfered with “public or private rights” that criteria were defined to assess what is ethically acceptable in the context of the Canadian liberal democracy.⁸⁴

To continue my discussion of the dual status of paradigmatic intermediate level ethical principles I now turn to Galston who identifies set of ideas “latent in the public political culture of a democratic society” that must be included in what Tomasi would call an expanded liberalism. It will be recalled that Galston’s conception of liberalism is based on three interdependent parts: liberal goods, liberal justice, and liberal virtues. Let’s consider for a moment Galston’s list of seven liberal goods: life, normal development of basic capacities, fulfillment of interests and purposes, freedom, rationality, society, and subjective satisfaction. Galston is not arguing that each one of these goods has only instrumental value but that each is valued intrinsically and fundamentally by citizens in a liberal democracy. Liberalism, says Galston, is “committed to a distinctive conception of the human good, a conception that undergirds the liberal conception of social justice.”⁸⁵ I suggest that this conception of the human

good implies a human good that operates at both the foundational political level, yet is expressed in terms that operate at the intermediate ethical level. For example, let's consider the liberal good of life. On the one hand, it is valued intrinsically and fundamentally in the political domain. Thus, the right to life is considered a basic right of all citizens. On the other hand, that right to life is not absolute in the political domain. The explanations provided by individuals and organisations for actions that cause bodily harm or take a life are usually couched in terms of commonly accepted ethical principles and obligations. However, when circumstances force citizens – and public officials - to justify proposed or past actions that transgress the right to life, the justifications usually provide a clear trail to their comprehensive doctrine or doctrines. In addition, the ongoing disagreements on the death penalty or on doctor assisted suicide illustrate well that liberal goods, like the right to life, tend to be expressed in the public forum in terms that are not specifically situated within any one comprehensive doctrine.

Galston makes an important point about the need for liberal citizens to accept that they must live with a certain level of “indeterminacy.” For example, his conception of liberal virtues refers to convictions, motivations, and traits of character that are required of liberal citizens to sustain liberal institutions and practices.⁸⁶ In his discussion of three intrinsic virtues for liberalism, he argues that they share a common core: “all lead to a vindication of the dignity of every individual and to the practice of mutual respect.”⁸⁷ Yet, he says, we should resist the attempt to reduce the tension between these three intrinsic virtues by privileging, for example, one over the two others as the “preferred standard,”⁸⁸ since all three represent “overlapping but distinct conceptions of individual excellences.”⁸⁹

The type of “indeterminacy” defended by Galston correctly describes the intermediate level nature of the paradigmatic ethical principles and obligations that constitute liberalism’s ethical imperative. It is a level of “indeterminacy” that we encounter regularly in our daily lives. The commonality of paradigmatic ethical principles and obligations, such as Galston’s intrinsic virtues for example, does not imply that they are not fundamental to democracy. They are. However, democracy cannot and should not attempt to do away with the “indeterminacy” either by giving place of honour to one comprehensive doctrine over the others or by resorting to full blown neutrality. Just the opposite, democracy is a way of life that is founded on respecting the level of ethical “indeterminacy” generated by a plurality of comprehensive doctrines.⁹⁰ It is by treating its ethical imperative as foundational and as constituted by paradigmatic ethical principles and obligations that liberal democracy can fully respect the role that ethical comprehensive doctrines inevitably play in informing the meaning and the value of liberal goods, liberal justice, and liberal virtues.

Priority of Ethics

Although I have argued that ethics is a necessary part of the foundation of a liberal democracy and proposed a way of conceiving the liberal ethical imperative at its core, I have not yet dealt with its priority relative to other values in that domain. The relative priority assigned to ethics in the political domain greatly influences the actions to be taken. For example, the Auditor General of Canada stated in his report to parliament in May, 1995: “Canadians are concerned about integrity in government and they have the

right to expect the highest ethical standards in their governments.’⁹¹ However, could not government maintain the “highest” ethical standards for individuals, for example treat employees fairly, and still be justified not to give priority to those standards when they conflict with other non-ethical values, for example reducing costs? On the surface, there seems no reason why government could not give greater weight to non-ethical values. I will argue that government in a liberal democracy must always give priority to ethics.

The question is whether an ethical imperative embedded in the political idea of a liberal democracy requires not just the practice of ethics in government but also the priority of ethics. Some might argue that it is not possible to give priority to some ethic since it would require that the state select one of the many comprehensive doctrines (whether secular or religious) as the one most well founded of all. However, as critics might correctly point out, many liberal democracies have done just the opposite for a large number of comprehensive doctrines by constitutionally separating church and state. According to this argument, ethics in government in a liberal democracy cannot be founded in some comprehensive doctrine and, therefore, there is no basis for assigning priority to it in the political domain.

The problem with this argument is that it fails to distinguish between ethical beliefs that have a common currency – what I have called the paradigmatic character of ethical obligations like honesty and loyalty – and beliefs that are totally defined within the boundaries of a comprehensive doctrine (secular or religious). For example, it is one thing to say that a religious institution, like the Southern Baptists in the United States, should not be allowed to use the power of the state to impose its religious beliefs concerning sexual behaviour on others in a democracy, but it is something else to say that

the religious beliefs of Southern Baptists or others do not necessarily inform their understanding of the ethical obligations they expect people in a democracy to adhere to, including values like fidelity. That is why I have argued that paradigmatic ethical principles and obligations have a necessary and legitimate role in defining the foundations of the political idea of a liberal democracy.

It is a commonplace that liberal democracies place the worth of the individual at the center of moral and political life. What are the implications of this commonplace? For some political philosophers, the wars of religion amongst European states are considered as one of the prime causes for the emergence of modern liberal democracies.⁹² The advent of democracy did not settle once and for the tensions between various comprehensive doctrines. In addition, the weight granted today in the public forum to most contemporary secular comprehensive doctrines emerged after these wars of religions. However, these developments do not mean that democracy can do without the contributions of comprehensive doctrines, including religious comprehensive doctrines, although it is true that many in liberal democracies have migrate towards secular forms of morality to deal with public issues. By placing the individual at the center of moral and political life, liberal democracy asserted a world configured around universal values associated with being human. Democracy represents a reconfiguration of a foundation for understanding the political world in terms of the moral worth of the individual. That's why the idea of democracy has been able to serve the interests of all those who support both national and global interests while at the same time advocating universal human rights.

It is granted that in the 'new' historical circumstances of liberal democracy, the primary role of the state is to foster the well-being of its citizens as individuals and not, primarily, the well being of interest groups, be they religious institutions or secular associations. Leon Trakman and Sean Gatien quote Will Kymlicka as making a similar claim in his description of liberalism as "characterized both by a certain kind of individualism – that is, individuals are viewed as the ultimate units of moral worth ... and by a certain kind of egalitarianism – that is, every individual has an equal moral status, and hence is to be treated as an equal by the government, with equal concern and respect."⁹³ In the same vein, they claim that for Rawls "the liberal community encompasses no distinct cultural values and interests apart from the rights and duties of each individual within it."⁹⁴

However, I have argued that liberal democracy's focus on the individual and on equality was not meant to eliminate the central role of comprehensive doctrines but rather to redefine their public function based on sustaining the individual at the center of moral and political life. That result does not mean that groups, especially cultural groups like the First Nations in Canada, do not have legitimate claims on the state, but that those claims tend to be interpreted in terms of the rights of the citizens who are members of these groups.⁹⁵ It is their needs as citizens in relation to the needs of other citizens that are given priority. Thus, in defining the purpose of the state in a liberal democracy, individually or collectively, the citizen must do so in terms that necessarily reflect individual well being.

The arguments put forward by individuals in a liberal democratic public forum to interpret the idea of well being can and will necessarily reflect one or more of the main

secular comprehensive doctrines held by individuals. However, as I have argued, individuals can, when necessary, appeal to their religious comprehensive doctrine. Nevertheless, it must be acknowledged that there is a fundamental bias in the idea of democracy towards the secular. That bias is probably rooted in the historical development of democracy, which was strongly influenced by the desire to avoid and overcome the suffering and the carnage produced by the wars of religion. A bias, however, is not the same as an exclusion. If the idea of a liberal democracy need not exclude an appeal to an individual's religious comprehensive doctrine, such an appeal should only be necessary in circumstances where the individual's well being involves, for example, a religious practice that can only be explained in terms of a religious comprehensive doctrine. We saw an example of such circumstances in the case of *Regina vs. Jack and Charlie* when we discussed the need for Anderson Jack to obtain raw deer meat for his wife to burn in a religious burning ceremony. On the other hand, if a citizen claimed that every practice in the day to day life of a citizen in a liberal democracy had to be justified to other citizens only in terms of one's religious comprehensive doctrine, that citizen would no longer be talking about the idea of liberal democracy as we know it.

Fortunately, in most circumstances of life in a liberal democracy, recourse to religious comprehensive doctrines to explain individual well being is not necessary. That does not imply that most individuals' recourse to the fundamental ideas of secular comprehensive doctrines, like utilitarianism or Kantianism, is apparent to them. In fact, it usually is not since individuals can function well with paradigmatic intermediate level ethical principles and obligations. It is only when they must provide arguments against

competing justifications for producing well being that the more fundamental ideas of secular comprehensive doctrines become more distinctly visible. Thus, government relief may be provided to the population of a town partially destroyed by an earthquake based simply on the moral worth of human life and of the property required to maintain the quality of life. However, if a choice must be made between building a needed highway through a wildlife sanctuary or through prime farm land, the arguments put forward by government officials in public forums immediately start to take on deontological and consequentialist colors, to name but two secular comprehensive doctrines.

Individual well being is valued by citizens in a liberal democracy and liberal democracy places the worth of the individual at the center of its moral and political life. If that is true and if individuals as citizens enjoy a special status in defining what a liberal democratic government should do to foster individual well being, given the well being of other individuals in society, then liberal democratic government has a moral responsibility to foster the well being of individuals in a manner that fully respects their understanding of well being. As I have argued, an individual's well being will ultimately be defined in terms of the comprehensive doctrines to which they appeal, doctrines that determine for the individual what is right and what is wrong.⁹⁶ It is the comprehensive doctrines, including the liberal democratic bias for justification based on secular comprehensive doctrines, that will determine that an individual's well being and the means to foster it has moral worth.

In summary, it is reasonable to claim that most citizens⁹⁷ conceive of liberal democracy as if it had at its foundation an overriding ethical imperative and, accordingly, demand that government do what is morally right all the time and not just some of the

time. In addition, when citizens become public officials, elected or not, they are not by that fact suddenly empowered to absolve themselves of that imperative. Nevertheless, it remains true, to paraphrase Jean-Pierre Charbonneau's insightful claim: the domestication of ethics within politics will inevitably be a permanent challenge.⁹⁸ In as much as it is true that the function of a plurality of comprehensive doctrines in a liberal democracy is to contribute to defining a public ethics centred on the well being of the individual, then it is reasonable to claim that an individual as a citizen in a liberal democracy would demand that ethics must have priority in the political domain.

Conclusion

In this chapter I have developed an alternative proposal for reconciling the tensions between the ethical in our private lives and the ethical in the political domain in a liberal democracy. I have argued that the best way to explain the nature of "the mutual dependency of ethics and democracy"⁹⁹ is to consider that there is an ethical imperative embedded in the foundations of liberal democratic politics and that this imperative is constituted by paradigmatic intermediate level ethical principles and obligations. This interpretation follows from the continuity strategy I have advocated for reconciling the tensions between the ethical in the two domains. Thus, for each of us the common definitions of intermediate level principles like honesty, responsibility, accountability, loyalty, and integrity possess a kind of paradigmatic meaning that necessarily remains open to be informed by the comprehensive doctrines that we hold as individuals. My proposal attempts to ensure that any discussion about the possible ethical foundations of

liberal democracy fully respect the fact of ethical diversity at the heart of democracy. However, it obviously leans in the direction of Galston's version of liberalism because I have contended that one does not respect that fact by excluding, in one form or another, comprehensive doctrines from the public forum, but rather by recognising their legitimate role in sustaining the diversity of democracy's ultimate ethical values and principles. Finally, I have argued that it is not sufficient to recognise the presence of an ethical imperative embedded in the foundations of liberal democratic politics, but that it is also necessary to acknowledge that citizens would demand that this imperative have priority in defining acceptable political means and ends.

END NOTES

¹ See Dworkin, "Foundations of Liberal Equality," p. 21.

² See Galston, *Liberal Purposes*, p. 6.

³ See Gutmann and Thompson, *Democracy and Disagreement*, p. 361.

⁴ See Garofalo and Geuras, *Ethics in the Public Service*, p. 182. Italics are mine.

⁵ The executive branch of government includes all public officials that make up the branch.

⁶ See Thompson, *Political Ethics and Public Office*, p. 3.

⁷ See Dworkin, "Foundations of Liberal Equality," p. 21.

⁸ *Ibid.*, p. 89.

⁹ *Ibid.*, p. 6.

¹⁰ *Ibid.*, p. 15.

¹¹ See Thompson, *Political Ethics and Public Office*, p. 3.

¹² *Ibid.*, p. 3.

¹³ *Ibid.*, p. 9.

¹⁴ *Ibid.*, pp. 9-10. For Thompson this is "the hope that motivates the theoretical analysis of this book." (p.10)

¹⁵ See Gutmann and Thompson, *Democracy and Disagreement*, p. 5.

¹⁶ See Tomasi, *Liberalism Beyond Justice*, 2001.

¹⁷ *Ibid.*, p. xviii

¹⁸ *Ibid.*, p. xvi.

¹⁹ *Ibid.*, p. xiii-xiv.

²⁰ *Ibid.*, p. xvi. Italics are in the text.

²¹ *Ibid.*, p. 128. Tomasi points out that Stephen Macedo makes a similar claim and quotes him as saying that a defence of liberal politics "should have something to say about how the interface between the political and the personal values is negotiated. (...) Managing that interface is, in a sense, *the* crucial public issue." (p.35) (Text from Macedo, *Liberal Virtues*, p.62. Italics are in text.)

²² Oddly enough, Galston uses a similar logic to criticise Rawls. In one of his criticisms of Rawls analysed in Chapter Two, Galston claims that once we come to know what political liberalism would have us sign up to, we would certainly insist on going back to the start point and be given the opportunity to refuse to participate in the process that Rawls proposes. See Galston, *Liberal Purposes*, p. 149.

²³ The question, as Tomasi says, is "To what degree can a political liberal society be *a home* to the people it was formally designed to include?" See Tomasi, *Liberalism Beyond Justice*, p. 16. Italics are in the text. My reference to liberalism is to traditional types of liberalism, for example those based on a Millian or Kantian philosophy, and the common understanding of political liberalism (that Tomasi takes exception with).

²⁴ See Tomasi, *Liberalism Beyond Justice*, p. xvii-xviii. Italics are in the text.

²⁵ *Ibid.*, p. 14.

²⁶ *Ibid.*, p. 90.

²⁷ *Ibid.*, p. 11.

²⁸ *Ibid.*, p. 10.

²⁹ *Ibid.*, p. 14. (See See Galston, *Liberal Purposes*, p. 296) Obviously, weaker vessels cannot overcome the force of the current.

³⁰ *Ibid.*, p. 38.

³¹ *Ibid.*, p. 16.

³² *Ibid.*, p. 39.

³³ *Ibid.*, p. 128.

³⁴ *Ibid.*, p. 75. Italics are mine.

³⁵ *Ibid.*, p. 45.

³⁶ *Ibid.* Tomasi says: "Political liberals, thus propose two major adjustments to the traditional liberal paradigm. First ... a freestanding political conception of justice (...) based on the shared elements of the public life of a democratic culture [and citizens] must be able to embed the political conceptions within their own comprehensive conceptions of the good, and thus achieve "full individual justification"." (p.7)

³⁷ On this point I share Muriel Ruol's conclusion that limits its potential. "Ainsi, le libéralisme politique identifie trop unilatéralement la culture publique à un contenu spécifique. Il limite ainsi la portée

potentiellement subversive de son approche de la modernité." See "De la neutralisation au recouplement: John Rawls face au défi de la démocratie plurielle," *Revue philosophique de Louvain*, tome 98, no. 1, 2000, p. 61.

³⁸ Ibid., p. 128. Italics are in the text.

³⁹ I share some of Muriel Ruol's conclusions about political liberalism. Le "Libéralisme politique défend l'intuition forte d'un recouplement entre la justification publique et des visions du monde hétérogènes." And in her summary she says: "En assurant un aller-retour entre les convictions « compréhensives » et la conception publique, le consensus par recouplement évite la neutralisation en un second sens : celui d'une mise entre parenthèses du potentiel argumentatif des visions du monde." See "De la neutralisation au recouplement: John Rawls face au défi de la démocratie plurielle," p. 62.

⁴⁰ Ibid., p. 75. Italics are mine.

⁴¹ Ibid., p. 128.

⁴² See Gutmann and Thompson, *Democracy and Disagreement*, pp. 4-5.

⁴³ Ibid., p. 229. See also their claim that the deliberative principles "provide better guidance in dealing with the substance of moral disagreement in politics" than competing conceptions, for example utilitarianism. (p.8) Similarly, the whole of chapter five is devoted to assessing "the promise of utilitarianism" and much of what they say is really at the foundational level.

⁴⁴ Ibid., p. 8. For example

⁴⁵ Ibid., p. 229.

⁴⁶ Harding, Russell (1999), "Method, Not Theory" in *Deliberative Politics*, Stephen Macedo, edit., p. 111. In "Reply to the Critics," Guttmann and Thompson claim that Harding is confusing two different kinds of political theories. First-order theories "like utilitarianism seek to resolve moral disagreement by rejecting alternative theories or principles with which they conflict." Second-order theories "like deliberative democracy" are "about other theories in the sense that they refer to first-order principles without affirming or denying their ultimate validity." I suggest that Guttmann and Thompson have not addressed the foundational question raised by Harding's criticism. When they claim that second-order theories "measure their success by the extent to which they can *justify their proposed resolution and the remaining disagreement to all who must live with them*," they are no longer on a second-order level but on a first-order level. See "Reply to the Critics," in *Deliberative Politics*, Stephen Macedo, edit., p. 260. (Italics are mine.)

⁴⁷ I use the term intermediate-level principles to differentiate it from Denis Thompson's "middle-level principles." In my case, as will be seen, I argue that the meaning of these principles is rooted in an individual's comprehensive doctrine or doctrines, although that meaning is not necessarily derivable in a straightforward way from a doctrine. In Thompson's case, he claims that "in political ethics, we do not try to trace the criteria back to their foundations in some philosophical theory. We operate with middle-level principles that may or may not be derivable from philosophical foundations." See Thompson, *Political Ethics and Public Office*, p. 8. I contend that this strategy has pragmatic value but that it is incomplete. Ultimately, in hard cases, individuals are informed by their comprehensive doctrine or doctrines to resolve ethically challenging issues.

⁴⁸ Note that I am not claiming that comprehensive doctrines are fully present in the public culture – that is the source of the principles – be it the Bible, the Koran, or comprehensive philosophies like Kant's, John Stuart Mill's, or Aristotle's, to name a few. Rather, I am claiming that principles clearly associated with these comprehensive doctrines are latent in the political culture.

⁴⁹ This is one of the values in my sample set of five ethical values: honesty, responsibility, accountability, loyalty, and integrity.

⁵⁰ Although my concern is with the public domain, I believe that my thesis could be generalised. However, a defence of this claim is beyond the scope of this dissertation.

⁵¹ Throughout this dissertation, my use of the expression comprehensive doctrine refers to a conception that is similar to Rawls's descriptions of both a fully and a partially comprehensive conception: "A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, non-political values and virtues and is rather loosely articulated." See Rawls, *Political Liberalism*, p. 13

⁵² It is probably true for both the private and public aspects of life generally.

⁵³ I suggest that this is also true of everyday life in general.

⁵⁴ There is much truth in the claim made by Hilliard Aronovitch people tend towards a level of least generality when unsure of something. "It may in fact be, and I think typically is, that people do not actually commit themselves to abstract principles but rather to paradigms, attached to particulars, from which they generalize in only limited and tentative ways." See "A Liberal Reading of the American Constitution," a "Critical Notice of Freedom's Law: The Moral Reading of the American Constitution by Ronald Dworkin" in *Canadian Journal of Law and Jurisprudence*, vol. X, no. 2, July 1997, p. 528.

⁵⁵ I would agree with Hilliard Aronovitch that principles are "developed over time, from particulars or paradigmatic notions" and they are "secured by basics and are never wholly open-ended, all the while that some basics may come to be rethought." *Ibid.*, p. 534. However, I would also add that the paradigmatic notions themselves, the basics, are informed by comprehensive doctrines found in the individuals' life contexts.

⁵⁶ Reichberg, Gregory, "Just War or Perpetual Peace?" in *Journal of Military Ethics*, 2000, 1(1), p. 16.

⁵⁷ Rawls, *Political Liberalism*, p. 175.

⁵⁸ See Thompson, *Political Ethics and Public Office*, p. 7.

⁵⁹ See Gutmann and Thompson, *Democracy and Disagreement*, p. 13. We can now understand why I stated earlier that their emphasis on "actual political deliberations" is fundamental to the conception of deliberative democracy put forward by Gutmann and Thompson.

⁶⁰ "First-order moral beliefs" refers us to the foundational level and "second-order agreements" refers us to the middle level. *Ibid.*, p. 93.

⁶¹ Robert P. George says that Gutmann and Thompson argue that pro-life advocates "are not able to provide an argument strong enough to dislodge the (also reasonable) belief of their pro-choice opponents that human beings who have not yet attained sentience and consciousness do not have a right to life – at least not of the sort that would entitle them to the status of "constitutional [persons who] deserve the same protection that infants and women should enjoy." [quoting Gutmann and Thompson, *Democracy and Disagreement*, p. 76.] I think that such an argument has, in fact, been provided, for example, in Lee, *Abortion and Unborn Human Life*. See Robert P. George, "Democracy and Moral Disagreement: Reciprocity, Slavery, and Abortion," in *Deliberative Politics*, Stephen Macedo, edit., p. 196 n. 20. Reference is to Patrick Lee, *Abortion and Unborn Human Life*, (Washington: Catholic University Press of America, 1996).

⁶² *Ibid.*, pp. 86-87.

⁶³ My proposal is consistent, for example, with work done in psychology on moral development. Thus, the neo-Kohlbergian school of thought has moved away from Kohlberg's description of moral development in terms of a stage model to a description of development in terms of "shifting distributions of schemas." (p.57) Schema are described as "general cognitive structures in that they provide a skeletal conception that is exemplified (or instantiated) by particular cases or experiences. That is, a schema has "slots" that can be filled in by particular instances. (...) If the slots are not filled in by stimuli [particular instances], then a schema supplies default values." (p.136) (See James Rest, D. Narvaez, M.J. Bebeau, S.J. Thoma, *Postconventional Moral Thinking: A Neo-Kohlbergian Approach*, Mahwah: Lawrence Erlbaum Associates, 1999.) Of course, I am arguing that these "default values" are rooted in comprehensive doctrines.

⁶⁴ To the extent that this claim is true, Kai Nielsen's description of "morality" would come close to describing what is observed at the intermediate level. Morality "can have no "real foundations." "What we have, instead, is the holistic conception of wide and general reflective equilibrium. It is itself a filling out, and exemplifying, and in a certain way even in part a constituting, of reasonableness." (He is here referring to Rawls notion of reasonableness.) I would, of course, add - which Nielsen would not - that the reflective equilibrium is partly constituted by interaction with "foundational" comprehensive doctrines. See "Liberal Reasonability a Critical Tool? Reflections After Rawls," *Dialogue*, XXXVII, 1998, p. 756.

⁶⁵ See Thompson, *Ethics in Congress*, p. 17. Italics are mine.

⁶⁶ *Ibid.*, p. 17. Italics are mine.

⁶⁷ "Legislative ethics," says Thompson, "is a species of political ethics." For my purposes, I shall use the terms interchangeably. *Ibid.*, p. 11.

⁶⁸ *Ibid.*, p. 19.

⁶⁹ If we reviewed the work of the other liberal political philosophers studied in this dissertation, we would find that they hold a similar position consistent with their own philosophical understanding of a liberal democracy.

⁷⁰ See Thompson, *Ethics in Congress*, p. 17.

⁷¹ Ibid., p. 19.

⁷² Ibid., p. 19.

⁷³ Ibid., p. 11.

⁷⁴ Ibid., p. 11.

⁷⁵ One consequence of this plurality of liberalisms, for Rawls, is that there are "many forms of public reason specified by a family of reasonable political conceptions." He stresses in the same paragraph that "justice as fairness, whatever its merits, is but one" such reasonable political conception. See Rawls, "The Idea of Public Reason Revisited," pp. 581-582.

⁷⁶ See Rawls, *Political Liberalism*, p. 159.

⁷⁷ See Gutmann and Thompson, *Democracy and Disagreement*, p. 79.

⁷⁸ See Rawls, *Political Liberalism*, p. 159.

⁷⁹ See Galston, *Liberal Purposes*, pp. 257-258. In his argument, Galston is claiming in particular that most liberal theorists had "assumed that civil society needed virtue and that publicly effective virtue rested on religion."

⁸⁰ See Rawls, *Political Liberalism*, p. 175.

⁸¹ See Gutmann and Thompson, *Democracy and Disagreement*, p. 79.

⁸² John Tomasi, "Kymlicka, Liberalism, and Respect for Cultural Minorities," *Ethics*, 105, April, 1995, pp. 602-603. I suggest that Tomasi's claim implies that the "nonliberal forms of respect for individuals" refer us to comprehensive doctrines.

⁸³ J.E. Bickenbach, *Canadian Cases in the Philosophy of Law*. 2nd edit. (Peterborough: Broadview Press. 1993), pp. 67-69.

⁸⁴ My purpose in using this case has not been to do a full analysis of the arguments of the case. It has been to highlight how comprehensive doctrines can and must necessarily play a role in justifying the interpretation and ethical worth of practices in a public forum. But, more importantly, it has been to show that the fact of pluralism in a liberal democracy demands that a the meaning and the ethical worth of practice must flow from some relevant comprehensive doctrine to receive a hearing in a public forum as a practice of a comprehensive doctrine.

⁸⁵ See Galston, *Liberal Purposes*, pp. 18, 173-174, and chapter 8.

⁸⁶ Ibid., pp. 18 and 212, and chapter 10.

⁸⁷ Ibid., p. 231.

⁸⁸ For example, Galston claims that Kant, and Rawls after him, attempts to resolve the tension between these three virtues by subordinating "the rational pursuit of individual life plans to the social requirements of the moral right." Ibid., p. 231.

⁸⁹ Ibid., p. 231. He refers to Locke, to Kant, and to John Stuart Mill.

⁹⁰ My approach certainly shares a kinship with Larry Alexander and Maimon Schwarzshild who favor an "eclectic liberalism." That is "a less absolute and monistic liberalism, one that recognizes autonomy, neutrality, and welfare as distinct values that cannot be reduced to each other, and that share the moral universe with some additional values that cannot be reduced or always reconciled with them." See "Liberalism, Neutrality, and Equality of Welfare vs. Equality of Resources," *Philosophy and Public Affairs*, Winter, 1987, vol. 16, no. 1, pp. 87 and 109-110.

⁹¹ Auditor General of Canada, *Report of the Auditor General to the House of Commons, ch. 1, Ethics and Fraud Awareness in Government* (Ottawa: Minister of Public Works and Government Services Canada, May, 1995), p. 1-7.

⁹² We saw in chapter 2, for example, that Rawls adopts that interpretation.

⁹³ Quoted in Leon Trakman and Sean Gatién, *Rights and Responsibilities* (Toronto: University of Toronto Press, 1999), p.175, n.35. See Kymlicka, *Liberalism, Community and Culture*, p. 140.

⁹⁴ See Trakman and Gatién, *Rights and Responsibilities*, p. 176.

⁹⁵ My argument is not affected by the fact that Aboriginal interests have been construed by the Supreme Court of Canada as distinct from Charter individual rights. Leon Trakman and Sean Gatién develop this point in quoting from Chief Justice Lamer in *R. v. Van der Peet*: "Aboriginal rights cannot, however, be defined on the basis of the philosophical precepts of the liberal enlightenment. Although equal in importance and significance to the rights enshrined in the Charter, aboriginal rights must be viewed differently from Charter rights because they are rights held only by aboriginal members of Canadian society." Quoted in Trakman and Gatién, *Rights and Responsibilities*, p.178. (See *R. v. Van der Peet*, (1996) 2 S.C.R. 507 per Lamer C.J. at paragraph 31.) My main point has been throughout that

comprehensive doctrines necessarily inform an individual's understanding of their ethical values and of the moral reading of individual rights.

⁹⁶ Leon Trakman and Sean Gatién point out the disagreement between Chief Justices Lamer C.J. and L'Heureux-Dubé. Where Lamer claimed that to interpret Aboriginal rights the court should understand them as the Aboriginal peoples perceive them, L'Heureux argued that the perspective of the common law mattered as much as the Aboriginal perspective. Trakman and Gatién, *Rights and Responsibilities*, p.178,n.49.

⁹⁷ It will be noted that I say most individuals will since some individuals, probably very few, may well be thoroughly nihilistic or hold other views that deny the existence of any morality. In a liberal democracy, they too have a right to interpret the worth of the individual and society in their terms.

⁹⁸ Jean-Pierre Charbonneau's complete thought on this matter is: « la moralisation de la politique est un défi permanent, un combat jamais totalement gagné ». In « Éthique et politique : une coexistence possible? », in *L'éthique gouvernementale, Cahiers de recherche éthique 21*, dirigé par Michel Dion, Québec : Fides. 1997. Pp.39-40.

⁹⁹ See Thompson, *Political Ethics and Public Office*, p.3.

CHAPTER FIVE

THEORETICAL FRAMEWORK FOR ETHICS PROGRAMS AND APPLICATIONS

In Chapter Four, my aim was to adopt a continuity strategy to identify an alternative proposal for reconciling the tensions between the ethical in our private lives and the ethical in the political domain in a liberal democracy. In this chapter, I develop a theoretical framework for ethics programs in government by identifying a set of conditions that are consistent with my version of a continuity strategy and that can serve as the basis for developing ethics programs for government, in particular as they apply to the executive branch of government. I then use the theoretical framework to evaluate the strengths and weaknesses of two current initiatives to institutionalize ethics in the federal government of Canada. In the first case, I assess the federal public service wide initiative on “Values and Ethics.” In the second case, I look at the efforts of the Department of National Defence, which has assumed the role of a lead department in building an ethics program in government.

A Theoretical Framework for Ethics Programs for Government in a Liberal Democracy

A theoretical framework for ethics programs for government must identify both the background conditions that should shape an ethics program and the minimum content requirements for such programs. I start, therefore, by summarizing the background

conditions for such a theoretical framework based on a continuity strategy and on the lessons learned in previous chapters. The first background condition involves the concept of governance. In Chapter One, I argued that the scope of the concept of *governance* when applied to the executive branch of government must include all public officials, the elected and the non-elected. The second background condition refers to the nature of *paradigmatic intermediate level* ethical principles. As I have argued, a foundation for a public ethics in a liberal democracy requires that “the mutual dependency of ethics and democracy”¹ be understood in terms of continuity between the ethical in our private lives and the ethical in the political domain, a continuity in which there exists a kind of “overlapping consensus” on the paradigmatic meaning of intermediate level ethical principles and obligations. That also implies that an ethics program for government should be expressed “in the vernacular.”² The third background condition acknowledges the role of *comprehensive doctrines* and requires us to accept that the ultimate meaning of paradigmatic ethical principles and obligations for most people originates in and is sustained by comprehensive secular and religious doctrines held by individuals. The fourth background condition requires that paradigmatic ethical principles be understood as possessing a *dual status*: they are intermediate from the point of view of comprehensive doctrines; and, they are foundational in the political domain where they are constitutive of a political ethical imperative. Finally, the fifth background condition gives *priority to ethical imperative* in the political domain.

Given these background conditions, we can now turn to the minimum content requirements for these programs. First, the content of ethics programs must respect and incorporate the fact that “a liberal democracy’s most basic commitment is to the freedom

and equality of its individual citizens.”³ That means that public officials who exercise public power in trust must do so by treating the citizens they serve in a manner that ensures that government decisions and actions fully respect the freedom and equality of Canadians both as individuals and as members of larger collectivities. It also means that governmental organisational policies applying to public officials as public officials must respect democracy’s most basic commitment by treating them also accordingly. As a second requirement, they should ensure that they include principles that address the triadic theory of the good that Galston claims is assumed by every contemporary liberal theory: the worth of human existence, the value of fulfilling human purposes, and a commitment to rationality “as the chief guide to both individual purposiveness and collective undertaking.”⁴ That means that democracy is not only about processes, however one defines them, but it is also about democratic goods that any society, including a liberal democratic society, seeks to produce for its members. As a third requirement, ethics program must include a set of common ethical principles and obligations expressed in terms of ordinary language. All of the people to whom these programs apply must be able to understand these principles and obligations to the largest extent possible. Finally, ethics programs must reflect their educational role in government in a liberal democracy. Dennis Thompson puts it this way: “the main business of government ethics should be what may be called education in democracy.”⁵ In concert with this role, these programs should foster liberal virtues like those identified by William Galston. They should include instrumental virtues - like courage, loyalty, law-abidingness - and intrinsic virtues – like self-direction and the capacity to act in

accordance with the precepts of duty,⁶ all of which are required for the preservation of liberal societies and institutions⁷

Together, the background conditions and the minimum content requirements constitute a theoretical framework for ethics programs for government based on a continuity approach that provides us with a means of assessing current initiatives to institutionalize ethics in government. On the basis of this theoretical framework, the next two sections assess the strengths and the weaknesses of two initiatives: the federal public service initiative on “Values and Ethics” and the departmental ethics program in Department of National Defence.

To perform these evaluations, I will limit myself to a set of three features taken from the theoretical framework for ethics programs for government. In addition, I further limit my choice by selecting three features from the background preconditions: the concept of governance, the role of comprehensive doctrines, and the priority of ethics. As will be seen, this set of criteria will be sufficient to illustrate the value of the theoretical framework and to reveal important strengths and weaknesses in these two Canadian federal government initiatives. In each case, the evaluation of the initiative will start by assessing how the initiative has dealt with governance. Then, it will consider whether the initiative has incorporated continuity between the ethical in our private lives and the ethical in the political domain, and in particular the role reserved for comprehensive doctrines in informing our paradigmatic intermediate level ethical principles and obligations. Finally, the evaluation will determine if the initiative truly gives priority to ethics in government.

The Federal Public Service Initiative on “Values and Ethics”

In the early 1990s, the Canadian federal government reassessed in depth the way it was managing the affairs of state. In doing so, it was being carried by a wave of change that was sweeping North American private and public sectors. The air was filled with a public demand for change in government that included the demand for more responsible government. It was a period in which successful concepts from the private sector were being introduced into the public sector. For example, the North American corporate world was stirred by the concept of “reengineering” introduced in the book *Reengineering the Corporation: A Manifesto for a Business Revolution*.⁸ In a similar vein, the book *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* presented a set of principles for “a new form of government.” These principles, the authors argued, “underlie the success for *any* institution in today’s world – public, private, or non-profit,” and fully respected the fact that government cannot be run like a business.⁹ Thus, it is not surprising that in the summer of 1993, the Vice President of the United States chaired a National Performance Review that led to the Reinventing Government (ReGo) initiative, which embraced many of these new principles.

It was in this context that the Clerk of the Privy Council in Canada established in 1995 nine Task Forces led by Deputy Ministers to explore significant issues related to managing the affairs of state that had emerged from a “Canada Program Review” for all of government. One of these Task Forces dealt with “Values and Ethics.” It was responsible for examining “the relationship between existing and evolving values in the

public service” and to consider ways “to align values with current challenges” of government.¹⁰

Published in December, 1996, the Task Force report, known in government as the *Tait Report*, is a good place to focus our attention for a few reasons. First, Jocelyne Bourgon, who in 1995, as the Clerk of the Privy Council, had established the Task Force on “Values and Ethics,” republished the report *A Strong Foundation* in January, 2000.¹¹ In the introductory dedication, she claims that the report continues to ring “true to public servants everywhere, and, as a result, the four families of values it identifies in its conclusion are not clichés but, rather, living truths.”¹² In addition, as the Auditor General of Canada said in his October, 2000 report on *Values and Ethics in the Federal Public Sector*, the *Tait Report* “is the most recent comprehensive assessment of the state of values and ethics in the public service.”¹³ Finally, as the Auditor General of Canada points out: “Since its publication, the report has become the key instrument for promoting values and ethics in the federal government.”¹⁴

What did the Task Force on “Values and Ethics” inherit in 1995 to do its work? The Task Force was aware of the literature in public administration ethics in the twentieth century that I covered in Chapter One. Although I will not repeat here the results that I obtained from my review of that literature – a literature admittedly limited to public administration in the United States, it is useful, however, to point out the corresponding state of Canadian public administration ethics. Kenneth Kernaghan, a member of the Task Force and a leading scholar of the Canadian public service, writes that prior to 1970 “no government had a statement of ethics rules¹⁵ that came close to being a comprehensive source of information on proper ethical behaviour.”¹⁶ Kernaghan further

states that, in the 1970s, Canada saw an “unprecedented outpouring of ethics rules from all levels of government”, but these rules “usually dealt solely with conflict of interest.”¹⁷ Kernaghan’s description of the government approach to ethical issues in government in Canada echo’s the words of Michael Starr and Mitchell Sharp their *Report of the Task Force on Conflict of Interest* (1984). They claim that when the Canadian government did turn its attention to ethical issues in government, it followed the “more typically (...) British-Canadian approach of an incrementalist response to particular problems as they have arisen.”¹⁸ Thus, it was not until 1985, following the work of a federal task force that the government adopted a set of principles in the form of a *Conflict of Interest and Post-Employment Codes for Public Office Holders*. Treasury Board, as the employer of the public service, then produced a mirror copy of the codes and applied them to the public service as a whole.¹⁹ True to its incrementalist approach, the rest of the 1980s saw most of the activity in the growth of ethics rules in the Canadian government mainly in the area of workplace harassment,²⁰ although there were many other aspects of workplace ethics that also required ethics rules, including gender and diversity issues.

There is nothing wrong *per se* with an incrementalist approach to ethics in government. It is, however, a fragmented approach that runs the risk of not questioning the foundation of the solutions being proposed for each particular set of ethical issues. The Task Force on “Values and Ethics” was well aware of this when it started its work stating clearly that “the time had come for a careful exploration of some of the problems and issues that had arisen in many public servants’ mind about the principles underpinning public service, and about the ethic or ethics of the public service itself.”²¹

In other words, it was time to take a much closer look at the foundations of public service ethics than had been done previously.

What has been the result of this effort? The *Tait report* identified a set of core values clustered into four families of values²² that it claimed were “rooted in the democratic mission of government.” The report states that these values form a “solid foundation on which renewal can take place and on which a stronger public service can be built.” It draws a distinction between core values and specific policies or mechanisms for their protection based on the assumption that “policies can and must change; core values should not.”²³ In describing the “next steps,” the report recommends a public service wide “honest dialogue” on values and ethics in the public service starting with the set of core values it had identified.²⁴ Picking up on this recommendation, the Auditor General of Canada writes that the main objective of his *Report on Values and Ethics in the Federal Public Sector* (October, 2000) is “to stimulate sustained discussion and action on values and ethics by Canadians and members of the federal public sector.”²⁵

Evaluation of the Public Service Initiative on “Values and Ethics”

I shall now evaluate the public service initiative on “Values and Ethics” on the basis of the three features selected from the background preconditions of the theoretical framework for ethics programs for government: how it deals with the concept of governance, the role of comprehensive doctrines, and the priority accorded to ethics.

As I have argued throughout this dissertation, a basic background condition for ethics programs for government concerns the issue of governance. On that point, the *Tait Report* contains a tension²⁶ between, on the one hand, recognising that public servants

exercise significant discretion and, thereby, exercise a degree of governance and, and on the other hand, maintaining the traditional idea that public servants cannot practice any degree of governance since they are the “unelected.” The tension between these two conceptions of governance clearly shows up in the *Tait Report* category of professional values. Thus, the Task Force acknowledges the existence of a tension between what it calls the “traditional values” of a public administration approach and the values of the “new public management”²⁷ approach. The drafters of the report write: “we do not think it is helpful to minimize or smooth over the tension between these two perspectives.”²⁸ They do not attempt to resolve this tension since they see it as “dynamic” and healthy, capable of laying “the groundwork for a necessary synthesis.”²⁹

I suggest that *Tait Report* is mistaken in its assessment. Contrary to the optimistic intentions of the drafters, I further suggest that the report as a whole erodes the potential ground for a “synthesis” before it can be worked out. The erosion of this supposedly “dynamic” tension is felt nowhere more than in the interpretation the *Tait Report* gives of the principles that govern the relationships between public servants and ministers and Parliament. The report attempts to side step the governance issue tension it has identified by joining two claims: first, “the most important defining factor for the role and values of the public service of Canada is its democratic mission and public trust”³⁰ ; and, second, this democratic mission and public trust is carried out by applying the traditional principle of ministerial responsibility.³¹ I would describe this logic as force fitting the changes observed within the concept of governance into the traditional concept of ministerial responsibility.³² The report correctly claims that the principle behind ministerial responsibility is the democratic principle and it defines the democratic

principle as: “government should be carried on by elected representatives, not by unelected officials.” The doctrine of ministerial responsibility, we are told, “protects the authority of ministers chosen through the democratic process”, and that means that the elected should be, and “should be seen to be, in charge.”³³

However, there is an important difference between being “in charge” and claiming that the elected are the only ones involved in governance. The *Tait Report* acknowledges a need to clarify the concept of ministerial responsibility³⁴ since the concept seems to convey misconceptions about the role of public service. For example, the report clearly denies the idea that the role of public servants is “merely to execute” what the ministers decide³⁵. However, it also states that the role of the public servant is to provide “comprehensive advice and then, to carry out faithfully and professionally their [ministers]decisions.”³⁶ To resolve this tension within the concept of ministerial responsibility, the report distinguishes between two concepts: accountability and answerability. According to the report, the concept of answerability is narrower than accountability and is limited to “the duty to inform and explain,” while the concept of accountability adds to answerability the idea of “accepting personal consequences.”³⁷

However, the shift to the traditional concept of ministerial responsibility does not succeed in adequately resolving the tension between public servants’ significant exercise of discretion – hence, a degree of governance – and the traditional idea that public servants cannot practice any degree of governance. The issue is more complex than the *Tait Report* acknowledges. As the *Report of the Task Force on Conflict of Interest* (1984) stated: “both politicians and public servants participate actively in policy development, with the result that the line between politics and administration has become

increasingly indistinct.”³⁸ In fact, the situation had been recognised years earlier by both the 1962 Glassco Commission and the 1979 Lambert Commission. Both commissions had recommended “that *to reflect reality*, deputy ministers should be accountable to Parliament for their administrative responsibilities.”³⁹ These observations relate to the concept of governance in a liberal democracy and suggest that there is a deeper issue at stake. In other words, who, in a liberal democratic government, defines and interprets the public interest?⁴⁰ The *Tait Report* answer to this question is evident from its discussion of the obligation of loyalty: “Loyalty to the public interest, *as represented and interpreted by the democratically elected government* and expressed in law and the Constitution, is among the most fundamental values of public service (...).”⁴¹ For the *Tait Report*, it is clear that the elected and not the nonelected define and interpret the public interest.

I suggest that to “reflect reality,” as both the Glassco and Lambert Commissions claim, we must acknowledge that nonelected public officials exercise discretion every day on the basis of their interpretation of the public interest.⁴² To a certain extent this is required because the public interest tends to be expressed in general or abstract terms in many laws,⁴³ including regulations that flow from requirements of the Canadian Charter of Rights and Freedom in the Constitution Act (1982). In many cases, nonelected public officials will make judgements in the form of departmental policy or of authorized departmental procedures based on some interpretation of a public interest as it is expressed in law and the Constitution. In addition, although these instances of the exercise of discretionary power may not be on the same scale as the wider reaching

policies that emanate from government legislation, they are not insignificant. The sum of all those daily decisions is significant.

I agree that the concept of ministerial responsibility necessarily requires accountability because “it governs the use of power” and that this requires that ministers “be personally answerable to the House of Commons for the exercise of power.” However, it does not follow that the nonelected should not be considered “accountable” in some significant way to Parliament. The *Tait Report* draws a distinction between “accountable to Parliament” and “accountable to ministers”⁴⁴ that I suggest needs to be revisited. That distinction may have been acceptable in the past, but it is neither a necessary requirement of the concept of governance in a liberal democracy or of the concept of the responsibility of ministers. In the final analysis, the traditional meaning of the doctrine of the responsibility of ministers is no longer useful today or for the future and requires a reinterpretation that aligns it with the evolved realities of government in modern liberal democracies.

It is not inconsistent for citizens to require the minister be “personally answerable to the House of Commons for the exercise of power” and for citizens to also demand that the nonelected public officials be held accountable in his or her organisation— and not simply answerable - for their use of the power they in fact do exercise. Citizens in modern democracies can easily ascertain that nonelected public officials exercise government power in a manner that enjoys a large measure of autonomy from the minister responsible for a specific department. I suggest that there are means available to institute forms of accountability that involve more than mere answerability. For example, if the government established a framework for the ethical exercise of delegated power, a

framework that included taking all reasonable steps to provide guidance on interpreting the public interest and taking action accordingly, then the public official should be held responsible, in addition to the minister, for the unethical exercise of discretionary power based on a transgression of the ethical values in the framework.⁴⁵ In fact, the government already has a component of such a framework in the *Code of Conflict of Interest for Public Servants*. The *Code* holds a public official accountable for acting ethically or unethically in a manner that is to a large extent autonomous from the minister of a specific department. In addition, the *Code* illustrates my point about the exercise of discretionary power by public officials since the principles in the *Code* are expressed in terms of very general guidelines that necessarily require interpretation by public officials for their application. Another example of a fairly autonomous means of holding public officials accountable is the inclusion of a factor dealing with ethical behaviour and responsibilities in the performance evaluation of personnel.⁴⁶ If the government of the day chooses to keep the accountability of public servants in the administrative rather than the legislative field, one can claim that in fact the public service is not technically accountable to parliament. However, this distinction is a superficial distinction at best.⁴⁷ In today's complex forms of modern government, it is no longer useful - quite the contrary - to continue to claim that the unethical nonelected public officials are merely answerable to the ministers to whom they report.

The Federal Sentencing Guidelines for Organisations enacted in 1991 in the United States provide a useful example here. They were designed primarily "to hold organisations *accountable* for employees' illegal actions."⁴⁸ Conversely, if an employee is found to have been involved in illegal actions in the name of his or her company,

companies that demonstrate that they have done all that is reasonable to create an “effective compliance program to forestall organisational crime” may avoid onerous and large penalties.⁴⁹ The U. S. Federal Sentencing Guidelines identify criteria that can be used to assess whether corporate executives can be considered to have done all that is necessary, beyond the minimum requirements of the law, to institute an effective compliance framework for action within their organisations. Thus, if a company employee is grossly unethical in his or her actions and such a program exists, the penalties imposed on the company are dramatically reduced and the courts consider that it is the employee and not the company that should carry the largest share of the blame.⁵⁰ In a similar way, I suggest, the introduction of a mandatory ethics framework would preserve the doctrine of ministerial responsibility understood as a means of “protecting the authority of ministers chosen through the democratic process” and as a means of ensuring that the elected should be, and “should be seen to be, in charge,”⁵¹ without denying the very real and significant responsibility that public servants have in carrying out their share of governance beyond the minimum requirements of the law.

In summary, on the issue of governance, I suggest that the Task Force on “Values and Ethics” and the Auditor General of Canada in his reports since 1995 dealing with ethics in government do not do justice to the discretionary use of power – hence, exercise of governance - exercised by public servants. Neither the Task Force on “Values and Ethics” nor the Auditor General have understood the full implications of a point made in the *Report of the Task Force on Conflict of Interest* (1984): “the increase in the number of public servants, and the greater scope and range of government activity in the economy, have altered the nature of government fundamentally. *The setting in which*

*public servants operate has changed.*⁵² I have argued that the “setting” in a modern democratic government has changed to the point that ministerial responsibility must be reinterpreted to better reflect and, thereby, effectively address the very real role that public servants are playing in governance. That role is exercised in the thousands of judgments made daily by a large and complex public service whose members interpret some aspect of the public interest expressed in the laws and regulations they administer. Only in that way can true accountability for public servants be worked out.

The second assessment feature of the theoretical framework to evaluate the federal government initiative on “Values and Ethics” focuses on its treatment of the continuity between the ethical in our private lives and the ethical in the political domain. It assesses, for example, whether ethical values are understood as paradigmatic intermediate level ethical principles whose meaning originates in and is sustained by comprehensive doctrines, both secular and non-secular, held by public officials.

In describing the evolution of the work of the Task Force, the *Tait Report* writes that it “did not set out to draft a list or a declaration of public service values.” The Task Force concentrated its energies on “important problems or issues for public service values.” However, it was inevitable that public service values would not only be part of the discussions of these issues within the Task Force, but also part of the conversations they had with a wide spectrum of other public servants. As the *Tait Report* states: “We found that certain values emerged spontaneously from our reflections. They are the values that come naturally to mind as one thinks about public service, the values without which it is not possible to speak of public service at all.”⁵³ In the end, the *Tait Report*

retained forty-five different values grouped in four “overlapping” families of core public service values: democratic, professional, ethical, and people values.⁵⁴ Examples of the democratic values are rule of law, responsible government, and accountability; examples of the professional values are merit, neutrality/non-partisanship, quality, and service to clients/citizens; examples of the ethical values are integrity, honesty, impartiality, and equity; and examples of the people values are respect, tolerance, fairness, and courage.⁵⁵ The report stresses that “these families of values are not fully distinct, but largely overlap or repeat each other.”⁵⁶

The first value to be assessed is the value of the public interest. In his *Report on Values and Ethics in the Federal Public Sector* (October, 2000), the Auditor General of Canada proposes a framework of action for further discussion with Canadians and throughout the federal public service on values and ethics. One of the major objectives identified in the framework requires that “ethical standards for public service should be clear.” One of the actions recommended to advance that objective is to “emphasize the principle of public service as a public trust and the primacy of the public interest and law.” Another recommendation is to “explain and balance competing public service values so that the public interest remains the paramount principle.”⁵⁷

I will assume, for the purpose of this dissertation that the primacy of respect for the law is founded in a public ethics. That assumption is supported by the argument I have made that we should accept a version of the moral reading of the laws of the land modeled on Dworkin’s moral reading of the American Constitution and that such a conception should apply to public officials. On this conception, we could consider that laws tend to be expressed in terms of paradigmatic intermediate level principles. Thus, in

applying these principles, public officials will necessarily be required in certain circumstances to justify their application on the basis of comprehensive doctrines.

I shall focus, therefore, on what I consider to be the really contentious issue. What is involved in claiming the primacy of the public interest? In neither the *Tait Report* nor the Auditor General Report is there any mention of what the public interest is or should be. Even if we accepted that the public interest is “as represented and interpreted by the democratically elected government and expressed in law and the Constitution,”⁵⁸ it would inevitably be expressed in general terms leaving much room for interpretation before a specific public interest becomes reality through government action. I have claimed that the extent of interpretation required of public officials is more than mere execution of the letter of the law.

The notion of public interest or public good is, and should remain, very general and abstract. It includes at a minimum, for example, Galston’s triadic description of the good: respect for life, fulfilment of interests and purposes, and rationality. It may help to understand my point here if I illustrate how these three goods could relate to the workplace of public servants. For example, respect for life could correspond to safety and security policies. Fulfilment of interests and purposes could correspond to policies that provide personnel with opportunities for education. And, rationality could correspond to the structured decision making required for managing multi-million dollar projects. The notion of public interest or public good probably also includes a need for a healthy respect of the other liberal goods in Galston’s list: negative freedom, normal development of basic capacities, intersubjective relationships, and subjective satisfaction. Since Galston claims that each one of these goods is valued intrinsically and

fundamentally by citizens in a liberal democracy, it is reasonable to expect that public officials who exercise discretionary power would often make judgments mainly on the basis of whether they are consistent with these goods understood as part of the public interest.⁵⁹ To the extent that public officials make use of any of these “liberal goods” for decision making, they are treating them as paradigmatic intermediate level principles that have a reasonably accepted shared meaning. However, none of this would justify reducing the idea of the public interest to any one of these specifications, nor to a set of them, nor to all of them. Although the idea of the public good is singular, its specifications are plural.

I now turn to the other values identified in the “Values and Ethics” initiative. My comments about meaning of the public interest are echoed in what the *Tait Report* and the Auditor General reports have to say about the meaning of the public service values they single out. To read these documents one gets the impression that the meaning of each of these public service values is so clear that all that is necessary is to reach for one’s copy of the *Concise Oxford* or *Webster’s* dictionary. However, things are not so simple. Although I have claimed that public service values like those in the *Tait Report* have a reasonably accepted shared meaning, one has to dig deeper as soon as there is a requirement to justify a decision invoking such a value that has been challenged. For example, one of the “democratic” values is loyalty. Someone’s loyalty may be challenged in difficult circumstances and a rationale from both the accuser and the accused will be necessary to resolve the conflict. Loyalty will imply something very different if the dominant comprehensive doctrine invoked by a public official tends to be a strong type of Kantian maxim/legal approach, a traditional utilitarian approach, or a

feminist gender based approach. The same is true for the value 'fidelity to the public trust', one of the "traditional professional" values. Similarly, the meaning of the concept of 'public trust' is also necessarily influenced by the dominant comprehensive doctrine invoked. To generalize, these comments apply to most of the *Tait Report's* "Ethical" values: integrity, honesty, probity, discretion, public trust (repeated), and others.

All of these "Ethical" values take on important differences in their interpretation - and in their application - when we change from one comprehensive doctrine to another. Yet, this fact is not recognised at all. The Auditor General of Canada recommends eight priorities for action in his *Report on Values and Ethics* and two of these priorities are: "establish comprehensive values and ethics initiatives in federal entities and interdepartmental communities;" and "provide guidance on ethical decision making."⁶⁰ I suggest that the only way that these initiatives will be successful is to treat these values – both ethical values and nonethical values – as paradigmatic intermediate level values that should include some reference to comprehensive doctrines.⁶¹ For example, consider the requirement for managers to treat fairly employees under their authority. As a paradigmatic ethical value fairness requires that managers adopt management practices that treat all employees according to the same standards. However, it should also be made clear that managers' decision-making in the application of a standard can and should be informed by various types of justification rooted in comprehensive theories. Thus, in some cases, policies should point out to managers that, in certain circumstances, to allocate training for professional development to the higher performing employees involves legitimately giving more weight to the utility of the training to the organisation (a consequentialist/utilitarian principle). However, the policies should also advise

managers that, in other cases, they are justified if they allocate training for professional development on the basis of a target level of training hours for all employees because, in these cases, they give more weight to the organisation's responsibility to contribute to the development of the employee (a care-based principle).

Although I have identified weaknesses in the federal government-wide initiative on "Values and Ethics," it does not imply that references to comprehensive doctrines in public servants' discussion of intermediate level ethical principles does not show up in forums meant to foster dialogue amongst public servants on ethical issues in government. For example, a practical handbook, *Building on a Strong Foundation – The Dialogue Continues: A Case Study Approach to Values and Ethics in the Public Service*, was produced by the Canadian Centre for Management Development. The handbook summarises the results of "honest dialogue" sessions on five case studies moderated by the two co-champions of values and ethics in the Public Service and including 70-80 participants at all levels of management in government.⁶² Thus, in discussing Case 1 – "Transparency versus Confidentiality in Releasing Information," the handbook notes three approaches the participants adopted in their dialogue on the issue. One of the arguments that form part of first approach states: "the release of information can be viewed from the utilitarian standpoint - what are the consequences?" A second approach is definitely deontological and focuses on, for example, the duty to be law-abiding and honest.⁶³ In Case 2 – "Balancing Compassion for Employees and Operational Constraints," approach two is based on the principle: the ultimate goal is the greatest good for the greatest number.⁶⁴ Finally, in Case 3 – "Professional Values – New Risk Management versus Traditional Prudence," the handbook concludes the case study with a

general comment: the nature of most workplace ethical situations is that “usually they involve one good versus another good,” and “the key to resolving these conflicts is responsiveness of four types.” The fourth type involves responsiveness “to higher values, primarily to the public interest.”⁶⁵ All of these examples clearly show that public servants inevitably turn to principles rooted in comprehensive doctrines when they participate in an “honest dialogue” that involves the justification of the ethical values they apply in dealing with day-to-day issues in public service.

The Auditor General of Canada correctly says that there is an “initial step” that can be taken “immediately” to implement his recommendations and that is “to acknowledge the difficult value and ethical judgements that may have to be made in delivering programs.” He is also correct in claiming that many of these judgements involve “consciously asking if decisions and reasons for the decisions are fair, honest, and reputable and would bear close public scrutiny if the media disclosed them.”⁶⁶ However, as I have said, these two recommendations cannot be adequately implemented without acknowledging that public officials make use of paradigmatic intermediate level ethical principles whose meaning originates in and is sustained by comprehensive doctrines, both secular and non-secular, held by public officials.⁶⁷

The third assessment feature of the theoretical framework to evaluate the extent to which ethics is given priority in the federal government initiative on “Values and Ethics.” Throughout this dissertation, I have advanced the thesis that “the mutual dependency of ethics and democracy”⁶⁸ requires not only the presence of ethics in the foundation of liberal democratic government but the priority of ethics. I have just argued that the

federal government conception of values and ethics in public service does not yet acknowledge a fundamental role for comprehensive doctrines and, therefore, does not treat ethical values as being at an intermediate level of abstraction – in the sense that I have presented. Nevertheless, the federal government initiative could still acknowledge the primacy of ethics in the political domain. We will now consider whether or not it does.

The central importance of values and ethics is declared in most of the federal government documents dealing with the subject in recent years. For example, the Auditor General of Canada agrees with the *Tait Report* that it is necessary to assign “primacy to the values of respect for law and the public interest,” two of forty-five values identified by the Report.⁶⁹ He also claims that “the promotion of values and ethics is an essential part of a good governance framework” and that “the long-term viability of federal entities” depends on maintaining the framework healthy.⁷⁰ In the same vein, the Clerk of the Privy Council, speaking for the Public Service as a whole in his Ninth Annual Report from the Clerk of the Privy Council to the Prime Minister, writes: “Scaling back to principles to match the present is not an option. We must be prepared to integrate our values and ethics into everything we do.”⁷¹

However, none of these documents acknowledge the priority of ethics in the political domain. I suggest that the reason for this omission - or incapability - lies in the unresolved tension we identified earlier within the concept of governance, more specifically as it relates to the doctrine of ministerial responsibility. As the Auditor General of Canada says: “concerns about the clarity of the concept of ministerial responsibility and its consequences are recurrent, and they go to the fundamental nature

of responsibility for actions in government.” For that reason, he continues: “we agree with the *Tait Report* that clarifying the responsibility of ministers is essential for promoting sound values and ethics in government.”⁷²

There is, however, a real risk that those who follow this advice will arrive at an impasse in matters of ethics since all arguments will be based on the traditional doctrine of ministerial responsibility. I will illustrate this risk by considering the forty-five values identified in the *Tait Report* and the priority assigned to them. Although there are forty-five values, ultimately, what is ethical must line up with two values: the primacy of the law and the public interest.⁷³ In addition, the *Tait Report* clearly states that the public interest is “represented and interpreted by the democratically elected government.”⁷⁴ This position gives priority to ethical values only to the extent that these values are contained in laws or interpreted by “elected” officials. However, the very existence of major ethics and values initiatives in the federal government implies that the law is not enough and that it provides only a minimal, although important, level of ethics. Our conception of liberal democracy does not and cannot reduce itself primarily to what occurs in the judicial system. As I have suggested, we can use as a model Dworkin’s argument for the moral reading of the American Constitution and generalize it for use by public officials. A generalized conception of the moral reading of laws provides us the means of understanding how the non-elected public officials can and do play a significant role in formulating the multiplicity of departmental policy and regulations that are intended to represent applications of the law.

Even if we were to grant that the law provides a minimal level of ethics for a liberal democratic society, there is another dimension to the risk. According to the *Tait*

Report, whatever is considered ethical but is outside this minimal level must remain within the boundaries of the other value to which it gives priority, the notion of the public interest. Let's take a closer look at what the report has to say. The argument as presented in the *Tait Report* would seem to give priority to what is political over what is ethical. The argument requires us to accept that it is the government of the day, and, more specifically in most departments, the relevant ministers, who decide what is ethical in their departments in as much as they are the ones who "represent and interpret" the public interest. The argument is reminiscent of what Gutmann and Thompson call Hobbes's "morally flawed argument" in which the power of the sovereign – and here I include the departmental ministers – implies that "any policy endorsed by the sovereign turns out to be moral by definition because the sovereign defines morality."⁷⁵ It seems to me that this argument would have been unacceptable to the drafters of the *Tait Report*. I also suspect that they would object to my contention that they are implying that what is ethical above the minimal level of ethics found in the law will be decided - represented and interpreted - solely by the elected officials. Nevertheless, neither the *Tait Report* nor the Auditor General of Canada have adequately addressed this risk and ensured that the "Values and Ethics" initiative can avoid the "morally flawed argument." The argument is certainly not acceptable if one accepts the results of chapter One that the role of non-elected public officials cannot be reduced to executing orders and commands – as do essentially both the *Tait Report* and the Auditor General of Canada. One thing for certain, this argument would not be acceptable to most citizens of a liberal democracy. Being ethical in government is a public good that forms part of the public interest such that it must extend beyond the boundaries of an interpretation provided by any government of the day.

In summary, the federal government public service initiative on “Values and Ethics” is an important initiative that is in stride with the times. It is with reason that the two deputy minister co-champions of the initiative can say: “talk of values and ethics seems to be everywhere today.”⁷⁶ However, as my analysis has tried to point out, the initiative suffers from important weaknesses. It has not adequately addressed the very real role that public servants are playing in governance. It provides a list of forty-five values, many of which should be, but are not, treated as paradigmatic intermediate level ethical values. It fails to acknowledge the fundamental role to be played by comprehensive doctrines, both secular and non-secular, held by public officials. And finally, it has not been able to assign a clear priority to ethics in government that gives full weight to a common ethical core of the historical phenomenon of liberal democracy in its many specifications. The name “Values and ethics” of the federal public service initiative captures well the tension at the heart of the initiative since, upon closer inspection, the initiative has not come to grips with the demand of Canadians that government give true priority to ethics in all facets of governance.

The Defence Ethics Program

The second ethics initiative we will consider at the federal government level involves the efforts of a department of government, the Department of National Defence. In the early 1990s, the Department of National Defence took note of some of the important changes occurring in the field of government ethics in other liberal democracies and started work on a Canadian approach to Defence ethics. For example,

in the United States, the U.S. Congress had already passed the Ethics in Government Act in 1978. The act created the Office of Government Ethics. And, as we mentioned in the previous section, the Federal Sentencing Guidelines for Organisations were enacted in 1991. The American approach to government ethics leaned heavily on compliance and adopted a system of ethical rules that took “the customary American form of laws with specific penalties for breaches of the law, and all the rights of ‘due process’.”⁷⁷ In Australia, the Australian Department of Defence instituted their Defence Ethics and Fraud Awareness Campaign in 1991.⁷⁸

It is in this context that the Department of National Defence gave approval in 1994 to develop an ethics program, which was formally approved in December 1997.⁷⁹ By doing so, it took on the role of a lead department in building an ethics program in government.⁸⁰ However, as the Auditor General of Canada notes, the Department of National Defence exists not only as a department of government but in support to the Canadian Forces constituted under the National Defence Act.⁸¹ Accordingly, the *Defence Administrative Order and Directive 7023-0*, issued in June, 2001, clearly states that the Defence Ethics Program applies equally to the public servants of the department and to members of the military.⁸²

The *Defence Administrative Order and Directive 7023-0* attempts to place the Defence Ethics Program within Defence’s larger context: “the DND and CF are integral parts of our democratic society and must reflect and practice the values of that society.”⁸³ Thus, it is not surprising that the Auditor General of Canada says in his report on *National Defence - the Proper Conduct of Public Business*: “The philosophical foundation of the program is a “values-based” approach, which places priority on core

values and principles of ethical culture as guides to professional conduct.” The *Statement of Defence Ethics* is considered the foundation of the program.⁸⁴ It is based on values drawn from basic and common values of Canada as a liberal democracy and of Canada’s military traditions. It is intended to be generic enough to respond to the needs of the defence community as a whole and to the particular needs of both groups within the Department of National Defence: public servants and military personnel.⁸⁵ It consists of two main parts: three ethical principles six ethical obligations. In descending order of priority, the three principles are: “Respect the dignity of all persons, Serve Canada before self, and Obey and support lawful authority.” The three principles refer to the universal ethical obligations owed respectively to humanity, to one’s society, and to lawful authorities, in that order.⁸⁶ The principles also serve as the basis for “establishing priorities when ethical obligations conflict or when circumstances do not present choices that are clear and ethically unambiguous.”⁸⁷ The ethical obligations are intended as *prima facie* obligations that personnel should strive to meet in performing their professional roles. They are: integrity, loyalty, courage, honesty, fairness, and responsibility.⁸⁸ Finally, the Defence Ethics Program recognises five main bases for ethical decision-making: rules-based, care-based, consequences-based, virtue-based, and self-interest-based.⁸⁹

Evaluation of the Defence Ethics Program

I shall evaluate the Defence Ethics Program within the Department of National Defence from the point of view of the same three assessment features of the theoretical framework for ethics programs for government used to assess the public service initiative

on “Values and Ethics”: how it deals with the concept of governance, the role of comprehensive doctrines, and the priority accorded to ethics. Although we are assessing an ethics program initiative at the departmental level in the case of National Defence, we must be careful to respect the unique nature of the military component of the department and not to focus only on the common trait of public service.⁹⁰

This distinct nature of, yet common goal of the military and the public service is readily apparent in the first background condition, the idea of governance. As a department of government with a large number of public servants, the Department of National Defence is part of the government wide initiative on “Values and Ethics.” To the extent that the initiative impacts on public servants in the department, the unresolved difficulties that we identified in the idea of governance at the public servant level remain unresolved for public servants in the Department of National Defence. However, by focusing the ethics program on providing a framework to assist personnel “in maintaining the highest ethical standards of conduct and leadership,” the department may have circumvented, for the time being, the full negative implications, argued in the previous section, of the need to justify all public service actions in terms of ministerial responsibility. As I have claimed, the problem is not with the idea of ministerial responsibility *per se* – that the elected should be, and “should be seen to be, in charge”⁹¹ – but with the narrow conception of ministerial responsibility that insists that *only* the elected are involved in governance.

In his *Report on Values and Ethics*, the Auditor General of Canada presents a “Framework for Action” and acknowledges that the public service must “clarify the principle of ministerial responsibility and the responsibilities of officials to whom

authority has been delegated.”⁹² Only the future will reveal whether that clarification will reflect the changes in the conception of governance that I contend are necessary or whether it will try to force the changed reality into a policy that attempts to perpetuate a traditional conception of the responsibility structure of the executive branch of government in liberal democracies. For the time being, if my argument is correct about the paradigmatic nature of ethical principles and obligations, any public service activities that involve a level of governance can and will be positively affected by a departmental ethics program that focuses its efforts on ethical conduct and ethical leadership.

If we consider the military arm of the Department of National Defence, the Canadian Forces, the idea that the military could somehow be involved in governance seems, at first sight, to go against the very grain of the principle of civilian control of the military in a liberal democracy. However, in many cases, military personnel are involved in departmental activities that parallel those of their public servant counterparts. Since the argument I have put forward on the concept of governance is based on the level of discretion – the part of daily decisions that constitutes governing power -exercised by a public official, then whether that official wears a uniform or not does not affect the argument.

The Canadian Forces certainly recognize the important decision making powers of many of its senior personnel and the need to base those decisions on ethical considerations. However, the exercise of discretionary power is too often understood in terms not of contributing to governance but rather of the traditional distinction between setting policy and implementing policy - with the minister setting the policy and the Canadian Forces implementing that policy.⁹³ Yet, Douglas Bland claims that defence

policy is managed and maintained “through a sharing of responsibility for choices and outcomes (...) specifically, the civil authority is responsible and accountable for some aspects of defence policy and administration and military leaders are responsible and accountable for others. Although some responsibilities may merge, they are not fused.”⁹⁴ In addition, in domestic situations at the National Defence Headquarters or on military bases in Canada, military personnel make judgements and take actions that correspond to a significant exercise of discretion and, I contend, they should be considered to be in fact exercising a governing power, the power of the Government of Canada delegated to them. However, it is acknowledged that the level of discretion for most military personnel, that is the exercise of governing power, is considerably constrained in international situations, especially when these involve armed conflict. Thus, in the case of military personnel, the nature of the discretion being exercised can change radically when they move from one end to the other of the peace-armed conflict continuum.

We now turn to the second assessment feature of the theoretical framework: how has this initiative dealt with continuity between the ethical in our private lives and the ethical in the political domain. For example, are the ethical principles and obligations treated as paradigmatic intermediate level principles and obligations? And, what role, if any, is assigned to comprehensive doctrines held by public officials? The *Statement of Defence Ethics* is a department-wide statement that serves as the foundation of the Defence Ethics Program.⁹⁵ In providing a distinction between its ethical principles and its prima facie ethical obligations,⁹⁶ the statement goes one step beyond the forty-five core public service values identified by the Tait Report.⁹⁷ For example, its three ethical

principles - “respect the dignity of all persons, serve Canada before self, and obey and support lawful authority”⁹⁸ - serve to establish “priorities when ethical obligations conflict or when circumstances do not present choices that are clear and ethically unambiguous.”⁹⁹ Although “respect the dignity of all persons” has a Kantian ring to it, the expression ‘dignity of all persons’ is certainly open to interpretations derived from public officials’ other comprehensive doctrines. Although a hierarchy is stipulated, it is expected that in most cases the three principles should be in alignment. Thus, those who exercise lawful authority, for example, should act in a manner consistent with their public role of serving Canada, and that should give priority to respecting the dignity of human beings.

It would seem that the Defence Ethics Program places its ethical principles and ethical obligations at the paradigmatic intermediate level, especially since it acknowledges a fundamental role for comprehensive doctrines held by public officials. It recognises five main individual ethical ideologies as the bases for ethical decision-making: rules-based, care-based, consequences-based, virtue-based, and self-interest-based. It is interesting to note that in a *Baseline Assessment of Ethical Values in DND* published in July, 2000, both the military and the civilian component of the department gave the same rank order to the five bases, in decreasing order of importance: virtue-based, care-based, rules-based, consequences-based, and self-interest-based.¹⁰⁰

Finally, the third assessment feature of the theoretical framework applied to the Defence Ethics Program considers the extent to which the initiative gives priority to ethics. Because of the mixed military-public service nature of the Department of

National Defence, we will deal with this assessment feature in two parts: the public service and the military. The conclusion that I reached for the “Values and Ethics” initiative in the federal public service obviously applies to the public servants in the Department of National Defence: the initiative does not address adequately the very real role that public servants are playing in governance. Despite that weakness, as I argued in the last section, federal public servants inevitably turn to their comprehensive doctrines when they participate in an “honest dialogue” about the role of ethical values in dealing with day-to-day issues in public service. Although the “Values and Ethics” initiative does not acknowledge a fundamental role for public servants’ comprehensive doctrines, it does not prohibit recourse to such doctrines.¹⁰¹

Although for most public servants in government the requirement to be ethical, over and beyond what is contained in the law, is still at the “honest dialogue” phase and not yet mandatory, the case of the public servants in the Department of National Defence is slightly different. The *Defence Administrative Order and Directive 7023-0*, issued in June, 2001, clearly states that the Defence Ethics Program applies equally to public servant employees of the department and to members of the military. Therefore, to the extent that public servants do adopt the ethical framework provided by the Defence Ethics Program, they will be in fact giving priority to ethical considerations in most situations where they exercise discretionary power whether or not such power is acknowledged by those leading the “Values and Ethics” initiative.

In as much as all public service is a public trust,¹⁰² I suggest that the use of the state’s military power by military personnel is a public trust in all cases where they exercise discretionary power. As a result, military personnel are deemed to have

accepted the responsibility and the related ethical obligations that flow from accepting this public trust. Although I grant that it is not up to the military to define defense policy but to the elected governing officials, I also submit that defence policy is not defence until it has been put into action. As I have argued, there are thousands of occasions that arise between the written general policy and the actions that make it a reality in which discretionary power that goes far beyond the simple execution of a command is exercised. In all cases of the exercise of discretionary power and in all cases of the straightforward execution of orders, the *Defence Administrative Order and Directive 7023-0* requires the military component to perform their duties to “the highest ethical standards.” It is clear that military personnel are formally not authorized to be unethical in the manner in which they exercise discretionary power and execute straightforward and precise orders. To the extent that military personnel act in accordance with these directives, we should conclude that they must give priority to the ethical in the public domain.

In summary, on the basis of the three features of a theoretical framework for ethics programs, the Defence Ethics Program of the Department of National Defence fares better than the “Values and Ethics” initiative. Military personnel have traditionally enjoyed a fair degree of discretion in operations. In today’s world that discretion needs to be acknowledged as the exercise of a certain level of governing power to be managed responsibly and adequately. In addition, the Defence Ethics Program states that justifications for decisions may require showing, in some cases, that they include ethical interpretations that can be traced clearly to comprehensive ethical theories. Finally, the initiative requires the priority of ethics in decision-making. However, as a department of

government, the Department of National Defence will be affected by the outcome of the “Value and Ethics” initiative and only time can tell whether that will be positive or negative.¹⁰³

Conclusion

This chapter developed a theoretical framework for ethics programs in government consistent with a continuity strategy for reconciling the tensions between the ethical in our private lives and the ethical in the political domain. On the basis of this theoretical framework, I identified three assessment features for the purpose of performing an evaluation of the strengths and weaknesses of two current initiatives to institutionalize ethics in the federal government of Canada. Both initiatives apply to the executive branch of government.

My evaluation of the federal public service initiative on “Values and Ethics” and of the Defence Ethics Program in the Department of National Defence revealed important weaknesses in both initiatives. For example, on the basis of the first assessment feature, both demonstrate that they have not dealt adequately with the scope of the concept of governance in modern liberal democracies. In particular, neither initiative fully acknowledges that the exercise of legitimate discretionary power in liberal democratic government represents a continuum exercised by all public officials – that is, not only by the elected; and even less, only by the executive of government. The issue is not whether a minister should be held responsible, but rather how we interpret that responsibility. There is no doubt that we need to protect the authority of ministers chosen through the

democratic process and that we must ensure that these elected officials should be, and “should be seen to be, in charge.”¹⁰⁴ The issue is rather that nonelected public officials do in fact exercise discretionary power in a manner that enjoys a large measure of autonomy, while acknowledging a reasonable scope of control of a responsible minister and, therefore, that the nonelected public officials should also be held accountable for their use of the power separate from the strict responsibility of the minister. Accordingly, I have argued that accountability mechanism should not be understood as somehow “independent” of parliamentary control, contrary to what the traditional doctrine of ministerial responsibility would have us believe.

When I evaluated these initiatives on the basis of the second assessment feature of our theoretical framework, there were mixed results. On the question of whether the initiative had incorporated continuity between the ethical in our private lives and the ethical in the political, the federal public service initiative on “Values and Ethics” is silent on the role that the comprehensive doctrines held by public officials should play in their decision-making. On the plus side, it does identify forty-five values that we could say are treated by public servants in their “honest dialogue” as intermediate level ethical principles. However, I have argued that a foundation for a public ethics in a liberal democracy requires that “the mutual dependency of ethics and democracy”¹⁰⁵ be understood in terms of continuity between the ethical in our private lives and the ethical in the political domain and that the ultimate meaning of these principles originates in and is sustained by comprehensive doctrines held by individuals. In as much as I am correct, those involved in the initiative on “Values and Ethics” still have to come to grips with this challenge. How well they acknowledge or don’t acknowledge this dimension will affect

how well government can fully respect the multicultural and multiethnic nature of modern liberal democracies.

In the case of the Department of National Defence, its Defence Ethics Program recognises five individual ethical theories as the bases for ethical decision-making: rules-based, care-based, consequences-based, virtue-based, and self-interest-based. In as much as these are used to justify what constitutes correct ethical decision making and action, this government ethics initiative incorporates a certain continuity between the ethical in our private lives and the ethical in the political. However, it is not clear how significantly the use of these individual ethical ideologies is constrained by environmental and situational factors, especially when the military component moves from domestic to international roles or moves from one end to the other of the peace-armed conflict continuum.

Finally, on the question of whether ethics is given priority -the third assessment feature of our theoretical framework - the Defence Ethics Program fares better than federal public service initiative on “Values and Ethics.” In the case of the “Values and Ethics” initiative, I have argued that there is a fundamental problem with the idea that ethical values are given priority only to the extent that these values are contained in laws or interpreted by “elected” officials. I have argued that the concept of responsibility in government - and its related obligation, accountability - should be understood in terms of an ethical imperative imbedded in a liberal democracy conception of governance that gives priority to ethics. The current “honest dialogue” exercise in the federal public service may lead to a clarification of the doctrine of ministerial responsibility that brings it more in line with the reality of government in modern liberal democracies.

The Defence Ethics Program applies equally to public servants and to military personnel. It gives priority to three ethical principles reflecting, in decreasing importance, ethical obligations to humanity, society, and the institution. It advocates recourse to these three principles in difficult situations when the *prima facie* applications of ethical values like honesty and loyalty, for example, is not clear. It is necessary, however, to distinguish between its civilian and military component of the Department for assessing whether ethics is given priority. As I argued, the civilian component is ultimately subject to the results of the federal public service initiative on “Values and Ethics,” whereas the military component possesses a sphere of activity that remains fairly separate from the public service – the military operations of the Canadian Forces. Within the military sphere of activity, the Defence Ethics Program requires military personnel to give priority to ethical considerations in their exercise of delegated power. However, even here, given the military principle of the primacy of operations, it is not yet clear how giving priority to ethics will be fully implemented, over and above internationally recognised rules of engagement.

On the basis of our assessment of these two initiatives, we can conclude that government at the federal level in Canada has not yet worked out a firm foundation for ethics programs for government in a liberal democracy. In addition, we must conclude that the inability to deal adequately with the three selected preconditions for ethics programs for government - how it deals with the concept of governance, the role of comprehensive doctrines, and the priority accorded to ethics - represent major obstacles to the potential success of providing a firm ethical foundation to any initiative to institutionalize ethics in the federal government of Canada.

END NOTES

¹ See Thompson, *Political Ethics and Public Office*, p. 3.

² As Will Kymlicka and Christine Straehle put it: "Democratic politics is politics in the vernacular. The average citizen only feels comfortable debating political issues in their own tongue." See, "Cosmopolitanism, Nation-States, and Minority Nationalism: A Critical Review of Recent Literature," in *European Journal of Philosophy*, 7:1 (Oxford: Blackwell Publishers, 1999), p. 70. I have argued that the use of the vernacular in talking about ethics in the public forum involves for most people making a paradigmatic use of the ethical principles and obligations in ordinary language, which, of course, the authors are not claiming.

³ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press, 1995, p. 34.

⁴ See Galston, *Liberal Purposes*, pp. 143-144 (also, p. 142).

⁵ Dennis Thompson, "Paradoxes of Government Ethics," in *Public Administration Review*, May/June, 1992, vol. 52, no.3. p. 255.

⁶ See Galston, *Liberal Purposes*, p. 229.

⁷ Ibid., p. 221.

⁸ Michael Hammer and James Champy, *Reengineering the Corporation: A Manifesto for Business Revolution* (New York: HarperCollins, 1994) (First appeared in 1993)

⁹ David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (Reading: Addison-Wesley, 1992), pp. 19-21. (Italics are in the original text.)

¹⁰ See Tait, *A Strong Foundation*, p. vii.

¹¹ Jocelyne Bourgon was President of the Canadian Centre for Management Development in January 2000 when she republished the report.

¹² See Tait, *A Strong Foundation*, 2000 (Text and page numbers are the same as the 1996 edition, except that this edition adds a Dedication by Jocelyn Bourgon), p. iii-iv. I will cover the four families of values mentioned in the quotation later in the text.

¹³ Auditor General of Canada, *Report of the Auditor General to the House of Commons, ch.12, Values and Ethics in the Federal Public Sector* (Ottawa: Minister of Public Works and Government Services Canada, October, 2000), pp. 12-9.

¹⁴ See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-8. In addition, as the Auditor General says in the same paragraph: "many of the conclusions of his [Tait] report were the starting point for our study."

¹⁵ In an endnote, Kernaghan states: "In this paper, the term "ethics rules" is used to cover statutes, regulations and guidelines bearing on ethical conduct, including codes of ethics." See Kernaghan, *The Ethics Era in Canadian Public Administration*, p. 24, endnote 12.

¹⁶ Ibid., p. 6.

¹⁷ See Kernaghan, *The Ethics Era in Canadian Public Administration*, p. 6.

¹⁸ Starr, Michael and Mitchell Sharp, Co-Chairs, *Ethical Conduct in the Public Sector: Report of the Task Force on Conflict of Interest* (Ottawa: Supply and Services Canada, 1984), p. 59. The report makes this claim about comparing guidelines for public office holders in Canada with the United States. "It is very difficult to compare Canada and the United States in this respect, since their system of ethical rules is very different and elaborate and takes the customary American form of laws with specific penalties for breaches of the law, and all the rights of 'due process.'" (p.10)

¹⁹ The report claims that British-Canadian approach, is to deal with ethical conduct in government by "developing specific policies or rules, and even at that, by leaving those rules more in the realm of public administration than of law enforcement," in contrast the American approach which prefers the enactment of statutes. See Michael Starr and Mitchell Sharp, Co-Chairs, *Ethical Conduct in the Public Sector*, Ibid., p.59.

²⁰ See Kernaghan, *The Ethics Era in Canadian Public Administration*, p. 8.

²¹ See Tait, *A Strong Foundation*, p. ix.

²² The report states clearly that it "did not set out to draft a list or a declaration of public service values." However, certain values did "emerge spontaneously" and those values could be "clustered" in "four

overlapping families.”(59) These families are democratic values (pp.53-54), professional values (pp.54-56), ethical values (p.56), and people values (pp.56-58). Tait, John C. chair. *A Strong Foundation*, ibid. It is interesting to note that since the report was published reference has been made to five, rather than four, families of overlapping values since the category “professional values” is really subdivided into two separate sets of values: the “traditional” professional values and the “new” professional values. See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-21.

²³ See Tait, *A Strong Foundation*, p. 58.

²⁴ Ibid., p. 61.

²⁵ See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-33.

²⁶ As far as the authors of the report are concerned the tension is resolved, and it is resolved in favour of the traditional concept of ministerial responsibility. See Tait, *A Strong Foundation*, pp. 11 and 29.

²⁷ Ibid., p. 32. Some of the new values of the public management approach involve, for example, more concern for citizens as “customers” of government services, for their interaction with government, and for the “real outputs” of government. (p.30)

²⁸ Ibid., p. 30.

²⁹ Ibid., p. 30.

³⁰ Ibid., p. 53.

³¹ Ibid., p. 11.

³² Ibid., p. 7.

³³ Ibid., p. 11.

³⁴ The Auditor General of Canada states in his report: “we agree with the Tait Report that clarifying the responsibility of ministers is essential for promoting sound values and ethics in government. We would extend this clarification to the responsibility of officials who receive delegated authorities. The Auditor General draws this conclusion while acknowledging that reports from other sources disagree with this conclusion. He identifies a 1979 Privy Council Office submission to the Lambert Commission, the 1990 White Paper, the document Public Service 2000: The Renewal of the Public Service of Canada, a 1992 report, Public Service 2000: A Report on Progress, and a 1993 publication, Responsibility in the Constitution. For all of these sources, the concept of ministerial responsibility is “clear – accountability should not be divided because it governs the use of power; thus “it requires that a minister be personally answerable to the House of Commons for the exercise of power.” However, as the Auditor General says: “concerns about the clarity of the concept of ministerial responsibility and its consequences are recurrent” and that justifies his conclusion. See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-17.

³⁵ See Tait, *A Strong Foundation*, p. 48.

³⁶ Ibid., p. 48.

³⁷ Ibid., p. 9.

³⁸ See Starr and Sharp, *Ethical Conduct in the Public Sector*, p. 54. This position is reflected in the more recent *Results for Canadians*, a document put out by Treasury Board setting out “a framework for management in the government of Canada and an agenda for change in the way that departments and agencies manage and deliver their programs and services.” In clarifying the term ‘management board’ the document states: the main underlying principle is clear – Ministers assess the public interest and decide, while officials advise and implement decisions.” See also *Results for Canadians: A Management Framework for the Government of Canada*, Ottawa: Treasury Board of Canada, 2000), p. 1 and footnote 1.

³⁹ See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-17. (Italics are mine.)

⁴⁰ On the related point of new versus traditional values, the Auditor General of Canada agrees with the Tait Report that “it should be made clear that the public service values of respect for law and the public interest are paramount.” See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-22.

⁴¹ See Tait, *A Strong Foundation*, p. 27. (Italics are mine.)

⁴² This point is highlighted in booklet put out by the Department of Justice. “Because of the complexity of modern society, more laws are made today than ever before. If our lawmakers had to deal with all the details of all laws, the task would be nearly impossible. To solve this problem, Parliament and provincial legislatures often pass general laws delegating authority to make more specific laws called “regulations.” Regulations serve to carry out the purposes of or expand on the general laws but are limited in scope by

such laws." See Department of Justice, *Canada's System of Justice* (Ottawa: Minister of Public Works and Government Services Canada, 1993), p. 9.

⁴³ Ibid., p. 9.

⁴⁴ See Tait, *A Strong Foundation*, p. 9.

⁴⁵ The need to go beyond the law is one of the main points of the response of the Ethics Counsellor for the Canadian Government to the Auditor General's October, 2000, report on *Values and Ethics*: public office holders have obligations that are "not fully discharged by simply acting within the law." Quoted in the Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-32. The response deals primarily with the first principle of the "Conflict of Interest Code": public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

⁴⁶ For example, all military personnel in the Department of National Defence have such a factor in their annual performance evaluation reviews. These evaluations serve as the basis for promotions and other benefits.

⁴⁷ I leave aside the very real differences in law between an administrative system and a legal system. I am concerned here with the principle of accountability as it should be understood in a liberal democracy and not with the mechanism used to enforce it.

⁴⁸ Debbie Thorne LeClair, O.C. Ferrell and John P. Fraedrich, *Integrity Management: A Guide to Managing Legal and Ethical Issues in the Workplace* (Tampa: University of Tampa Press, 1998), p. 69. (Italics are mine.)

⁴⁹ See Thorne LeClair, Ferrell and Fraedrich, *Integrity Management*, p. 70.

⁵⁰ In fact, the courts apply a two part formula in assessing fines: first, it establishes the seriousness of the federal offence; second, it establishes the level of blame of the organisation. Seriousness is measured in terms of monetary gains made by the company or losses suffered by someone as a result of the illegal action. Level of blame is determined by the demonstrated efforts made by the organisation to prevent and detect illegal action. The level of blame establishes a "culpability score" that serves a minimum and maximum multiplier that the courts must use to establish a range of fines. For example, if a company was convicted of having bribed a government official to obtain \$11 million worth of contracts, the fine range could be as little as \$7,000 - \$28,000 for a company with an effective compliance program and as high as \$5.6 - \$11.2 million for a company with no compliance program. Ibid., pp.71-74.

⁵¹ See Tait, *A Strong Foundation*, p. 11.

⁵² See Starr and Sharp, *Ethical Conduct in the Public Sector*, p. 56. (Italics are mine.) In the text, the report is referring to the need to introduce written rules for public servants to deal with conflict of interest, "acknowledging that it is impossible to go back to the era of unwritten rules." However, in my opinion, this Task Force also did not appreciate the full implications of its own observation.

⁵³ See Tait, *A Strong Foundation*, p. 53.

⁵⁴ Ibid., p. 53. These families are "democratic" values (pp.53-54), "professional" values (pp.54-56), "ethical" values (p.56), and "people" values (pp.56-58). It is interesting to note that since the report was published reference has been made to five, rather than four, families of overlapping values since the category "professional values" is really subdivided into two separate sets of values: the "traditional" professional values and the "new" professional values. See also Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-21.

⁵⁵ See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p.12-21, Exhibit 12.9.

⁵⁶ See Tait, *A Strong Foundation*, p. 53.

⁵⁷ See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, pp.12-28 and 12-29.

⁵⁸ See Tait, *A Strong Foundation*, p. 27. (Italics are mine.)

⁵⁹ Refer to my analysis of Galston's liberalism in chapter three.

⁶⁰ See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-30.

⁶¹ For example, in the *Integrated Risk Management Framework*, the President of Treasury Board says that the integrated risk management framework will "lead to the adoption of a more holistic approach to risk management." The framework is said to be an important component of the earlier *Results for Canadians*, a document that outlined the "new management framework" that would "modernise management practices in order to make the Government of Canada more citizen-focused." (See, Treasury Board of Canada. *Integrated Risk Management Framework*, President's Message) Neither of these documents shows that to be "citizen-focused", to be "holistic", the government must acknowledge the importance citizens and public

officials give to the various comprehensive doctrines they ultimately invoke when understanding and applying values, especially ethical values.

⁶² Canadian Centre for Management Development, *Building on a Strong Foundation – The Dialogue Continues: A Case Study Approach to Values and Ethics in the Public Service*, Ottawa: Canadian Centre for Management Development, 2000. p. 5. The two co-champions of values and ethics in the Public Service named by the Clerk of the Privy Council are Janice Cochrane (Deputy Minister, Citizenship and Immigration Canada) and Scott Serson (President, Public Service Commission of Canada). (p.13)

⁶³ See *Building on a Strong Foundation*, pp. 14-15.

⁶⁴ Ibid., p. 20.

⁶⁵ Ibid., p. 20.

⁶⁶ See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-22.

⁶⁷ On this point, I stand in opposition to Kymlicka who says that taking morality seriously does not require taking moral philosophy seriously. See Will Kymlicka, "Moral Philosophy and Public Policy: the Case of NRTs," in *Bioethics*, vol 7, no. 1, 1993, p. 11. In the article, Kymlicka puts forward strong reservations about the usefulness of moral philosophy for the analysis of public policy issues, in this case, new reproductive technologies (NRTs).

⁶⁸ See Thompson, *Political Ethics and Public Office*. p. 3.

⁶⁹ See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-20. Later in the text he says: "like the Tait Task Force, we believe that it should be made clear that the public service values of respect for law and the public interest are paramount." (p.12-22)

⁷⁰ Ibid., p. 12-8.

⁷¹ See Mel Cappe, "Ninth Annual Report from the Clerk of the Privy Council," March 27, 2002, page 2, available on the internet at:

"http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=report&Doc=clerkletter_e.htm."

⁷² Ibid., p. 12-17.

⁷³ It is noteworthy that the *Tait Report* states, on the one hand, the "ethical values are not different from those found in other sectors or parts of society," while it continues with "they take their distinctive coloration from the intersection with democratic and professional values." See Tait, *A Strong Foundation*, p. 56.

⁷⁴ Ibid., p.53.

⁷⁵ See Gutmann and Thompson, "Reply to the Critics," p. 260-261.

⁷⁶ Ibid., p. p. 1.

⁷⁷ See Starr and Sharp, *Ethical Conduct in the Public Sector*, p. 10

⁷⁸ Inspector General Division of Department of Defence, Australia, Defence Ethics and Awareness Campaign, November, 1993, p.A-1.

⁷⁹ Auditor General of Canada, *Report of the Auditor General to the House of Commons, ch.26, National Defence – The Proper Conduct of Public Business* (Ottawa: Minister of Public Works and Government Services Canada, November, 1999), p. 26-11.

⁸⁰ John Greenwood featured the Defence Ethics Program as one of six exemplary ethics programs in a special article on ethics programs. See "The Guardians," *The Financial Post* 500, 1997, pp. 40-50.

⁸¹ See Auditor General of Canada, *National Defence – The Proper Conduct of Public Business*, p. 26-8.

⁸² Department of National Defence of Canada, *Defence Administrative Order and Directive (DAOD) 7023-0*, issued under the authority of the Deputy Minister and the Chief of Defence Staff, 26 June, 2001.

⁸³ See *Defence Administrative Order and Directive (DAOD) 7023-0*.

⁸⁴ See Auditor General of Canada, *The Proper Conduct of Public Business*, p. 26-11.

⁸⁵ Department of National Defence of Canada, *The Fundamentals of Canadian Defence Ethics* (Ottawa: Chief of Review Services/DND, November, 1999), p. 9. Patrick Murphy reviewed the ethics statements of medium to large firms in the United States and other western countries and selected this statement as one of eighty exemplary ethics statements. See *Eighty Exemplary Ethics Statements*, (Notre Dame: University of Notre Dame Press, 1998), pp. 37-38.

⁸⁶ This hierarchy is adapted from Nicholas Rescher's five foci of obligation for the profession of arms: the chain of command, the service, the nation, civilization, and humanity at large. See Nicholas Rescher, "In the Line of Duty: The Complexity of Military Obligation", in *The Leader's Imperative: Ethics, Integrity, and Responsibility*, J. Carl Ficarrotta, edit. (West Lafayette: Purdue University Press, 2001), pp. 245-246.

⁸⁷ See Auditor General of Canada, *The Proper Conduct of Public Business*, pp.26-11 and 26-12.

⁸⁸ Ibid., p. 26-12. This page of the report contains a copy of the *Statement of Defence Ethics*.

⁸⁹ V Catano, K. Kelloway, and J.E. Adams-Roy, *Measuring Ethical Values in the Department of National Defence: Sponsor Research Report 00-1*. (Directorate Human Resources Research and Evaluation, NDQH, Ottawa, Ontario. July, 2000), p. 13. The survey involved administering a questionnaire derived from a theoretical model of ethical decision making. The model identified a set of five types of predictors, one of which was "individual ethical ideologies."

⁹⁰ It should be noted that the *National Defence Act* establishes two separate entities under the authority of the Minister of National Defence: the Department of National Defence and the Canadian Forces. Thus, under the law, the Canadian Forces are an entity separate and distinct from the Department of National Defence. See the Honourable M. Douglas Young, Minister of National Defence, *Report to the Prime Minister: Authority, Responsibility, and Accountability*, (Department of National Defence: Ottawa, Canada, March 25, 1997), pp. 2-3.

⁹¹ As stated in the previous section, the report correctly claims that "the principle behind ministerial responsibility is the democratic principle" and defines the democratic principle as: "government should be carried on by elected representatives, not by unelected officials." The doctrine of ministerial responsibility, we are told, "protects the authority of ministers chosen through the democratic process", and that means that the elected should be, and "should be seen to be, in charge." See Tait, *A Strong Foundation*, p.11.

⁹² See Auditor General of Canada, *Values and Ethics in the Federal Public Sector*, p. 12-28.

⁹³ The accountabilities and responsibilities of the use of power and resources in the Department of National Defence and the Canadian Forces, in both legal and practical terms, "in Canada is expressed in terms of: ministerial control over the Department and the Canadian Forces, and effective Parliamentary oversight over the defence programs and activities of the Government." See *Report to the Prime Minister: Authority, Responsibility, and Accountability*, p. 2.

⁹⁴ Discussion Notes by Douglas Bland for "Chief of Defence Staff's Seminar: The General Officer Corps' Responsibility in Shaping Defence Policy in a Liberal Democracy," 19 February, 2002, p.3.

⁹⁵ See Auditor General of Canada, *The Proper Conduct of Public Business*, p. 26-11.

⁹⁶ Ibid., p. 26-12.

⁹⁷ Ibid., p. 12-21.

⁹⁸ Ibid., p. 26-12.

⁹⁹ Ibid., p.26-11.

¹⁰⁰ See Catano, Kelloway, and Adams-Roy. *Measuring Ethical Values in the Department of National Defence*, p.50. The description provided of each of these comprehensive doctrines is rudimentary and remains at the level of the pragmatic. Nevertheless, the distinction is made.

¹⁰¹ I suspect that the "Values and Ethics" initiative would limit such recourse to secular comprehensive doctrines.

¹⁰² See Auditor General of Canada, *Ethics and Fraud Awareness in Government*, p.1-20. The text reads: "A sound ethical framework in government is grounded on the principle that public service is a public trust."

¹⁰³ Of course, I mean positive or negative in terms of what I have identified as important features of a theoretical framework for ethics programs for government.

¹⁰⁴ See Tait, *A Strong Foundation*, p.11.

¹⁰⁵ See Thompson, *Political Ethics and Public Office*, p. 3.

CONCLUSION

I opened this dissertation with the observation that the last thirty years have witnessed a “revival of concern about ethics” that has spread to all sectors of society.¹ I was motivated to pursue the topic of this dissertation because I was experiencing this “revival” first hand in my workplace in government.² I was intrigued with the idea that ethics in government could be undergoing a “revival.” In government, this “revival” tended to take the form of “ethics” programs for government. Since I expected that public officials would be very sensitive to any initiatives that dealt with their ethical obligations as public officials, I wondered what these initiatives had done to ensure a firm foundation for the *ethics* of these “ethics” program.

I was surprised therefore to see how little serious attention seemed to be placed on the necessity of demonstrating that the content of the “ethics” programs flowed from a firm foundation for the *ethics* of these “ethics” program for government. As I argued in Chapter One, a review of an important body of the literature of public administration ethics in the twentieth century showed why many contemporary scholars in public administration ethics believe that the search of a firm foundation is still ongoing. Therefore, to a certain extent, the lack of attention to the question of the foundations of ethics programs for government in a liberal democracy may be due, in part at least, to a perception that such a foundation was not available.³

As a result, the purpose of the dissertation was to search for a foundation for ethics program for government in a liberal democracy. It seemed natural to turn to the work of important contemporary liberal political philosophers who have dealt with the

question of the ethical foundations of liberalism, in particular, to clarify the relationship between the ethical in our private lives and the ethical in the political domain. Although the examination was limited to liberal political philosophers, it included a good representation of the spectrum of contemporary schools of liberal thought. Consequently, the works of the liberal political philosophers John Rawls, Ronald Dworkin, and William Galston were critically studied to ascertain what insights they could provide into the nature of the relationship between the ethical in our private lives and the ethical in the political domain. I added to the circle of political philosophers studied some recent work by John Tomasi and work on deliberative democracy by Amy Gutmann and Dennis Thompson.

To structure my approach, I adopted Dworkin's distinction between continuity and discontinuity strategies for explaining the nature of the relationship between the ethical in the two domains. I assessed the work of Rawls, Dworkin, and Galston from both a pragmatic and a theoretical point of view. In the pragmatic respect, I sought to examine whether the ethics program for government, which each version of liberalism could support, would be considered acceptable to a reasonable person's expectations of ethics in government. In the theoretical regard, I sought to examine the categorical force – a notion adopted from Dworkin - each version of liberalism could impart to ethics in government.

Thus, in both the pragmatic and the theoretical respects, Rawls's version of liberalism, understood as an example of a discontinuity approach to explaining the nature of the relationship between the ethical in our private lives and the ethical in the political domain, was found to be unacceptable as a potential foundation for ethics program for

government. Although the dissertation argued that a continuity approach held the most potential for providing an ethical foundation for liberalism and, therefore, a firm foundation for ethics programs for government in a liberal democracy, both Dworkin's and Galston's versions of liberalism, understood as examples of continuity approaches, leave us with something important missing.

In the light of these results, I proposed an alternative way of conceiving the relationship between the ethical in both domains. By conceiving of the ethical concepts all of us use in our everyday life as paradigmatic in nature, I argued that such a conception would allow us to situate these ethical concepts at both an intermediate and a foundational level. Foundational in the political domain, these ethical concepts belong to an ethical imperative at the heart of liberal democracy. The presence of such an ethical imperative explains why citizens expect government to be ethical and why the high standards of behaviour expected of government officials should not be subordinated to political expediency or to the partisan interests of elected representatives. In addition, a liberal democracy must respect the fact of a plurality of comprehensive theories and doctrines held by citizens as citizens. Thus, by conceiving of the ethical concepts in our everyday life as paradigmatic intermediate level ethical concepts, I argued that such a conception would respect this fact because as paradigmatic intermediate level concepts they are necessarily informed by the comprehensive theories and doctrines held by individuals and considered by them foundational.

I have suggested that it could be demonstrated that my proposed conception of the paradigmatic nature of ethical concepts agrees with Rawls's claim that a liberal political conception of justice must be "worked out from fundamental ideas seen as implicit in the

public political culture of a constitutional regime.”⁴ In addition, I have also suggested that it could be shown how this conception would provide the basis of an affirmative answer to Dworkin’s question: “can a political conception of justice gain categorical force as well as consensual promise when its central principles are “latent”?”⁵ Finally, I have suggested that it could be demonstrated that such a conception could explain why a healthy liberalism should accept the necessity of what Galston calls a certain level of “indeterminacy” in dealing with many ethical issues in a liberal democracy.⁶ However, such demonstrations are beyond the scope of this dissertation.

In addition to reserving a necessary role for comprehensive ethical theories and to advocating the priority of ethics in government, this dissertation also argued – based on the Chapter One review of the literature of public administration ethics - that the concept of governance in large modern democracies must be expanded to include non-elected public officials. On that basis, ethics programs for government rightly should apply to both elected public officials and non-elected public officials. However, scholars in public administration have been slow to understand that changes in our conception of governance – conceived as a distributed continuum of the exercise of discretionary power – would require significant changes in our understanding of the way, as Dworkin says, “ethics and politics are intertwined.”⁷ It may well be that these scholars have been slow in their efforts to challenge traditional views on the ethical foundations of liberal democracy - in particular, as it affects the relationship of public administration and political stewardship - because they were motivated by an overriding pragmatic concern to provide public administrators with principles and guidance in the here and now.

It was not surprising, therefore, to find that my assessment of two current Canadian federal government initiatives to institutionalize ethics in government should reveal not only the presence of foundational fault lines but also a certain lack of awareness that there exists a foundational weakness in the first place. Both of the examined efforts to institutionalize ethics in government have not dealt adequately with the notion of governance, with the role of comprehensive ethical theories in understanding and applying ethical concepts, and with a liberal ethical imperative that gives priority to ethics in government.

This dissertation has thus sought to advance the search for the foundation of the *ethics* in the ethics programs for government in liberal democracy by showing that such a foundation should be built on a liberalism, which, as Dworkin says, gives “full effect to the most comprehensive and philosophical convictions” we possess.⁸ It has shown that a continuity approach to understanding the nature of the relationship between the ethical in our private lives and the ethical in the political domain offers the most potential for success in the quest for a firm foundation. It has described how attributing paradigmatic characteristics to our ordinary everyday ethical concepts explains well the nature of the continuity between the ethical in our private lives and the ethical in the political domain. A theoretical framework for ethics programs in government has thus been articulated, and finally, its pragmatic value illustrated by assessing two initiatives to institutionalize ethics in the Canadian federal government.

ENDNOTES

¹ Dennis F. Thompson, *Ethics in Congress: From Individual to Institutional Corruption* (Washington: The Brookings Institution, 1995), p.4.

² I was responsible for the development of a theoretical foundation for the Defence Ethics Program in the Department of National Defence, Canada.

³ I have in mind here those who justify and develop such programs. I am not referring to the many who work in such programs for whom the question of foundations is a theoretical question that they expect others – experts in the field - to deal with.

⁴ See Rawls, "The Idea of Public Reason Revisited," pp. 583-584.

⁵ See Dworkin, "Foundations of Liberal Equality," p. 32.

⁶ See Galston, *Liberal Purposes*, p. 231.

⁷ See Dworkin, "Foundations of Liberal Equality," p.21.

⁸ *Ibid.*, p. 21.

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