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**Political Legitimacy and  
Ethnocultural Justice.  
Essays on Public Reason, Democratic  
Citizenship, and the  
Rights of Cultural Minorities**

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For Erik and Selma

Don't let them change you  
Or even rearrange you, oh no  
We've got a life to live

Bob Marley

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

United Nations, Declaration on the Rights of Indigenous Peoples, September 2007 (United Nations 2007), Article 5

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

International Covenant on Economic, Social and Cultural Rights, December 1966 (United Nations 1966), Article 1, Paragraph 1

## Abstract

In this thesis, I argue that there are public cultural reasons that can underpin public justifications of minority rights of indigenous and national minorities in a constitutional democracy. I do so by tackling diverse issues facing a liberal theory of multiculturalism. In the first essay, I criticize Will Kymlicka's comprehensive liberal theory of minority rights and propose a political liberal alternative. The main problem of Will Kymlicka's theory is that it builds on the contestable liberal value of individual autonomy and thus fails to take diversity seriously. In the second essay, I elaborate on the Rawlsian political liberalism assumed here by criticizing Chandran Kukathas's version of political liberalism as overly accommodating to diversity. In the third essay, I discuss questions of method that arise for a political liberal approach to the moral-political foundations of multiculturalism, and propose a certain understanding of the political liberal enterprise and its crucial standard of reasonableness. In the fourth essay, I dwell on the political liberal ethic of citizenship and propose a strongly inclusionist interpretation of the duty of civility. In the fifth and last essay, I introduce a certain understanding of ethnocultural justice and propose a view on certain cultural reasons as *public cultural reasons*. Cultural reasons are public when they are based on necessarily established cultural marks of a democratic polity, as specified by the cultural establishment view; and when they are crucial for the societal cultural bases of self-respect of citizens. The arguments in this thesis support, and help to spell out, moral-political rights of indigenous and national minorities as formulated in international legal documents, such as the Declaration on the Rights of Indigenous Peoples (United Nations 2007) or the International Covenant on Economic, Social and Cultural Rights (United Nations 1966).

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# 1 Introduction

We live in a world that is marked by a wide range human outlooks and ways of living. Humans engage in most diverse social practices, worship a plurality of Gods, and pursue all kinds of goods. The human condition, if allowed to flourish, is expressed in most diverse shapes and forms.

A main question for modern constitutional democracies is how to accommodate this diversity within a proper social and political order. Such an order aspires to be legitimate, just, and stable in the right way. It thus aspires to be supported by the widest range of outlooks of its citizens.

Arguably, much has been done to live up to these aspirations. In 2007, the General Assembly of the United Nations accepted the “Declaration of the Rights of Indigenous Minorities” (United Nations 2007), and thus granted indigenous minorities around the world recognition of their political struggles and claims. This gave, for instance, the Saami in Europe, the Aboriginals in Australia, or indigenous inhabitants of the Amazon an important standing in relevant international legal documents. It was also a recognition of indigenous minorities’ claims and their way of life in the human rights canon.<sup>1</sup>

In 2014, Scotland voted in a referendum whether to remain part of the United Kingdom (and Great Britain), or to become an independent state instead. The outcome was that a majority of voters in Scotland opted to remain within the UK (with approximately

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<sup>1</sup>This recognition is the result of many developments and steps in international norm-setting regarding indigenous peoples in particular and cultural minorities more generally (Kymlicka 2007, 33). Several documents adopted by the international community throughout the proceeding decades, focusing on minority protection and accommodations, led to a third generation of human rights (after the basic civil and political rights, and the expansion to social and economic rights). Examples of this development are the International Covenant on Economic, Social and Cultural Rights (United Nations 1966), the ILO convention No. 169 concerning indigenous and tribal peoples in independent countries (United Nations 1989), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (adopted by the UN General Assembly in 1992 United Nations 1992), or the UN Working Group on Minorities (established in 1995 as part of the Sub-Commission on Human Rights of the Human Rights Commission). Other examples are the importance of minority protection issues within the Organization for Security and Cooperation in Europe (OSCE) with its High Commissioner on National Minorities, or the crucial role of minority rights in evaluations of development projects by the World Bank. (See e.g. Kymlicka 2001g, 6-7; Kymlicka 2007, 96)

55 per cent voting “no” to independence). Scotland was, however, promised further autonomy in the campaigns preceding the vote in case Scotland remained a part of the United Kingdom (BBC 2014). Similar questions of independence and self-determination for national minorities have been a topical political issue in many other parts of Europe—e.g. in Catalonia, the Basque region, or Eastern Ukraine, where a war over territory is waging as I write—as well as the world at large.<sup>2</sup>

The recognition of claims by indigenous and national minorities are important instances of what has been dubbed multicultural politics, or simply multiculturalism. Such recognition can take different forms and be expressed in international legal documents, votes on independence, or some more modest forms of accommodation through differential treatment. Multiculturalism, as understood here, is a political view that covers a wide range of policies aiming at accommodation, support or public recognition of claims by non-dominant ethnocultural groups.<sup>3</sup>

Since I first started to think about indigenous minorities’ claims to land and autonomy, or certain national minorities’ claims to self-determination, I had the intuitive conviction that many of these claims were there by right. Not least, to be sure, because of the colonial history and past injustices that many indigenous and national minorities suffered.<sup>4</sup> Other minority claims aiming at a more adequate public recognition or accommodation stirred similar intuitions. Many of these claims, at least *prima facie*, seem to further the aims of a just and legitimate polity.

An aim of this thesis is to ponder on these intuitions. It is a thesis about questions of legitimacy and justice regarding multicultural politics, and more precisely regarding multicultural politics when it comes to indigenous and national minorities. Many Western democracies adopted multicultural policies and laws accommodating claims by diverse ethnocultural minorities, such as national minorities, indigenous minorities, or different immigrant groups, throughout the last forty or so years. Examples range from funding mother-tongue courses and festivals for immigrant groups, to accommodating land claims of indigenous minorities, regional autonomies of national minorities, or legal exemptions for religious minorities.<sup>5</sup>

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<sup>2</sup>See e.g. Kivisto 2002 for an overview.

<sup>3</sup>See e.g. Kymlicka 2007, 16; Song 2010.

<sup>4</sup>On issues of historical justice and some problem it raises, see e.g. Gans 2004; Meyer 2005; Song 2007, Section 3, paragraph “Historical injustice”; Waldron 1992; Waldron 2004b. This thesis does not focus on issues of historical justice, but engages with issues of ethnocultural justice.

<sup>5</sup>See Kivisto 2002 for examples and Levy 1997 for a typology of minority rights. In the first Chapter

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More recently, however, multiculturalism has come under pressure. Many commentators have observed a backlash against multiculturalism (see Song 2010, Section 4). Thus, the heads of the states of Germany (Angela Merkel) as well as that of Britain (James Cameron) recently declared the end of multicultural politics in their respective states.<sup>6</sup> Moreover, public opinion in many European countries seemed to have grown more and more skeptical regarding multicultural accommodations.<sup>7</sup> This is, for instance, underlined by the rise of European right-wing populist movements or parties, such as the Ukip in England, the National Front in France, the Swiss Popular Party, the True Finns, or recently Pegida in Germany, to mention just a few. They often explicitly challenge multicultural accommodation policies.<sup>8</sup>

The controversies and divergent intuitions about multicultural politics indicates that it touches a main nerve of constitutional democracies. Two main questions are: how to deal adequately with cultural diversity in a just and legitimate polity? Do (certain) group-specific minority rights further the aim of a just and legitimate political order, or do they undermine it?

I take it that there are at least two main issues involved when answering these general questions: First, (a) how to conceive of a just and legitimate political order? Second, (b) how to publicly justify group-specific minority rights within such a just order?

These are the general concerns in what follows. My contention is that many claims raised by indigenous or national minorities—such as the Saami, Inuit, Maori, Aborigines, and American Indians; or the Catalans, Basques, Scots, Welsh, Corsicans, Puerto Ricans, and Quebecois respectively—are there by right.<sup>9</sup> This serves as a starting point for

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of this thesis I also provide a more concise overview on instances of multicultural policies.

<sup>6</sup>See also Barry 2001, 293; Kymlicka 1998, 4 for similar observations regarding Canada, one of the pioneering countries of multicultural politics.

<sup>7</sup>Note that the term “multiculturalism” is used around the globe, and that it raises different associations in different parts of the world. In Canada or Australasia, for instance, issues of “multiculturalism” are mainly associated with claims by indigenous minorities. In Europe, however, it is mainly associated with immigration issues—or sometimes even more particularly with Muslim immigration. See Kymlicka 2007, 17; Ivison 2010, 2-3. In this thesis, I am not directly concerned with immigration issues.

<sup>8</sup>Note that this does not necessarily have to do with multiculturalism itself. It might well have other underlying reasons—such as unfavorable macroeconomic conditions, which make accommodation of and spending for multicultural policies seem overly burdensome. See Song 2010, Section 4 on this point.

<sup>9</sup>Note that I do not hold that all claims made by these minorities are there by right. I merely want to illustrate a few instances of indigenous and national minorities that do stir relevant intuitions for the study ahead. In order to do justice to all the particular cases at hand, we have to take the complex history of the diverse cases into account, and consider what “group-differentiated ethnopolitical

this investigation. The study ahead is, thus, motivated to a great extent by an intuitive conviction that the accommodation of many claims made by indigenous or national minorities, be it in the human rights canon or in more regional constitutional democracies, are there by right, and thus just. However, the political-philosophical challenge arises of how to square this conviction with our view on a legitimate and just polity. Principles of a constitutional democracy and of democratic citizenship set certain standards regarding the question of what legitimate and just policies and laws are. One of them is that policies and laws are in need of public justification. It is therefore questionable whether and how claims by indigenous or national minorities of various kinds can be accommodated and publicly justified within such a constitutional democratic framework.

This is, then, the more particular concern in what follows: how to accommodate, and publicly justify, multicultural policies for indigenous and national minorities in a just constitutional democracy?

Will Kymlicka presents a widely discussed and ground-breaking liberal theory of such cultural accommodation and minority rights. Even though many of the arguments presented by Kymlicka for an accommodation of cultural claims within a liberal polity are appealing, the ultimate touchstone to judge and assess the accommodation of these claims, namely the liberal value of individual autonomy, is not. In this thesis, I search for alternative and hopefully more appealing liberal grounds for such accommodations by engaging with political liberalism. A main motivation to engage with political liberalism as an alternative way to account for multicultural politics in liberal terms is thus the dissatisfaction with one of the main cornerstones of group-differentiated minority rights in the work of Will Kymlicka, namely the liberal value of individual autonomy. The liberal value of individual autonomy is overly exclusive and restrictive, and thus somewhat inadequate to underpin multicultural politics in a liberal spirit. Will Kymlicka's theory fails to take diversity seriously due to the foundational role it assigns to individual autonomy, even though many of the arguments in favour of multicultural accommodations retain their appeal.

An attempt of this thesis is therefore to put some of Kymlicka's claims about the liberal accommodation of group-differentiated minority rights on other, more compelling liberal grounds. Thus, along the way, I take on board many of Kymlicka's views and arguments, e.g. his view on culture as "societal culture", or his views on the importance

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claims" (Kymlicka 2007, 96) are justified in the given context.

of societal cultures for functioning liberal democracies. I think that there is much we can mine from these views when arguing for instances of multicultural politics. We can do so, furthermore, without having to rely on the controversial liberal view on individual autonomy. Instead, I hope to indicate that more adequate grounds for multicultural accommodation can be found in a political liberalism of a broadly Rawlsian kind, one focusing on issues of liberal legitimacy, public reason, and democratic citizenship as involving the duty of civility.

This thesis is, then, also an attempt to show that we can safeguard some of Kymlicka's views and arguments from the comprehensive liberal grounds on which Kymlicka himself built them, and put them on arguably more secure or at least somewhat less controversial political liberal grounds.

## 1.1 Main Claim

The main claim of this thesis is that there are public reasons, based on cultural considerations, that underpin public justifications of (certain) group-specific rights of (certain) ethnocultural minorities, such as indigenous minorities and national minorities. In other words, there are considerations of ethnocultural justice, building on the idea of public cultural reasons, that help to publicly justify differential treatment of (certain) ethnocultural minorities, such as indigenous and national minorities, in a constitutional democracy. This main claim thus explains the first part of the title of the thesis ("Political Legitimacy and Ethnocultural Justice").

Arguing for this claim involves many further claims along the way. A crucial element of this thesis is that I focus extensively also on such related underlying claims. During the first several Chapters, I will thus engage with what I take to be important background questions, i.e. questions on the nature of legitimate political authority, the foundations of liberalism, issues of democratic citizenship and public justification, or methodological assumptions in political theorizing. I do so to set the stage for arguing for my main claim towards the end of the thesis.

## 1.2 Outline of the Chapters

Let me briefly outline in more detail what to expect in the Chapters that follow. Before that, however, a remark on how to read the Chapters ahead. In the title, I refer to the

various Chapters of the thesis as essays. I do so because the Chapters of this thesis can also be read as independent essays. Thus, the different essays or, if you prefer, Chapters engage with very different aspects of a liberal multiculturalism. A focus that I establish throughout the following essays is how different issues relating to multicultural politics link to other basic problems within moral-political philosophy, such as the nature of a legitimate and just polity, methodological concerns, or the requirements of democratic citizenship. As a consequence, each essay can stand on its own.<sup>10</sup> My hope is, however, that when the essays are taken together, they will tell a coherent and convincing story about multicultural accommodations within a liberal polity. In short, the aim is to build a compelling liberal case for (certain) minority rights within a legitimate and just polity based on essays that engage with diverse problems raised by multicultural politics.

What to expect of the different essays ahead? In the first essay, entitled “Which Liberal Approach to Cultural Diversity? Taking Diversity Seriously”<sup>11</sup>, I am concerned with the legitimacy of minority rights. Although legitimacy issues are often raised when it comes to minority rights, it does not always become clear, as far as I can see, what precisely is at stake when legitimacy is invoked in liberal theories of multiculturalism.<sup>12</sup> Arguably, the legitimacy of minority rights depends, at least partly, on the more basic legitimacy of the political order and authority under which they are issued. I thus ask: What are adequate liberal moral-political grounds for legitimate political authority and minority rights? After introducing basic terms relevant for the discussion, such as political authority, minority rights, cultural groups, I discuss a major liberal contribution to a liberal theory of minority rights, namely the influential and appealing views developed by Will Kymlicka.

As already indicated, Kymlicka’s account of political authority and his justification of

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<sup>10</sup>This form brings with it some redundancies within the several essays. Thus, several issues are treated in several parts of the thesis, and thus involve some repetition. For instance, the issue of how to conceive of culture is discussed in the first and fifth essay; issues of legitimate political authority are discussed in the first as well as the second essay; arguments related to methodological assumptions are relevant in the second and third essay etc. Even though I attempted to minimize these redundancies to some extent, I still decided to leave them as they stand. The main reason to do so is that this makes the several essays stand on their own, so that they can also be read independent of each other.

<sup>11</sup>The second part of the title is inspired by discussions in Galston 2002, Chapter 2, 20-27.

<sup>12</sup>Thus, for instance, Will Kymlicka holds that “the accommodation of ethnic diversity is not only *consistent* with, but in fact a *precondition* for, the maintenance of a legitimate international order” (Kymlicka 2007, 45, emphasis added). There is, however, no further indication of what a legitimate international order—or, more generally, a legitimate political order—involves or requires.

minority rights strongly builds on the controversial liberal value of individual autonomy. In the first essay I defend the claim that Kymlicka's theory of minority rights is not an adequate liberal moral-political ground on which to base a theory of minority rights. This holds, arguably, more generally for all accounts that are based on the controversial liberal value of individual autonomy, such as John Christman's account discussed at the end of the essay.<sup>13</sup> The main reason is that by building on the liberal value of individual autonomy, Kymlicka's theory fails to take diversity seriously. Taking diversity seriously is, however, a main desideratum or aspiration of a liberal polity. A theory of minority rights based on the value of individual autonomy excludes all those from full standing in the polity who do not embrace the liberal value of individual autonomy. This, however, makes the theory in question too restrictive in moral-political terms, or so I hold. I maintain that at least certain conservative, traditional or otherwise non-liberal views that do not embrace individual autonomy, namely reasonable ones, should have their place in a liberal polity.

I argue for this view at some length in the first essay, mainly by considering the particular and imaginary case of some shepherds who are content with their lot (I label them content shepherds). Content shepherds live according to their traditional customs. They resemble, in their main traits, traditional tribes or indigenous peoples. They are, furthermore, perfectly satisfied, or content, with their lives; they do not embrace individual autonomy, and might even see it as detrimental to their way of life. A liberal account of political authority and minority rights, I hope to indicate, should be able to accommodate content shepherds, even if they do not embrace, and indeed reject, the liberal value of individual autonomy. Only then does a liberal polity take diversity seriously. I engage with an imaginary case, and not a real-world case, in order to be able to focus on certain normative-conceptual issues that such a case, and those similar enough, raises.

Given the problems of liberal theories that build on the controversial liberal value of individual autonomy—a position we might dub *autonomy liberalism* (see e.g. Galston 1995, 521 and Galston 2002, 20-21)—I take it that we have good reason to search for other liberal grounds to underpin our account of legitimate political authority and minority rights. The aim is to find grounds that are more apt to take diversity seriously and, in general, prove to be more adequate moral-political grounds for a liberal polity.

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<sup>13</sup>The claim is not new. It has been put forward by “diversity liberals” such as William Galston (see e.g. Galston 2002, Chapter 2) or Chandran Kukathas (see e.g. Kukathas 2003).

One kind of liberal theory that aspires to take diversity as seriously as liberally possible is political liberalism.

The second essay, entitled “Which Political Liberal Approach to Multiculturalism?”, thus engages in the search for more adequate foundations of political authority and minority rights within the broad field of political liberal views.

I investigate some basic building blocks for what I take to be a convincing liberal account of political legitimacy. I briefly touch on basic issues such as consent, liberty, public justification, and the duty of civility. I propose to settle on a broadly Rawlsian version of the liberal principle of legitimacy, and the view on democratic citizenship that goes with it, as the liberal framework to assess the legitimacy of political authority and minority rights. The liberal principle of legitimacy involves a requirement for public justification of weighty political matters, such as constitutional essentials or the basic social structure. It also involves crucial requirements for democratic citizenship, namely the duty of civility. The duty of civility is the requirement for citizens to present public reasons in public justifications of weighty political matters.

Furthermore, I briefly discuss—in a Section entitled “Taking Diversity Too Seriously?”—some criticism of the Rawlsian approach as presented by Chandran Kukathas. The criticism is interesting because Kukathas establishes an alternative political liberal framework to assess multicultural politics. I compare the broadly Rawlsian political liberal view with Kukathas’s political liberal approach to issues of multiculturalism, and indicate why I favour a broadly Rawlsian approach over Kukathas’s approach.

The main reasons why I favour the first approach over the second is that Kukathas’s criticism against a Rawlsian political liberalism can either be accommodated within a Rawlsian approach (as in the case of the “controversial justice charge”), or it can be challenged and refuted (as in the case of the “closed society charge” or the “abstraction charge”). A major issue at stake in this second Chapter is thus how to conceptualize a political liberal view on political authority more precisely. At stake is, in other words, the question of why to opt for a Rawlsian version of political liberalism rather than for rival versions, such as Kukathas’s take on political liberalism.

In the third essay, I briefly pause in order to further situate the chosen political liberal approach within certain methodological debates. To do so, I consider methodological concerns that might arise when engaging in political liberal theorizing. The aim in the third essay, entitled “A Matter Internal to Liberalism? An Interlude on Method in Political Liberal Theorizing”, is to get a clearer picture on the kind and shape of

political liberal view adopted here. The main concern is how to adequately construe political theory within a broadly Rawlsian approach.

I thus discuss Jonathan Quong’s distinction between “internal” and “external” political liberal theories (Quong 2011b, 5-6), and attempt to situate my own approach within these given coordinates. I hope to show that when dealing with issues of multiculturalism, to adopt something like a “middle-ground conception of political liberalism” is sensible. Such a middle-ground conception attempts to adequately steer between being overly aspirational and ideal, as in internal conceptions of political liberalism, and being overly concessional and empirically restricted, and thus overly “utopophobic” (see Estlund 2008, Chapter 14; Estlund 2014) as in external conceptions of political liberalism.

Based on these methodological findings, I attempt to deal with problems that arise regarding two basic ideas of political liberalism, namely the ideal of public reason and the standard of reasonableness. Thus, in the last part of the third essay, I am interested in how the chosen middle-ground conception of political liberalism bears on the issues of how to adequately conceptualize public reason and a standard of reasonableness. Both themes are fundamental to the broadly Rawlsian kind of political liberal approach to multiculturalism scrutinized here.

In the fourth essay, I am interested in the political liberal take on democratic citizenship and the implications of a duty of civility for the engagement in public justification of weighty political matters. Thus, I consider how to deal with a prominent instance of diversity in pluralist democratic polities, namely religious diversity, when it comes to issues of public justification and political argument on weighty political matters. The debate on the role of religious views in political argument and public justification has been broad and intense. This arguably has to do, firstly, with the historical roots of political liberalism in the European Reformation. Concerns of the peaceful living together of people with different religious views, such as Catholics and Reformed, were a basic concern of political liberals from the beginning (see Rawls 2005, xxiv-xxvi).<sup>14</sup>

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<sup>14</sup>It is thus interesting to note that political liberalism seems to rely on a “philosophical account of history” (Lassman 2011, 131), and that it explicitly presupposes “an historical story” as it applies “to a particular political formation, the modern pluralist state” (Williams 2005a, 53). The focus on religious diversity is also strongly linked to the American context in which John Rawls and other prominent political liberals—such as Stephen Macedo, Bruce Ackerman, Thomas Nagel or Charles Larmore—have been writing and debating. Some commentators claim that Rawls’s “idea of public reason and of the realistic utopia of political liberalism is, in reality, a highly partisan interpretation of American liberalism, presented as a universal, objective and moral necessity” (Lassman 2011, 115). With the essays ahead, and through indicating how political liberalism can also take instances

There is another main reason why to engage with religious diversity when it comes to issues of legitimacy and public justification in a liberal polity. Arguably we can mine a lot from debates on *religious* diversity in a political liberal order when dealing with issues arising from *cultural* diversity in such an order.<sup>15</sup> I settle on a view on the role of religious reasons in public justification of weighty political matters that is strongly accommodating and inclusionist regarding such reasons. This allows to take diversity seriously, while upholding a duty of civility that insists on public reasons in public justification of weighty political matters. This view has implications on how to deal with cultural reasons in public justification. Thus, when cultural reasons are conceptualized analogously to religious reasons, there is a lot of room for cultural views and reasons in political argument—given that, sooner or later, there are also public reasons underpinning the political claim in question.

In the fifth and last essay, entitled “Political Liberalism and the Moral-Political Foundations of Multiculturalism”, I defend my main claim, namely that there are public reasons based on cultural considerations that underpin public justifications of group-specific rights of indigenous and national minorities within a political liberal polity. This entails showing how certain cultural reasons are fundamentally different from religious reasons, and indeed constitute something like *public cultural reasons*. These reasons help to justify differential treatment of indigenous and national minorities, for instance through minority rights or exemptions. I argue for this claim by building on, and in some instances applying, the findings of the proceeding essays.

Thus, I dwell on the conception of culture as “societal cultures”, and a related view that holds that establishing certain cultural features, most intriguingly those of language, territory, history and institutional practices, are unavoidable or necessary for a functioning constitutional democracy. Based on this view, I argue that the establishment of certain cultural features affects the basic social structure of a polity. This establishment therefore requires public justification and becomes an issue of social or, more precisely, ethnocultural justice. Cultural reasons based on the cultural establishment view, then, are public cultural reasons. Public cultural reasons help to publicly

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of ethnocultural diversity into account, I hope to indicate that this charge is misguided.

<sup>15</sup>Both forms of diversity arguably raise the question of the role of heteronomous ways of life in a constitutional democracy. Lucas Swaine thus holds that we should “shift concern away from religion and to focus instead on heteronomous people” more generally (Swaine 2009, 184). Still, a focus on religious people and views in politics can be instructive for considerations of heteronomous ways of life more generally.

justify the establishment of certain cultural features, such as language and institutional practices, in a neutral and non-sectarian way. They are a good basis for claims by indigenous and national minorities to self-determination. Given that certain societal cultures establish their cultural marks, considerations of justice require that other societal cultures are adequately accommodated within such a cultural establishment—for instance through regional autonomies, federal government arrangements, or more modest ways of accounting for claims to self-determination.

Why, however, do members of a societal culture have a right to their *own* societal culture? The reason is that a cultural establishment arguably also affects the crucial primary good of self-respect. To be able to deal with political issues in one's own language, or to see certain long-established social-political institutions reflected and protected by political institutions, arguably affects a citizen's sense of self-worth.

There are, thus, public cultural reasons for fair treatment of societal cultures, such as indigenous or national minorities, based on considerations of cultural establishment and self-respect. Requirements of ethnocultural justice can, depending on context, be met through a wide range of policy options in a legitimate and just political liberal polity. For instance, through limited recognition and representation rights, a federative accommodation of certain autonomies of minorities, or more far-reaching self-determination rights.<sup>16</sup>

In a last step, I consider the example of content shepherds who value measles (I dub them “measles valuing content shepherds”). The aim here is to apply the findings of the fifth essay to a case where measles valuing content shepherds do not accept the justification of an otherwise widely accepted policy that imposes vaccination against measles. Questions that arise here are: is the issue of concern (imposed vaccination) a matter of ethnocultural justice? How to present public justifications for an exemption from vaccination against measles? I hope to indicate that we can build a *prima facie* case for the exemption of measles valuing content shepherds from the vaccination policy on the grounds of public cultural reasons, and thus based on considerations of ethnocultural justice.

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<sup>16</sup>As already indicated, I hope to indicate political liberal ways to argue for some forms of group-specific rights of indigenous and national minorities, such as representation or self-government rights, as made out by Will Kymlicka. See Kymlicka 1995, 27-30.

### 1.3 Some Clarifications

The essays of this thesis touch on a wide range of issues that a liberal theory of multiculturalism arguably needs to take into account, at least sooner or later. Otherwise it will, sooner or later, beg the question. Thus, when engaging with multiculturalism and the justification of minority rights, the wide array of issues that bear on such justification should be appreciated and taken into account as far as possible. This is what I tried to do in this thesis—to set a rather broad, synthesizing focus instead of a rather narrow, analytical one.

As Annamari Vitikainen points out, there are different levels involved in liberal debates on multiculturalism. All of them are relevant to the overarching theme of multicultural politics from a liberal point of view. Very roughly, three main levels of the debate that can be discerned are (i) the rather abstract debates on liberalism, on its nature and foundations; (ii) debates on the link of liberalism to multiculturalism, and whether liberalism, or certain versions thereof, should accommodate cultural claims and differentiated rights of cultural minorities; and (iii) debates on concrete multicultural policies and actual state responses to cultural diversity (see Vitikainen 2013, 48-54). Arguably it would be very hard, if not impossible, to establish any necessary connections between these debates. For instance, arguments on (ii)—that, say, a certain version of liberalism should accommodate cultural claims—will not have any direct or necessary implications for arguments on (iii)—that, say, the Saami have a right to hold a certain number of reindeer; or that they have a right to cross borders of Northern Europe and Russia freely; or a right to at least a certain degree of political autonomy; or that they have a property claim to their homeland. Thus, it seems important to be wary of the scope that one’s arguments might have. Arguments on liberal foundations of multicultural politics, for instance, do not bear directly on arguments for a particular claim by a particular cultural minority.<sup>17</sup>

None of this denies, however, that we *can* engage in fruitful connections between these different levels of debates on multiculturalism. We can establish fruitful links

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<sup>17</sup>Thus, the view that there are no particular minority rights involved in a particular case is “compatible with the view that any justified theory of justice must necessarily include minority protection” (Räikkä 1996, 6). Similarly, it should be noted that “the question of whether minority protection is morally justified is not the same as whether minority protection is in accordance with justice. Unjust practices may sometimes be morally justified.” (Räikkä 1996, 18, fn. 13). The focus in this thesis will be on the political question of justice-based arguments for certain minority rights, and not with moral permissibility more broadly, or with very particular cases of minority rights.

between, say, foundational questions of liberalism and questions regarding the adequate accommodation of particular cultural claims. It should, however, be kept in mind that these connections and links are by no means necessary, or logically implied. Even so, however, it is interesting to see whether claims within (i), (ii) or (iii) are consistent with each other, and how to spell out an interesting and compelling story that attempts to link issues of all three levels of the debate on liberal multiculturalism.

This, at least, should be granted for the sake of the coherence of the following essays. To establish such links is, after all, part of the aim of the study underway here. When trying to grapple with the diverse issues involved within the politics of multiculturalism, I encountered a situation similar to one encountered by G.A. Cohen when he was engaging with historical materialist explanation. As Cohen states:

“It is a wonderful thing about philosophy, or, anyway, I find it wonderful, that you start in one place and that, ‘following the argument where it leads,’ [Plato 1993, 394d] you end up someplace very much else. That happened to me thirty-five years ago when I mounted a defense of Karl Marx’s theory of history. In that case I started with the substance of historical materialist explanation, but I had to reach up to the pure concept of explanation to support what I was doing (...).” (Cohen 2008, xv-xvi)

Somewhat similarly, when I started to engage with liberal multiculturalism, I was startled by how multicultural politics crucially links into many more fundamental political-philosophical issues, such as questions of legitimate political authority, public justification, or methodological issues. When engaging with multiculturalism, I was thus compelled to ponder further issues in order to support what I was doing. These issues are, again: the legitimacy of political authority and minority rights; establishing political liberalism as an adequate liberal starting point to deal with multiculturalism; the nature of political liberalism and democratic citizenship; basic methodological assumptions of political liberal theorizing<sup>18</sup>; the treatment of other instances of diversity, namely religious diversity, in a political liberal polity.

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<sup>18</sup>An intriguing rationale for engaging with methodological questions is that answers to methodological concerns will bear on the kind of moral-political questions and answers we find of interest in our theoretical endeavours. Methodological premises arguably give us, so to speak, a lens or perspective through which we ask, assess and answer moral-political questions. In such an indirect way they are thus relevant for more particular and concrete moral-political questions. John Rawls puts the point as follows: “[G]eneral philosophical questions cannot be the daily stuff of politics, but that does not make these questions without significance, since what we think their answers are will shape

The different Chapters address some of these diverse issues raised by multicultural politics. However, the essays taken together, although addressing very different issues, tell a more or less coherent political liberal story about how to adequately take (certain) cultural issues into account in public justifications of weighty political matters such as differential treatment of indigenous and national minorities.

To put it as an analogy, the individual essays are to be considered as tesseraes (small tiles) in a mosaic. Even though each tessera has its own colour and shape, taken all together they build a more or less coherent picture. The essays are, in other words, supposed to be seen as parts of a single pictures, and to be telling a continuous story, so as to back up the main claim of this thesis—that there are public cultural reasons that help to justify differential treatment of national and indigenous minorities.

With this thesis, I also aim at synthesizing different issues and debates. This approach is, however, chosen with the intention to back up the claim that there are public cultural reasons that help justifying differential treatment of national and indigenous minorities. Taking into account the diverse issues to underpin this main claim arguably also fits well, and is itself a performance of the general attempt to take diversity seriously.

A further aim and virtue of the wide focus on diverse issues, and the attempt to draw a colourful mosaic to underpin my main claim, is that it allows to link different debates and issues that might usually not have much of a connection. Thus, linking the debate on justifications of (certain instances of) multicultural politics with debates about the foundations of political liberalism, in the way that I attempt to do, might be inspiring for both philosophical debates. Debates on the justification of multiculturalism can, for instance, be informed by a political liberal account of political legitimacy and public justification, or so I hope to indicate in this thesis. On the other hand, the debate on the foundations of political liberalism might gain new insights from debates about the role of cultural views in justifications of minority rights. There are also interesting methodological issues that are raised through a political liberal engagement with the justification of group-differentiated minority rights, as indicated in the third essay. In general, engagements with multiculturalism inspire more fine-grained views on culture and public reasons that can reflect back on debates within political liberalism.

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the underlying attitudes of the public culture and the conduct of politics. If we take for granted as common knowledge that a just and well-ordered democratic society is impossible, then the quality and tone of those attitudes will reflect that knowledge. A cause of the fall of Weimar's constitutional regime was that none of the traditional elites of Germany supported its constitution or were willing to cooperate to make it work." (Rawls 2005, lix; see Lassman 2011, 108 for discussion)

None of that, however, is to claim that any of the considered connections and links between different issues and debates is somehow necessary. The links are merely attempts to synthesize different questions and issues into a coherent story of how to underpin multicultural politics with political liberal foundations. It is thus important to note that I do *not* claim or mean to imply, for instance, that particular views on political liberal method (in the third essay) necessarily lead to particular claims about ethnocultural justice (in the fifth essay). I merely claim that we can establish links between the different debates in order to tell a more compelling story about political liberal foundations of (certain instances of) multiculturalism. Methodological considerations, for instance, can inform arguments on ethnocultural justice by making clear on what assumptions regarding political theorizing they are based. Political liberal arguments on ethnocultural justice also start, after all, from certain methodological assumptions, and thus raise methodological questions.<sup>19</sup> Some methodological questions that might be begged are: how should we regard political philosophy? Which aspiration and which concessions in political liberal theorizing are accurate?

This said, let me briefly make a few further clarifications regarding my engagement with the work of John Rawls. Even though this is a thesis dealing with a Rawlsian version of political liberalism, it is not a thesis about John Rawls. The aim here is not to understand Rawls's version of political liberalism as well or as thoroughly as possible.<sup>20</sup> The exegetic interest of the following pages is minimal. The aim is rather to build on some views and assumptions that *might* be Rawls's, views and assumptions that I find appealing as foundational elements of liberalism, in order to establish what legitimate political authority, public reason, or democratic citizenship is or involves. To be sure, Rawlsian assumptions are widely discussed and contested. I will discuss many of these assumptions that I take on board along the way, and try to defend some of them.

However, I am not so much interested in Rawls's detailed views and rather complicated conception of political liberalism as I am in some basic assumptions and outlooks he adopts. Thus, it should be kept in mind that I discuss a political liberalism with a Rawlsian face (broadly construed), and not Rawls's political liberalism. An advantage of this approach is that I can focus on those aspects of political liberalism that seem relevant

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<sup>19</sup>I thus agree with the basic impetus of Gerald Gaus' statement that "[w]hether or not we need a metaphysics of liberalism, we certainly require a metaethics of it" (Gaus 2005, 300).

<sup>20</sup>For such an attempt, see e.g. Langvatn 2013.

for the purpose at hand, i.e. the attempt to square basic political liberal assumptions with multicultural politics. Furthermore, it allows me to discharge those elements that do not seem relevant or interesting for the project outlined here. Thus, in this thesis, I will heavily build, and focus almost exclusively on, the public reason (or legitimacy) aspect of Rawlsian political liberalism, and not on the theory of justice aspect (involving e.g. the view on justice as fairness and the well-known device of a “veil of ignorance”).<sup>21</sup>

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<sup>21</sup>As Samuel Freeman points out, Rawls has two “route[s] to the idea of public reason”, one that is linked specifically to his view on “justice as fairness”, and one tied up with his views on liberal legitimacy—an idea that “plays no explicit role” in Rawls’s earlier work on justice as fairness—and the duty of civility (Freeman 2004, 2028). As indicated, I will focus exclusively on the latter, legitimacy-based take on public reason in this thesis. This is also the main reason why discussions of or references to Rawls’s *A Theory of Justice* will be scarce. See e.g. Lassman 2011, 87-89 for a discussion of the relation between Rawls’s early and later work.

## 2 Which Liberal Approach to Cultural Diversity? Taking Diversity Seriously

People have always pursued, and still pursue, their lives in the most diverse ways. Human customs and traditions, rituals and religions, world views and beliefs, values and attitudes have taken— are still taking, and most likely will continue to take—quite different forms throughout different times and places. Individual lives are distinct and diverse regarding any number of parameters you wish to apply, be they ethnicity, nationality, regional belonging, socio-economic class, religion, gender, education, sexual orientation etc.<sup>22</sup>

The diversity in human ways has a significant bearing on many political issues. Some of them are the object of this and the following essays. However, I will focus mainly on one particular instance of diversity, one that has been labeled “cultural diversity”<sup>23</sup>.

A political issue where cultural diversity is crucial is the issue of toleration. Thus, we might ask: How far is diversity of human cultural ways acceptable? When, if at all, does it become intolerable? Should a polity limit diversity in human cultural ways, and if so, on what grounds? Why should some ways be acceptable and others not?

A prominent liberal way to approach these questions about cultural diversity is to say that diversity is acceptable, and toleration within the polity mandated, as long as the diversity of ways of life is in accord with the individual autonomy of the members of all cultural groups. Thus, according to philosophers such as Will Kymlicka, it seems to be a defining feature of liberalism that it is “committed to supporting the right of individuals to decide for themselves which aspect of their cultural heritage are worth passing on” (Kymlicka 1995, 152). On this view, diversity within a polity is acceptable as long as individuals are free to “assess and potentially revise their existing ends” (Kymlicka 1995, 158). The value of individual autonomy is the rationale for toleration, and indeed seems

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<sup>22</sup>Which is not to say, of course, that they all have the same political impact, importance or quality.

<sup>23</sup>See e.g. Baumeister 2006, 750. More precisely, I will be concerned with what we might label “ethnocultural diversity”. See Section 2.1.2 for a brief discussion on what ethnocultural diversity means for the purpose of our investigation.

to be the very “locus of interpersonal respect” (Christman 2009, 136) within this liberal strand.<sup>24</sup>

Call such liberal approaches that rely on the value of individual autonomy to assess the acceptable limits of human diversity *autonomy liberalism*.<sup>25</sup>

Autonomy liberalism can be distinguished from what we might label *diversity liberalism*.<sup>26</sup> Diversity liberals do not rely on the value of individual autonomy to assess what is tolerable and what is not. They might not restrict the range of tolerable cultural diversity at all, or they might restrict it on other grounds than individual autonomy. Diversity liberals might focus on the instrumental or intrinsic value of diversity<sup>27</sup>, or on a basic freedom to association and exit<sup>28</sup>, rather than on the liberal value of individual autonomy.

Diversity liberals are, thus, usually more concerned with “toleration towards outside” (Kymlicka 1995, 157, 158)<sup>29</sup>, i.e. with toleration between groups, as opposed to “toleration towards inside”, i.e. toleration of a group towards its own members. A religious

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<sup>24</sup>For Kymlicka’s account of toleration based on the value of individual autonomy, see Kymlicka 1995, Chapter 8, especially p. 155-158; for further discussion on the link between toleration and individual autonomy, see e.g. Mendus 1989.

<sup>25</sup>Prominent proponents of autonomy liberalism are Joseph Raz and Will Kymlicka, even though they propose very different versions of it. See Raz 1986, Chapters 14 and 15; Kymlicka 1995, 75-76, 80-82, 90-93, 152-158. See also the work of John Christman, e.g. in Christman 2009, for another example of autonomy liberalism. As these examples indicate, there are different and sometimes opposing versions of autonomy liberalism. Thus, while Raz proposes a “comprehensive perfectionist” (Quong 2011b, 19-21, 26-32, 47-53) version of autonomy liberalism and view on the role of the state, Kymlicka defends a “comprehensive antiperfectionist” (Quong 2011b, 19, 21-26) view on these issues. Christman, again, relies on a refined “socio-historical conception” of individual autonomy (Christman 2009) to develop his version of autonomy liberalism. Note also that the literature on the concept of autonomy and the place of autonomy within liberalism is vast. The aim of this essay is not to provide an overview on the wide discussion of individual autonomy itself. For a useful overview on these issues, however, see Christman 2005a and Christman 1989.

<sup>26</sup>See Galston 1995 and Galston 2002, 23, Chapter 2. William Galston associates autonomy liberalism with the “Enlightenment Project” and diversity liberalism with the “Reformation Project” (Galston 1995, 525). Diversity liberalism arguably also corresponds to what Kymlicka labels “tolerance-based liberalism” (Kymlicka 1995, 154). However, this label is misleading since the idea of toleration can itself be spelled out in terms of autonomy, as in Kymlicka’s own account of toleration. For a discussion of this point, see Kymlicka 1995, 158.

<sup>27</sup>See Galston 1995, 527; Galston 2002, 27 and Chapter 3 for arguments regarding the intrinsic value of diversity.

<sup>28</sup>See e.g. Kukathas 2003, 23-31 (especially 24-25), 74-118 (especially 74-75 and 91-92) for an outline of such a view. As Kukathas holds, “the fundamental principle describing a free society is the principle of freedom of association”, the “principle of freedom of dissociation” and “the principle of mutual toleration of associations” (Kukathas 2003, 75).

<sup>29</sup>I take this label from Will Kymlicka to describe a basic outlook of diversity liberalism. Note that Kymlicka himself does not use the label in the same context.

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majority that does tolerate other religious minorities alongside their own religious practices, even though the minority might be considered to be heretics or guilty of apostasy, is an example of toleration towards the outside. A religious group that does not tolerate dissent from dogmatic teachings within its religious community, as in the case of the Amish (Kukathas 2003, 27), is an example of being intolerant towards the inside.

As an example of such “toleration towards outside”, Kymlicka mentions the Millet system of the Ottoman empire, described as a “federation of theocracies” (Kymlicka 1995, 157). The millets—or nations, or religious groups—had many liberties. As communities they were tolerant towards, and in turn tolerated by, other millets. In other words, the millets were tolerant towards the outside. However, the individual members within the different religious communities or millets did not enjoy individual autonomy or liberty of conscience. Rather, the individual members within a millet were at the grace of the millet majority or rulers. There was thus no toleration towards individual members of the religious group, i.e. there was no toleration towards the inside.

Whereas many diversity liberals might find the millet system enough to secure toleration<sup>30</sup>, autonomy liberals could not accept such a liberal approach to human diversity in politics. The main reason is that autonomy liberals are crucially concerned with “toleration towards inside”, i.e. with the individual autonomy and freedom of conscience of group members. The “liberalism” in the label “diversity liberalism” thus seems—very roughly—concerned with the liberty, or self-determination, of communities or associations, whereas autonomy liberalism seems essentially concerned with the autonomy of individuals to assess and revise their beliefs and ends.

Given that autonomy liberalism, as outlined here, takes individual autonomy to be a basic political value and the ultimate locus of respect, the value of individual autonomy will be essential to the moral-political assessment of a wide range of political issues, not only issues of toleration. Given the crucial role that individual autonomy plays within autonomy liberal views, the question of how individual autonomy is affected by, say, laws and policies becomes a decisive litmus test for any political decision. Individual autonomy will therefore figure prominently in the normative assessment of issues such as the justification and use of political force (i.e. the issue of legitimate political authority), the just distribution of resources or welfare (i.e. issues of distributive justice), or to the

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<sup>30</sup>Maybe with some further qualification, such as a right to leave a millet and join another one (see Kukathas 2003, 25 and 103-114 for a series of problems and objections). See also Kukathas 2003, 187 for a discussion of the millet system as a response to pluralism.

fair treatment of diverse ethnocultural groups within a polity (i.e. issues of ethnocultural justice and legitimate differential treatment).

Even though autonomy liberalism seems to be a compelling liberal stance, the main aim of this essay is to show why autonomy liberals are mistaken in thinking that the value of individual autonomy is an adequate and fundamental basis for liberal politics. I thus aim at showing that the value of individual autonomy is an inadequate ground for the justification of legitimate political authority and, consequently, also for the justification of minority rights.

My main claim here is, in a nutshell, that individual autonomy is an inadequate basis for political authority and minority rights because it fails to take diversity seriously. By showing that autonomy liberalism is unable to take diversity seriously, I also motivate the search for more adequate liberal grounds for legitimate political authority and minority rights. The search for such more adequate liberal grounds is the task of the following essays.

I am going to proceed as follows. As a first step, I will introduce and assess some basic terms essential to the discussions ahead, such as *political authority*, *minority rights*, *culture* and *individual autonomy*. I will also scrutinize the role of the value of individual autonomy in the influential and appealing theory of minority rights developed by Will Kymlicka.

In a second step, I introduce the case of the content shepherds in order to challenge the underpinnings of Kymlicka's theory of minority rights, i.e. the value of individual autonomy and autonomy liberal assumptions that go with it. The aim of the discussion of the case of the content shepherds is to show that legitimate political authority and a liberal theory of minority rights should not be based on the controversial and contestable value of individual autonomy alone. This is the case because any account of political authority and minority rights based on the value of individual autonomy is unable to accommodate content shepherds in a polity, and thus fails to take diversity seriously.

As a last step, I consider a few possible replies to the problems I raise, and briefly dwell on John Christman's modified version of autonomy liberalism. Christman is starting from a conception of individual autonomy that is sensible to the socio-historical context in which persons live. I consider whether Christman's modified conception of individual autonomy is able to side-step the problem raised by the presence of the content shepherds in a liberal polity, and thus whether Christman's view is more apt to take diversity seriously. Arguably, however, Christman's conception of autonomy liberalism,

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even though more accommodating to diversity than Kymlicka's account, is unable to accommodate the content shepherds, and thus fails to take diversity seriously as well.

I conclude that, given the problems faced by autonomy liberal takes on legitimate political authority and minority rights, we have good reasons to search for other and more compelling grounds to underpin our liberal approach to minority rights and multicultural politics. The aim is to find grounds that can live up to the basic liberal desideratum of taking diversity seriously. The search for such ground is the task of the essays ahead.<sup>31</sup>

Before we start, a few notes are in order. Note, thus, that the criticism of individual autonomy as a fundamental liberal value and a basis for minority rights is common in the literature on multiculturalism.<sup>32</sup> What does this essay add to this already well-elaborated criticism? A main difference to the standard criticisms is that I criticize justifications of minority rights based on the liberal value of individual autonomy in the more general context of justifications of legitimate political authority.<sup>33</sup> Another difference is that by thoroughly investigating the example of content shepherds, I make out some new grounds to criticize justifications of minority rights and political authority that are based on the liberal value of individual autonomy. For instance, I consider "alien attitudes" of political agents such as content shepherds and how they help to support an argument against individual autonomy as a fundamental value in a liberal polity (see Section 2.2.2); or I consider the case of evil content shepherds and whether an imposition of political authority that is based the liberal value of individual autonomy is warranted and legitimate at least in such grave cases (I think it is not). I hope that the discussion of these criticisms will help to clarify already existing criticism and, at some points, add new grounds for criticizing justifications of political authority and minority rights that are crucially based on the liberal value of individual autonomy.

Now, one might wonder whether framing justifications of minority rights within the more general framework of justifications of legitimate political authority is adequate or helpful. It might well be that framing the debate about minority rights in this way is sweeping away important differences between justifications of political authority in

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<sup>31</sup>The project tempted here aspires, more precisely, to take ethnocultural diversity seriously as a constitutional matter. See e.g. Dersso 2012 for a project with a similar aspiration in a more particular context.

<sup>32</sup>See e.g. Kukathas 2001; Parekh 2006, Chapter 3, especially the Sections "Raz", "Kymlicka" and "General comments"; Galston 2002, Chapter 2.

<sup>33</sup>Note that assessing political issues and questions in view of their political legitimacy is a familiar feature of the political liberal stance, i.e. a stance that I will adopt and spell out in the essays to come.

general and of justifications of policies and laws, such as minority rights, in particular.<sup>34</sup>

Admittedly, justifying legitimate political authority in general is a different issue than justifying particular policies and laws such as minority rights. Also, the view on individual autonomy presented by Will Kymlicka that I criticize in this essay is mainly developed and deployed in the context of justifying minority rights. Am I, then, unduly blurring important differences between justifications of political authority and justifications of minority rights?

As already admitted, it certainly holds that there are important differences between the issue of justifying political authority in general and the issue of justifying more particular policies such as minority rights. Still, let me briefly indicate why it is interesting to assess justifications of minority rights in the broader context of justifications of legitimate political authority.

A first point is that I am not so much interested in justifications of particular policies and minority rights (say, the particular right of the Saami to pursue reindeer herding within a certain area and with a certain amount of reindeers), but rather in the more general political issue *why there should be differential treatment of (certain) minorities at all*, i.e. why a regime of minority rights (for certain minorities) is just and legitimate. I am, thus, explicitly interested in the legitimacy of differential treatment of (certain) minorities in a minority rights regime. To tackle this issue presupposes an account of legitimacy, and thus a view on what makes political regimes legitimate.

Now, it is true that this is not the only way to frame questions about minority rights.<sup>35</sup> Thus, there surely are also other reasons to follow particular laws protecting minorities and to support particular minority rights than the fact that these laws and rights have been issued by a legitimate political authority. For instance, laws might be morally or pragmatically justified without being issued by a legitimate political authority.<sup>36</sup> Justice and legitimacy considerations are, then, not the whole story when it comes to the complex issue of justifying minority rights of (certain) minorities. However, it is this political issue of the legitimacy and justice of differential treatment of (certain) minorities that I am interested in on the following pages. There is, then, no elision of

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<sup>34</sup>Thanks to Sune Laegaard for pointing out this difficulty.

<sup>35</sup>Indeed, one might even question whether this is an adequate or interesting way to tackle issues of minority rights at all. One might hold that an interesting and meaningful investigation of differential treatment and minority rights regimes necessarily starts from particular minority rights and concrete contexts. I address methodological concerns of this kind in Chapter 4.

<sup>36</sup>Thanks to Sune Laegaard for this point.

important differences between justifications of political authority and of minority rights in the account that lies ahead—these differences are admitted and duly noted. I merely frame our discussion of justifications of minority rights in a certain way, namely by investigating the legitimacy of a minority rights regime for (certain) minorities that is issued and supported by legitimate political authority.

A further problem seems to be that Kymlicka's justifications of minority rights are not explicitly developed in such a framework. Do we, then, do injustice to Kymlicka's theory of minority rights if we ask how it squares with a certain view on political legitimacy?<sup>37</sup> I don't think so. The reason why I think this is not the case is the fundamental role that the pervasive, or comprehensive, value of individual autonomy plays in Will Kymlicka's liberal theory. Individual autonomy is not only the core liberal value to assess justifications of minority rights, but also to assess justifications of political authority—even though, of course, the justifications will be different, involving different questions and arguments. Still, on Kymlicka's view minority rights as well as political authority are justified, crucially, if they protect and promote the individual autonomy of citizens. The value of individual autonomy is at the heart of Will Kymlicka's theory of minority rights as well as his views on political authority. My arguments against Will Kymlicka's views on political authority and minority rights address this fundamental level of his liberal approach. They aim at the central role of the value of individual autonomy in his liberal theory, and thus also at his views on minority rights and political authority.

The root or core problem of Kymlicka's arguments and justifications in both domains is the highest-orderedness of the liberal value of individual autonomy. To question this highest-orderedness is the main aim of this essay, and accepting this criticism will make Kymlicka's justification of minority rights, as well as of political authority more generally, less compelling. For the purpose of this thesis, the criticism motivates a move away from an autonomy liberal stance towards a more political version of liberalism.

## **2.1 Legitimate Political Authority, Minority Rights, and Individual Autonomy**

Minority rights are a corner stone of multicultural politics. Multicultural politics, or multiculturalism, is here understood as sets of policies or laws that aim at providing

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<sup>37</sup>Thanks to Sune Laegaard for pointing out this problem.

public recognition of and support for certain ethnocultural groups through differential treatment (cf. Ivison 2010, 2). Common examples include self-governing rights of indigenous minorities; limited or extensive autonomies for national minorities; exemptions from animal protection, drug regulation, or school attendance laws for certain religious groups; funding of mother-tongue courses and festivals for immigrants.

A pressing question when it comes to issues of multiculturalism is the justification of political authority itself. Why is a polity justified in promoting such policies (and any other policy as well) in the first place? Any theory of minority rights requires not only an account and justification of the differentiated rights and exemptions themselves, but—as a background or framework—also of an underlying conception of legitimate political authority. It is legitimate political authority that issues legitimate differential treatment and minority rights. If the authority issuing minority rights is deemed illegitimate or inadequate, this will rub off on the minority rights that it issues.<sup>38</sup> In short, legitimate minority rights can be issued only by institutions or persons with legitimate political authority.

On the following pages, I briefly introduce what I take to be workable views on legitimate political authority and minority rights, and how they are justified in autonomy liberal terms. This will give us a solid conceptual background for a discussion about adequate liberal approaches to multicultural politics.

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<sup>38</sup>I will not further argue for this view. I simply state it here explicitly as a crucial premise for the arguments and conclusions to come. To see why illegitimacy rubs off, however, briefly consider an instance of illegitimate rule, as in Nazi Germany. It seems plausible to assume that the laws and policies issued by the illegitimate state are illegitimate also *because* they were issued by an illegitimate authority, i.e. the Nazi state. On such a view, it would not only be unjust and oppressive laws, such as the racial laws, that were illegitimate in Nazi Germany, but laws issued by the authority more generally. This view strikes me as sensible, since it tunes in with a view on resistance and disobedience during the Nazi regime that allows for a break with the regime in general, and not just with certain unjust or oppressive aspects of it.

Note, however, that the legitimacy of laws is not the only relevant factor in decisions of people of whether or not to follow a law. Laws might also be followed on moral or pragmatic reasons that are independent of legitimacy considerations. Similarly, an authority lacking legitimacy might still issue laws that people consider right, or have other (say, pragmatic) reasons to follow. (Thanks to Sune Laegaard for pointing this out). Still, once we are interested in the legitimacy of minority rights, that legitimacy will crucially depend on the legitimacy of the political authority that issues them—even if there might be many other good reasons than legitimacy considerations (such as moral or pragmatic ones) why people might follow minority protection laws.

### 2.1.1 Political Authority

Having political authority, I take it, is having the right to rule. Such a right to rule usually encompasses the right to make policies, laws and regulations; to judge and enforce these normative standards; as well as to punish and redress in case these standards are not met (Raz 1990c, 2). Political authority is a species of practical authority. Practical authority is the moral power to require action (Estlund 2008, 30-31, 118 and more generally Chapter 7; Raz 1990a, 115).<sup>39</sup> Practical authority is thus concerned with reasons for action. It can be distinguished from theoretical authority, i.e. authority that is not concerned with reasons for action, but with reasons for belief (Christiano 2013, Section 1.1; Raz 1990c, 2.). Also, the term political authority is not meant to be descriptive, i.e. intended to describe certain manifest forms of authority in the world we live in. Rather, our interest is normative. We are concerned with issues of justification. Examples of relevant normative questions regarding authority are: what justifies, if anything, the existence of authority? What are the appropriate limits of authority? Who is entitled to hold it? And what duties does it create? (Raz 1990c, 1)

To understand authority in the sense proposed here implies that authority cannot be established by, and has nothing to do with, brute force or mere *de facto* authority (Raz 1990c, 3; Raz 1990a, 117). It can be considered justified and appropriate only if it is “there by right” (*ibid.*), i.e. if it is legitimate. A most crucial question when it comes to normative issues of authority is thus the question under which conditions, if any, authority is legitimate.<sup>40</sup>

As Joseph Raz points out, many writers see the problem of legitimate political authority basically as a problem of the justification of coercion (Raz 1990c, 15). Given the view on political authority depicted here however—with the focus on the right to establish and enforce political standards, and the implied corresponding creation of duties to obey—the authoritative qualities of the standards or directives issued seem to lie elsewhere, namely in the “moral right to impose duties” (*ibid.*). This is not to say, however, that coercion is irrelevant regarding legitimate political authority. Quite to the contrary, issuing political standards and directives will involve the enforcement of these standards and directives, and thus in certain cases at least it will involve coercion. However, we can hold a conception of political authority as depicted here—i.e. one build-

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<sup>39</sup>For an overview on basic conceptual issues that arise regarding authority see e.g. Raz 1990c, Lagerstetz 1995, Chapter 4 and Christiano 2013.

<sup>40</sup>Such issues of legitimacy will be at the heart of the second essay (see Section 3.1).

ing on a right to impose duties rather than the enforcement of coercion—and still hold that it is a most crucial element of political authority to be able to resort to coercion. Nothing in the conception of political authority as the right to impose duties opposes the view that the use of coercion is a defining feature of political authorities (Raz 1990c, 15, 117). In what follows, however, nothing will hinge on a more intimate link between authority and coercion either. It is enough to admit that the ability to use coercion is a crucial feature of legitimate political authority, even if authority is far from being only about coercion.

Nonetheless, the issue of coercion hints at a crucial desideratum in any justification of legitimate political authority. Since legitimate political authority has coercive powers, the stakes to establish and impose political authority will be particularly high. To use coercion and interfere with someone's individual freedoms and rights puts the bar high for any justification of political authority.<sup>41</sup>

As already mentioned, I am interested in issues of political authority because they underly any account of minority rights, or multicultural politics more generally. Speaking of minority rights and multicultural policies presupposes an authority that issues these policies, and grants these rights. Also, our understanding of legitimate political authority has implications for, or rubs off on, our theory of minority rights and multicultural politics, given that our view on legitimate authority allows for minority rights in the first place. In other words, a theory of minority rights and multicultural politics—in order to be compelling—has to be in tune with a sensible view on legitimate political authority.

### 2.1.2 Minority Rights

Multicultural politics or multiculturalism aims at providing public recognition of and support for certain non-dominant ethnocultural groups through differential treatment.<sup>42</sup> Minority rights are an instance of multicultural politics, if the rationale for granting such rights is a proper or just response to cultural diversity (Kymlicka 1989, 139). Minority rights are a way to grant the members of different cultural groups—or the

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<sup>41</sup>One view on political authority that deems these stakes too high for any justification—also, but not only due to the issue of coercion—is anarchism. See e.g. Wolff 1990; Wolff 1998; Christiano 2013, Sections 3 and 4.

<sup>42</sup>This, in any event, is the rather technical understanding of multiculturalism throughout this study. See Song 2010, introduction; Kymlicka 2007, 16 for such a view.

groups as such—what is owed to them by the surrounding majority culture, namely equal consideration and respect. In other words, minority rights are a way for culturally diverse polities to establish just relations between the different cultural groups and their members. They are, therefore, a way to establish and guarantee ethnocultural justice.<sup>43</sup>

This view of cultural justice suggests that merely tolerating cultural group differences is not enough to establish an appropriate and just relationship between different cultural groups that live together in a polity. A toleration-based approach, i.e. one that benignly neglects cultural issues in politics, seems to fall short of treating members of different cultural minorities as equal citizens (Song 2010, introduction). Indeed, most Western democracies, during more or less recent developments, adopted policies that aim at recognizing and positively accommodating group differences through “group-differentiated rights” (Kymlicka 1995, 6-7, Section 2.2, 34-38; Song 2010, introduction). They moved away from—if they actually ever fully embraced—the practice of benignly neglecting, or merely tolerating, cultural differences.<sup>44</sup> Telling examples here are the increasing degrees of self-determination rights, and other ways of political empowerment, of indigenous peoples in many parts of the world<sup>45</sup>; the development and promotion of the status of indigenous peoples in recent years within the UN human rights canon<sup>46</sup>; the acceptance or promotion of autonomy rights of different regions in Europe in recent years, such as Catalonia, Wales and Scotland (Kivisto 2002, 119-138)<sup>47</sup>; or the changing paradigm for

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<sup>43</sup>“Ethnocultural justice” covers a certain limited range of cultural diversity arising in a polity, namely those arising in societal cultures. Relevant issues here are language, territory, collective history, and traditional institutional practices. Throughout this study, when talking about “culture”, “cultural groups” or “ethnocultural groups”, I refer to Kymlicka’s view of cultures as societal cultures and the political issues that societal cultures raise, i.e. political issues of national and indigenous minorities, as well as ethnic immigrant groups (see Kymlicka 2001g, Part II). Societal cultures tend to coincide with other labels for cultural groups, such as peoples or nations. As Kymlicka puts it, societal cultures usually “are national cultures” (Kymlicka 1995, 80). See Section 2.1.2 below for further discussion on societal cultures.

<sup>44</sup>For a short but concise historical overview on these developments in countries such as the USA, Canada, Australia, Britain, and Germany, see Kivisto 2002.

<sup>45</sup>For instance the granting of the Nunavut territory to Inuits in the Northwestern Territories of Canada (Kivisto 2002, 101); or treaties that New Zealand signed with the Maori (Kivisto 2002, 106); or the more successful land claims by Australian Aborigines during the last two decades (Kivisto 2002, 106).

<sup>46</sup>According to Kymlicka, multiculturalism thus reflects a “third stage [after the political and social rights stages] in the human rights struggle against ethnic and racial hierarchies” (Kymlicka 2007, 96 and 21-55). See United Nations 1989; United Nations 1992; United Nations 2007. See also United Nations 2010 for an overview on minority rights issues within the United Nations.

<sup>47</sup>Compare, though, the more problematic examples of Northern Ireland and the Basque region in Kivisto 2002, 132-138.

immigrants in many Western democracies away from a model of cultural assimilation to one of civic integration<sup>48</sup>. Another example are non-assimilationist models of immigrant multiculturalism. According to such models, integration into the political community is usually seen compatible with upholding a strong bond with one's country of origin, so that political integration measures might go hand in hand with policies that aim at strengthening such bonds.<sup>49</sup>

That much regarding a general outlook on minority rights and ethnocultural justice. Now some clarifications regarding the use of terms such as minority rights and group-differentiated rights seem in place. As Kymlicka indicates, the term minority rights is used in a wide range of contexts. It is sometimes used to cover claims of non-cultural minorities—such as the minority of vegetarians, or that of cyclists, as when it is claimed that vegetarians have a right to meatless food in canteens, or cyclists have a right to save paths for cyclists in car dominated cities. Sometimes it is used to refer to the issues of non-discrimination more generally, without the more specific focus on discrimination of cultural groups implied here, as when rights of the handicapped or of homosexuals are discussed under this header.<sup>50</sup>

I will use the term *minority rights* in a very restricted and technical sense. I use it to denote instances of differential treatment within the confines of multicultural politics as outlined above. Crucial features of minority rights as understood here are those in which (i) the rights are granted to non-dominant cultural groups, and that (ii) their rationale is an appropriate or just response to ethnocultural diversity, and thus the granting of equal respect and consideration to all citizens and citizens-to-be (in the case of immigrants).<sup>51</sup>

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<sup>48</sup>According to Bikhu Parekh, assimilation of cultural communities is one basic possibility of a polity to respond to cultural diversity, a distinctly “monoculturalist” one (Parekh 2006, 6). For an overview on political developments regarding immigration in several Western democracies, see Kivisto 2002, 44-50; 72-83 (USA); Kivisto 2002, 138-150 (Britain); Kivisto 2002, 172-177 (France); Kivisto 2002, 96-99 (Canada). It is also worth noting that arguments based on the idea that certain potential immigrants should not be allowed to immigrate due to their “incompatible” life styles, views or “culture”—i.e. ideas favouring the cultural assimilation paradigm—seem to resurge. This is part of what has recently been diagnosed as a major political backlash against multicultural politics. See e.g. Song 2010, Section 4 for a discussion of that backlash.

<sup>49</sup>Consider for example bilingual education programmes for children of immigrants, institutional adaptations regarding work schedules or dress-codes, cultural diversity trainings for police and social workers, or the public funding of festivals and associations for immigrant groups etc. (Kymlicka 2001h, 159-160; Kymlicka 1995, 31)

<sup>50</sup>As Kymlicka points out, the same is the case with terms such as “group rights”, “collective rights”, “minority protection”, or “special status” (see Kymlicka 1989, 138-139).

<sup>51</sup>These qualifications should be enough to exclude bad or unjust minority rights, such as the ones granted to the white minority in apartheid South Africa that autocratically ruled a segregated

Due to the imprecision of the term minority rights, and its wide and incoherent use, Kymlicka introduced the term of “group-differentiated rights” to build his theory of cultural minority rights (Kymlicka 1995, 6-7, Section 2.2, 34-38). Kymlicka distinguishes between three kinds of group-differentiated rights, depending on what cultural minority is concerned. The first kind of group-differentiated rights are self-government rights for national minorities. These rights are often granted through some form of federalism or regional autonomy (Kymlicka 1995, 27-30). The second kind are polyethnic rights for ethnic or religious immigrant groups, such as the right to financial support and legal protection for cultural practices, or the exemptions from laws and regulations to the same end (Kymlicka 1995, 7, 30-31).<sup>52</sup> The third kind are special representation rights for ethnic as well as national groups, such as a quota in parties, institutions or representative bodies for members of disadvantaged or marginalized cultural groups (Kymlicka 1995, 31-33).

These kinds of group-differentiated rights will, in detail, raise different justificatory issues, since they are concerned with different groups and problems.<sup>53</sup> However, they are all instances of minority rights as outlined above, i.e. (i) they focus on cultural groups and (ii) are based on the rationale of a just response to cultural diversity. In this sense, the different kinds of group-differentiated rights also raise common issues regarding the justification of differential treatment of cultural groups in the form of minority rights.

### **What is a Culture?**

Minority rights will be claimed by, or assigned to, members of cultural groups. Any account of such rights will thus also need an account of what a cultural group is, what makes it cultural as opposed to anything else (e.g. religious), what qualifies membership in such a group and what, more precisely, are these rights.<sup>54</sup>

Even though these are all sensible concerns regarding any account of group-differentiated rights, let me briefly focus on the tricky issue of how to conceive of cultural groups, or

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state.

<sup>52</sup>In his later writings, Kymlicka refers to such rights as accommodation rights rather than polyethnic rights due to criticism raised against his terminology e.g. in Carens 1997. The idea, however, seems to remain the same. See also Vitikainen 2013, 89, fn. 125 on this point.

<sup>53</sup>This is the main reason why I will restrict my investigation to issues of ethnocultural justice as concerned with instances of multiculturalism arising from the presence of several societal cultures, such as national and indigenous minorities, within a polity. See Section 6.1.2 for further discussion of this point.

<sup>54</sup>See Rääkkä 1996, 9-10 and Vitikainen 2013, 59-60, Chapters 4 and 5 on issues of group membership.

cultures *tout court*.

Cultures are the research objects of whole academic fields, such as cultural studies, cultural history, ethnology or social anthropology. Views of what cultures are vary within different fields and paradigms of research. Furthermore, we use the term culture to describe practices, customs, or attitudes of many kinds of loose or strict associations—as in coffee culture, football culture, or high-brow culture (Kymlicka 1995, 18). In contrast to conceptions of culture on this micro level that describe lifestyles, world-views or social movements, we also use it on a macro level to describe common traditions, customs and beliefs of whole peoples or civilizations, as in Italian culture, European culture, democratic culture, or Western culture (*ibid.*).<sup>55</sup>

In order to be able to focus on ethnocultural groups, and to distinguish these kinds of cultures from those just mentioned, Kymlicka introduces the term “societal culture” (Kymlicka 1995, 18, 76-80, 82-84). The term societal culture gives us a specific and technical conception of the more general and contested concepts of cultures, nations, or peoples.<sup>56</sup> It is also an attempt to settle the use and definition of the notion “culture” somewhere between the micro- and the macro-level mentioned above. Most of all, however, it is a stipulation of the term “culture” that allows Kymlicka to focus on certain social aspects that are relevant for further normative-political discussions regarding ethnocultural groups and their fair treatment. What are these aspects?

A societal culture is characterized as an “intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct

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<sup>55</sup>Given this broad use of the term culture, definitions of culture tend to be very broad as well. Thus Bikhu Parekh, for instance, defines it as “a body of beliefs and practices in term of which a group or people understands themselves and the world and organize their individual and collective lives” (Parekh 2006, 2-3, see also 142-143). For further issues regarding the definition of culture, see e.g. Kymlicka 1995, 18-19, 76-80; Festenstein 2005, Section 1.2; Festenstein 2010; Ivison 2002, 33-39; Parekh 2006, Chapter 5; Risjord 2012; Song 2007, Chapter 2.

<sup>56</sup>Kymlicka himself seems to use the term societal culture as synonymous with nation or people (Kymlicka 1995, 18, 80). Also note that our concern here is, as indicated in the title, with “ethnocultural justice”, i.e. justice concerned with ethnic cultural groups. For the purpose of this study, I will use the terms ethnic groups, peoples and nations somehow interchangeably, given that they are understood as societal cultures. To put it differently, I take societal cultures, as defined here, to be at the core of normative issues regarding ethnic groups or, if you wish, nations. Admittedly, there are difficult issues and differences between group labels such as “ethnic” or “national” that should be kept in mind. The understanding of (ethnic, national etc.) culture as societal cultures allows me, however, to sidestep an engagement in further conceptual issues regarding ethnicity and nationality. I simply stipulate that ethnic or national groups are societal cultures. For a short discussion on how to distinguish ethnicity from other social labels such as nationality, people, or race, see e.g. Kivisto 2002, Chapter 1; Kivisto 2012, Chapter 12; Shapiro, I./Kymlicka, W. 1997.

language and history” (Kymlicka 1995, 18). Furthermore, societal cultures provide its members “with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres” (Kymlicka 1995, 76).<sup>57</sup> Crucial in this conception of culture are the aspects of territorial concentration, institutional completeness, linguistic unity and historical continuity. The criteria of territorial concentration establishes that the group in question shares a common territory and is in this sense a community that lives together. Institutional completeness refers to the requirement that a culture, as understood here, consist of institutions that cover most relevant domains of life, from economics, politics, social practices, to education. Linguistic unity allows the standardized use of language, and thus the engagement in a common institutional life in the first place. The continuity of history furthermore underpins a sense of common membership that is often characteristic of cultures as envisaged here.<sup>58</sup>

The need of a polity for a societal culture is striking when we consider modern Western democratic nation states. For instance economic, political, bureaucratic and educational institutions and procedures heavily rely on the use of a common language. Thus, a common language, and a societal culture more generally, seems to be a functional requirement of any modern economy, where a mobile and educated work-force is needed (Kymlicka 1995, 76-77). A common societal culture also seems crucial for the sort of solidarity that any welfare state requires of its citizens, since such a culture facilitates the sense of common membership in a polity and the will to make sacrifices for each other (*ibid.*). For instance, a shared sense of a common and continuing history among members of a political community might be important for many citizens to accept political burdens such as the political obligation to go to the army or to do an obligatory civil

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<sup>57</sup>See Kymlicka 1995, 76-80 and Vitikainen 2013, 73-74 for a discussion of the term, societal culture.

For an overview on and criticism of Kymlicka’s account, see e.g. Festenstein 2005, 17-22; Festenstein 2010, 85-86; Benhabib 2002, 59-71; Carens 2000, 66.

<sup>58</sup>Note, however, that there are different conceptions of history, and that not all views on history might be congenial to or compatible with a view on history as implicit in Kymlicka’s account. Judith Shklar, referring to Friedrich Nietzsche, discusses three different ways to conceive of history. She labels them “monumental”, “antiquarian”, or “critical” (see Shklar 1998b). Monumental history, for instance, is addressed to political actors and aims at reminding them “that great deeds were performed by notable men and that what was once feasible is at least possible again” (Shklar 1998b, 353). It would be interesting to investigate more closely what conception of history is implicit in Kymlicka’s view on societal cultures. This, however, would lead too far astray. For now, I assume that the crucial element of Kymlicka’s account of history is that it underpins or supports a sense of membership in a political community, a sense that is also linked to a common language, a shared or common territory and to established institutional practices.

service (militia armies still exist e.g. in Switzerland and Finland), to pay taxes, or to be on a jury. Furthermore, access to societal cultures seems to be a pivotal requirement to establish and live up to the modern commitment to equality of opportunity through providing standardized public education for all (*ibid.*).

However, societal cultures are not limited to the modern context of current Western democracies. The term can also be used to characterize many indigenous peoples or minority nations, where their traditional societal characteristics have not been eradicated by colonialism or assimilationist policies. In these cases, societal cultures function on a smaller, more community-based scale and regarding an institutional setting that is very different from modern societies. The cultural aspects of common territory, common language, common institutional practices, and a common sense of history are also relevant for these groups. These groups thus also have a common societal culture.

### **Some Criticism of Kymlicka's Approach**

Kymlicka's view on group-differentiated rights, and the conception of societal cultures, has been severely criticized. For instance, the distinction between ethnic immigrant groups and national or indigenous groups was deemed too rough, sociologically naive, reifying and in general too simplistic or inadequate. Our world and the issue of cultural belonging and identity, so critics held, is far more complex than Kymlicka's discussion of societal cultures and minority rights suggests.

There are different versions of this general strand of criticism. Iris Marion Young, for instance, claims that Kymlicka's approach proposes fixed and neat categories, such as national or ethnic groups, whereas we should think of ethnocultural groups more as fluid continuums (Young 1997, 50). Brian Barry, albeit a critic of Young's approach (see e.g. Barry 2001, 305-308), points out that the ascription of cultural characteristics to groups trades on flimsy sociology, since other social dimensions such as class, geography, religion and sexuality will make it impossible to ascribe any commonalities that could be subsumed under the header of "culture". Thus, making culture a focus of normative investigation, and "culturalizing" (Barry 2001, 65, 306) debates more generally, is thus deeply flawed according to Barry.<sup>59</sup> Seyla Benhabib and others point out the complex heterogeneity of cultures and identity groups in general, and the ensuing difficulties for any arguments of cultural protection and support. If cultures are seen as fluid and

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<sup>59</sup>See Barry 2001, 5, 63, 95-96, 305-308, 315.

heterogeneous, it will become difficult to conceptualize and grasp what exactly should be the object, and who the subject, of protective measures.<sup>60</sup>

These are important points, and surely we have to be cautious regarding these issues when adopting Kymlicka's vocabulary. Regarding the charge that the terminology is too static and categorical, we might well concede the point—as did Kymlicka himself (see Kymlicka 2001b, 56-57). After all, there are many cases that do not neatly fit the scheme of national, indigenous, or ethnic immigrant groups made by Kymlicka. Examples might be guest workers, refugees, illegal immigrants, Sinti and Romanies, African Americans, or certain long-standing minorities such as Jewish communities in European cities that have been around for hundreds of years (or more).

However, these examples and cases do not undermine the claim that immigrants and national minorities still represent a most common types of ethnocultural pluralism in Western democracies, and that Kymlicka's terminology helps us to make sense of their claims as well as to accommodate them within a liberal framework of cultural justice (Kymlicka 2001b, 57). These examples merely establish that there are many more interesting and relevant instances of cultural diversity. This does not undermine the political relevance of immigrants, national minorities and indigenous peoples, or the interest that Kymlicka takes in these instances of cultural diversity.

Regarding the flimsy sociology and cultural heterogeneity charge, we might again concede the point without giving up on Kymlicka's project completely. Indeed, social reality is much more complex than represented in Kymlicka's depiction of societal cultures. However, even if there is much more to social life than shared territory, language, a common sense of history, and traditional institutional practices, these aspects of social life are still important building blocks for most social-political communities that we refer to as peoples, nations or nation states. If this holds, then the relevance of societal cultures for many polities in the world we live in is and remains eminent.

The cultural groups made out by Kymlicka arguably play an important role in the world we live in—a world of nation states, claims by national and indigenous minorities, and strong migratory movements across the globe resulting in considerable immigrant communities in many countries. A focus on these groups and their claims is adequate, and indeed required, if the aim is the search for a just and legitimate polity that is faced with cultural diversity and claims of this kind. The term societal culture focuses

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<sup>60</sup>See Appiah 2005, Chapter 4; Benhabib 2002; Gutmann 2003; Sen 2006; Waldron 1995, 95, 101. For an overview on these critiques, see Christman 2009, 196-204.

on certain relevant aspects of these groups and their claims (namely language, history, institutional structure, and territory). The idea of a societal culture is not concerned with other manifest social issues and complexities. Nor is it a most adequate description of nations or people (should there be any such thing in the first place). However, none of that is aspired. The idea of a societal culture admittedly involves considerable simplifications about the social world. These simplifications are accepted in order to focus on certain crucial aspects of functioning nation states, indigenous peoples and national minorities. A societal culture is merely a conception of culture that underlines certain relevant social aspects or traits or ethnocultural groups—namely those of language, history, institutional practices, and territory.<sup>61</sup>

Of course, the aspects taken into consideration should be indeed interesting and relevant. The social elements picked out by our conception of culture should be crucial aspects of many ethnocultural groups and their political claims. I take it that this relevance is manifest when it comes to societal cultures. Many claims by national and indigenous minorities are linked to issues of territory, language, institutional practices and their colonial history. Also note the “functionality thesis” that is implicit in our discussion of societal cultures. The functionality thesis holds that a certain linguistic unity and institutional completeness, a common sense of history and territorial unity is crucial for the functioning and stability of nation states.<sup>62</sup> In other words, the aspects picked out by the conception of societal cultures are most common, defining and arguably even necessary features of nation states.<sup>63</sup>

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<sup>61</sup>Another way to illustrate the view on a societal culture as a particular conception of culture is to compare the notion of a societal culture with ideal types, as outlined by Max Weber (see Weber 1956, 9-10). Ideal types are not supposed to be most adequate descriptions of the social world. They involve abstractions, generalizations and simplifications. However, they also helpfully reduce complexity and provide workable conceptions of social phenomena. Ideal types allow us to pick out and focus on certain relevant aspects of the social world. This is, arguably, a sensible methodological choice when dealing with the overwhelming complexity of social (economic, political, historical etc.) phenomena. Thus, the notion of societal cultures with its limited focus on language, territory, history and institutional practices is such a helpful ideal type that highlights certain interesting aspects of the social world, and helps to make sense of ethnocultural claims in a liberal perspective.

<sup>62</sup>Note that this is not to say that nations or societal cultures cannot be purely imagined communities, or socially constructed. Crucial is merely the self-perception of oneself and others as members of a societal culture. The aspects picked out in the conception of societal cultures—geographical proximity, common language, common institutions, common history—are then seen as common markers of membership in a particular societal culture. The common markers might still be purely imagined, or socially constructed.

<sup>63</sup>They are not, however, sufficient for functioning nation states. Regarding the stability of a polity at least, further issues such as the justice and legitimacy of the regime are crucial as well. I discuss

Another interesting point about the cultural elements at the core of the conception of a societal culture is that states seem to be forced to establish at least some of these cultural elements. Thus, politics and political deliberation will have to be conducted in a certain language, within a certain institutional setting, within a certain territory, and in front of certain views on history. The politics of nation states, at least, is most commonly conducted within a certain delimited geographical space, in front of a certain understanding of history, as well as within a set of certain institutional and social practices. In short, it seems that nation states, in order to be functional, have to establish certain features of societal cultures. This, at least, is a basic insight and premise of what we might dub the “cultural establishment view”.

Societal cultures and the cultural establishment view also help to explain why nation states, but also confederative political entities such as the EU, or federations such as the US or Switzerland, engage in what has been dubbed nation-building (see e.g. Kymlicka 2007, 347, 362-364). States usually develop school curricula, decide on street names and statues that are displayed in public squares, fund memorial days and festivities and, in general, take an active part in shaping political and social institutions with the aim of cultivating, and perpetuating, a societal culture.

Kymlicka’s conceptualization of societal cultures and related ethnocultural claims is also sensible because it is in accord with how many nations, national minorities, indigenous peoples, and immigrants formulate their claims for fair treatment and accommodation. The socio-cultural aspects picked out by the conception of societal cultures are in tune with many claims of cultural minorities. Thus, aspects of societal cultures highlight issues that are usually most important for indigenous minorities to maintain their way of life. The concept of societal culture is congenial to the vocabulary and claims of many cultural groups such as minority nations and indigenous minorities, in their struggle for political recognition in the contemporary international order. The idea of societal cultures thus helps to make sense of certain political claims made by cultural minorities.

In any case, however, my main concern in this essay is not with Kymlicka’s conception of culture and minority rights per se. The issue will again take centre stage in the last essay (see Section 6.1.2). For now, I will simply take on board Kymlicka’s views on culture for my arguments. What I would like to take issue with now is, rather, the

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some of these issues in Section 3.1 below.

kind of justification of group-differentiated rights for indigenous and national minorities that Kymlicka presents. This justification crucially builds on the value of individual autonomy. This, I will argue, is highly problematic if we aim to take diversity seriously.

### 2.1.3 Individual Autonomy

Until now, I have been mainly concerned with the conceptual clarifications of crucial notions for discussions that lie ahead. In this Subsection, I will now turn to autonomy liberal justifications of political authority and minority rights, as proposed by Will Kymlicka.

Why is the state justified to promote minority rights? This question is significant, since differential treatment seems to contradict modes of “universal political incorporation”, where “each individual citizen stands in the same direct relationship with the state” (Kymlicka 1995, 137). On such a view of universal political incorporation, equal rights for all corresponds to equal consideration and respect for all. This seems to involve an avoidance of representing different cultural, religious etc. outlooks in public institutions (Gutmann 1992, 4). This view is held by an important strand of liberal thought (ibid.; Barry 2001, 7; Schuck 2002).

Liberals will thus have to present a convincing story to allow this universal conception of citizenship to be replaced by a multicultural one.<sup>64</sup> In a historical perspective, a critique of universal conceptions of citizenship might point out the de facto exclusion of many groups (such as women, slaves, the poor, the prisoners) from the political community throughout history, and the general partiality of such a conception of citizenship towards white, property-owning men in the name of universal citizenship (Christman 2009, 189-190). However, such empirical-historical considerations do not concern us here. The focus here lies on normative issues regarding citizenship. As far as we are concerned, the exclusion of women and many other groups from the public space and political process was unjust. The ideal of universal citizenship in those times was simply not realized since many groups that had reasonable claims to full political standing were excluded from political participation. Historical examples do not show, however, that universal citizenship could not be realized *in principle*. Historical arguments do

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<sup>64</sup>For a discussions of this issue see e.g. Kymlicka 1995; Kymlicka 2001f; Kymlicka 2001d; Kymlicka 2002, Chapter 7; Kymlicka 2003d; Kymlicka 2003c; Kymlicka 2003b; Ivison 2010; Joppke 2002; Parekh 1997; Song 2010; Young 1989.

not undermine the possibility of a polity in which universal citizenship would indeed be realized.<sup>65</sup>

Also, the question “Why is the state justified in promoting minority rights?” will have to be answered together with the underlying question of the following sort: Why is the state allowed to promote any rights or policies in the first place? Given a strongly diverse polity, the question of why a common polity is at all desirable might also arise. Certain groups—for instance, indigenous or national minorities—might well wonder why they should be at the discretion, even partly, of other groups or institutions that are somewhat alien to them.<sup>66</sup>

Regarding the underlying question of why the state is allowed to promote any rights or policies in the first place, Jonathan Quong describes Kymlicka’s position as an instance of “comprehensive antiperfectionism” (Quong 2011b, 19)<sup>67</sup>.

Kymlicka’s liberalism is antiperfectionist insofar as it holds that the state should not engage in the business of deciding—for the members of the political community or anyone else—what a valuable or meaningful life consists of. Such a state is thus to abstain from imposing a view of the valuable or meaningful life on its citizens. Perfectionism would claim the opposite, i.e. that the state should promote a view of the valuable and meaningful life, and that the state should, or is allowed to, impose such a view

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<sup>65</sup>For criticism of universal citizenship that builds heavily on empirical-historical considerations and injustices, and that holds that domination and oppression is thus involved in any universal conception of citizenship, see e.g. Young 1990, 109. For a discussion of Young’s view, see e.g. Christman 2009, 194-196; Barry 2001, 11, 96-97.

<sup>66</sup>This point indicates why issues of federalism and secession become pressing regarding multicultural politics concerned with indigenous and national minorities. On federalism, see e.g. Kymlicka 2001e; Kymlicka 2001c; Føllesdal 2014. On secession, see e.g. Buchanan 1991; Buchanan 1997; Buchanan 2003; Buchanan 2005; Buchanan 2013; Horowitz 2003; Macedo 2003; Miller 2003; Moore 2003. For an overview on rather recent secessionist movements around the world—from Congo, Eritrea and Sudan to the Kurds, Bangladesh and the Philippines—see e.g. Heraclides 1991.

<sup>67</sup>Chandran Kukathas labels Kymlicka’s position, less precisely, as a version of “comprehensive liberalism” (Kukathas 2003, 16). Comprehensive antiperfectionism is a species of comprehensive liberalism. Another kind of comprehensive liberalism in Quong’s taxonomy is thus “comprehensive perfectionism”. In a nutshell, comprehensive perfectionists hold that it is “permissible for a liberal state to promote or discourage some activities, ideals, or ways of life on grounds of their inherent or intrinsic value” (Quong 2011b, 15; for a similar definition, see Appiah 2005, 157). Comprehensive antiperfectionists would, to the contrary, deny that a liberal state is allowed to do so. Prominent representatives of comprehensive perfectionism are e.g. Thomas Hurka (see Hurka 1990, Part 3), Joseph Raz (see Raz 1986) or Steven Wall (see Wall 1998). Prominent representatives of comprehensive antiperfectionism, together with Will Kymlicka, are e.g. John Stuart Mill (see Mill 1991) and Ronald Dworkin (see Dworkin 2000). For an instructive overview of the two philosophical camps, see Quong 2011b, 15-21; on perfectionism, see also Wall 2012.

on its citizens. A view of the valuable or meaningful life allows one to judge whether lives of citizens develop for the better or the worse, and to impose policies that aim at improving, or perfecting, these lives according to the adopted standard of a valuable and meaningful life.<sup>68</sup> Perfectionism, then, serves as a rationale for state paternalism.

Antiperfectionists oppose state paternalism based on established standards for a valuable and meaningful life. Instead, they favour neutrality on the part of the state regarding the issue of how to lead a valuable, meaningful, or good life.<sup>69</sup>

Given only Kymlicka's antiperfectionist views of the sort just described, we might wonder how this squares with his theory of minority rights that grants special legal treatment to certain cultural minorities.<sup>70</sup> Isn't differential treatment of certain cultural minorities a perfectionist state intervention? To see why this is not the case in Kymlicka's view, we need to have a closer look at the rationale that underlies Kymlicka's antiperfectionism. This rationale is the value of individual autonomy. Individual autonomy is at the heart of Kymlicka's justification of antiperfectionism and minority rights.

Why should we, according to Kymlicka, oppose a perfectionist and paternalistic state? Given that we have an essential (or highest-order<sup>71</sup>) interest in leading a good life, we need (i) to be able to lead this life "from the inside" (Kymlicka 1989, 13; Kymlicka 1995, 81), i.e. we have to wholeheartedly embrace or endorse our beliefs about what gives value to life as our own, genuine beliefs.<sup>72</sup> Such beliefs cannot be merely imposed,

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<sup>68</sup>Christman proposes a similar conception of perfectionism, see Christman 2009, 14, 173. According to Christman, perfectionism is "the view that there are ideals of life and human flourishing which (...) apply to individuals generally, whether or not they have chosen or accepted such values", and that "such objective values (...) should be used to formulate political principles for a just regime" (Christman 2009, 14). Perfectionism, thus conceived, will arguably involve a certain view on the nature of values as objective and knowable. According to Steven Wall, perfectionism is the view that "political authorities should take an active role in creating and maintaining social conditions that best enable their subjects to lead valuable and worthwhile lives" (Wall 1998, 22). For another recent defence of perfectionism that builds on the value of individual well-being, see Only 2013.

<sup>69</sup>See Kymlicka 1989, 12; Kymlicka 1995, 80.

<sup>70</sup>Indeed, the antiperfectionist aspect of Kymlicka's views is shared by an ardent liberal critic of Kymlicka's approach to multiculturalism, namely Brian Barry (see e.g. Barry 1995, Chapter 6).

<sup>71</sup>See Kymlicka 1989, 12.

<sup>72</sup>We can, following Ronald Dworkin, call this the "endorsement constraint" (Kymlicka 1995, 81). According to Dworkin, endorsement of beliefs and choices is constitutive to the value of a life, and not just "frosting on the cake" (Dworkin 1989, 486). On this view it is the endorsement constraint that explains "why a good life is distinctively valuable for or to the person whose life it is" (ibid.). For a discussion of the endorsement constraint in John Stuart Mill's view on individual autonomy, see Appiah 2005, 160. For a critical discussion of the endorsement constraint as an aspect of autonomy, see Wall 1998, Chapter 8.

or copied, or adopted without further reflection. This would lead to a heteronomous life, one merely led from the outside. Even though Kymlicka himself does not speak about authenticity, this seems—in a nutshell—to be the core issue of (i): that people lead an authentic life, i.e. one that is chosen and embraced by themselves, and not for them by someone else.<sup>73</sup>

A life led from the outside is, for instance, one that is mainly determined by traditions and social roles. It is a life that is not reflected upon or actively embraced, but that mainly follows imposed behavior and rules (Kymlicka 1989, 13; Kymlicka 1995, 80-82).

Furthermore, since we can be wrong about the worth of our current lives, and since no one wants to lead a life based on false beliefs, Kymlicka holds that we (ii) need to be able to revise and question our current beliefs, i.e. we need to be able “to examine them in the light of whatever information and examples and arguments our culture can provide” (Kymlicka 1989, 13)<sup>74</sup>. This freedom to question our beliefs seems necessary to achieve a life that we lead from the inside. In order to revise our views and lead our lives from the inside, we are in need of many classical liberties (such as a right to privacy, freedom of expression and association), as well as of resources and education (Kymlicka 1995, 81). Most importantly, however, we are in need of an antiperfectionist polity that allows for such liberties, and that does not punish or discriminate against those who claim such individual freedoms (*ibid.*).<sup>75</sup>

Together, the freedom to endorse beliefs and the freedom to form and revise one’s beliefs form Kymlicka’s conception of the value of individual autonomy (Kymlicka 1995, 7). According to Kymlicka, such an account of individual autonomy underpins much of the political morality of modern liberalism.<sup>76</sup>

Kymlicka claims, citing John Stuart Mill, that the only compelling ground for antiper-

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<sup>73</sup>See also Taylor 1992, 15-16, 25-29. Charles Taylor associates authenticity with a moral ideal of self-fulfillment understood as “being true to oneself, in a specifically modern understanding of that term” (Taylor 1992, 15-16). This, I take it, is congenial to Kymlicka’s understanding of individual autonomy with its endorsement constraint.

<sup>74</sup>See also Kymlicka 1995, 81, 92. For an interesting discussion of reflexivity in relation to higher order desires and volitions as well as wholeheartedness, see Frankfurt 1988, Sections II-VII.

<sup>75</sup>Note that, according to Kymlicka, both elements of individual autonomy (i) and (ii), i.e. endorsement and formation/revision of beliefs, are equally important (Kymlicka 1995, 82).

<sup>76</sup>Kymlicka also mentions a further major pillar on which the political morality of modern liberalism rests, namely the liberal principle of equality (Kymlicka 1989, 13; Kymlicka 1995, 34, Chapter 6). This principle is tangible in Kymlicka’s antiperfectionism as the “egalitarian principle of neutral concern” (Kymlicka 1989, 95) that guarantees that everyone’s aspiration to a good life is treated with equal respect.

fectionism is the commitment to a common public philosophy of the kind he presents, i.e. one based, at least in part, on the value of individual autonomy (Kymlicka 1989, 95). This explains Kymlicka's hope that his account of individual autonomy as the endorsement and revisability of beliefs or choices may be unobjectionable (Kymlicka 1989, 11, 12).<sup>77</sup>

This, then, is the comprehensive part of Kymlicka's account of state neutrality. Kymlicka's antiperfectionism is justified by the distinctly liberal and pervasive value of individual autonomy. Kymlicka's antiperfectionism is comprehensive because of the pervasiveness, or general importance, of the value of individual autonomy.<sup>78</sup> It is pervasive or comprehensive because it covers or has significant implications for all kinds of different issues such as the view of the good life, the person, family, friendship, aesthetics, politics etc. Individual autonomy has this pervasive or comprehensive character because it is assumed to be a basic value, and thus of highest-order interest to persons.

Individual autonomy plays a decisive role not only in Kymlicka's take on antiperfectionism and thus the issue of the proper nature of political authority, but also in his theory of minority rights. Given the fundamental role that individual autonomy plays in Kymlicka's political philosophy, this should not come as a surprise.

Why, and how, is individual autonomy important for Kymlicka's theory of minority rights? Individual autonomy involves making choices from among different options (of goods, ends, beliefs, views, ways of life etc.). In Kymlicka's view, cultural membership in a societal culture is important because it provides the context for these choices. Apart from providing options that we—as individually autonomous members of a societal culture—endorse and revise, cultural membership also makes these options meaningful to us in the first place (see Kymlicka 1995, 83; Margalit 1990). Options (choices, views, ends etc.) are always chosen in a social context where such options make sense. Cultural membership is thus a prerequisite for individual choices. Call this the “prerequisite for choice-argument” (Vitikainen 2013, 72-74).

The option to learn a certain profession depends on whether this profession is known in a given social and historical context. It also depends on whether the profession can be learned and applied there, or whether the social and economic status it provides is

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<sup>77</sup>In the next Section of this essay I show that this hope is unfounded. See also Barry 1995, 129-132 for a criticism of the value of individual autonomy as a constituent building block of a liberal polity.

<sup>78</sup>See Gaus 2004, 1; Rawls 2005, 13 and Section 5.2.1 below for a more thorough discussion of the label “comprehensive”.

appealing.<sup>79</sup>

As has been noted by critics, an argument along these lines provides no basis for moral consideration of a particular culture or context of choice. Any cultural context would do to fulfill this requirement of providing a context of choice. What is needed to live up to the prerequisite of choice is *any* kind of context of choice, not a *particular* context of choice. Kymlicka thus admits that at this junction of his argument identity considerations become crucial. He holds that it matters crucially that I feel that the context of choice is *my* context of choice, and not just any context of choice.<sup>80</sup> When developing the “culture as context of choice”-view, Kymlicka holds that considerations of identity (Who am I? What language do I speak? Where do I come from? etc.) help to link our autonomy-based interest in culture to *our* culture (as opposed to *any* culture). According to Kymlicka this is not to say that identity considerations can ever override autonomy considerations. Quite the contrary, identity considerations are supposed to help to specify our autonomy-based interest in picking out a specific context of choice for *us* (Kymlicka 2001b, 55, fn. 7). This part of Kymlicka’s argument, building on identity considerations, can be dubbed “importance-argument” (Vitikainen 2013, 74-77).

Even if, in Kymlicka’s view, autonomy considerations are more basic than identity considerations, the importance-argument remains a crucial part in Kymlicka’s argumentation. According to the importance-argument, cultural membership is crucial to one’s sense of self and identity. Losing one’s cultural membership can have catastrophic consequences for persons. Therefore, Kymlicka holds that it cannot reasonably be expected for persons to abandon their cultural membership and cultural context (see Vitikainen 2013, 74-75). This suggests that liberal theories of multiculturalism of the kind proposed by Will Kymlicka are often instances of “identity politics”, i.e. they are concerned with political claims and struggles based on the citizens’ sense of identity and self. In this vein, identity considerations become very weighty and influential when it comes to

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<sup>79</sup>As Margalit and Raz point out, the “familiarity with a culture determines the boundaries of the imaginable” (Margalit 1990, 449; see also Kymlicka 1995, 89). This also goes for the kind of profession or occupation one imagines and is willing to learn.

<sup>80</sup>According to John Christman, it is a grave lacunae in Kymlicka’s approach to multiculturalism that he does not spell out, or even propose, any view on identity. It is a grave shortcoming, Christman holds, because identity issues turn out to be crucial for Kymlicka’s theory of minority rights (Christman 2009, 197-198). For further discussion of identity issues in this context, see also Appiah 2005, 123-130; Forst 1997; Gans 2003, Chapters 1 and 2; Taylor 1992, 33, 40-41, 45-48; Waldron 2000. See Christman 2009, 196-216 for an overview on debates about the role of identity in politics.

political theorizing and decision-making.<sup>81</sup>

Considerations of individual autonomy remain, however, most basic and most important in Kymlicka's account. The baseline in his view is that membership in a societal culture is important because such cultures as contexts of choices are essential to the individual autonomy of individuals.<sup>82</sup> Thus, the case for upholding and protecting societal cultures through group-differentiated rights is ultimately founded on (a) the importance of the value of individual autonomy, as well as (b) the view on societal cultures as most important contexts of choice that are essential to the individual autonomy of citizens. In a further step, identity considerations become relevant for sorting out which societal culture is important to whom.

The strong focus on individual autonomy explains why, in Kymlicka's version of liberal multiculturalism, the external protection of societal cultures through minority rights is justified, but not the internal restriction of its members. The reason is that external protections are, or can be, in accord with the value of individual autonomy when they protect or uphold a context of choice for individually autonomous members of a societal culture. Internal restrictions of individual members, on the other hand, cannot serve this role of protecting or upholding contexts of choice. Internal restrictions are all about restricting the individual autonomy of members of a societal culture. (Kymlicka 1995, 35-44; Kymlicka 2007, 340-342)

## 2.2 The Case of the Content Shepherds

For individual autonomy to be a compelling ground in justifications of political authority and minority rights, the value of individual autonomy has to be conceived of as a highest-order conception of the good. In other words, it should be a good that all individuals share and that is most important to them.<sup>83</sup> However, as John Christman bluntly holds,

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<sup>81</sup>The emphasis on identity considerations and cultural membership as a crucial aspect of one's identity has been the object of much discussion and criticism. Anne Phillips, for instance, proposes a "multiculturalism without culture" that aims at "a multiculturalism that dispenses with the reified notions of culture that (...) feed stereotypes" and that "denies human agency, defining individuals through their culture, and treating culture as the explanation for virtually everything they say or do" (Phillips 2007, 8-9). This is a poignant critique of the sometimes problematic role of identity considerations in theories of multiculturalism. For further discussion of identity issues in politics, see also Appiah 2005; Gutmann 2003; Heyes 2014; Taylor 1989; Waldron 2000.

<sup>82</sup>See Kymlicka 1995, 82-93.

<sup>83</sup>This holds, at least, if the autonomy-based liberal justification for political authority and minority rights is to be acceptable to all those living under that authority. On an autonomy liberal view, a

“autonomy as the ability to question and revise one’s commitments in general is simply not a universal value for all people” (Christman 2009, 43). The aim of this Section is to point out more precisely why individual autonomy is an inadequate liberal basis for justifications of legitimate political authority and minority rights.

As Christman’s view indicates, the main reason that individual autonomy fails to be an adequate liberal basis for political authority and minority rights is that individual autonomy is a contestable and contested liberal value. Individual autonomy is too controversial a value to underpin legitimate political authority and a regime of minority rights. As a rationale for political authority it will not appeal, and thus not be able to take into account, certain ways of life or points of view in public justifications of that authority. Some of these ways of life and points of view should, however, be accommodated in a liberal political order with its aspiration to legitimate political authority. In other words, I attempt to indicate how autonomy liberalism fails to take diversity seriously (when it comes to the issue of justifying political authority and minority rights), and therefore fails as an adequate liberal foundation for legitimate political authority and

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crucial rationale for accepting political authority and minority rights is that the individual autonomy of citizens (as spelled out e.g. by Will Kymlicka) is protected or promoted. The problem of this view is that the rationale of political authority and minority rights will only be appealing and acceptable to those who hold the liberal value of individual autonomy, and who furthermore give it due weight in the grave moral-political issue of justifying political authority (the view that the acceptability of justifications of political authority is essential for the legitimacy of that authority will be developed below, see Section 3.1). For autonomy liberals, there is thus a tension between the antiperfectionist political authority they justify, and the restricted set of justifications of that antiperfectionist political authority that are admissible, namely those justifications based on the comprehensive liberal value of individual autonomy. Thus, the political authority that is justified in terms of individual autonomy will be antiperfectionist regarding different outlooks on the good in a polity—for instance when the political authority upholds that beliefs cannot be imposed on citizens, or that citizens should have all the necessary freedoms to revise their beliefs. However, the *justifications* for that antiperfectionist authority itself will crucially build on the comprehensive liberal value of individual autonomy and the importance it has in the lives of citizens. These justifications will, then, only be appealing or acceptable to those who cherish the good of individual autonomy. In other words, whereas political institutions are neutral and political authority is antiperfectionist on Kymlicka’s view (see Section 2.1.3), the justification thereof is not neutral but only acceptable to those who value individual autonomy (on the distinction between the neutrality of justifications and the neutrality of aims or effects, see e.g. Gaus 2009a, 81; Larmore 1996, 126). In what follows, I will be concerned with justificatory issues of the latter kind, and not so much with the neutrality of political authority. If my arguments are not restricted to these justificatory issues regarding political authority and minority rights, then one might well draw the conclusion that I ascribe to Kymlicka a perfectionist view on political authority (thanks to Sune Laegaard for pointing this out). This, however, is not the case. Will Kymlicka clearly proposes and justifies an antiperfectionist view on political authority; the problem is that he does so on the grounds of the contestable and comprehensive value of individual autonomy.

minority rights.<sup>84</sup>

For this attempt to be convincing, I will have to present a viable conception of legitimate political authority. This is the task of the next essay (see Section 3.1). Here, I will focus on presenting a case, namely the way of life of content shepherds, that undermines the plausibility of autonomy liberal approaches to legitimate political authority and multicultural politics.<sup>85</sup>

A quite common objection to conceptions of individual autonomy, as outlined here, are cases of happy slaves or voluntary addicts (see e.g. Christman 2009, 159, 168). These are cases where persons autonomously choose a heteronomous way of life, for instance through autonomously choosing to be slaves or addicts.<sup>86</sup>

These cases undermine the plausibility of the value of individual autonomy as a basic value or highest-order good by presenting troubling or hard cases. The cases are troubling because they force us to call slaves and addicts autonomous persons, even though slaves and addicts are not autonomous in any intuitive or common-sense understand-

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<sup>84</sup>Another way to put it is that the aspiration here is to outline a polity that is not only for WEIRD persons and citizens, i.e. members of “Western, educated, industrialized, rich, and democratic societies” (Diamond 2012, 9, 475). Rather, the aim is to focus on political questions of D (“democracy”) and to investigate how a constitutional liberal democracy can accommodate diversity, as far as liberally possible.

<sup>85</sup>Note that I am not challenging the view that a political order based on the value of individual autonomy cannot accommodate cultural minorities *in practice*. A liberal political order based on the value of individual autonomy can provide accommodation for all kinds of minorities in practice, even if those practices are justified on the basis of a value that the minorities in question do not hold. The point I am trying to make here is that those practices are, then, still problematic from a point of view of the legitimacy of those minority rights. This is so because, on the view of legitimacy adopted here and developed below (see Section 3.1), legitimate political authority and differential treatment is only legitimate if it is justified by public reasons, i.e. reasons that all those concerned by the political arrangement in question could accept. If individual autonomy is the crucial rationale in justifications of political authority and minority rights, and if this rationale is not acceptable for some minorities engaging in the process of public justification, then the justification of political authority and differential treatment or minority rights in question is prone to fail. Those minorities are, then, not accommodated in the process of the public justification of political authority and differential treatment. The practice in question therefore lacks legitimacy. In this sense, content shepherds are not accommodated in public justifications of political authority and minority rights. They are, therefore, not adequately accommodated within that political order—even if there are, in practice, minority rights that protect them. The problem with these minority rights is, then, that these practices *are not justified to the content shepherds*. An adequate accommodation would involve a publicly justified order that the minorities in question could accept. Thanks to Sune Laegaard for pressing me to clarify this ambiguity in the use of the term “accommodation”.

<sup>86</sup>Inverse cases might also cause trouble, where people develop to be autonomous persons under very restrictive or even oppressive conditions. Think of a religiously fundamentalist, autonomy-inhibiting school education that leads, against all odds, to an individually autonomous person. See Christman 2009, 157 for discussion.

ing of the term. Such hard cases are possible because of the procedural nature of the conception of autonomy under scrutiny here. What is decisive in ascribing individual autonomy is not the substantial belief, choice, good, or value that a person endorses, but only *how* the person ends up with that belief, choice, good or value.<sup>87</sup> The crucial issue is whether the choices are embraced and revisable. Thus, what matters is the procedure that leads to an outcome, namely endorsement and revision, and not the substantial outcome itself (i.e. beliefs, choices, goods or values).<sup>88</sup>

This procedural or second-order aspect of individual autonomy can lead to an absurd consequence, since it allows for the seemingly contradictory possibility that persons autonomously choose to live heteronomous lives. To allow for such cases to be instances of individual autonomy is indeed very strange.<sup>89</sup>

The case of the content shepherds that I am going to present is similar in tone to this broad line of criticism of the importance of individual autonomy. However, with the case at hand I intend to show not only how the value of individual autonomy can lead to strange cases, but that it poses grave moral-political difficulties if it is conceived of as a highest-ordered value. The main moral-political difficulty is that accounts of political authority and minority rights based on, and thus justified by, the value of individual autonomy fail to take diversity seriously. Such accounts unduly exclude certain ways of life, namely reasonable heteronomous ways of life, from full consideration in the political community. This exclusion is wrong because these ways of life deserve equal consideration and respect, in justifications of political authority and minority rights, as those based on the value of individual autonomy.

These points should be enough to indicate why the value of individual autonomy is inadequate as a fundamental building block or rationale of a liberal polity that aspires to take diversity, or the liberty of its citizens, seriously. They motivate the search for a more convincing way to ground legitimate political authority and minority rights. This

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<sup>87</sup>Note that the procedural nature of individual autonomy also explains how the value of individual autonomy is able to justify neutral political institutions (e.g. institutions that do not promote substantial goods or values) and antiperfectionist political authority.

<sup>88</sup>This characteristic of the value of individual autonomy led Brian Barry to speak of a “second-order conception of the good” (Barry 1995, 129). It is a good that indicates how people should reach their beliefs, choices, goods or values (namely through endorsement and revisability). See also Colburn 2010, section 3.2 for a discussion of second-order values.

<sup>89</sup>A way out for partisans of individual autonomy is to refine the conception of individual autonomy in a way that it evades or accounts for such paradoxical situations. For a discussion and defence of a certain conception of individual autonomy from some implausible implications just discussed, see e.g. Christman 2009, 159-163.

task will be pursued in the following essays.

### 2.2.1 Outline of the Case

The ability and possibility to endorse one's beliefs about the goods and values according to which one lives, and to be able to re-examine one's beliefs and choices whenever one sees fit, is surely important in the lives of many liberally-minded people. The claim, however, that it is an interest of the highest order and necessary for a good life is misguided.<sup>90</sup>

To see why, consider the case of the content shepherds. The shepherds are living a simple and mostly secluded rural life, with all their basic physical and social needs covered. They are, as their name indicates, content with their lives and find pleasure in their daily activities. They have, however, never thought about what gives value to their lives. Neither have they, therefore, wholeheartedly embraced any beliefs about the value of life, or revised—or felt the urge to revise—any of their beliefs. Most of them did not even choose to become shepherds, but did so because it was virtually the only possibility in the area to make a living, and because all their ancestors were shepherds too.<sup>91</sup> In brief, there is no reason to believe that the content shepherds live an individually autonomous life in Kymlicka's sense—rather, their life is marked by centuries-old daily

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<sup>90</sup>A case for this view is also forcefully made by Chandran Kukathas with several examples, e.g. the “Muslim fisherman in Kelantan”, indicating that certain ways of life may not have a basic interest in individual autonomy and that, against Socrates' dictum, “the unexamined life may well be worth living” (Kukathas 2003, 59). See Kukathas 2001; Kukathas 2003, 58-63. See also Christman 2005c, Section II for an overview on difficulties particularly with self-reflection as an element of individual autonomy. The main issues are that self-reflection “is often costly”, and that “the reflective voice in all of us often does not speak for our most settled and authentic personae” but might well “misdiagnose the inner workings of our psyche” (Christman 2005c, 336-337).

<sup>91</sup>Content shepherds are thus what William Galston referred to as the “ideal-typical” figure of a “Traditional” (Galston 1999, 773). They are also similar to “Martin” in Diana Meyers' discussions of a “relentlessly unidimensional socialization” that leads to an “unwillingness and (...) inability to reshape” life plans (Meyers 1989, 47). In contrast to partisans of individual autonomy, who attempt a better future through embracing and revising choices, content shepherds are also more like the man “Timeless” in Derek Parfit's example of someone who has “no bias towards the future” (Parfit 1986, 174). Instead, they are neutral with respect to the importance of events in the past or the future (see Parfit 1986, 174-177 for discussions). Content shepherds might resemble in relevant respects many indigenous peoples before colonization and inclusion into nation states. There are also supposed to be certain similarities to isolationist religious groups that focus on traditional and nonconformist ways of living, such as the Amish or the Hutterites. For an overview on indigenous peoples and some of their ways of living, see Beach 1994; Grinde 2002; Minde 2008; International Work Group for Indigenous Affairs 2014. For an overview on the way of life of the Amish and Hutterites, see e.g. Barry 2001, 163-164, 176-187; Galston 1995, 516-518; Hostetler 1993; Kraybill 2001.

routines, customs, and traditions. Nor is there any reason to believe, furthermore, that the ability to live an individually autonomous life would be appealing to them.<sup>92</sup>

If one of them is inquired about his life, however, it becomes clear that, in his eyes, he lives a good life—even if liberal partisans of the value of individual autonomy cannot in the least see what the good of his life could consist of. We can conjecture that in his eyes, he lives a good life because, in his eyes, he lives a pleasurable and satisfying life; or because he lives one that is in accord with dearly held traditions and customs. There is nothing absurd or implausible about the depiction of such a situation.<sup>93</sup> This, at least, is what I argue in the next Subsection.

### 2.2.2 Are We All Like Content Shepherds?

The main aim of this Subsection is to argue for the plausibility of the case of content shepherds.<sup>94</sup> I propose to demonstrate the plausibility of the case of the shepherds by comparing them to ourselves. By establishing the plausibility of the case, I hope to establish that the value of individual autonomy is not the basic human value or highest-order interest that partisans of individual autonomy take it to be. With the case of the shepherds, I thus hope to indicate something like a slippery slope that undermines the view that individual autonomy is a human value of the highest order.

This endeavour helps to, at least partly, undermine the plausibility of individual autonomy as an adequate ground for political authority and minority rights. The adequacy of individual autonomy as a basis for political authority and minority rights seems to rely heavily on the value's status as a highest-order interest of persons. However, we, inhabitants of liberal Western democracies, resemble content shepherds in relevant re-

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<sup>92</sup>Note that content shepherds make up their own societal culture, with a common language and history, settling on a shared territory, with some basic common institutions such as political decision-making procedures, ways to allocate work and status in the community, or regulations on marriage and property relations. Nothing in what follows in this essay will, however, hinge on this point. These points are, however, relevant for issues raised in the last essay.

<sup>93</sup>This is not to say that the content shepherd could never change his beliefs, or could never lead an autonomous life. The point is simply that the good of his life does not seem to depend, in the least, on the possibility of leading an individually autonomous life.

<sup>94</sup>Of course, the easiest way to argue for the plausibility of the case is to actually find persons and groups that do live such, or similar, lives. I assume that history and social anthropology can provide us with such examples (see e.g. Diamond 2012). Here, however, I will not focus on historical or ethnological arguments, but on other ways to argue for the plausibility of the example of content shepherds, ones that are more psychological in character.

spects, and thus do not value individual autonomy to such a degree as seems necessary to make it an adequate ground for justifying political authority and multicultural politics.

Are we, thus, all like content shepherds? Many of us, I conjecture, do not full-heartedly endorse, or reflect any further upon, the job we do, the food we buy and eat, the sort of movies we watch or how we move from A to B (by car, train, bicycle, or on foot) etc. Recent psychological research<sup>95</sup> indicates that much of our cognitive and affective capacities, as well as our choices, are guided by (dubious) heuristics, biases, formulas, framings, nudges, and the like.

Sarah Conly, as is evident from the title of her recent book (*Against Autonomy. Justifying Coercive Paternalism*), takes these findings to justify a form of “libertarian paternalism”.<sup>96</sup> Given that agents are far less autonomous and rational than they think they are, so the reasoning goes, paternalist policies might be better suited to further the agents’ interests and well-being than granting autonomous choices (see Thaler 2003). Take, for example, the public health issue of obesity. Obesity is, according to such a view, best tackled through paternalist policies, e.g. through making desserts less accessible or offering only healthy food and fruit desserts in canteens, and not through granting individual autonomy when choosing a diet.<sup>97</sup>

Even though I attempt to argue against the highest-orderedness of individual autonomy, and am thus sympathetic towards the first part of the title of Conly’s book (*Against Autonomy*), I oppose the perfectionist and paternalist conclusions that the author draws, as expressed in the second part of the title (*Justifying Coercive Paternalism*). The main reasons for such opposition is the voluntarist view on politics adopted here, i.e. the view that legitimate political authority needs to be willed by the subjects of this authority. Legitimate political authority requires public justification and consent by those concerned, at least when it comes to weighty political matters. This view suggests that there is something wrong with paternalist practices that are merely imposed

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<sup>95</sup>See Conly 2013, Chapter 1; Kahneman 2012; Thaler 2003, 176-177; World Bank 2015, Part 1 for an overview on recent scientific findings that undermine a view on ourselves as mainly rational and autonomous.

<sup>96</sup>So do other authors, see e.g. Thaler 2003, Thaler 2008, Sunstein 2015.

<sup>97</sup>Such reasoning arguably also underlies the practice of personalized filters in Internet search engines (such as Google), where the search results are filtered according to a person’s search history, whereabouts etc. On a benevolent understanding of such practices, it is assumed that search algorithms and filters better serve our interests when searching for relevant information on the web than does our capacity for autonomous choice. For an overview and critical discussion of the personalized filter practice, see e.g. Pariser 2012.

without further justification to those concerned. What seems wrong is that paternalistic practices are, ultimately, disrespectful towards citizens. They do not seem compatible with respect for citizens as free and equal members of a political community, at least if weighty political matters are at stake.<sup>98</sup>

John Christman, defending a certain conception of individual autonomy, also admits that

“most of our commitments, tendencies, emotional predilections, and forms of thought have developed in us without any ongoing reflective consideration (. . .). We merely find ourselves with such traits and come to endorse them as constitutive of who we in fact are”. (Christman 2009, 139)

Christman holds that such and similar observations undermine “models of agency and citizenship that assume Herculean abilities to fashion ourselves out of whole cloth” (Christman 2009, 10). He takes these observations as a starting point to develop a view on socio-historically shaped selves, and a conception of individual autonomy that is sensitive to social and historical conditions under which individual autonomy necessarily develops.<sup>99</sup>

All of this suggests that we might not, after all, highly value the ability to endorse or reflect upon our beliefs—at least in some of the domains mentioned above (work, diet, cultural entertainment, mobility). Many, if not most, of our preferences and attitudes we take for granted, even if they embarrass us sometimes, and seem to be simply what we have ended up with.<sup>100</sup> What is of value to us, more often than not, are the beliefs and choices themselves, and not the way they came about, or the ability to embrace or reflect upon them.

If this picture holds, then most of us would be comparable to the content shepherds, at least regarding some of our beliefs and choices of every-day life. I thus take it that a depiction of ourselves as, at least partly, immersed in every-day live with established behavioural patterns that are only occasionally and partly, if at all, embraced and reflected seems adequate.<sup>101</sup>

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<sup>98</sup>For an alternative critique of libertarian paternalist views that focuses on the arguably faulty psychological assumptions and underpinnings it builds on, see e.g. Gigerenzer 2015.

<sup>99</sup>For an overview, see Christman 2009, 7-15. I will briefly discuss Christman’s views below (Section 2.3).

<sup>100</sup>This fact might partly explain the appeal of preference-based utilitarianism. It takes us for who we are, here and now, and tries to maximize utility starting from there.

<sup>101</sup>See also Wilson 2002, Chapters 3-5 for such a view.

A further crucial issue is that the value of individual autonomy is highly demanding. Embracing and reflecting on beliefs can be an intense, shattering, and time consuming enterprise. Thus, one might well question whether it is a valuable thing to pursue regarding many of our beliefs. There might be different and more worthwhile ways to spend our time and attention than to dedicate it to the embracing and reflection of our beliefs. The content shepherds, for instance, will consider herding or spending time with the community or traditional rituals to be such more worthwhile activities.<sup>102</sup>

Now, to admit that we might not value individual autonomy, understood as the ability to embrace and revise beliefs or choices, regarding some of our beliefs and choices, does not yet show that we might not value it regarding other beliefs or choices. That much holds. However, the point that all, or many, of us do have at least some traits of the content shepherds makes it conceivable and plausible to think that there might be people that do not value individual autonomy regarding any of their beliefs. Thus, if most of us do not value individual autonomy regarding a subset of our beliefs or choices, then there might well be people who do not value individual autonomy regarding any set of their beliefs.

Content shepherds are an example of people who do not value individual autonomy at all. They do not value being able to embrace and revise any of their views. Such an attitude is arguably made plausible by a comparison with ourselves. Many, if not most, of us resemble content shepherds to at least some degree. If this is the case, however, then the highest-orderedness of individual autonomy is put into question.

At this point, a few remarks on the nature of the beliefs and attitudes discussed here are in order. Our beliefs or attitudes regarding which we do not seem to, in the slightest, value the ability to embrace or revise beliefs can be of at least two kinds. Firstly, they can be noticed beliefs, i.e. beliefs that one is aware of. These beliefs can themselves be dearly-held beliefs—such as, for example, the belief that there is a God watching over us, or the belief that Barcelona is currently the best football club on earth. Such beliefs can, however, also be those that we simply hold and to which we are not particularly

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<sup>102</sup>William James argues for the virtue of habits, and instilling them in education as early as possible. James thus prefers habit over embracement or revision of beliefs. This view suggests that individual autonomy is not valuable regarding many of our beliefs, most of all in the context of everyday life. James holds that “*we must make automatic and habitual, as early as possible, as many useful actions as we can* (. . .). The more of the details of our daily life we can hand over to the effortless custody of automatism, the more our higher powers of mind will be set free for their own proper work” (James 1914, 54, emphasis in the original). See Wilson 2002, 43 for a discussion.

attached—such as the belief that yogurt is a good and healthy food, or that airplanes fly due to well-known physical laws.

The beliefs we are concerned with can, however, also be unnoticed. They might be those that one is not aware of. Unnoticed beliefs are those that a person who holds them is not aware of holding them. They might be tacitly implied by other beliefs the person holds, but never be made explicit. Or they might be part of a net of beliefs that a person has never consciously thought about, or cannot think about, for instance due to certain taboos or aversions.<sup>103</sup>

Call the beliefs regarding which we do not value individual autonomy, i.e. the ability to embrace or revise them, autonomy-indifferent beliefs. An interesting point about autonomy-indifferent beliefs is that it does not seem to matter whether they are noticed or not. That is, the autonomy-indifference does not depend on the beliefs' being noticed or not. I can be aware of a belief, e.g. the belief that yogurt is a good and healthy food or that angels are watching over me, and still cannot in the slightest value the ability to embrace or revise it. This, indeed, seems to be the situation that content shepherds find themselves in regarding their beliefs of how to lead their lives. They are noticed beliefs regarding which these shepherds do not value the ability to embrace or revise them.

Still, unnoticed beliefs raise different issues regarding the value of individual autonomy than noticed ones. What is special about unnoticed beliefs is that all unnoticed beliefs are autonomy-indifferent. After all, we are only able to endorse and revise noticed beliefs, so individual autonomy becomes relevant only regarding those beliefs. The ability to endorse and revise beliefs, in short, presupposes noticed beliefs. This observation goes hand in hand with the common view that individual autonomy involves, and is tightly linked to, conscious cognitive activity.

Of course, unnoticed beliefs can be noticed. And one might still value the ability to

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<sup>103</sup>This view presupposes that one's beliefs can indeed be opaque to oneself. The view that beliefs can be opaque to oneself, in turn, presupposed a certain conception of beliefs. Such a conception of beliefs might be controversial. Thus, some might be reluctant to speak of beliefs if a person is not aware of having them. Consider a rough definition of a belief as the "attitude we have (...) whenever we take something to be the case or regard it as true" (Schwitzgebel 2015, introduction). Such a conception of beliefs presupposes that beliefs are transparent to us, even if it does not presuppose active reflection on them (ibid.). We can arguably only "take something to be the case" or "regard it as true" if we are aware of, and can hold, the belief in questions, i.e. if the belief is transparent to us. Even though I cannot pursue the issue here, I take it that unnoticed attitudes and beliefs can be accounted for in a more detailed conception of beliefs. D. H. Mellor, for instance, denies that "beliefs must be capable of becoming conscious" (Mellor 1977-1978, 88 and more generally Sections I and IV). This, at least, shall be assumed here.

endorse and revise one's unnoticed, but noticeable beliefs—even though one has no idea what they are (otherwise they would be noticed). However, unnoticed beliefs help to further illustrate similarities between ourselves and content shepherds, and to undermine the alleged highest-orderedness of individual autonomy.

Before I dwell further on issues of unnoticed beliefs, however, let me briefly consider a few general possible objections against the view that we resemble content shepherds in relevant respects and that, therefore, individual autonomy is not of the highest-order quality that Kymlicka suggests. Let us thus first turn to the “fundamental-beliefs objection” and the “content-shepherds-display-individual-autonomy-after-all objection”.

I will then consider certain instances of unnoticed beliefs. To conclude this Subsection, I will also briefly consider the case of deeply-rooted selves that might help to establish similarities between ourselves and content shepherds, and thus to challenge the highest-orderedness of the value of individual autonomy. However, I hold that the case of deeply-rooted selves is not convincing, and should be left aside in liberal attempts to criticize the fundamental role of the value of individual autonomy in politics.

### **The Fundamental-beliefs-objection**

The first objection against our resemblance with the content shepherds to be considered holds that individual autonomy has nothing to do with trivial issues such as ways of transportation or the sorts of yogurt we eat, but only with more fundamental beliefs and choices. At stake is thus the scope, or range, of issues that trigger concerns of individual autonomy. On this view, only issues of some gravity matter regarding our individual autonomy. Issues relating to the meaning of life maybe, or to our different social roles (such as friends, mothers, employees), or to the more significant customs and traditions that we follow (such as marriage, family, work).<sup>104</sup>

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<sup>104</sup>This echoes concerns regarding the question of how localized or, adversely, how global we should conceive of autonomy. Is individual autonomy supposed to be relevant regarding particular choices, acts and “other localized aspects of the person” (Christman 2009, 135)? Or is it defined with reference to “the person as a whole” (ibid.)? Christman argues for the view that an autonomous person has to be “autonomous relative to her basic, orienting values and motivations” (Christman 2009, 136) and thus seems to adopt a rather global conception of autonomy. Will Kymlicka, with his focus on individual choices and acts, seems to be drawn towards a rather local conception of autonomy. My contention is, as I argue below, that a distinction between local and global autonomy is hard to draw. For further discussion of the local-global issue in definitions of autonomy, see Dworkin 1989, 15-16 (holding that autonomy seems to be “a global rather than local concept”); Friedman 2003, 5-8; Meyers 1989, 46-49 (discussing the same issue under the header of “episodic” and “programmatically self-direction”).

However, even if we grant that individual autonomy matters only regarding fundamental, or basic, beliefs (let us, for the sake of argument, grant that there are such things in the first place)—how do we know which beliefs are fundamental and which are not? And once we know, what does our knowledge about these basic beliefs imply regarding the less fundamental beliefs we hold? Consider the case of the yogurt introduced above. Even though we might not think that issues of individual autonomy are at stake when it comes to our choice of a strawberry over a banana yogurt, this might in fact easily be the case. Vegans, for instance, would not buy any (milk based) yogurt at all. At least some of them abstain from doing so because of beliefs about the fair treatment of animals (exploitation of cows and the living conditions of animals more generally), the working of the food industry or the global economy (the strawberries might be from the other side of the globe, should there be any real strawberries in the yogurt at all), or because of health or nutrition issues (milk might be considered unnecessary or even potentially harmful) etc. The seemingly innocent and trivial preference for one yogurt over another, or for consuming yogurt at all, can thus easily be linked to more fundamental moral, political, health and nutrition issues, where surely more fundamental beliefs are involved. Such links to more weighty beliefs can arguably be established regarding many seemingly trivial choices and beliefs.

The main problem of this first objection is that it faces grave difficulties when it comes to the restriction of individual autonomy to a certain scope of issues labelled as basic. Much of what we do or prefer can be linked to quite basic beliefs, even if only indirectly and faintly. The charge that we resemble content shepherds, and that many of us do not value individual autonomy regarding some of our beliefs (fundamental or not) therefore still stands.

This suggests that the value of individual autonomy is not as fundamental and pervasive as partisans of individual autonomy, such as Will Kymlicka, thinks it is. We do not embrace or reflect many every-day choices that affect many basic beliefs. Nor do we seem to value the possibility to do so. Often, all that is valued is the pleasure drawn from these choices, or the customary value they display. Insofar, at least, to some degree, we seem to resemble the content shepherds.<sup>105</sup>

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<sup>105</sup>Even if we grant that the value of individual autonomy can and should be restricted to fundamental beliefs, it remains questionable whether we would indeed value individual autonomy regarding all fundamental beliefs. Consider the arguably fundamental beliefs regarding a fulfilling sexual and intimate life. Few, I conjecture, would categorically value individual autonomy over other values that might be involved in one's intimate and sexual life, such as the values of truthfulness, trust,

To be clear, this line of argument is not particularly strong, and it is not intended to undermine the importance of the value of individual autonomy as such. After all, the fact that we do not value the ability to embrace or revise some of our beliefs, such as some of the every-day life beliefs, does not diminish the value of individual autonomy if there are still some beliefs regarding which we highly value individual autonomy. The points made here are merely intended to cast doubt on the highest-orderedness of individual autonomy by indicating that, at least in some respects, we do resemble content shepherds who do not value individual autonomy at all. This should help to make the case of the content shepherds more plausible, since the only difference between us and them would then be the scope, or range, of beliefs where individual autonomy is not valued.

### **The Content-shepherds-display-individual-autonomy-after-all objection**

The second objection against the criticism of individual autonomy presented here holds that the content shepherds do display, and might thus also value, individual autonomy after all, at least to some degree. We might consider the depiction of a content shepherd's ending up in a job he likes, or our ending up with a yogurt or life that we more or less like, as necessarily involving at least some degree of individual autonomy. The claim is thus that these choices necessarily involve embracing and revising of beliefs, and therefore also the appreciation of individual autonomy.<sup>106</sup>

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safety, or a sense of connectedness with one (or several) partners. Depending on the situation, these values and the value of individual autonomy might conflict—e.g. when my wish to revise my beliefs on a good intimate relationship conflicts with my wish to a safe and stable relationship. In such a case, there is no obvious reason to categorically value individual autonomy higher than other involved values. This point can be underlined by imagining that it is not our own intimate and sexual life that is at stake, but that of our children. It seems odd, and contrary to a protective and caring attitude towards children that many parents display, to assume that individual autonomy is more fundamental than other values such as a sense of connectedness, trust or security (thanks to Saul Smilansky for bringing this case to my attention). Brian Barry makes a similar point when he holds that “few people are such fanatics for autonomy as to believe that it should be maximized at the expense of all other considerations” (Barry 1995, 132). Gerald Dworkin elaborates an ideal of autonomy that tries to account for that, and that aims at being “consistent with other important values we hold”, such as “loyalty, objectivity, commitment, benevolence, and love” (Dworkin 1988, 21). Note that the issue here is not whether autonomy is the *only* value that counts; as Thomas Hurka rightly indicates, “no plausible value theory can treat free choice [i.e. individual autonomy] as the only intrinsic good” (Hurka 1990, 148). Rather, the issue is whether individual autonomy is of highest-order importance when compared with other values.

<sup>106</sup>It is also possible that someone is competent regarding the requirements of individual autonomy, such as the revision of beliefs, but does not value these competences. There is, in short, a relevant difference between the competence of being individually autonomous and the valuing of individual autonomy (thanks to Sune Laegaard for pointing this out). This, however, does not seem to cause

This objections plays on ambiguities in the notions of “embracing” and “revising” in Kymlicka’s definition of individual autonomy. If embracing means simply accepting, then the content shepherd and we, ourselves, would indeed display individual autonomy. Thus, content shepherds indeed somehow accept becoming shepherds, just as we simply accept the range of yogurt choices in the supermarket, or our preference for yogurt more generally.

The same holds regarding the revision of beliefs. If by revision we mean simply a second acceptance of a belief at a later point in time—as when the content shepherd goes to his sheep day after day, or as we choose a certain yogurt on a second shopping tour—then, again, we might say that we display individual autonomy. However, this cannot be the kind of individual autonomy Kymlicka had in mind. We would hardly associate such mere acceptance as full-blown choices or signs of a life lived “from the inside”. For a more full-blown conception of individual autonomy in the sense Kymlicka seems to have in mind, embracing and revising will involve at least some elements of critical assessment, comparison and informed choice. These elements, however, were clearly not involved by the content shepherds ending up as shepherds. We should therefore abstain from labelling the content shepherds as individually autonomous.

Of course, we could reformulate Kymlicka’s view of “embracing” in a weaker way, and define it in a very weak fashion as, say, “not feeling alienated by a choice”<sup>107</sup>. This might do to get the ambiguities regarding the notions of embracing and revision out of the way, and to settle on a weak view on embracing and revision that would also cover the content shepherds’ choices to become shepherds.

However, this move might well miss the point. Even though we might then be able to label the content shepherds as individually autonomous, the conception of individual autonomy we end up with might no longer be recognizable by partisans of individual

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grave problems for the discussion underway here. If citizen C is individually autonomous but does not value that competence, then we do not face the problem we are interested in here—namely the problem of grounding justifications of political authority and minority rights on the liberal value of individual autonomy. If C does not value individual autonomy, even if she has all competences required for individual autonomy, then C is in the same situation as the content shepherds: justifications of political authority and minority rights based on the rationale of individual autonomy will not appeal to her. The case of C too, then, suggests that other grounds than the rationale of individual autonomy are required in order to justify legitimate political authority and minority rights.

<sup>107</sup>John Christman suggest such a formulation in his own conception of individual autonomy, one that we might dub “socio-historical autonomy”. See Christman 2009, 143-148; see also Section 2.3 for a short discussion of Christman’s view on autonomy.

autonomy such as Kymlicka. Again, it is hard to see how a content shepherd's not-feeling-alienated by his choice could qualify the content shepherd as an individually autonomous agent in any stronger sense. Such a stronger sense involves, after all, a sense of one's life being lived from the inside. Given that the content shepherd never compared his choices to other possible choices, or never considered his life as one that could take a different turn than the current one or that of his ancestors, it is hard to see how we might qualify such a life as being lived from the inside, and thus as individually autonomous.

The problem of the objection under scrutiny here is, then, that a mere not-feeling-alienated by a choice is not able to live up to an essential requirement of individual autonomy, namely a life's being "lived from the inside". Individual autonomy spelled out as non-alienation is too weak a conception of individual autonomy since it is unable to do the normative work that Will Kymlicka needs it to do, namely to guarantee lives lived from the inside.<sup>108</sup>

It seems more plausible to hold that the content shepherds are simply not individually autonomous, on any sensible conception of individual autonomy that is in line with Kymlicka's view. Also, the case of content shepherds is modelled as a case where people do not display, and value, individual autonomy. The aim of the example is to challenge Kymlicka's rationale of political authority and minority rights. It would thus be highly surprising if the content shepherds would display individual autonomy after all.<sup>109</sup>

The case is, however, not yet closed. This line of critique will concern us again in a different guise at a later point, since it involves crucial questions about what the liberal locus of moral respect is: What is the liberal locus of respect, if not individual autonomy? Can such a locus be conceived independently of individual autonomy at all? I will dwell

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<sup>108</sup>The search for adequate conceptions of individual autonomy through negative definitions (as in "not feeling alienated") has parallels in attempts to adequately define pleasure in hedonistic views, or to adequately define utility in utilitarian views. Epicurean approaches of negatively defining pleasure as "absence of X" (X being something bad, such as pain, or anxiety) are not able to capture what we usually associate with pleasure in a more positive sense, such as the presence of joy or fulfillment. Similarly, problems of defining utility in utilitarian thought have led some to develop a "negative utilitarianism", where utility is conceived of as "absence of suffering", and where the utilitarian calculus focuses not on positively promoting well-being (since it is not clear what this would mean in most situations), but on negatively avoiding suffering (which seems to be more straightforward). Arguably, sensible conceptions of pleasure, utility and individual autonomy would have to involve both negative and positive elements in order to capture their initial appeal for moral reasoning. On the issue of negative definitions, see e.g. Zagzebski 1999, 103.

<sup>109</sup>See, however, Section 3.1.3 for a discussion of the requirements of ultra-minimal and minimal personal autonomy for the ideals of respect and democratic citizenship.

on these issues in the next essay.

### **Alien Attitudes**

Let us assume, for now, that the presented case for us all resembling content shepherds, based on the claim that we do not value individual autonomy regarding many or some of our preferences and beliefs, is overstated. Consider, thus, two possible alternative stories to support the claim that we resemble content shepherds more than partisans of individual autonomy think we do, and why there is considerable ground for scepticism regarding the highest-orderedness of individual autonomy.

So far, I tried to build a case around the observation that we do not, after all, value individual autonomy as a highest-ordered value. This fact makes the value of individual autonomy vulnerable to objections, and implausible as a core value for liberal justifications of political authority and minority rights. If individual autonomy does not enjoy the status of a highest-ordered value, then it will be unable to play the crucial role in liberal justifications of political authority and minority rights assigned to it by partisans of individual autonomy.

A different observation that helps to undermine the plausibility of the highest-orderedness of individual autonomy is that there are certain beliefs and attitudes that evade the possibility of embracement and revision in the first place. As I tried to indicate above, most or all people seem to have unnoticed beliefs. Furthermore, probably most or all people also do have unnoticed beliefs that somehow conflict with certain sincere convictions (Räikkä 2012, 511). For instance, one's unnoticed beliefs regarding the consumption of strawberry yogurts as described above might well conflict with one's sincere conviction regarding the adequate workings of the global economy. Call such beliefs conflicting unnoticed beliefs.

Conflicting unnoticed beliefs as well as unnoticed beliefs more generally can, of course, be noticed. We might hope to discover more and more of our unnoticed beliefs over time. Or, given that such beliefs are easier to be detected from outside than from within ourselves, we might expect friends to point out such conflicts. However, there are more extreme cases of conflicting unnoticed beliefs where such a cognitive processing becomes very difficult or impossible. It is cases like these that I would like to consider now. The aim is to suggest, and partly build, another case against the highest-orderedness of individual autonomy.

The kind of conflicting unnoticed beliefs or attitudes I have in mind have been labelled “alien attitudes”, since these beliefs or attitudes appear completely alien to the person that has them. These are cases where people do not actually believe what they take themselves to believe (Räikkä 2012, 511).

Alien beliefs or attitudes “fail to be sensitive to the person’s regular processes of introspection and evaluation” (Räikkä 2012, 511). The person only gets to know about such beliefs or attitudes through “behavioral and psychological evidence” (*ibid.*) that she found out about herself or that were presented to her by others. To have alien beliefs is a species of having conflicting unnoticed beliefs, with the qualification that the alien beliefs relate very oddly to oneself (*ibid.*). They relate oddly because one does not take oneself to believe what, given external observation and evidence, one is proven to believe after all.

An example presented by Juha Räikkä and Saul Smilansky is a professor who consciously judges that undergraduate degrees from foreign countries are of equal worth as undergraduate degrees from her home country. Still, it becomes clear through the decisions she makes on hiring and on giving recommendations, that she does not really believe that undergraduate degrees from foreign countries are of equal worth as undergraduate degrees from her home country. This second, evidential belief—evidential because it can be proven in light of her hiring and recommendation practice—is an alien belief of the professor in question.<sup>110</sup>

How are alien attitudes relevant for our discussion of the highest-orderedness of individual autonomy? Alien attitudes are a special case of unnoticed beliefs, and more precisely of conflicting unnoticed beliefs, as discussed above. Unnoticed beliefs were introduced to underpin the plausibility of the case of content shepherds, and as an indication why—with our unnoticed beliefs—we do resemble content shepherds more than might seem at first sight. Unnoticed beliefs are thus supposed to raise scepticism regarding the highest-orderedness of individual autonomy.

Alien attitudes are important for our discussion because they raise further doubts about the importance of the ability to embrace and revise beliefs in our own lives. After all, most of us live well with unnoticed beliefs, conflicting unnoticed beliefs, and

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<sup>110</sup>For a discussion of the case and of ways to deal with alien attitudes, see Räikkä 2012, 516-520. Note that this is a case where a person displays a morally reprehensible alien attitude, i.e. one where the person tries, or should try, to evade or stop it. There are also cases of desirable or neutral alien attitudes. For the distinction between reprehensible, desirable and neutral alien attitudes, see Räikkä 2012, 513-515.

even alien attitudes that we can only manage “from the outside”. Regarding the latter attitudes and beliefs we do not—and indeed cannot—in the slightest value individual autonomy.

Of course, unnoticed beliefs can become noticed. It is thus plausible to assume that at least at this point we might start to value individual autonomy regarding the newly-noticed beliefs. This point is linked to Kymlickas view that no one wants to live a life of lies, committed to views and practices one did not choose and embrace oneself, as a rationale for the highest-orderdness of individual autonomy.<sup>111</sup> According to Kymlicka, we should thus be able to embrace and revise our beliefs once we have noticed them.

However, noticing beliefs does not necessarily trigger the valuing of individual autonomy. Content shepherds have many noticed beliefs about their way of life: about the importance of certain duties or rituals, about the pleasure of herding etc. Still, they do not value individual autonomy regarding those beliefs.<sup>112</sup> What they value might be how these noticed beliefs align with certain beliefs of their ancestors, or how they fit with other beliefs that the shepherds hold about the order of things and their way of life etc., and not the embracing or reflecting these beliefs.

Now, an interesting characteristic of alien attitudes is that the value of individual autonomy is obsolete from the outset. Since alien attitudes are not judgment sensitive<sup>113</sup>, questions of the ability to embrace and revise these beliefs and attitudes do not arise at any point. At least regarding this class of beliefs and attitudes, there is no hope for the value of individual autonomy to play any interesting or direct role.<sup>114</sup> Individual autonomy is just not concerned with alien attitudes. Thus, the value of individual autonomy is necessarily—and not just contingently, as in the case of other unnoticed beliefs that might become noticed—obsolete regarding a whole class of beliefs and attitudes that all or most of us display. This raises further doubts about the highest-orderedness of the

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<sup>111</sup>See Kymlicka 1989, 12. There Kymlicka holds that “no life goes better by being led from the outside according to values the person doesn’t endorse”.

<sup>112</sup>A reason might be that content shepherds still do not reflect on these noticed beliefs. As Marilyn Friedman holds, “[o]nly when one reflectively cares in some way about something, thereby reaffirming it and doing so as the distinctive person one is, does it become relevant for one’s autonomy” (Friedman 2003, 5).

<sup>113</sup>Alien attitudes thus “fail to be sensitive to the person’s regular processes of introspection and evaluation and are known by him merely through behavioral or psychological evidence that he has noticed about himself” (Räikkä 2012, 511).

<sup>114</sup>At most, we might ascribe a second-order role to the value of individual autonomy regarding alien beliefs. Thus, it might be deemed important to be able to embrace and revise beliefs about alien beliefs.

value of individual autonomy. If individual autonomy is irrelevant, or has not direct bearing on, a whole class of beliefs we commonly hold, then the status as a highest-ordered value becomes doubtful.

### **Deeply-Rooted Selves**

Yet another case to indicate why the situation of content shepherds is more common than one might think at first glance does not refer to our every-day preferences and attitudes but, on the contrary, on some more deeply-rooted features of ourselves—the fact that we are embodied, gendered, socially and linguistically rooted etc. (Christman 2015, Section 3.2.) The point here is that some of these features might evade embracement or revision. For instance, it seems to make little sense to embrace and revise the fact that my mother-tongue is German. It simply is, whether I want it or not. Of course I can learn other languages or develop a critical attitude towards German. Still, the status of my mother-tongue will remain special after all. Such a view seems plausible regarding many other features of ourselves, such as our embodiment, our sexual orientation or our gender as we perceive it etc.<sup>115</sup>

The problem of such a deeply-rooted-selves-approach is that it is prone to reify certain aspects of the person that are in fact open to change and social or psychological amendment. Thus, consider again the example of one's mother-tongue. A mother-tongue is not a given and static matter, even though most of us will experience it that way. It can easily become a matter of embracement and revision, for instance when a language is imposed, as in the case of colonizers that ban the use of certain local languages and impose their own language in schools, public institutions and even private life. One's relation to an imposed mother-tongue is prone to be ambiguous. Thus, it might be the imposed, colonial mother-tongue that conveys the ability to written expression, or gives access to interesting and fulfilling literary traditions. On the other hand, one might feel a deep sense of alienation towards the colonial language, since it has been taught in oppressive institutions and possibly been despised by one's own parents and community.<sup>116</sup>

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<sup>115</sup>This case of deeply-rooted selves is analogous to communitarian points about encumbered and situated selves. They have often been pressed against liberals and their alleged atomistic views on persons. I do not go into any further issues related to communitarian views on rootedness and encumbered selves here. For an overview on major communitarian issues with liberalism see Bell 2012; Bell 1993; Christman 2002, Chapter 5; Kymlicka 2002, Chapter 6; MacIntyre 1988; Mulhall 1996; Sandel 1998; Taylor 1985; Taylor 1989; Walzer 1983.

<sup>116</sup>For language issues in colonial rule, see e.g. Chavan 2013.

Another example to illustrate the mere relative importance of one's mother-tongue can be found in the case of immigrants living in a foreign country for a very long time. Through rapid and smooth integration into a new societal culture, immigrants might easily lose their initial strong bonds to their mother-tongue. The fact that one no longer uses it, but instead starts to communicate mainly, or even exclusively, in another language will arguably weaken the bond to one's mother-tongue. Through strong pressure of assimilation, immigrants might even start to develop negative attitudes towards their mother-tongue. Suppose that a certain immigrant group's language is the target of public ridicule and stigmatization. Under such conditions, and the willingness to assimilate, immigrants might well stop using their mother-tongue, and maybe even start to develop negative attitudes and feelings towards their mother-tongue themselves, for instance because they see their mother-tongue as the reason for their stigmatization by the majority.<sup>117</sup> At least for second generation immigrants, such a situation might well lead to an alienation from the language spoken by their parents at home.<sup>118</sup>

Similar issues are faced by arguments based on social or gendered rootedness. Even though many aspects of our bodily and social selves might seem given and stable, this is surely not the case for everyone. Trans- or cross-gender issues, feelings of alienation from social expectations and one's surroundings etc. should be enough to indicate that fixed social as well as gender roles deliver problematic grounds for normative political reasoning. A reification of social, biological or other natural human traits and their introduction into normative political justification tends to undermine attempts to take diversity seriously, or as seriously as liberally possible. This is because reifications of this sort will present as stable and fixed something that might in fact be diverse, fluid and prone to change. Thus, views on what it means to be masculine, or what it means to be a husband or father, are not stable and invariant, but prone to change over time. Arguably, from a liberal point of view, it seems more sensible to assume, at least for

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<sup>117</sup>On the linguistic phenomenon of losing one's mother-tongue, i.e. first language attrition, see e.g. the essays in Seliger 1991.

<sup>118</sup>An example might be Italian immigrants in Switzerland during the 1950s and 1960s. In German speaking Cantons, Italian migrants were pejoratively and publicly referred to as "Tschinggen" (derived from the Italian word "cinque", meaning "five"). This label arguably stigmatized the use of Italian, and thus also Italians. As a reaction, and a measure to assimilate or isolate, some Italians might thus well have minimized the public use of Italian, or rejected the use completely. For a discussion of the situation of Italian immigrants in Switzerland during that time, see Maiolino 2011. Another historical example with similar aspects might be the situation of Turkish "Gastarbeiter" (guest workers) in Germany during the same time (see e.g. Reimann 1987).

methodological purposes, that potentially every aspect of ourselves—be it the significance of our mother-tongue, the importance of given social roles we hold, or most of our beliefs—are reversible.<sup>119</sup> I thus take it that deeply-rooted-selves-arguments are not a convincing liberal base to argue for our similarity with content shepherds, and against the highest-orderedness of individual autonomy.<sup>120</sup>

### **Are We All Like Content Shepherds? A Brief Conclusion**

Let me conclude on the comparison of ourselves with content shepherds. To wholeheartedly embrace and, on occasion, question and revise our beliefs—and thus to lead a truly authentic life—is a demanding, shattering, confusing, and time consuming enterprise that might not appeal to many. As Kymlicka himself indicates, “revising our ends is often a matter of a crisis in deeply felt beliefs and commitments” (Kymlicka 1989, 59). Revising, and arguably also embracing, beliefs thus has its costs (Christman 2009, 121). In any case, individual autonomy does and will not appeal to content shepherds. There is no obvious reason for them why they should engage in such a project. Also, many of us might feel the same about at least a subset of our beliefs, e.g. our preference for yogurt, or our preference of one yogurt over another. Thus, at least regarding some of our beliefs, and all of the content shepherds’ beliefs, individual autonomy seems to be a controversial and quite demanding requirement to lead a good life. What is more, it seems inadequate to hold that our and the content shepherds’ lives are not valuable simply because they partly or completely lack individual autonomy. Individual autonomy might well not appeal to many of us regarding any number of attitudes or beliefs, and it arguably cannot appeal to the content shepherd. For the content shepherds, as well as for many others, there might be other major ingredients that make for a valuable life.

The objection that individual autonomy is a highest-order human interest at least

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<sup>119</sup>See e.g. Kymlicka 2002, Chapter 6 for a discussion of this issue. Kukathas also holds that “identity is not natural, or original, or permanent, or even necessarily enduring. It is fluid, ever-changing (to varying degrees) and inescapably political” (Kukathas 1997, 150).

<sup>120</sup>Note, however, John Christman’s claim that there is a stability of the general contours of bodies and our biological sex. He also holds that this stability implies that a requirement of complete revisability of all significant aspects of ourselves in a conception of individual autonomy will be unrealistic (Christman 2009, 126). Even though such a stance is well in line with my general aim of this Section to show that we do not value individual autonomy regarding some beliefs and aspects of ourselves, and that it is thus not of the highest-orderedness as suggested by Kymlicka, I do not think that we should make the point on the basis of a deeply-rooted-selves-argument. Still, should Christman be right after all, then this would help to make the case I am arguing here.

regarding fundamental beliefs fails because it will be inextricably difficult to disentangle more fundamental beliefs from less fundamental beliefs. The objection that content shepherds display individual autonomy after all fails because it has to rely on an inflated conception of individual autonomy. It is a conception of individual autonomy that has little to do with autonomy as the value of “living a life from the inside”, as outlined by Will Kymlicka.

There are two further issues that can help to build a case against the highest-orderedness of individual autonomy, namely the one of alien attitudes and the one of deeply rooted selves. I argue that the first one is a promising starting point to argue further against the fundamental importance of individual autonomy, while the second one is not.

Alien attitudes are interesting because they provide the insight that one’s beliefs and attitudes are not entirely transparent to oneself (Räikkä 2012, fn. 3-4). The issue of alien attitudes undermines the status of individual autonomy as a highest-order value because alien attitudes indicate that the value of individual autonomy might be irrelevant regarding a considerable set of our beliefs, namely unnoticed beliefs in general and alien attitudes in particular.

The view that certain aspects of ourselves are deeply rooted or immutable indicates also that the value of individual autonomy might not be as important as Kymlicka suggests. Thus, if individual autonomy is incapable of bearing on many important aspects of persons, such as their mother-tongue or biological and sexual embodiment, then it might not be of highest-order importance to persons after all. This view, however, relies on a reified and contestable view on deeply-rooted selves. What seems deeply-rooted might not be as deeply-rooted after all. Thus, the rootedness of mother-tongues or one’s sexual embodiment might not be as strong and exclusive after all. Individual autonomy might well play a role, and be important, regarding those seemingly rooted aspects of persons; issues of endorsement and revision might well arise.

### **2.2.3 Content Shepherds and Political Authority**

Having doubted the claim that individual autonomy has the fundamental status in liberal political theorizing as suggested by Kymlicka, let us now turn to the issue of the content shepherds and partisans of individual autonomy engaging in the project of founding a common polity.

At first glance, we might deem such a project unnecessary. Why not leave the content

shepherds in peace, and let the partisans of individual autonomy put up their own polity? For the sake of argument, however, let us suppose that the context makes this option hardly possible or undesirable. Let us assume that they need to find ways and means to live together in a common polity, as was the case when Catholic and Protestant congregations during the Reformation had to find some means to live together in the same polity. Putting up a new, purely Protestant or Catholic polity was often, after years of conflict and war, no option.

Let us also assume that both sides see benefits in such a project—whatever they may be, for instance security, peace, stability or prosperity—and engage in the search of common grounds to found it. The aim is thus to found a polity that is there by right, and that has binding authority on content shepherds and partisans of individual autonomy alike. The aim is therefore nothing less than a polity with legitimate political authority. A crucial step for partisans of individual autonomy to establish such grounds, I conjecture, would be to convince the content shepherds that individual autonomy, consisting of the ability to embrace and revise beliefs and choices, is crucial to lead a good life. In their view, and given the highest-orderedness of individual autonomy, only a political authority that is protecting<sup>121</sup> the individual autonomy of its subjects can be an authority that is there by right. For partisans of individual autonomy, the legitimacy of political authority seems to crucially depend on the capacity of the authority to secure the individual autonomy of its subjects.

Now, suppose that partisans of individual autonomy propose to a content shepherd to get to know other ways of life, and to offer him adequate resources and education etc. in order for him to be able to do so. In line with the content shepherd's attitudes and way of life described earlier, he would decline, and not grasp why anyone would even propose, or want, to engage in such a project. How, then, to convince the content shepherd that individual autonomy is necessary for a good life? And, starting from there, how to make a conception of political authority founded on the value of individual autonomy appealing to the content shepherds?

Before dwelling on the issue, we should wonder whether these are the right questions to ask. To be sure, from the point of view of the partisans of individual autonomy it is tempting to understand the project of founding a common polity with content shepherds as the project of convincing the content shepherds of the highest-orderedness

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<sup>121</sup>It is questionable whether mere protection would be enough, or whether a more active promotion is required. I leave these more detailed questions aside, but see Vitikainen 2013, 123-128 on this point.

of the value of individual autonomy, and as the project of justifying political authority by establishing this common view on individual autonomy. These questions are a way to engage in the search for answers to the Socratic question of “how one should live”, and what the good in life consists of.<sup>122</sup> The Socratic question is, on such a view, the most fundamental ethical question. Once an answer to the question is found and transferred to the realm of politics, a perfectionist state seems to be best suited to promote the good life as made out by philosophical (and other) endeavours. To make a view on the good life the rationale for politics suggests that “the state exists ‘for the sake of a good life’ ” (Hurka 1990, 147, citing Aristotle).

Now, in order to take diversity in different outlooks and world-views seriously, and thus also the freedom to hold and develop them, the question should rather be: how to live *together* given that we have different views on how one should live?<sup>123</sup>

Why choose this second question (how to live together with different outlooks) over the first one (how to convince the content shepherds of the value of individual autonomy)? Our choice to focus on the first or the second question will depend on how we conceive of freedom. Let me thus briefly dwell on the issue, and in the end indicate why I think that Kymlicka’s conception of freedom as individual autonomy forces us into the first questions, but that this first question is too narrow to account for freedom and legitimate political authority in a pluralist society.

### **Freedom and Individual Autonomy**

To start with, the content shepherd does nothing wrong in following pleasures or traditions, and not valuing individual autonomy. As a matter of establishing a righteous and legitimate polity, it is hard to see on what grounds we could claim that content shepherds have to adhere to the value of individual autonomy, and to be convinced of its value. It is not clear at all why partisans of individual autonomy could claim such a moral high ground, i.e. why they could claim that the polity has to be founded on

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<sup>122</sup>Bernard Williams takes this to be the crucial question of moral philosophy. It is also, in his view, the essence of “any hopes it [i.e. moral philosophy] may have of being worth serious attention” (Williams 1985, 1).

<sup>123</sup>See Barry 1995, 77. Similarly, Judith Shklar insists that liberalism, as she understands it, is not “a philosophy of life such as has traditionally been provided by various forms of revealed religion (...)” and other comprehensive world-views, but that it “has only one overriding aim: to secure the political conditions that are necessary for the exercise of personal freedom” (Shklar 1998a, 3).

their core value of individual autonomy and not on the content shepherd's ones, such as pleasure and traditional customs.

Furthermore, we can conjecture that the content shepherd lives, in his eyes, a good life. Indeed, at least part of the good of his life derives precisely from not being individually autonomous. Rather, it consists of conforming as well as possible to customs and traditions. The individual autonomists' value of the good life thus conflicts with that of the content shepherd. It is, therefore, again hard to see how individual autonomists could convince the content shepherd of the value of individual autonomy without forcing it on him. That is why a shift to the second kind of question, on how to live together given different outlooks on what is good, seems more adequate and maybe even necessary from a liberal point of view.

As to the partisans of individual autonomy the question might well become: why not resort to paternalism regarding the content shepherd?<sup>124</sup> If only an individually autonomous life is a good or valuable life, why not simply impose such a life, for his sake, on the content shepherd?

One tempting way to answer could be that it is permissible to impose individual autonomy because the content shepherd already is, maybe in some unconscious way, individually autonomous so that we would simply impose something on him that he already possesses or values. This might then seem morally less problematic. Compare this case, however, to a justification where one holds that it is permissible to impose individual autonomy because it is natural for humans to be individually autonomous. The two cases are analogous because we define certain qualities of the content shepherd (his already embracing and revising choices unconsciously in the first case; his nature consisting of individual autonomy in the second) in such a way that the imposition of individual autonomy seems no longer problematic, or indeed seems required, or the natural thing to do. The point of the example of content shepherds is, however, precisely that they do not display any sort of individual autonomy in Kymlicka's sense, and that there is nothing strange or odd about that. To reintroduce the assumption that they

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<sup>124</sup>There is some evidence in the history of colonialism and imperialism that this option is not completely alien to liberal thought. On the historical link between liberalism and colonialism, see e.g. Arneil 1996; Armitage 2004; Hsueh 2006; Ivison, D./Patton, P. et al. 2000; Ivison 2002, 45-48; Ivison 2003; Kohn 2014, Section 3; Tully 1993. John Stuart Mill, a prominent autonomy liberal, is a known defender of colonialism. He thought that, in principle, colonialism would bring progress and civilization to "backward" peoples, even though he was aware that settler violence against subordinate peoples was undermining the civilizing efforts (see Smits 2008 for a discussion).

in fact do possess individual autonomy would miss the point and undermine the whole thought experiment underway here.

Thus, the antiperfectionism defended by Kymlicka and other partisans of individual autonomy might well turn out to be a chimera. If a justification of individual freedom and state neutrality is based on the value of individual autonomy, as in Kymlicka's case, then individual freedom and state neutrality too might well be restricted to individually autonomous ways of life (even though this need not be so).<sup>125</sup> Since the content shepherd does not value individual autonomy—he simply leads a pleasurable life, or one guided by customs and traditions, not an individually autonomous one—he is not free and state neutrality regarding his way of life might well be put into question.<sup>126</sup>

Such an antagonism between individual autonomy and state neutrality, should there be any, will considerably weaken the appeal of individual autonomy as a core liberal value and foundation of political authority, or so I venture to suggest. That a state should be allowed to impose the value of individual autonomy on the content shepherd, to possibly replace his pleasure and tradition-based way of life, is not obvious and indeed problematic from the point of view of other liberal commitments.

It is not obvious because it is not clear why the content shepherd should bear the burden of proof in the first place. Why does the content shepherd have to defend

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<sup>125</sup>Brian Barry (Barry 1995, 131-132) makes a similar point. Kukathas, discussing Will Kymlicka's early work, also holds that by "[b]y insisting that the cultural community place a high value on individual choice, the larger society would in effect be saying that the minority culture must become much more [autonomy] liberal" (Kukathas 1992, 122). Similarly, John Christman—whose view on autonomy will be discussed below—holds that principles of justice are restricted to principles that serve the autonomy of citizens. This is the "autonomy-based conceptions of democratic justice" (Christman 2009, 228) that he defends. It holds that "only if the principles [of justice] (...) model us and our co-citizens as autonomous—able to competently, independently, and authentically judge values for ourselves—will they gain the legitimacy that just institutions require" (Christman 2009, 226). He goes on that "legitimacy presupposes a model of the (autonomous) person able to reflectively endorse her interests" (Christman 2009, 227, see also 228). Even though Christman claims that his view on democracy is "deeply pluralistic" (Christman 2009, 228), it would not be able to accommodate content shepherds. Since content shepherds are not autonomous in Christman's sense, they pose a similar problem to Christman's socio-historical-autonomy-based account of political authority as they do to Kymlicka's individual-autonomy-based account. For further discussion of Christman's views, see Section 2.3.

<sup>126</sup>Some liberals who take individual autonomy to be a core liberal value might argue along these lines, i.e. they might well abandon state neutrality and take individual autonomy to justify a perfectionist liberal state. An influential version of such comprehensive perfectionism has been presented by Joseph Raz (see Raz 1986 and Raz 1990b). For further perfectionist accounts, see Hurka 1990 and Wall 1998. For a discussion and critique of perfectionist stances, see e.g. Quong 2011b.

himself and his way of life against that of individual autonomists?<sup>127</sup> At this point another intriguing and influential liberal idea of Mill's *On Liberty*, apart from the one of individual autonomy, becomes interesting, namely the harm principle. According to the harm principle, the content shepherd would be free to live and act as he sees fit as long as this does not harm others (see Gaus 2004, 109; Mill 1991, 14). Even though the harm principle itself is ambiguous and possibly implausible due to problems in defining harm (Gaus 2004, 110), two liberal ideals that underpin it help us to understand why partisans of individual autonomy are misguided in imposing their value of the good life on the content shepherd.<sup>128</sup> The first one is the "presumption of liberty"<sup>129</sup> or liberty principle. This is the idea that, firstly, it is rather interference with one's actions that is in need of justification than non-interference. Second, it involves the ideal of consent: "[W]here there is consent, there is no harm" (Gaus 2004, 110). According to this ideal, the content shepherd's consent becomes crucial regarding interventions with his way of life. Consent is essential when it comes to questions of legitimate political authority.<sup>130</sup>

Individual autonomy is thus in conflict with two other important liberal ideas. The presumption of liberty and the ideal of consent seem to undermine the possibility of founding political authority on the value of individual autonomy as conceived here, i.e. on the ability to embrace and revise one's beliefs and choices. The presumption of liberty and the ideal of consent shift the burden of proof from the content shepherd to the partisans of individual autonomy. We live in a world where diverse ways of life, such as the one of content shepherds and of partisans of individual autonomy, live side by side. The presumption of liberty and the ideal of consent therefore deliver the ingredients to a more compelling approach to diversity in a liberal polity than the one proposed by partisans of individual autonomy.

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<sup>127</sup>One might also wonder why the issue of justification comes up at all. What triggers the demand for justifying the content shepherd's way of life towards individual autonomists in the first place? It cannot be simple grievance on the side of the content shepherd that triggers a demand for justification, since there is always space for individually felt grievances. On the other hand, people may be trained to overcome grievance where genuine demands for justification would be adequate (see Williams 2005b, 6). I take it that a fundamental liberty, as well as respect for persons, are crucial elements that trigger such a demand for justification. See Section 3.1 for further discussion. For a brief historical overview on the emergence of a need for justification as a distinct feature of "our moral modernity", see e.g. Appiah 2005, 156-157.

<sup>128</sup>See however Raz 1986, 412-424 for an alternative interpretation of the harm principle that is in line with autonomy liberalism. See also Hurka 1990, 147-152 for a discussion.

<sup>129</sup>See Gaus 2004, 110 citing Feinberg 1984, 9.

<sup>130</sup>See Section 3.1.2 where I discuss the issue of the presumption of liberty, or the liberty principle, as well as issues of consent.

In other words, a political liberalism—as opposed to a comprehensive one—seems to be a more compelling way to deal with the living together of content shepherds and individual autonomists in a common liberal polity. Whereas a comprehensive liberalism is based on a pervasive and encompassing liberal value, such as the value of individual autonomy, a political liberalism attempts to restrict its theoretical aspirations to the domain of the political, and thus to the moral-political foundations of the political framework spelled out as constitutional essentials. Such an approach allows to take diversity more seriously than comprehensive liberalism, since it is not based on a controversial liberal value of how to lead one’s life. Certain baselines of political liberalism, such as a presumption of liberty and the ideal of consent, will thus be the starting point to assess legitimate political authority and minority rights. These grounds will be discussed further in the next essay (see Section 3.1).

Before going into that, however, I would like to dwell on a few further issues that come up in the search of the content shepherds and the individual autonomists for a common polity. First I will dwell on conceptual and epistemic issues. Second, I will dwell on some further possible criticism that might be raised against the arguments and examples presented so far.

#### **2.2.4 Some Further Issues: Conceptual and Epistemic**

Consider some further problems that partisans of individual autonomy might face when they try to convince the content shepherds of the highest-orderedness of individual autonomy. This time, the problems they face are not linked to the challenges faced when establishing a legitimate and just polity, but to conceptual and epistemic issues.

For one, it will be intractably difficult for individual autonomists to determine when one is able to endorse and revise beliefs, or when beliefs are actually endorsed or wholeheartedly embraced, i.e. when one lives a life from the inside. There seem to be considerable conceptual and epistemological difficulties involved. Some of them are: What does “to be able to endorse and revise beliefs” involve and require more precisely? When exactly is a belief endorsed or embraced? Is it enough to think things through just once? Or should we do so on a continuous basis? How do we know that we live our life from the inside? This issue is challenging enough in a first person perspectives, engaging with ourselves; but it gets even more challenging when engaging with others, in a third person perspective. Thus, how can we know that others embrace a belief, and that they live a

life from the inside? Is it enough that they tell us that they do, or should we look for some objective standard on which to base our judgment?

Given these difficulties, once the content shepherd figures out what is required to be left alone by the partisans of individual autonomy, he might simply state that he wholeheartedly embraces the traditions according to which he lives (even if he does not know what “wholeheartedly embrace” actually means), and that to be able to do so is of supreme importance. This, obviously, is not what the partisans of individual autonomy are aiming at. What they would again have to do at this point is to convince the content shepherd that it is indeed important to be able to embrace his beliefs about the traditions according to which he lives.

However, and as indicated above, it is far from surprising if the content shepherd is completely immune to the points that his interlocutors try to make. And, most important, there is nothing irrational or odd about this. If, for him, a valuable life is one consisting of the pleasures of herding, or of following the ancient customs and traditions as they were passed on by his ancestors, he might well not be able to see the slightest worth in the ability to embrace, or revise, his beliefs about the valuable life. He might just want to follow customs and traditions, even if he does not really know why he wants to do so, or would not be able to explain any further what the worth of this attachment is. For the content shepherd, individual autonomy is just a rival account of the good life, one that he might very well reject without acting irrationally or oddly. He simply values something different, namely to live a life that is (in his eyes) pleasurable, and that corresponds as closely as possible to the customs and traditions of his ancestors.<sup>131</sup>

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<sup>131</sup>Due to such a view on diverse outlooks on life it might seem that the kind of liberalism I am hinting at here will necessarily subscribe to value pluralism, or value scepticism. This would be the view that “there are various forms and styles of life which exemplify different virtues and which are incompatible” (Raz 1986, 395). Such a view seems to “equate values with tastes or preferences” (Gaus 2004, 109; see further Gaus 2004, 108-109 on the important role of value scepticism in much liberal thought). Such a link with value scepticism is, however, not necessary. It might well be that pluralism or scepticism of this sort has simply a psychological affinity with the kind of liberalism hinted at here, but that there is no conceptual or logical connection between them. Thus, Judith Shklar holds that an “original mistake” of those criticizing liberalism of being “agnostic, relativistic, and nihilistic” is “the failure to distinguish psychological affinities from logical consequences” (Shklar 1998a, 6). Jonathan Quong also argues that “political liberalism does not assume or imply any version of scepticism about our ability to know the good life” (Quong 2007, 320). I will sidestep this issue here, and simply assume that different views on how liberalism links to value pluralism are possible. For instructive discussions of the relationship between value pluralism and liberal political theory, see Crowder 1998; Galston 1999; Galston 2002; Gray 1995, Chapter 6; Lassman

The example of the content shepherd therefore seems to undermine Kymlicka's claim that we need individual autonomy to reach our essential (or highest-order) interest in leading a good life. Pleasure and traditions might well, as the case of the content shepherd indicates, be enough.

However, even if the content shepherd accepted the offer and took advantage of the ability to question his beliefs, and went to investigate new ways of life to compare them with his own, he might wonder: how far should he go in his investigations, and when is it enough? When can or should he stop? Is it enough to investigate other local rural ways of life, or should he go to have a look a city, or even go abroad and see other countries and continents? Kymlicka holds that it is enough to explore "different aspects of our collective cultural heritage" (Kymlicka 1989, 13) to be able to judge what is valuable in life. This formulation is ambiguous, but probably he does not have in mind the cultural heritage of whole humanity. If so, then exploring this heritage would be a Herculean task for the content shepherd in his examination of valuable ways of life. Rather, Kymlicka seems to have in mind a manageable number of ways of life that surround us quite immediately.

It is, however, far from clear why the content shepherd should limit himself only to his own cultural heritage. Maybe the beliefs about the good life he could most easily and most wholeheartedly endorse, or the beliefs that he would judge most valuable after inspection, are to be found on another continent? Indeed, many Westerners, not only during the 1960s and 1970s, have been fascinated and inspired by ways of life to be found in India or the Far East. Just think of the widespread Yoga activities or the fascination for Buddhist meditation practices. Kymlicka's limitation to one's own cultural heritage, regarding which one should be able to embrace and revise beliefs, therefore seems rather arbitrary.<sup>132</sup>

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2011. Whatever the relationship between liberalism and value pluralism might be, the political liberal approach advocated in the following essays does rely on a priority of the right over the good in politics (see Rawls 2005, lecture V). This, however, does not imply any stance on whether our views on the good can be true or not. Arguably there is nothing in the political liberal stance that implies that they cannot be true. The decisive issue is, however, that this truth is not imposed on others. Thus, as Quong puts it, the crucial issue is that the political liberal project and "[l]iberal neutrality [are] motivated not by scepticism about *our own* views, but rather by a desire to justify fundamental political principles *to others*" (Quong 2007, 320, emphasis in the original; see also Christman 2009, 230-231 on this issue).

<sup>132</sup>I conjecture that Kymlicka would base the limit to one's own cultural heritage on identity considerations, i.e. he could maintain that we have an interest to be able to get to know beliefs that make sense in the cultural context in which we were brought up.

This is, then, a further point that illustrates why Kymlicka's account of the importance of individual autonomy is controversial. Individual autonomists will hardly agree on what is required to be able to judge what is valuable in life. Thus, it is questionable how far the content shepherd should go in an investigation of other ways of life in order to reach individual autonomy; or when the content shepherd is actually justified in maintaining that he truly embraces his beliefs.

It is therefore far from clear what individual autonomy requires more precisely to lead a good life. What individual autonomy is or requires is contestable, as is the content shepherd's views that pleasure and traditions give value to life. If this holds, however, then it is not clear why the content shepherd should exchange his controversial view of the good life with the ambiguous one that individual autonomists offer. Both are, after all, controversial or objectionable in one way or another.

### **2.2.5 Critique: Strange and Evil Content Shepherds**

Consider the following two objections against my critique of Kymlicka's views. First, one might hold that the case of the content shepherds is strange and marginal, at least in the world we live in, so that we might indeed neglect it in our account of political authority.<sup>133</sup> This pragmatic objection seems to suggest that, in fact, most members of most groups accept a conception of political authority based on individual autonomy (see Kymlicka 2001b, 59-60). Pragmatically, therefore, we can neglect the case of the content shepherds and similar other small groups that inspired the example of content shepherds, such as Hasidic Jews or the Amish (Kymlicka 2001b, 61), when it comes to real-world questions of political authority. When it comes to the world we live in, this view holds; we can stick to the presumably widely held value of individual autonomy.

On such a view, the critique based on the content shepherds seems like a professional hazard of political theorists who have the trained tendency to focus on the hard and

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<sup>133</sup>This objection is a species of the view discussed earlier, according to which individual autonomy seems to be an almost intrinsically human, or at least very widespread, value (see Section 2.2.2). The objection under scrutiny here is outlined in Kymlicka's reply (see Kymlicka 2001b, 59-65) to Bhikhu Parekh's (Parekh 1997) and Rainer Forst's (Forst 1997) criticism. Both attack the controversial autonomy liberal foundations of Kymlicka's theory of minority rights. Thus, Kymlicka holds that most of the multicultural disputes in Western democracies are not disputes of principle, but disagreement "over their [i.e. the principle's] interpretation and application" (Kymlicka 2001b, 61). The air of deep conflict in the philosophical literature is then depicted as a mere result of the "professional hazard" of philosophers who have the "natural tendency to jump to the cases where there is a deep difference of principle, since these are the most philosophically interesting" (ibid.).

intractable cases, even if they are marginal (Kymlicka 2001b, 61). This *realpolitik* objection might have some force when it comes to policy-making and every-day political business, but it has no force when it comes to normative theorizing. The example of the content shepherds shows that conceptions of political authority based on individual autonomy have grave difficulties to take diversity seriously. Such conceptions cannot accommodate people such as the content shepherds. It would be wrong to force political authority on the shepherds simply because they follow their hedonistic or conservative ways and reject the value of individual autonomy. This holds even if content shepherds are marginal or strange in the world in which we live. Indeed, it would even be wrong if there were no content shepherds at all. This is so because the point made here is a justificatory one. If the value of individual autonomy is not able to ground, and thus to justify, liberal political authority in the presence (or possible presence) of content shepherds, then liberal theories of authority based on the value of individual autonomy are flawed. This is what the case of the content shepherds shows: normatively speaking, legitimate political authority cannot be founded on the contestable liberal value of individual autonomy alone. This, at least as far as I can see, also holds in the face of any pragmatic consideration suggested above.

Second, one might hold that the example of the content shepherds is only more or less convincing (if at all) as long as the content shepherds are not evil, or do not commit injustices or atrocities. Imagine that the content shepherds systematically oppressed women, or held slaves. In this case, at least, would it not be right to impose individual autonomy on the content shepherds, as well as the women and slaves involved?

Three things should be kept in mind regarding the case of evil content shepherds. First, even if there were such a case, the critique of individual autonomy as a basis of political authority based on the case of good content shepherds would remain intact. The case of good content shepherds still undermines the plausibility of Kymlicka's theory of political authority and minority rights, even if there were only evil content shepherds in the world in which we live.

Second, it is a long way from fighting injustices, and rejecting the suppression of women and slaves, to imposing individual autonomy. Fighting injustices and imposing individual autonomy are two different things. Suppose we, as liberals, would have to choose how evil content shepherds should change so that they could become members of our moral-political community. I take it that only few liberals would accept racists and

sexists amongst their midst.<sup>134</sup> Would we, then, say that evil content shepherds should be able to embrace their beliefs and revise their views? Most probably not. What if a sexist or, even worse, a slave sticks to his views? Rather, we would say that evil content shepherds should see others, and especially those they are prone to dominate, as moral persons who are worthy of respect and reciprocal behaviour. In other words, evil content shepherds need to become reasonable, not individually autonomous.<sup>135</sup>

That fighting injustice and imposing individual autonomy are different things is also supported by another extension of the example. Suppose that it is not the fault of the evil content shepherds that they became evil. Maybe slavery and misogyny were very common for a very long time. They might have been based on persistent, strongly and most widely held religious views. Furthermore, imagine that no other views were around that could have challenged the assumptions that underlie the institutions of slavery and misogyny.<sup>136</sup> Under such conditions, it seems indeed to take extraordinary moral insight, or something like a moral genius, to see beyond all the seemingly stringent evidence in support of slavery or misogyny (see Rosen 2003, 69). After all, slavery or misogyny are everywhere and furthermore are embraced and valued by everybody you esteem and ask.<sup>137</sup> Under such conditions, and given a version of the parity thesis according to which “blameless moral ignorance” (Rosen 2003, 64ff.) is capable of excusing the ignorant, we arguably cannot blame the evil content shepherds for their being evil, and doing evil deeds. If we cannot blame them, then it seems unreasonable to expect them to have acted differently. Then, however, it also seems unreasonable to impose sanctions, such as imposing the value of individual autonomy, on them. After all, we should not punish them for something for which they are not to blame.

All of this, however, does not suggest that we should sit back and do nothing about

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<sup>134</sup>This is to say that racist and sexist views are not qualified standpoints with a full standing or say on basic moral-political issues. The reason is that these views hurt a basic moral-political commitment to respect for persons and reciprocity.

<sup>135</sup>I will develop on the point of reasonableness in Section 4.4.3 below. The point I make here is that individual autonomy does not seem to be the cardinal virtue or issue that lies at the heart of the moral-political matters regarding a legitimate and just polity. For further considerations in this direction, and arguments for the claim that individually autonomous persons do not necessarily make better citizens, see Swaine 2009, 197-198.

<sup>136</sup>Note that the depiction of this situation is not so far from the common situation in ancient Greece, or parts of Medieval Europe. Slavery, for instance, was defended by most ancient philosophers. Misogyny, in turn, was common in Europe until very recently and found support in Europe’s major religion, i.e. Christianity. See Rowe 2005, 129-130 on the attitudes towards slavery in ancient Greece, and e.g. the introduction in de Beauvoir 2011 on misogyny in Europe during the 1940s and 1950s.

<sup>137</sup>For a fuller discussion of such slavery and misogyny cases, see Rosen 2003, 64-69.

the evils and injustices we observe. The point, again, is that we can and should do something about such evils and injustices, but without imposing individual autonomy. Evil content shepherds do not merit the sanction imposing individual autonomy because they cannot be blamed for the evils and injustices involved. This suggests that our motivation to overcome evils and injustices in the case of evil content shepherds is not derived from our valuing individual autonomy. If our motivation was derived solely from our value of individual autonomy, we could do nothing about the evil shepherds. Either we would have no reason to impose the sanction of forcing the value of individual autonomy on the evil content shepherds, since they cannot be blamed for their acts. Or evil content shepherds are already individually autonomous, as when one evil content shepherd spends considerable effort and time in embracing and revising his views and then embraces his views about women and slaves. In this latter case of informed misogyny or slavery, the imposition of individual autonomy will not change anything about the miserable situation of slaves and women. In short, the value of individual autonomy seems irrelevant, and might be toothless, when dealing with evil content shepherds. Their lack of individual autonomy is not the source of the problem.

The source of the problem and the basis for our motivation for action in the case of evil content shepherds are, arguably, the evils or injustices themselves. In the case of blameless evil content shepherds, we should still intervene. However, we should not intervene because the shepherds are not individually autonomous, or because they lack the value of individual autonomy. Rather, we should intervene because their treatment of slaves and women is wrong. It is wrong (at least partly) because slaves and women are not respected as moral persons and citizens in their own right, and because there is no reciprocity between evil content shepherds and slaves or women.

### **2.2.6 Outlook: Respect for Persons and Public Reason**

Given the stance and arguments elaborated in this Section, it seems that an ideal of respect for all as free and equal moral persons is a more compelling ground for political authority than the value of individual autonomy. The value of individual autonomy is controversial, and as a foundational value of a liberal polity the value is unable to account for content shepherds and their way of life. This, however, seems wrong. Content shepherds deserve full moral-political standing; their lack of valuing individual autonomy is not enough to deny them full moral-political standing. Thus, a polity based on the

controversial liberal value of individual autonomy fails to take diversity seriously.<sup>138</sup>

Charles Larmore takes the principle of equal respect for persons to be the moral core of a political liberalism, as opposed to a comprehensive liberalism proposed by Will Kymlicka (see Larmore 1999, 602, 617). Of course, it is highly ambiguous what “respect for all as free and equal” means and requires. However, crucial ingredients for such respect are presumption of liberty as well as the ideal of consent. The presumption of liberty and the ideal of consent imply that the public justification of political arrangements are crucial to any account of liberal political authority. The public justification of political authority is one way how respect for all moral persons as free and equal is instantiated as a political principle. Public justification is reached when reasons given for political authority are acceptable to all citizens concerned. Call reasons that aim at such consent *public reasons*.<sup>139</sup>

Liberal political authority therefore seems to be adequately founded on the ideal of public justification and public reason. This accounts for the idea that a liberal polity should, most of all, be freely accepted by those (moral or reasonable) persons who inhabit it—and thus also by the content shepherds. Evil content shepherds, however, will have to be left out of the picture, since they are not reasonable. They do not respect some others of the political community (slaves or women) as moral persons worthy of respect and moral-political reciprocity.<sup>140</sup>

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<sup>138</sup>If the main criticism against individual autonomy as a foundational liberal value is that the value is controversial, what about the ideal of respect for all as free and equal? There are, after all, also people who reject this value (thanks to Sune Laegaard for pointing this out). Admittedly, the ideal of respect for all as free and equal is a markedly liberal commitment, so all those who are not liberals might reject it. Why, then, choose the ideal of respect over the value of individual autonomy as a basis of a liberal polity? A main reason is that the ideal of respect is still less controversial than the value of individual autonomy, and thus more accommodating towards diversity and liberty in public justifications of a legitimate political order. The ideal of respect is, arguably, as accommodating towards diversity and liberty as liberally possible—and thus acceptable to content shepherds as well as partisans of individual autonomy. The value of individual autonomy, in contrast, is more controversial and not apt to take certain relevant points of view into account in the establishment of a legitimate political order. This, at least, is what the case of content shepherds is supposed to show. For further discussion of this point, see Section 3.1.3.

<sup>139</sup>Note that this is a very rough outline of a view I will develop further in the essays to come. Note also that it involves a particular view on public justification. Public justification has also been conceptualized differently, e.g. without a focus on public or shared reasons, but rather with a focus on shared outcomes. For further discussion on how to conceive of public justification and issues relating to public reason, see Chapter 5.

<sup>140</sup>Such exclusion based on an idealized view of citizens as reasonable will be deemed problematic by those who prefer a more “realistic’ conception of public justification” (Rossi 2010, 22, Section 2), i.e. a conception that attempts to accommodate citizens as they are found in the world we live in.

This, then, seems to be a liberally more adequate approach to political authority and legitimacy: one that puts at its heart the ideal of public reason and the respect for all as free and equal moral persons. Such an approach allows to accommodate content shepherds, and thus to take diversity more seriously than views on political authority that are based solely on the controversial value of individual autonomy. The approach based on the ideal of public reason and respect for citizens as free and equal is, at least, the one that I will favour in what follows. To see what place differential treatment of ethnocultural groups has in such a political liberal perspective is the main challenge of the rest of this thesis.

## 2.3 Socio-historical Autonomy: A Compelling Alternative Take on Individual Autonomy?

Before we go on to elaborate on the foundations of a political liberalism, let us pause briefly. One might think that the proposed abandonment of the value of individual autonomy is hasty, and that an ideal of autonomy, maybe one that is differently construed than Kymlicka's conception, is essential to liberalism and any liberal account of respect for persons. It is a standard liberal theme that the ideal of respect for persons is spelled out as respect for persons *qua* rational and autonomous persons.<sup>141</sup> Before I start to dwell more thoroughly on the foundations of the kind of liberalism that I will favour throughout this thesis, let me thus briefly dwell on concerns of this kind.

Faced with various criticisms of individual autonomy as a foundational value of liberal politics<sup>142</sup>, partisans of individual autonomy seem to have two options, i.e. either to abandon the comprehensive ideal of individual autonomy and search for other grounds to build a liberal political theory, or elaborate on the ideal of individual autonomy and try to shield it from the most severe criticism.<sup>143</sup> Even though I opt for the first option

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I will deal with this and similar concerns in Chapter 4.

<sup>141</sup>See the influential account of autonomy by Immanuel Kant who claims "that all persons are owed respect just because they are persons, that is, free rational beings" (Dillon 2014, Section 2.2). See also Valentini 2011, Section 9.2 for a discussion of a "principle of equal respect for persons *qua* rational and autonomous agents" (Valentini 2011, 206).

<sup>142</sup>For an overview on some of them, see e.g. Christman 2015, Section 3; Gaus 2004, 103-105; Gaus 2005; Vitikainen 2013, Chapter 2; Barry 1995, 128-133.

<sup>143</sup>As we will see below (Section 2.2.2), the political liberalism advocated here also involves a thin, political view on autonomy. One, however, that is far from the thick and controversial view on individual autonomy proposed by Will Kymlicka. To anticipate a bit, "the fundamental interest that citizens respect in others" is, in Rawlsian terms, the "higher-order exercise of their [two] moral

for the rest of this thesis, i.e. I focus on an alternative to individual autonomy, let me briefly consider an attempt that opts for the second way, i.e. for the attempt to develop an alternative account of individual autonomy.

John Christman, dwelling on individual autonomy in the political context, opts for the second path. He points out that challenges by hard cases, such as the content shepherds, or by other examples that stress the “unreflective and the automatic in life” (Christman 2009, 140), do not force us to abandon “autonomy-based political views” altogether (ibid.). Rather, they indicate the need to refine the conception of autonomy so that it can account for such cases.

Christman investigates the normative baselines of a just liberal polity that aspires to “sensitivity to pluralism and difference” (Christman 2009, 161). In order to reach this aim, Christman proposes as a liberal baseline a “maximally flexible notion of autonomy, so that a broad variation of conceptions of the good, ideals of personhood, and approaches to personal and social life receive full respect” (Christman 2009, 161; see also Dworkin 1988, 21).<sup>144</sup> His response to the challenges of liberty and diversity is thus to make the conceptions of the person and of autonomy, that are underpinning the political framework, as inclusive as possible. In other words, he attempts an ecumenical conception of persons and autonomy.<sup>145</sup> These are conceptions that are, or can be, shared by all those views that should be taken into account in a just and legitimate polity. Christman thus develops a socio-historical conception of autonomy, i.e. a conception of autonomy that is sensitive to a person’s social and historical context.

Is such an ecumenical conception of individual autonomy able to side-step the problems posed by the case of content shepherds, and thus to take diversity seriously? To answer this question, consider—in a nut shell—Christman’s socio-historical conception of autonomy. First of all, Christman’s conception of autonomy is restricted to certain basic organizing values and commitments. In his view autonomy thus only matters

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powers” (Weithman 2002, 201), i.e. their power or sense to discern what is good and their power or sense to discern what is right. The good that is discerned can, according to the view adopted here, be the value of individual autonomy, but it might also be the value of pleasure or traditional customs as in the case of the content shepherds.

<sup>144</sup>Christman further holds that “autonomy in this sense must pick out all and only those agents whose capacities and point of view should matter as the sources of valid claims in collective decisions and toward whom paternalistic intervention would be disrespectful” (Christman 2009, 162). I will work with a different theoretical device that has the same function, namely a standard of reasonableness (see Section 3.1.2).

<sup>145</sup>See e.g. Christman 2009, 9; 14; 227.

regarding a person's basic attitudes or fundamental beliefs.

Second, regarding those basic commitments, and in order to count as socio-historically autonomous, one needs to display certain competences. One has (i) to be competent to form intentions on the basis of basic attitudes, and (ii) to be capable of critically reflecting on one's basic attitudes. We might call this the *competence requirements for autonomy*.<sup>146</sup>

Third, autonomy crucially involves a person's authenticity. Authenticity is understood as non-alienation towards one's basic attitudes upon historically sensitive (and otherwise adequate) self-reflection. The main idea is that a person can be considered autonomous only if she authentically maintains her basic attitudes. This is to say that when a person reflects upon her basic attitudes, she should not feel alienated by them. Interesting in this account is also the kind of self-reflection it presupposes. When assessing the authenticity of one's basic attitudes, not any kind of self-reflection will suffice. Only historically sensitive, and otherwise adequate, self-reflection will do.

Historically sensitive self-reflection involves the requirement that the basic values or commitments are considered in light of how they came to be part of one's basic attitudes. Adequate self-reflection also involves critical appraisal that would remain the same over a variety of conditions (Christman 2009, 156). These qualifications on self-reflection are introduced to deal with hard cases, such as happy slaves (and, arguably, also content shepherds). These qualifications introduce further filters in our understanding of individual autonomy that supposedly help to side-step, or deal with, such hard cases.<sup>147</sup>

A few observations and points are in order. Firstly, and interestingly enough, Christman's motivation to elaborate an inclusive or ecumenical conception of autonomy is, similar to my own attempt here, motivated by an urge to take diversity seriously; or, at least, more seriously than it is possible in more conventional normative liberal theories

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<sup>146</sup>As indicated above, the fact that someone is competent regarding (i) and (ii) does not imply that this person also values autonomy. Being competent regarding the requirements of individual autonomy and valuing autonomy are different issues. There is thus a relevant difference between the competence of, say, adequate self-reflection and the valuing of self-reflection (thanks to Sune Laegaard for pointing this out). This, however, does not affect the basic problem at stake here, namely that justifications of political authority and minority rights that are crucially based on the value of individual autonomy fail to take diversity seriously.

<sup>147</sup>The discussion of Christman's view here is necessarily sketchy, due to space constraints. For a more detailed and thorough description and discussion of socio-historical autonomy, taking into account several objections and alternatives, see Christman 2009, Chapter 7 and pages 155-56 for an instructive summary.

based on the value of individual autonomy.<sup>148</sup> This greater inclusiveness can arguably be gained by stressing procedural aspects of autonomy, such as self-reflection, that establish a “value neutral stance for our model of autonomy” (Christman 2009, 172). A main task that Christman takes up is, then, to defend his own procedural and inclusive approach to individual autonomy against other conceptions of autonomy that incorporate “certain substantive value commitments” (ibid.). He thus targets less inclusive, and more controversial, stances towards the ideal of individual autonomy and its role in politics.<sup>149</sup>

The question remains, however, whether such a more inclusive elaboration of the ideal of autonomy will help to take diversity seriously. The concern here is, thus, whether Christman’s attempt for a more inclusive view on (socio-historically sensitive) autonomy can live up to the challenge of taking diversity seriously. If it is impossible to live up to this challenge, then we might well conclude that we should abandon the values of individual or socio-historical autonomy to found our liberal polity, and to search for further grounds.

Whatever the more detailed contours of Christman’s socio-historical conception of autonomy may be, in order to get the project off the ground and make it a liberal path worth pursuing, he relies on the following assumption: Autonomy (in Christman’s case construed as socio-historical autonomy) is the locus of interpersonal respect that grounds one’s membership in the political community and one’s participation in political processes (Christman 2009, 136). Thus, Christman holds that autonomy is “the status marker for entrance into collective deliberations” (Christman 2009, 136).

The problem of this assumptions is, however, that it is in conflict with his other desideratum, namely his attempt to take diversity seriously. Take again the example of the content shepherds. Content shepherds are not autonomous, not even in Christman’s socio-historical sense. If so, however, then they would therefore not be allowed to be

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<sup>148</sup>As Christman states, “[t]he greater inclusiveness of a conception of autonomy developed here is motivated by a need to extend as far as possible the normative banner under which political participation in democratic society extends, the boundary of which are autonomy” (Christman 2009, 172-173).

<sup>149</sup>See Christman 2009, Chapter 8 where he discusses and criticizes such conceptions of relational or social autonomy that are often motivated by feminist and emancipatory concerns. Christman states that “while I applaud the motivations behind such a move [of developing a more substantive conception of autonomy that incorporates having acceptable social relations], (...) I want to resist the temptation of making autonomy a relational property itself (...) for reasons connected to recognition of difference and pluralism” (Christman 2009, 14). On the more substantial ideal of relational and social autonomy and feminist conceptions thereof, see e.g. Anderson 2005; Friedman 2005, 151-152; Friedman 2003, Part 2; Jaggar 1988, 29; Mackenzie, C./Stoljar, N. 2000; Meyers 2010, Section 3; Meyers 1996; Meyers 1989, 19-20, Parts 1 to 3; Oshana 2006.

members of the political community and participate in political processes. And again, they might well become the object of perfectionist or paternalistic policies.<sup>150</sup> This, however, again hurts intuitions linked to the presumption of liberty and the principle of consent. It is again not obvious why requirements of autonomy would outweigh or override the presumption of liberty and the principle of consent—most of all if there is nothing wrong with the way of life of the shepherds. Although they are not individually or socio-historically autonomous all kinds of political, contractual, and reasonable moral interaction with them is possible.<sup>151</sup>

What exactly is it about individual or socio-historical autonomy that should give it ultimate normative weight? I agree that we should put limits on the admissibility to a political community; not all kinds of demeaning and disrespectful points of view have to be taken into account in political decision-making. Think of the example of sexist or slave-holding content shepherds that, arguably, should stay out of the moral-political justificatory picture. There is, thus, some limits on how seriously we should take diversity. However, it is hard to see why content shepherds, simply because they do not display individual or socio-historical autonomy and live a life marked by customs and traditions, should be denied full moral-political status as citizens in a liberal polity.

Now, parallel to the discussion of individual autonomy, a way to respond to the criticism of autonomy raised here is to hold that the content shepherds do in some way display socio-historical autonomy after all. Thus, only if content shepherds lack the defining features of socio-historical autonomy—such as (a) the capacity for historically informed and adequate self-reflection, or (b) the virtue of authenticity understood as non-alienation regarding one’s basic attitudes—might paternalistic intervention and an exclusion from the moral-political community be warranted.

As Christman indicates paternalism is warranted only if (a) is lacking, i.e. if content shepherds are not at all capable of adequate reflection regarding basic commitments and

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<sup>150</sup>As Christman indicates, certain heteronomous people, namely those who are “unable to reflect adequately at all and hence should not be counted in collective decisions”, could well be “open to paternalistic care rather than egalitarian respect in our social dealing” with them (Christman 2009, 162). For an opposing view, and one that draws similar conclusions to the ones I advocate here, see Swaine 2009.

<sup>151</sup>One might wonder whether reasonable political, contractual and moral interaction does not in some way presuppose autonomous agents. As I will indicate in the next essay, reasonable political interaction indeed presupposes ultra-minimally and minimally autonomous agents (see Section 2.2.2). Ultra-minimal and minimal autonomy are, however, different from the more elaborate views of individual or socio-historical autonomy discussed here.

attitudes. If it is only (b) that is lacking, i.e. if content shepherds only lack authenticity, then this “calls for reform of the conditions that result in (...) alienation and constraint” (Christman 2009, 162) rather than exclusion from the political community of citizens. Thus, in Christman’s view, the lack of authenticity can be remedied by changing the socio-historical conditions that brought about the alienation from basic attitudes. If it is only authenticity that is missing, then no paternalistic intervention is warranted. However, if the basic capacity of adequate reflection is missing, then paternalism is warranted.<sup>152</sup>

From the point of view of a conception of socio-historical autonomy the question is, then, if content shepherds are capable of adequate self-reflection. If they do not have the competence of adequate self-reflection, and therefore should be excluded from full moral-political standing in our political community, then the conception of socio-historical autonomy would be unable to take diversity seriously. A political framework founded on the conception of socio-historical autonomy would then fail to accommodate content shepherds, and fail to take diversity seriously. It would thus run into the same problems as a political framework founded on the value of individual autonomy; it would fail to take diversity as seriously as liberally possible.

So do content shepherds have the competence to adequate self-reflection? Arguably not. Reflecting on basic attitudes is nothing that a content shepherd values. There is thus no point in engaging in such a practice, nor is it appealing to him to ever do so. Thus, since he is never actively engaging in the practice, and never training or practising self-reflection of any kind, he is, arguably, unable to do so. And even if he were able to do so, he would abstain from it. There is no value in it for the content shepherds, nothing to be gained or valued through it. Self-reflection, be it socio-historically sensitive or not, rather seems to be a threat to their values of pleasure drawn from herding and following traditional customs.

Also briefly consider the issue of (b) authenticity, even though the point is irrelevant regarding paternalism towards content shepherds based on socio-historical autonomy.

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<sup>152</sup>See Christman 2009, 162: “[T]here will be two kinds of people being ruled out (...) as heteronomous: one is unable to reflect adequately at all (...) and hence should not be counted in collective decisions, at least as a self-representing participant in the usual way; the other is a person who feels trapped or alienated from some central commitment or other but is generally able to reflect. The former might well be open to paternalistic care rather than egalitarian respect in our social dealings with her. The latter kind of person, though, should certainly be included (non-paternalistically) in the membership of collective decision-making bodies, but her situation calls for reform of the conditions that result in her alienation and constraint.”

Authenticity or non-alienation seems to depend on the capacity to adequately reflect on basic commitments or attitudes. If one is unable or unwilling to reflect on one's basic attitudes, then the issue of authenticity or non-alienation does not arise. This is the case with content shepherds. The issue of authenticity, if depending on self-reflection, simply is not an issue for content shepherds. If they do not value reflection, then neither will they value anything that depends on self-reflection, such as authenticity.

Against Christman's view one might also argue that authenticity does not depend on self-reflection in the way that he claims. It is indeed questionable why a lack of reflection would necessarily lead to an inauthentic and alienated life. Cherishing a way of life marked by the pleasures of herding and by ancient customs and traditions does not seem to depend on the capacity to self-reflection. Rather, leading a pleasurable or traditional life can be valued as such. It can be wholly satisfying, and in this sense non-alienating, without displaying any element of individual or socio-historical autonomy.

As indicated, content shepherds do not seem to have, or value, the capacity for adequate self-reflection. Neither are they leading an authentic life as defined by Christman. Because of the fact that content shepherds do not have, nor value, the capacity for adequate self-reflection, Christman would arguably approve of paternalistic intervention regarding the way of life of content shepherds in order to promote socio-historical autonomy.

This, however, seems wrong. As in the case of individual autonomy, the example of the shepherds shows that a political framework based on socio-historical autonomy fails to accommodate the shepherds and to respect them as full members of the moral-political community. Such a political framework thus fails to take diversity seriously.

The example of the shepherds indicates that the liberal locus of respect lies (also) somewhere else than in the valuing of individual or socio-historical autonomy. Since a polity founded on the values of individual or socio-historical autonomy has inherent problems to adequately deal with content shepherds, and thus to take diversity seriously, I will now turn to alternative views on the locus of respect. Instead of ecumenical endeavours to elaborate on the value of autonomy, I suggest a more agnostic view on the good in life as a starting point for further investigations.

### 2.3.1 Agnosticism, Reasonableness, and Respect for Persons: An Outlook

The challenge at hand is to spell out the locus of respect in a liberal polity that is able to account for content shepherds. Arguably, this requires to abandon individual autonomy as a foundational liberal value, even in its most ecumenical form. The main reason is that content shepherds deserve to be respected, so it seems, even if they are not in the least autonomous, either individually or socio-historically. Therefore, respect in a liberal polity does not depend, and should not be granted, on the ground of the controversial value of individual autonomy alone.

Instead of an ecumenical conception of individual autonomy, I thus propose an agnostic stance regarding the good life, as well as underlying views on the self and personhood. The account of respect for a liberal polity aspired here shall thus be as agnostic, and as thin and uncontroversial, as possible. The aim is, in other words, to focus on a merely political conception of persons, citizenship and respect for them. Such a conception does not aspire to give any compelling account of what, say, is good in life or what metaphysical features persons actually display. It merely aspires to account for agency and decisions regarding a limited scope of basic political issues, not for life at large. The hope is, then, that all kinds of (reasonable) views on the self and the good in life can agree on such a rudimentary account of what it means to be a citizen and member of a liberal democratic polity.

Such an agnostic view on personhood and citizenship does not mean, however, that anything goes. Even on an agnostic, and thus more accommodating and diversity-sensitive, approach to personhood it will be necessary to restrict the scope of liberally acceptable diversity. The reason is that there are illiberal and intolerable points of view that should not have full moral-political standing in political decisions within a liberal democratic polity. Sexist, racist, theocratic or fundamentalist views are obvious examples of such unreasonable views.<sup>153</sup>

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<sup>153</sup>This is not to say that a liberal polity, or political theory more generally, should not at all be concerned with such views or with unreasonable people. This is simply to state that they will have a political status different from reasonable or “qualified” (Estlund 2008, 41, 64) points of view (however construed). How to deal with unreasonable disagreement is not the focus of this thesis. Still, it seems that unreasonable people can claim benefits of citizenship, even if they should be excluded from the constituency of public justifications (see Quong 2004a, 314, Section I). Restrictions on rights of unreasonable citizens seem justifiable if they threaten the normative stability of the polity (like wars do), or if they use their citizenship rights to pursue “unreasonable objectives” (Quong 2004a, 314-315, Sections III-V). On the issue of unreasonable disagreement and unreasonable peoples see also Horton 2010, 61-62; Quong 2011b, Chapter 10; Quong 2004b; Friedman 2000.

On the agnostic and political view aspired to here such an exclusion of views cannot be justified with reference to the value of individual autonomy alone, for reasons discussed above. Thus, a different view on the locus of respect for person, or what it means to be a “self-authenticating source of valid claims”<sup>154</sup>, is required. According to the view outlined here, it is a citizen’s *reasonableness* that establishes full moral-political standing in a liberal polity. It is thus a person’s reasonableness and not her individual autonomy that is a crucial source of political respect and a citizen’s self-authenticating valid claims in a liberal polity.

In the following essays, I will dwell on such and similar basic building blocks of a political liberal polity. The hope is that such an approach is more capable than autonomy liberal views to take diversity seriously, and thus to do justice to content shepherds’ lives as well as all kinds of other reasonable ways of life.

## 2.4 Conclusion

I hold that the controversial liberal value of autonomy, spelled out more precisely as individual autonomy by Will Kymlicka, and as socio-historical autonomy by John Christman, is a problematic and unconvincing ground for liberal accounts of political authority and minority rights. The main reason is that the liberal value of individual autonomy, together with the views on political authority and minority it underpins, fail to take diversity seriously. They fail to take diversity seriously because they do not live up to other crucial liberal desiderata and principles, such as the presumption of liberty, the ideal of consent, respect for persons and the principle of public justification.

I argue for this claim mainly by discussing the hard case of content shepherds. This case indicates weaknesses in Will Kymlicka’s account of individual autonomy as a foundational liberal value. Kymlicka’s conception of individual autonomy involves that agents wholeheartedly embrace their beliefs, and that they are open to revise their choices and beliefs. Content shepherds, herding and living according to traditional customs, are clearly not individually autonomous in this sense. However, even though content shepherds are not individually autonomous, it is hard to see why they should not have full moral-political standing in a liberal polity. Their conservative ways of liv-

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<sup>154</sup>Rawls 2003, 23-24; see also Christman 2009, 135. To perceive of oneself and others in this way implies more precisely that citizens “regard themselves as being entitled to make claims on their institutions so as to advance their conception of the good (...)” (Rawls 2003, 23).

ing deserves equal political consideration and respect as do other reasonable ways of life, say libertarian, progressive, socialist, republican or individually autonomous ones. This, at least, seems mandated by other main moral-political desiderata of a liberal polity.

In order to argue for this view, and against the value of individual autonomy as a foundational liberal value, I challenge the presumed highest-orderedness of the value of individual autonomy. The case of the content shepherds is supposed to show that the value of individual autonomy does not have the foundational and crucial role in a liberal polity that partisans of individual (or socio-historical) autonomy ascribe to it.

The highest-orderedness of the value of autonomy is challenged by the presence or the possible presence of content shepherds. These shepherds do manifestly have a good they pursue, namely pleasure and adherence to traditional customs. They do not, however, value individual autonomy; indeed, they cannot value individual autonomy because it is in stark opposition to some other, more conservative values they hold. Valuing individual autonomy and embracing and revising one's beliefs can be a shattering, time-consuming and otherwise challenging enterprise. It is, then, by no means clear why individual autonomy should overrule the values that the shepherds hold, or why they should be compelled by the challenges that individual autonomy brings with it. Indeed, other liberal considerations, such as the presumption of liberty or the ideals of consent and public reason, strongly indicate that the value of individual autonomy should not have the overruling force that autonomy liberals ascribe to it. Content shepherds should be free, in a liberal democratic polity, to pursue their traditional way of life marked by ancient customs. The highest-orderedness of the value of individual autonomy is thus put into question.

The strength and relevance of the case of the content shepherds is underlined by the further claim that most of us resemble content shepherds—at least to some degree. The case of the content shepherds is therefore more important and fundamental than it might seem at first glance. Many of us do not or might not value individual autonomy regarding many of our choices or beliefs. Indeed, regarding some subsets of our beliefs, namely unnoticed beliefs and alien attitudes, individual autonomy does not matter at all. It is, then, strange to assume that the value of individual autonomy is of highest-order importance to us if most of us do not value it that much after all, or if it is irrelevant regarding many of the beliefs and attitudes we have. This, then, delivers further ground for scepticism regarding the highest-orderedness of the value of individual autonomy.

All of this suggests that individual autonomy is a controversial liberal value that should

not play the fundamental role in a liberal polity ascribed to it by autonomy liberals. This is, at least, the case in a liberal polity that aspires to take diversity seriously, and thus to accommodate the shepherds.

The case of the content shepherds also challenges philosophical attempts that work out more refined conceptions of individual autonomy as the foundation of a liberal polity. John Christman proposes an ecumenical account of autonomy that side-steps some of the problems faced by individual autonomy as a foundational liberal value. Christman's project can thus be understood as an attempt to account for the case of the shepherds, and thus to take diversity more seriously. Christman proposes an ecumenically revised view on individual autonomy that aspires to be socio-historically sensitive.

I argue that a polity based on the value of socio-historical autonomy fails to take diversity seriously for similar reasons as a polity based on individual autonomy fails to do so. Such a polity is prone to exclude the shepherds from full moral-political standing and to allow for paternalistic intervention with their way of life. The reason here is that they do not have, or value, the adequate capacity of self-reflection that is crucial to the conception of socio-historical autonomy outlined by John Christman. Even on the ecumenical and socio-historically sensitive view of autonomy developed by Christman, then, diversity is not taken seriously enough.

All of this suggests that autonomy—individual or socio-historically sensitive—does not have the highest-ordered status in human affairs that is ascribed to it by autonomy liberals. Individual autonomy is therefore not, taken on its own, a convincing foundational building block of a liberal polity that aspires to accommodate content shepherds and to take diversity seriously. The case of the shepherds suggests, rather, that the locus of respect for citizens lies somewhere other than in the citizens' individual autonomy.

The arguments presented here thus motivate the search for alternative foundations of a liberal polity. I take these alternative foundations to be an agnostic as opposed to an ecumenical view on persons and citizens, as well as the capacity of reasonableness. This lead will be pursued in the essays that follow.

### 3 Which Political Liberal Approach to Multiculturalism?

The previous essay was devoted to a critique of liberal approaches to diversity that are founded on a substantial commitment to thick liberal values, such as the value of individual autonomy.<sup>155</sup> The aim of this Chapter is to discuss and further elaborate on the kind of agnostic diversity liberalism carved out as a more compelling liberal outlook on politics in the previous essay. It is the kind of liberalism that is more compelling when faced with a widely diverse citizenry and a plurality of ways of life or conceptions of the good. It also is a kind of liberalism that is promising in a dialectical move away from versions of liberalism based on individual autonomy, or other comprehensive doctrines. It is a compelling move because political liberal views seem more apt to take diversity seriously, and thus to live up to crucial liberal desiderata.

In this essay I will proceed as follows. I first present several basic normative assumptions that I take to be crucial for a political liberal enterprise as tempted here. I will then dwell on some of the crucial notions involved, and thus hope to draw a rough, but reasonably clear picture of a liberal stance that is apt to take diversity seriously—or at least more seriously than many rival comprehensive liberal approaches.<sup>156</sup>

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<sup>155</sup>I labeled stances committed to the value of individual autonomy as “autonomy liberalism”. A more encompassing label, covering all kinds of religious, philosophical or moral doctrines, is “comprehensive liberalism” (see e.g. Rawls 2003, 14; 19 and Gaus 2004). Autonomy liberalism, as conceived here, is thus a species of comprehensive liberalism. See below (Section 5.2.1) for a discussion of comprehensive liberal stances.

<sup>156</sup>A recent attempt to base minority rights on more political liberal foundations, building heavily on the ideals of neutrality and equal recognition, can be found in Patten 2014, especially Chapters 4 (“Liberal Neutrality”) and 5 (“Equal Recognition”). The investigation underway here focuses on political liberal premises that are explicitly Rawlsian, such as the liberal principle of legitimacy (involving the ideal of justificatory and state neutrality) and equal respect for persons as free and equal. Note, however, that the views presented here are not Rawls’s. The starting point of my discussion below for instance, i.e. the liberty principle (see Section 3.1.1), is not taken from John Rawls’s but from Gerald Gaus’s work. To start with the liberty principles gives, I think, a good sense of what is crucial in the political liberal enterprise. It is thus a good starting point to investigate the political liberal foundations of a legitimate political order, even though it might, together with the strong requirement for public justification it suggests, admittedly verge on political liberal forms of (left) libertarianism (thanks to Sune Laegaard for pointing this out; see Quong 2011a for further discussion). In what follows, I hope that the indicated references to Rawls’s work will give a clear enough picture of what elements of the political liberal view presented here are avowedly Rawls’s

In the second part of the essay I will consider Chandran Kukathas's political liberal view and his take on multiculturalism. His enterprise is also marked by the aim of taking diversity and liberty as seriously as possible. I will first consider some of his concerns regarding a political liberalism as I carve it out at the beginning of this essay. In a discussion of contrasts between Kukathas's approach and the broadly Rawlsian version of liberalism favored here, I hope to be able to show that Kukathas's view is prone to take diversity too seriously. Kukathas's theory does not account adequately for egalitarian respect that citizens of a political liberal polity owe to one another.

The discussion in this essay will thus become more introvert, or internal to political liberal theorizing. The aim is to elaborate on some crucial elements of a political liberal view, and to discuss different ways to spell out a political liberal approach to multiculturalism. The framework established in this essay will then, in the following essays, be further elaborated and put to work in the assessment of justifications of minority rights for national and indigenous minorities in a liberal constitutional democracy.

Before I start, a short clarification on some of the labels used in this chapter. Throughout the first essay, I contrasted "autonomy liberalism" with "diversity liberalism" (see the introduction of Chapter 2). In what follows, I will shift to the label of "political liberalism", as opposed to "comprehensive liberalism", to describe the kind of liberalism favored here. Political liberalism, I take it, is a species of diversity liberalism. Autonomy liberalism, on the other hand, is a species of comprehensive liberalism.

The reason for this shift in labelling is twofold. First, the views of one of the main diversity liberals I would like to discuss here, i.e. Chandran Kukathas's take on multiculturalism, are labelled as political liberal ones (see Kukathas 2003, 16-17). Second, the label "political liberalism" fits well with the views I will introduce and discuss in the first part of this essay. There, I attempt to outline a political liberal framework that is broadly Rawlsian in outlook. In what follows, I will thus stick to the label, *political liberalism*, and assume that it is a species of the kind of diversity liberalism discussed in the first essay.

### 3.1 Elements of a Political Liberalism

After my discussion of autonomy liberalism in the first essay, I start from the assumption that a political liberal take on political authority is a promising way to side-step particu-

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(or Rawlsian, given that there are different rivaling interpretations of Rawls's views).

lar problems faced by autonomy liberalism. It also seems to be a compelling way to take diversity seriously. What are, then, crucial elements of a political liberal outlook? In a nutshell, political liberalism opts “for a shallow theory of toleration with a broad appeal” (Waldron 2004a, 91). It can be contrasted with “deep”, or thick, theories of toleration. Such substantial views are based on a particular liberal-philosophical value, such as the value of individual autonomy discussed in the first essay. These substantial views can be labeled “comprehensive”, since they develop their political views on the basis of a pervasive value commitment that covers all, or most, domains of life and thought.<sup>157</sup> Will Kymlicka’s theory of minority rights and multicultural citizenship, based on the liberal commitment to individual autonomy, is comprehensive according to this rough division because of the highest-orderedness of the value of individual autonomy and its importance for leading a good life.

Note that Jeremy Waldron seems to assume that the shallower a theory of toleration, the more appeal it will have; and that the deeper or thicker with liberal commitment a theory is, the less appeal it will have. It seems, however, questionable whether this actually holds. We might well imagine a deep theory of toleration with very wide appeal. As Gerald Gaus points out, there are “reasonable differences about what is properly political, while many beliefs associated with comprehensive doctrines are widely shared” (Gaus 2003, 197). Whether or not Waldron’s view holds, I take his depiction of the political-comprehensive-divide to catch a major aspiration of political, but not necessarily of comprehensive, liberal theorizing. Namely the aspiration to gain widespread appeal, as far as liberally possible, for a political framework in a polity with a widely diverse citizenry. Political liberals crucially assume that regarding fundamental political issues, there is value in being less controversial rather than more. Such an aspiration arguably pulls us in the political liberal direction of searching for a “shallow” view on toleration and widely appealing reasons for our political arrangements.

There are two key elements in Waldron’s characterization of political liberalism that are useful to grasp basic premises of a political liberalism as conceived of here. First, (i) the element of shallow toleration, and second (ii) the element of broad appeal to the citizenry of the polity. Let us now discuss each of these two elements in turn.

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<sup>157</sup>For an overview on comprehensive liberalism, see Gaus 2004. For a critical discussion of the Rawlsian conception of comprehensive views and its contrast with political views, see Gaus 2003, 180-186.

### 3.1.1 The Liberty Principle

I take it that (i), the element of shallow toleration, at least in part, follows from a presumption of liberty, or liberty principle, as introduced in the first essay (see Section 2.2.3). Such a principle holds that liberty, understood in the negative sense of freedom of interference<sup>158</sup>, should be the fundamental liberal norm or default position. That is, the burden of proof always falls on those who want to interfere or coerce. Such a principle is based on a certain view on respect and citizenship. Thus, respect for citizens qua persons as free and equal demands that they are free to decide on how to live their lives.<sup>159</sup>

Such a presumption in favour of liberty is common in the liberal tradition<sup>160</sup>—indeed, it seems to be one of its core defining, and name giving, features.<sup>161</sup> It is also important to note that this presumption of liberty can be overridden.<sup>162</sup> The presumption in favour of liberty can be overridden if element (ii) holds, i.e. if overriding the presumption of liberty in a certain case has (or could have) wide enough appeal. Such a case where the presumption of liberty can be overridden prevails if all those concerned by such

<sup>158</sup>On the negative-positive liberty distinction, see the classical account in Berlin 1969.

<sup>159</sup>Gerald Gaus and Kevin Vallier, citing Joel Feinberg (Feinberg 1984, 9), formulate a liberty principle as follows: “Liberty should be the norm, [respect for persons as free and equal requires that] coercion always needs some special justification. Unjustified coercion is wrong” (Gaus 2009b, 53). Gerald Gaus also introduces the “fundamental liberal principle” in Gaus 2005, 274-275 where it is formulated as follows: “1. A person is under not standing obligation to justify his actions; 2. Interference with, or restriction of, an other’s action requires justification; unjustified interference or restriction is unjust, and so morally wrong.”

<sup>160</sup>See the discussion in Gaus 2009b, 53 and the references there to the works of John Stuart Mill, Joel Feinberg, John Rawls and Stanley Benn. Martha Nussbaum states her version of the liberty principle at Nussbaum 2008, 24.

<sup>161</sup>It is not, however, uncontroversial amongst liberals. John Christman, for instance, holds that liberty cannot play any fundamental role in liberal thought because of the following reasons. It is (a) an essentially contested concept with varying interpretations and conceptions, as for instance the distinction between negative and positive liberty suggests. Also, (b) it is questionable whether liberty is indeed basic, or whether it is derived from more fundamental ideas of right or justice, and whether it can stand independent of these ideas. In passing, note the following reply: I do not think that these criticism are fatal, since, whether fundamental or not, liberty will take a central role in any liberal theory. One way of expressing this is to spell it out as a principle, i.e. a fundamental moral-political norm. This is not to deny that liberty is crucially linked to other important liberal ideas such as justice. Also, the fact that liberty is a contested concept is shared with many other basic liberal ideas, such as justice and equality. At most, I think, this suggests caution in the development of conceptions of these ideas, not their abandonment as crucial ingredients of the political liberal enterprise.

<sup>162</sup>Political philosophical stances that tend to virtually deny, or to question, that the presumption in favor of liberty can be overridden arguably fall in the camp of libertarian or anarchistic views. See e.g. Mack 2004; Nozick 1995; Wolff 1998 for discussion.

an infringement on their liberty consent or agree (or could consent or agree) to this infringement, maybe because it is to everyone's benefit, or because it is just.

In order to see when the presumption of liberty can be overridden, we will need a standard to judge when such overriding has wide enough appeal. Such a standard assesses when consent or agreement on overriding the presumption of liberty is (or could be) reached. Another way to put it is that we are in need of a standard of public justification to assess the propriety of infringements on our default liberty.

Waldron takes the element of wide appeal, here spelled out in terms of consent and public justification, to be a crucial fundamental element of liberalism—or at least the kind of liberalism we are concerned with here.<sup>163</sup> Waldron thus holds that liberals

“are committed to a conception of freedom and of respect for the capacities and the agency of individual men and women, and (...) these commitments generate a requirement that all aspects of the social should either be made acceptable or be capable of being made acceptable to every last individual”.  
(Waldron 1987, 128)

Waldron adds that “this view or something like it underpins many of the most characteristic and distinctive liberal positions” (*ibid.*). In what follows, I would thus like to dwell on two crucial issues for the political liberal project starting from this presumption. First, the standard of public justification that seems to be implied by the requirement that “all aspects of the social should either be made acceptable or be capable of being made acceptable” (*ibid.*) to all those concerned.<sup>164</sup> Second the underlying conception

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<sup>163</sup>It has been questioned whether the focus on consent and agreement, as well as the necessarily hypothetical character of such an enterprise, is indeed fruitful for the liberal project. For discussions see e.g. Rossi 2010; Mouffe 2000 (also in Mouffe 2005); van den Brink 2005. For an overview on such and similar criticism that can be roughly bundled under the header “realist views on politics”, attacking more idealized or moral modes of political theorizing, see e.g. Rossi 2014; Sleat 2013; Galston 2010; Williams 2005b as well as the special issue of the *European Journal of Political Theory*, 9 (4) 2010, on “Realism and Political Theory”. For a list of authors holding such realist views, see Estlund 2014, 114, fn. 2. For a criticism of Rawlsian political liberalism inspired by realist insights, see e.g. Freyenhagen 2011. I will discuss some of these methodological issues regarding a political liberal take on diversity and multiculturalism in Chapter 4.

<sup>164</sup>Respect for the public justification requirement is the main element that sets political authority apart from other ways or organizing social life, as in syndicates or the mafia (see Tilly 1985 for a critical discussion and a historical analysis of actual state making in Europe). This stance also crucially underpins the view on legitimate political authority discussed in the first essay (see Section 2.2.6). To base one's conception of legitimate political authority on consent and agreement is common in the contractarian strand of the liberal tradition. For an overview on works of recent representatives

of “respect for the capacities and the agency of individual men and women” (ibid.), which is arguably at the core of the political morality to be investigated and outlined here. Since we are concerned with the political context, the respect clause shall here be understood in political terms as “respect for fellow citizens”—still including, of course, men and women as well as their agency, but conceived only narrowly in their capacity as members of a political community or polity. I will now address these two issues of public justification and respect for fellow citizens in turn.

### 3.1.2 Public Justification: What Has to Be Justified to Whom, and How?

Suppose that the content shepherds, introduced in the first essay (see Section 2.2.1), are to be members of our polity. Given the basic liberal commitments to liberty, public justification and respect for fellow citizens just introduced, this requires that content shepherds are to consent to such membership, and thus to accept (at the very least) or to support more fully the basic political-legal framework of our polity at hand. As already mentioned, such consent is at the core of the liberal view of legitimate authority as understood here. Consent does crucial normative work that is important in a moral-political attempt to reconcile individual liberty, respect for persons and legitimate political authority. However, assuming that such consent, or agreement, has to be actual sets too high a standard for a consent-based view on legitimate political authority. We should thus, as is commonly done in the liberal tradition<sup>165</sup>, restrict ourselves to hypothetical consent, that is an agreement that would, or could—under certain circumstances—obtain.<sup>166</sup>

How, then, to reach such (hypothetical) consent with the content shepherds? A straightforward way is to *justify* the arrangement to the content shepherds, so that

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of this tradition such as John Rawls (Rawls 1971, Rawls 2005), Thomas Scanlon (Scanlon 2000), Thomas Nagel (Nagel 1987) or Bruce Ackerman (Ackerman 1989), see Macedo 1990, 299, fn. 3. For a recent elaboration of a conception of consent and its basic role for legitimate political authority, see e.g. Estlund 2008, Chapter VII.

<sup>165</sup>Enzo Rossi holds that “hypothetical agreement” is “at the core of the consensus view [of liberal legitimacy, i.e. the view that liberal political power is well grounded and properly exercised only if it is in some appropriate sense acceptable to those subject to it]” (Rossi 2010, 21). Gaus and Vallier also stress that the justificatory liberalism that they adopt “is not an actual consent view of justification” (Gaus 2009b, 74, fn. 29).

<sup>166</sup>Such a requirement is also necessary to be able to pursue the issue conceptually, from the armchair. Otherwise questions regarding consent will mainly become an empirical matter. Our view on consent with a hypothetical twist will depend heavily on the conditions we impose on hypothetical consent to obtain.

they can, or could, embrace it from their own point of view.<sup>167</sup> Since we are faced with a polity marked by diverse outlooks and ways of life, the justification for political authority and the political arrangement of our polity will have to appeal to all these outlooks and ways of life. The justification at hand has thus to be *public*. Public justification obtains, arguably, if all citizens, i.e. the members of the political community which are to embrace the political arrangement, can or could accept the authority and political-legal framework of the polity in which they live.

So far the general outline of the political liberal view on legitimacy that will be adopted throughout the following essays. Let us now fill in some of the blanks in this rather rough sketch of what political legitimacy requires.

#### On Consent

A few remarks on consent seem in order. First of all, and as already mentioned, consent-based views on legitimacy and political authority have a long tradition in liberal contract theories. It plays an important role in the works of classics of that tradition such as those written by Thomas Hobbes, John Locke, Jean-Jacques Rousseau, or Immanuel Kant.<sup>168</sup> Immanuel Kant maintains that

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<sup>167</sup>This solution suggests that there is a kind of “endorsement constraint” involved when it comes to the justification of legitimate political authority. Such a constraint is, however, different from the endorsement constraint in a conception of individual autonomy as discussed in the first essay (see Section 2.1.3). An endorsement of justifications of political authority is different from choosing and endorsing something that one cherishes.

<sup>168</sup>Note that these authors all develop different, and sometimes widely diverging, views on social contracts and political authority. On Hobbes’s views, see Hobbes 1985, Part I, Chapter 14, especially 64-65; Hobbes’ “second law of nature” holds “[t]hat a man be willing, when others are so too (...), to lay down (...) [the] right to all things; and to be contented with so much liberty against other men, as he would allow other men against himself” (ibid.). On Locke’s views, see Locke 2003, Book II, Chapter VIII, Section 95; Locke states that “[t]he only way whereby any one devests himself of his Natural Liberty, and *puts on the bonds of Civil Society* is by agreeing with other Men to joyn and unite into a Community, for their comfortable, safe, and peaceable living one amongst another (...)” (ibid., emphasis in the original). On Rousseau’s views, see Rousseau 2004, Book I, Chapter 6, especially p. 182; Rousseau makes out the following moral problem as the core issue in the contracting situation: “how to find a form of association which will defend the person and goods of each member with the collective force of all and under which each individual, while uniting himself with the others, obeys no one but himself and remains as free as before” (ibid., translated and cited in Jennings 1994, 117). Rousseau thus attempts to square the moral-political circle of retaining full individual liberty within social cooperation and political authority. Kant’s problem and view is, in this regard, related to Rousseau’s view. See Kant 1995b, 133, 139 and the quote below. For discussion of these classic accounts, see e.g. Forsyth 1994, Waldron 1994, Jennings 1994, Williams 1994.

“only the unanimous and combined will of everyone whereby each decides the same for all and all decide the same for each—in other words, the general united will of the people—can legislate” (Kant 1995b, 139).

To put it in the term used here, only the consenting will of all is able to establish legitimate political authority.

Some questions regarding consent that immediately arise are: (a) Why does (hypothetical) consent have the normative force to convey authority, and thus allow for coercion? (b) What is consent in the first place, and how to obtain it? (c) Will any kind of consent do, or do we need a certain kind of consent to establish authority? (d) Has consent ultimate normative weight, or are there other moral requirements that not even consent can cancel out? Let us have a brief look at these concerns.

To answer the first question (a), I introduced the liberal principle of liberty, and thus a rationale to give priority to citizens’ freedom over any kind of coercion or interference. Consent is supposed to cancel this priority, and thus to allow for coercion or interference as part of a legitimate political order. Why is this so? The main reason is that demands of legitimate political authority “do not confront us simply as external requirements but are confirmed by our own reasons to act” (Gaus 2005, 292).<sup>169</sup> This is so because, since it is legitimate, citizens consent to the political authority in question so that its requirements “are freely willed by all” (ibid.). This idea is conveyed in Kant’s statement that it is “an *original contract* [expressing consent] by means of which a civil and thus a completely lawful constitution and commonwealth alone can be established” (Kant 1995a, 79, emphasis in the original; see also Gaus 2005, 292). Consent thus seems apt to explain the necessarily “Janus-headed nature” (Gaus 2005, 292) of a political liberal morality.<sup>170</sup> Such a morality restricts, through (legitimate) political authority, as well as expresses, through a requirement of consent, our freedom.<sup>171</sup>

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<sup>169</sup>One might think that formulations such as this imply reasons that are subjectively and thus actually, and not merely hypothetically, endorsed (thanks to Sune Laegaard for pointing this out). However, an endorsement constraint on justifying reasons is not committed to actual consent. We can—and should, in order to get a consent theory off the ground—conceptualize the mentioned “own reasons to act” in a hypothetical way. These are reasons that a person *could* accept, given all her outlooks, beliefs, world views etc. she holds.

<sup>170</sup>Note that Gaus uses the image in a discussion of morality more generally, not of a political liberal one in particular.

<sup>171</sup>To put it differently, Kant held—in the words of Gerald Gaus and Kevin Vallier—that “each is both subject and legislator: each is subject to the law, yet each legislates the law, and so all are free and equal under the law” (Gaus 2009b, 52; see Kant 1974, 64-65 and Kant 1995b, 133).

Consider question (b): What do we mean by consent in the first place? Speaking of consent crucially involves, in general terms, conscious agreement to a state of affairs. It thus basically means that a state of affairs is willed. That a state of affairs can be willed requires that the state of affairs is, at least in some basic way, understood. Consent thus crucially involves “the need for some comprehension and voluntariness” (Eyal 2012, introduction). Conscious agreement, furthermore, involves more specifically having good reasons to embrace the state of affairs in question. What are such good reasons? Good reasons for my agreeing to a state of affairs are reasons that are not alien to me, reasons that I hold as genuine reasons within my world view (be this a liberal view, conservative view, socialist view, Christian or Muslim view etc.).

This gives us a hint regarding question (c). Not every kind of consent will do. Only consent based on good reasons will count as suitable consent. This also involves, furthermore, that the qualified consent in question must be free, and thus come about without coercion—otherwise there is no consent for the right kind of reasons.<sup>172</sup> Another way to put it is to say that consent should, in some sense, come about autonomously.<sup>173</sup> A further point is that the consent involved arguably has to be informed. That is, the relevant consent to political authority should display the further epistemic quality of being based on the right kind of information and assessment. Citizens who agree to a political arrangement are in need of the right kind of information and assessment in order to give qualified consent; consent based on lies, a shortage of information or a lack of time to assess them will arguably not do.<sup>174</sup>

Does consent have ultimate normative weight (c)? Imagine a case where someone agrees to become a slave. Is consent enough to warrant that? Arguably not. There seem to be, underlying any contracting or consenting situation, some basic or “natural

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<sup>172</sup>Note that there are difficult epistemological problems involved in knowing what good reasons for consent will be in concrete cases, since we cannot access a world view or way of life directly, and have to rely on testimony about what might be good reasons. I will skip these difficult questions for our purposes of giving a broad sketch of what consent is and involves.

<sup>173</sup>At first glance, at least, autonomy as understood here seems to involve merely the absence of coercion and interference, and is thus congenial to the negative view on freedom as put forward in the liberty principle (see Section 3.1.1 above). The ideal of autonomy referred to here is thus different from, and less demanding than, the ideal of individual autonomy understood as the value of full-hearted embracement and openness regarding the revision of one’s beliefs (for discussion, see Section 2.1.3). To mention the ideal of autonomy here indicates, however, that a certain understanding of autonomy remains important in order to give consent its normative weight. On this point, see the related discussion of autonomy as a locus of respect below (Section 3.1.3).

<sup>174</sup>For an overview and further issues regarding consent in the political context, see e.g. Christiano 2013, Section 4; Peter 2010, Section 3.1.

duties” (Rawls 1971, Section 19) and rights that cannot be overruled, even by consent (see also Benn 1988, 242-244). They do “apply to us without regard to our voluntary acts” (Rawls 1971, 114) and “obtain between all as equal moral persons” (Rawls 1971, 115).<sup>175</sup> In other words, there seem to be moral considerations that are not constituted by consent or the resulting contract, but that the agreeing parties, suitably qualified, have good reasons to acknowledge as conditions of their contracting situation (Benn 1988, 242). These conditions constitute the moral core of a political liberal project pursued here, expressed in the principle of respect for persons as free and equal and of a reasonableness standard.<sup>176</sup>

With this outline of consent and agreement, let us now turn to the issue of public justification.

### On Public Justification and Public Reason

A crucial point that we can draw from the sketchy discussion of consent is that content shepherds must recognize the reasons presented in a justification of political authority, firstly, as reasons at all and, secondly, as good reasons from their point of view. As Gerald Gaus maintains, it is not enough that the reasons for interference are reasons for those who want to interfere. This does not yet show that the content shepherds also have reasons for such interference. What is thus needed is a justification of interference

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<sup>175</sup>Natural duties, according to Rawls, include for instance the “duty of helping another when he is in need of jeopardy”, i.e. the “duty of mutual aid”; the “duty not to harm or injure another”; and “the duty not to cause unnecessary suffering” (Rawls 1971, 114). Rawls also mentions that “a fundamental natural duty is the duty of justice”, i.e. the requirement “to support and to comply with just institutions that exist and apply to us” (Rawls 1971, 115). The basic rights mentioned are what we usually refer to as human rights. Stanley Benn holds that “arguments from consent are (...) generally unsatisfactory (...) to legitimize actual political and legal restrictions on natural or human rights” (Benn 1988, 243).

<sup>176</sup>I will dwell on these issues further below (see Section 3.1.3). The kind of liberalism here is thus not of a “Hobbesian variant” (Christman 2005c, 341), where political authority is based on a collective choice that is an aggregation of individual preferences or desires (ibid.). On such a view, “[t]he ground of political authority (...) is self-interested rationality manifested in strategic interaction with others” (ibid.; see also Gaus 2003, Chapter 3 for further discussion and references regarding such an approach). The kind of liberalism outlined here—and going back to thinkers such as Jean-Jacques Rousseau and Immanuel Kant—elaborates the relationship between citizens and political authority as a *moral* one, where legitimate authority is the collective manifestation of a morally autonomous will (ibid.). A Rawlsian approach to political liberalism, although involving rational persons making decisions, is decidedly Kantian in this sense. It tries to give an account of reasonable principles of justice, which have priority over the rational preferences and choices of individuals in their pursuit of the good (see e.g. Rawls 2003, 81, 82, fn. 2).

to the content shepherds (see Gaus 2005, 288; Gaus 2009b, 52).

Now, there are views that would hold that if R is a reason for the majority, then it necessarily also is a reason for the minority, i.e. the content shepherds. This is so, it could be claimed, because of the nature of reasons. On this view a reason appeals, necessarily, to human reason in general. A reason for me is, then, necessarily also a reason for you (and everybody else displaying human reason). A rationale for such a view is a conception of reasons as inherently social and shared, for instance inspired by Ludwig Wittgenstein's later work (cf. Wittgenstein 1953). On such a view, there would thus be no "justification *to*"; there would only be "justification *that*" (Gaus 2005, 288)<sup>177</sup>.

The case of the content shepherds, however, allows us to question such a view on reasons. Content shepherds, living according to ancient customs, have very different living conditions and follow different traditional practices from those of the majority. They also speak a different language, and in general seem to have a different outlook on life and on the world, its value and nature, from that of the majority (see Section 2.2.1). Even though these customs, the language, their way of life etc. surely are social, it is plausible to assume that people with different cultural backgrounds, i.e. people with different customs, languages, and ways of life, will not share many reasons with the content shepherds (Gaus 2005, 288-289). Just think of the majority in our fictional polity where content shepherds live, namely partisans of individual autonomy. Content shepherds and partisans of individual autonomy will hardly understand each other's ways of life, and not grasp the other party's reasons for leading their lives as they do. In order for a justification to be public in a polity with widely diverse outlooks, a justification has to take into account the diverse sets of views and reasons, in our case those of content shepherds and partisans of individual autonomy. In short, justifications addressed to the public should be addressed *to* those holding diverse views and reasons.

This short discussion of reasons involved in public justification indicates that public justification is a delicate issue. It involves, for instance, a view on reasons presented in justification. It also involves a standard of justification and of publicity that allows us to assess public justifications, and to qualify justifications as public in the first place. Furthermore, it involves a view on the public to whom justification is owed and presented. In order to discuss some of these basic issues involved in public justification, and to get

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<sup>177</sup>See also Gaus 2003, 104-113 for a discussion of "Wittgensteinian-inspired socialized reasoning" (ibid.). See Pettit 1993 for a contemporary elaboration of such a view.

a clearer picture of the political liberal enterprise pursued here, let us now turn to the question of how to conceive of public justification.<sup>178</sup>

### **Gaus's Public Justification Principle**

A generic principle of public justification holds that citizens owe one another good reasons for interference or coercion. As we have seen below, this seems to follow from the liberty principle introduced above.

This generic requirement of public justification can be spelled out in different ways. Consider Gerald Gaus's public justification principle:

A coercive law  $L$  is wrongful unless each and every member of the public  $P$  has conclusive reason(s)  $R$  to accept  $L$ . (Gaus 2010, 21)<sup>179</sup>

The main elements of this definition are: (i) the object of public justification, i.e. the coercive laws  $L$ ; (ii) the public  $P$  that engages in public justification; and (iii) the reasons  $R$  that have to be of a certain kind, namely conclusive to those who hold them in order to establish public justification. Let me briefly comment on these three aspects in turn.

**The Object of Public Justification: Laws and Policies, Government Action, Basic Social Structure, Constitutional Essentials** It is common to assume that a requirement for public justification is triggered by coercion, and thus by most laws and policies (since most laws and policies are coercive). Coercion indeed is a severe issue for liberals committed to a liberty principle, and the whole point of public justification seems to be to reconcile a liberty principle with legitimate political authority that is coercive.

Still, the view that it is coercive laws  $L$  that should be the sole focus of public justification is not obvious. Why not apply a broader focus and extend the justification requirement on any action that public institutions of our polity pursue? We might insist on such a broad focus on government action in general because public institutions in a constitutional democracy always act in the name of its citizens. Therefore, one might

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<sup>178</sup>In what follows, I will largely draw on Gerald Gaus's work and views. For an alternative overview on public reason issues and many problems that go with them, see e.g. Lassman 2011, 103-141; D'Agostino 1996; D'Agostino 1998.

<sup>179</sup>An almost identical formulation can be found in Gaus 2009b, 53: " $L$  is a justified coercive law only if each and every member of the public  $P$  has conclusive reason(s)  $R$  to accept  $L$  as a requirement".

hold, these public institutions should be accountable to the citizens regarding each action they undertake in their name.<sup>180</sup>

Alternatively, one might opt for the opposite direction and narrow down the focus for public justification. The focus of public justification might thus not be extended to laws and policies in general, but be restricted to, say, only very basic and important issues within the political framework, such as its basic social structure or constitutional essentials (see Rawls 2005, 227-230 and 257-259).<sup>181</sup> On such a view, we might require public justification only on issues that have a fundamental impact on the lives of citizens, and be more relaxed regarding public justification requirements on particular laws or policies.

I reckon that the latter view, focusing on the basic social structure and constitutional essentials, has much in its favour. First of all, as Rawls points out, the basic social structure and constitutional essentials are of “the greatest urgency for citizens to reach practical agreement” on (Rawls 2005, 227). Concrete policies and laws become an issue only when the basic social-political framework is set out. Second, the views that extend a public justification requirement more widely—encompassing also coercive laws, or even any government action there is—will face the problem of establishing a viable liberal polity in the face of a widely diversified citizenry. The number of policies, laws or government actions that are publicly justifiable will, arguably, be minimal given the diverse sets of reasons to which public justification is owed. The scope of political action, i.e. the domain of government action and administration that is publicly justifiable, will

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<sup>180</sup>See Weithman 2002, 112-117 for such a view. Paul Weithman builds his view on a “Agency Conception of Government” according to which “the government is the agent of the people” (Weithman 2002, 114).

<sup>181</sup>I take constitutional essentials to encompass issues such as (a) “fundamental principles that specify the general structure of government and the political process: the powers of the legislature, executive and judicative; the scope of majority rule” and (b) “equal basic rights and liberties of citizenship that legislative majorities are to respect: such as the right to vote and to participate in politics, liberty of conscience, freedom of thought and of association, as well as the protection of the rule of law” (Rawls 2005, 227). The basic social structure is understood as “the way in which major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation” (Rawls 2005, 258). I take it that the political constitution is part of the basic social structure (*ibid.*), and that the constitutional essentials in turn crucially shape the basic social structure. In the discussion to come, even though I will focus more on questions relating to constitutional essentials, I will regularly refer to them together with the basic social structure since they together constitute the political domain (as understood here). In the approach chosen here, it is constitutional essentials and the basic social structure that are the crucial objects of political theorizing.

thus shrink considerably.<sup>182</sup>

In contrast, the focus on the basic social structure and on constitutional essentials allows for more accommodation of diverse views when it comes to public justification. The reason for this is that only an agreement on rather abstract and general political issues is required, and not an agreement on concrete and particular laws and policies. The search for an agreement on rather abstract and general political values and principles allows for considerable room for diverse interpretations of these values and principles from different perspectives and points of view. The focus on constitutional essentials and the basic social structure is thus less prone to lead to a lock-down in the search for an agreement on political issues. An agreement on rather abstract and general constitutional essentials is more likely to obtain than an agreement on particular laws and policies. A focus on constitutional essentials is therefore better suited to establish a common polity amongst widely divergent views and to prepare the ground for effective policy and law making.<sup>183</sup>

Admittedly, the focus on rather abstract and general constitutional essentials of the basic social structure comes at a price. That is, the agreement reached is at best an agreement on a set of basic principles that are rather vague—and thus, at worst, merely a “fund of platitudes” (Eberle 2002, 215). The constitutional essentials will, thus, have to be spelled out more precisely, and are in need of further interpretation in order to yield concrete and action-guiding policies and laws. This can be seen as a shortcoming of a focus on constitutional essentials and the basic social structure.<sup>184</sup>

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<sup>182</sup>See Gaus 2010, 35 for a similar view on what happens when the public justification requirement for coercive laws is taken seriously and when the “coercion is pretty easy principle” (Gaus 2010, 35) is dropped. Thus, Gaus’s view seems to be that a public justification requirement applying to all coercive laws will lead to a situation where many coercive laws will not be publicly justifiable and thus not be implemented. The scope of the political, i.e. the domain regulated by public policies and laws, would thus shrink considerably. This leaves more liberty for citizens to go about their lives as they see fit. It is arguably views such as these that led commentators to label Gaus’s view as “libertarian”. See, however, Gaus 2011, xv for a critical comment on that labelling.

<sup>183</sup>Rawls gives a further related rationale to focus on constitutional essentials. His “aim is to consider first the strongest case where the political questions concern the most fundamental matters. If we should not honour the limits of public reason here, it would seem we need not honour them anywhere” (Rawls 2005, 215).

<sup>184</sup>To put it differently, general and abstract principles that are publicly justified are “really instances of nested inconclusiveness” (Gaus 1996, 179, 151-157). That is, even though proposals of constitutional essentials as general concepts might be publicly justified, e.g. the right to free speech, “no specific conception [of free speech legislation] can be justified” (ibid.). This is to say that our justifications are inconclusive—they do not yield specific interpretations of concepts or principles. See also Gray 1989a, 169, 186 for the same point.

However, an agreement on a rather vague political framework, given widely disparate views on life and the good, is still better than no agreement at all. An agreement on a rather vague political framework, furthermore, is just the first step in building a stable polity. Concrete laws and policies will have to be negotiated, or decided on according to accepted political procedures, in further steps. These further steps might—and given a wide diversity of outlooks, almost certainly will—be marked by disagreement and conflict. The political framework, i.e. the general political principles on which agreement has been reached, however, will serve as a stable ground to debate and (hopefully) resolve these disagreements and conflicts, and thus lead to concrete and determinate laws and policies. The abstract nature of the basic political agreement on constitutional essentials thus has the advantage of fostering consent and agreement amongst widely disparate views. On the other hand, there is the downside of leaving important details of interpretation for a later stage of debate.

An agreement on a rather vague political framework strikes the balance between the options (i) of no agreement at all and (ii) a rather detailed agreement on concrete policies and laws. The first option is undesirable because the aspired common political project fails to get off the ground. The second option seems overly ambitious in a polity marked by a wide diversity of outlooks and ways of life. An agreement on a rather abstract and general political framework is, then, what we can hope for in a polity marked by diverse outlooks and ways of life.

To disagree on the proper interpretation of constitutional essentials as laws and policies, as well as over the proper scope of these essentials (what they cover or encompass in the first place) is then, in a sense, a minor problem. To disagree on particular laws and policies is not as such a grave problem for a peaceful and stable democratic polity. On the contrary, disagreement and discord in law making and public debates is the stuff of everyday political business in a democracy.<sup>185</sup> It is, indeed, one of its most vivid characteristics. The major and more fundamental issue is that citizens share some basic common understanding and commitment regarding their political framework, as enshrined in constitutional essentials. Disagreement and discord on particular laws and policies occurs, then, in front of the background of that common understanding and commitment. It is this political framework that enables the stability of all ensuing social cooperation. It also makes disagreement on social and political issues safe for everyday

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<sup>185</sup>As Gaus puts it, day-to-day politics is, “first and foremost, about the ways in which we differ” (Gaus 2003, 198).

political business. The political framework, based crucially on the essentials of a constitution, therefore is the proper scope of the political. Constitutional essentials seem to be the main issue when it comes to questions of public justifications in a constitutional democracy.

Still a graver problem than the inconclusiveness of an agreement on constitutional essentials is, one may claim, that there might be cases where no agreement is to be reached at all, not even on constitutional essentials (see Gaus 2003, 193-194). This, however, should be accepted as a real option and possibility. In such cases, there is simply no common polity established. This might even be for the better; if it is not possible to reach an agreement even on constitutional essentials, a common social and political life seems indeed hardly imaginable. A common constitutional democracy under such conditions seems impossible and undesirable.

The crucial desideratum regarding the establishment of a common polity is, arguably, that citizens share a basic common understanding and commitment to the political framework in which they live. Now, whether this framework is in fact spelled out as constitutional essentials does not seem to be the decisive issue. In some cases, citizens might share a basic common understanding not just on constitutional essentials, but on many fine-grained interpretations of these essentials, i.e. on many laws and policies. In these cases, a restriction on constitutional essentials might be overly modest. In such a polity, marked by a high degree of common understanding, more can be expected about what is publicly justifiable than in a context of highly diverse and opposing views.

Thus, the desideratum of basic common understanding and commitment to the political framework of a polity does not warrant a restriction of legitimacy considerations to constitutional essentials. Some contexts, marked by high common understanding, might allow for a considerable extension of legitimacy considerations to laws and policies, and maybe even government action in general.<sup>186</sup> In what follows, I will thus refer to the the adequate political scope of legitimacy considerations vaguely as “weighty political matters”. Weighty political matters are, under conditions of widely divergent and opposing views, best understood as constitutional essentials. In other contexts, however, they might encompass laws and policies, or even government action in general. In the context of this thesis, “weighty political matters” cover mainly constitutional essentials

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<sup>186</sup>A political community that shares a common good and that has a high common understanding of that good, for instance sharing a common faith and a common understanding about the meaning and purpose of life, would be an example in case.

and matters regarding the basic social structure. A citizen's views on weighty political matters are spelled out in a citizen's conception of what is just.<sup>187</sup>

**The Public To Whom Public Justification Is Owed** A main lesson of the first essay was that in order to take diversity seriously we should abstain from grounding our views on legitimate political authority (and the ensuing views on minority rights) on substantial liberal values such as individual autonomy. Rather, it is public justification that should take centre stage in a political liberal polity. However, the questions of how to conceive of the public to whom public justification is owed remains open.

One might wonder: is justification owed to each and every person directly affected by government action and the political order? Or is it owed—as is common in current Western democracies—only to adult members of the political community with certain capacities, i.e. citizens?<sup>188</sup>

As indicated above, the political liberal project usually focuses on hypothetical consent, i.e. consent which can, could, or would obtain. One way to determine what can, could, or would be consented to is to set standards of rationality and reasonableness. The question thus becomes: what consent is rational, and what consent is reasonable?<sup>189</sup>

I assume that public justification is owed to the members of the political community concerned by a political order only, i.e. to citizens. It is citizens who bear duties and rights in a political community, and who are the subjects of political authority.

The reason that citizenship is restricted to adults seems to be that adults, under normal circumstances, are rational and reasonable. Of course, in current democracies there are rational and reasonable adults, such as many immigrants, that still do not enjoy citizenship status. The case of immigration and, even more, illegal immigration,

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<sup>187</sup>Arguably, the stance regarding weighty political matters outlined here is congenial to a Rawlsian take on political liberalism, even though the fact that I do not insist on constitutional essentials as the only proper scope of legitimacy considerations might be surprising. However, an insistence on constitutional matters is not a crucial mark of a political liberal stance. As Rawls puts it: “Keep in mind that political liberalism is a kind of view. It has many forms, depending on the substantive principles [of justice] used and how the guidelines of inquiry are set out.” (Rawls 2005, 226). Arguably, the proper scope of legitimacy considerations is one parameter that can change within the “kind of view” under scrutiny here.

<sup>188</sup>That is, public justification is not owed to children or adults lacking certain capacities (such as psychopaths or sociopaths).

<sup>189</sup>Robert Audi, for instance, investigates only the case of fully rational and well-informed agents (Audi 2000, 66; see Weithman 2002, 168-177 for discussion). For a criticism of the “modality of possibility” (Bohman 2009, 254) and the idea of “reasons all can accept” in deliberative democratic theory, see Bohman 2009 and discussion in the third essay below (Chapter 4).

challenges accounts of political legitimacy based on consent. Immigrants are subject to political authority of a polity in a very similar way that citizens are. However, they lack the rights and duties of citizens and are thus excluded from full standing in the political community. These are tricky issues that need to be addressed within legitimacy views based on consent. For now, however, I will leave them aside. Let me instead focus on some more basic and general requirements for democratic citizenship.

Consider, first, standards of rationality. Imposing a standard of rationality seems difficult in the face of a diverse citizenry. What is rational for one person is not necessarily rational for another.<sup>190</sup> Thus, what might seem perfectly rational to content shepherds in the pursuit of their aims and goods, such as herding and upholding their ancestors' way of life, might seem strange and flawed to members of the majority. The majority's pursuit of individual autonomy, on the other hand, might be incomprehensible to the content shepherds. What is rational thus seems to depend, crucially, on the aims and goods pursued in life, and what beliefs and views one holds. As Christopher Eberle puts it, what is rational is crucially determined by a person's "evidential set" (Eberle 2002, 62), i.e. by the views and values a person holds when thinking about the best or most rational course of action. Given that people have different evidential sets, diversity will persist in answers to the question of what is rational.<sup>191</sup>

Still, stable and reliable social cooperation seems to depend on at least somewhat rational citizens. A citizen's rationality seems to be crucial when it comes to the possibility to contract and to argue together. A complete lack of rationality undermines the possibility to engage together in meaningful social cooperation, or indeed to engage together in any project at all. Suppose that content shepherds change their views on what is good and valuable in life randomly every other day. Or imagine that there is a complete lack of coherence or consistency in the exposition of their views, or in discussions and arguments about a common social-political arrangement. Suppose that their views and

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<sup>190</sup>Such a view on rationality seems in accord with the aim of taking diversity seriously, and with a political liberal outlook more generally.

<sup>191</sup>See e.g. Eberle 2002, 61-63 and Gaus 1995 for further discussion on rationality. For a communitarian criticism of rationality as a contentious ground for political justification, see e.g. MacIntyre 1988. Alasdair MacIntyre holds that there are "[f]undamental disagreements about the character of rationality" and that they "are bound to be peculiarly difficult to resolve. (...) A certain degree of circularity is ineliminable" (MacIntyre 1988, 4). He also holds that "rational inquiry" is "inseparable from the intellectual and social tradition in which it is embodied" and that "the concept of rational justification (...) is essentially historical. To justify is to narrate how the argument has gone so far" (MacIntyre 1988, 8). See Barry 1995, 119-122 for a critical discussion of MacIntyre's views.

preferences contradict each other, or often do not relate each other at all. Under such conditions, it seems virtually impossible to establish a common political framework, and to engage in any meaningful interaction at all.<sup>192</sup>

What seems required of citizens, then, is that they are rational to some “requisite minimal degree to be fully cooperating members of society” (Rawls 2005, 19), which partly establishes their status as an equal. Let us thus settle on a somewhat minimal, political understanding of rationality that we ascribe to citizens of a democratic polity. Such a conception of rationality is supposed to take seriously the diversity in views on what rational courses of action are, while still enabling meaningful social interaction and cooperation in the political context.<sup>193</sup> Rationality in such a minimal, political sense does not establish substantial standards of what makes acts or citizens rational. Rather, it enables meaningful social cooperation and political interaction.

I thus assume that rational citizens (i) pursue goods, aims or projects. In Rawlsian terms, I assume that citizens have “the moral power to have a conception of the good” (Rawls 2005, 30; see also 19, 81). Rational citizens also (ii) pursue these goods, aims and projects in an aim achieving way that is (minimally) coherent and consistent. In other words, citizens have “powers of reason” (Rawls 2005, 19), such as the powers of judgment, thought and inference. This involves, for instance, that goods and aims are not abandoned or changed randomly and that a meaningful exchange or discussion about goods and how to achieve them is possible and desirable.<sup>194</sup>

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<sup>192</sup>Arguably, it is considerations such as these that help to justify the exclusion of (small) children from the public to which justification about the common political arrangement is owed. It is hard to see how public justifications could address (small) children, given the issues just mentioned. This does not mean, of course, that democratic procedures and attitudes cannot be practised or trained with (small) children as well, for instance through their participation in decisions of a family (“family councils”) or in day-care groups and schools. For a discussion of the involvement of children in the justificatory process in Rawlsian political liberalism, and the importance and possibility of developing “a conception of cooperative fairness early on” (Brennan 2000, 65) in human life through playing games, see e.g. Brennan 2000.

<sup>193</sup>It is, thus, supposed to be a political conception of rationality that all citizens with their diverse views on rationality can accept for the purpose of political cooperation.

<sup>194</sup>Note that Rawls more precisely holds that the moral power in question encompasses the “capacity to form, to revise, and rationally pursue a conception of one’s rational advantage or good” (Rawls 2005, 19). This formulation is reminiscent of the characterization of the value of individual autonomy in the first essay (see Section 2.1.3). The capacity “to form, to revise, and rationally pursue” a good is crucial for partisans of individual autonomy to pursue their good, but not for content shepherds to pursue theirs. As a minimal requirement for meaningful social cooperation, I thus prefer to spell out the minimal political conception of rationality merely as the capacity to pursue a good in an aim-achieving manner, i.e. based on judgment, thought and inference. This minimal standard of rationality allows to take diversity more seriously by qualifying content shepherds as rational, and

The requirement that citizens are rational in a minimal way—i.e. that they pursue goods, and do so in an aim-achieving way—seems to be a sensible basic assumption about democratic citizens. It is required for the pursuit of a common political project and mutual civil understanding given a widely diverse citizenry. If there are no goods pursued by citizens—and if this is not done in a somehow rational, i.e. aim-achieving way—then it is hard to see why people would share with others in a common political project that builds on social cooperation. The pursuit of goods and ends is, after all, a main rationale for social cooperation and a common polity. Engaging in a political project makes sense only if citizens are minimally rational.

A minimal standard of rationality thus seems necessary to account for citizens' engagement in social cooperation. Citizens need to be minimally rational in order to understand and support a common political project. Another way to put it is that public justification and consent seem lost on citizens that do not display the minimal ability to understand and relate to their polity. I therefore assume that democratic citizens are rational in the minimal way just sketched.

Let us now turn to the second common requirement of citizens, the one of reasonableness. Reasonableness can be understood and spelled out in very different ways. Charles Larmore, for instance, takes it to be the general human capacity to understand and exchange reasons. Larmore thus holds that a reasonableness requirement basically refers to the “free and open exercise of basic capacities of reason” (Larmore 1999, 602; see also 600).

Now, such a general account of reasonableness seems indistinguishable from rationality as developed above. Consider, thus, a more elaborate or substantive account of reasonableness, consisting of normative constraints that are recognizably moral. Reasonable citizens (i) respect each other as free and equal persons who (ii) engage in public justification for political arrangements, and who (iii) abide by the terms of cooperation

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thus as fully equal members of the political community. Content shepherds, after all, would not live up to the Rawlsian standard of rationality just mentioned since they do not use, nor do they appreciate or value, the capacity of forming or revising goods. Partisans of individual autonomy, however, can be conceived of as pursuing the good of being able to endorse and revise the goods, aims and projects they endorse. Both content shepherds and partisans of individual autonomy therefore seem adequately accommodated. For a discussion of the ability to revise one's conception of the good as a crucial element of rationality, i.e. a defense of the “value of rational reconsideration” (Wolf 2000, 107), see Wolf 2000, Section 3. For a discussion of arguments against revisability as an element of rationality, see Wolf 2000, Section 5 and 6.

agreed to, given that others do the same.<sup>195</sup>

Arguably, the reasonableness standard does much of the (recognizably liberal) normative work in a political liberal project.<sup>196</sup> To restrict P to reasonable citizens means to restrict the kind of diversity we are investigating. It is not diversity *per se* that we then deal with, but only diversity amongst reasonable citizens. In other words, the interest lies on “reasonable pluralism”, not any kind of diversity or pluralism. The question thus becomes how to build a polity amongst people who *reasonably* disagree.<sup>197</sup>

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<sup>195</sup>John Rawls prominently adopts such a view on reasonableness. Note that Rawls himself states that “[t]he terms ‘reasonable’ and ‘rational’ will not be explicitly defined” in his work. Instead, the meaning of the terms shall be settled “by how they are used and attending to the contrast between them” (Rawls 2003, 82). Regarding the term reasonable he adds that it “is viewed as a basic intuitive moral idea” (*ibid.*). If reasonableness is indeed a basic moral idea within political liberalism, as Rawls suggests, then we arguably need a more elaborate conception of it in order to see what the core moral-political commitment of political liberalism consists of. I will turn to the issue of how to conceive of reasonableness more thoroughly in the next essay (see Section 4.4.3). On the distinction between the reasonable and rational in Rawlsian political liberalism, crucially involving the claims that “neither the reasonable nor the rational can stand without the other” (Rawls 2005, 52) and that there is no “deriving one from the other” (Rawls 2005, 51), see Rawls 2005, 50-54. For critical discussion and a reevaluation of the importance of rationality, see Gaus 1995.

<sup>196</sup>Enzo Rossi holds that unanimous consent to, or a consensus on, liberal political principles “requires very demanding procedural restrictions” (Rossi 2010, 38). A standard of reasonableness is a crucial element of such restrictions, since it makes out the range of points of view that are involved in the political consensus.

<sup>197</sup>On reasonable pluralism in Rawlsian political liberalism, see Rawls 2005, 36-37, 63-64; Rawls 2003, 3-4, 33-34, 36. For a discussion, see e.g. Waldron 2004a, 94-95; D’Agostino 2004, 240-241. Note that the restriction of the focus on merely reasonable pluralism in Rawlsian political liberalism is a main issue of contention. Thus, John Gray holds that “a central disability” of liberalism “is its blindness to the historical singularity of its distinctive forms of self-identity and self-understanding” (Gray 1989b, 240). On such a view, the focus on reasonable pluralism would be just another way of formulating the liberal self-understanding. This is arguably part of what Gray called the “self-deception of liberal philosophy, which is bound to deny the particularistic character of [or brute pluralism in] all genuine moral and political reasoning” (Gray 1989b, 262).

William Galston holds that “there is more, historically and even morally, to be said for the brute fact of difference” (Galston 1995, 519), i.e. a “factual” (Gaus 2009b, 57) or “strong” (D’Agostino 2004, 241) pluralism instead of reasonable pluralism. Galston argues that even if we accept a distinction between factual and reasonable pluralism, a criterion of reasonableness tends to “pack far too much into the idea” of reasonableness (Galston 1995, 519, fn. 14). Due to this, Galston claims that Rawlsian political liberalism “doesn’t take religious diversity seriously enough” (Galston 1995, 518). Galston’s view seems to be that only a focus on simple pluralism, as opposed to reasonable pluralism, is apt to take diversity seriously. My contention is that political liberalism focusing on reasonable pluralism is apt to take diversity as serious as liberally possible. This is so because it takes diversity seriously while safeguarding the moral-political core of political liberalism, as expressed in a criterion of reasonableness. The political liberal approach arguably yields the required “principled path between intrusion [or, in our vocabulary, political authority] and laissez-faire [or liberty]” (Galston 1995, 529) that Galston also attempts to strike.

For further problems and issues when applying a standard of reasonableness, see also Eberle 2002,

I propose, for now, to settle on the rather demanding view on reasonableness, one that grasps the moral core of the political liberal enterprise as understood here. Reasonableness, I take it, involves (i) respecting fellow citizens as free and equal, thus (ii) providing public justification for basic political arrangements that one favours as a citizen, as well as (iii) abiding to fair terms of cooperation that one agreed to, given that others do the same. Now, it is questionable how this rather demanding view on reasonableness squares with the aim of taking diversity seriously (or, more precisely, as seriously as liberally possible). I will return to this issue in the next essay to dwell on a standard of reasonableness (see Section 4.4.3).

**On Justifying Reasons** As we have seen above, in order for public justification to succeed, one needs justifying reasons that are good reasons from one's own point of view. Gerald Gaus adds that the justifying reason(s) have to be conclusive.<sup>198</sup> Depending on further criteria that one is willing to introduce, there will be many different conceptions of what justifying reasons are, and thus how public justification might be achieved. Public justification is thus a delicate issue—so delicate, indeed, that some think it is an unattainable ideal.<sup>199</sup>

Let me thus briefly comment on what justifying reasons might be. Given our discussion so far, a straightforward answer is that justifying reasons are public or shared reasons. That is, justifying reasons are those that everyone can or could (under certain qualified conditions) accept. Public reasons are those that are, for instance, transparent and accessible to human inspection.<sup>200</sup> They are, furthermore, reasons that are prone to lead to consent, whatever other views citizens might hold. Public reasons are, by

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149-150, 212-216; Gaus 1996, 131-136, 223, 293; Estlund 2008, 44, 57. David Estlund, aware of the tricky issues involved when introducing a standard of reasonableness, simply refers to “qualified standpoints” and thus sidesteps the issue of how to conceive of these qualified standpoints more precisely. Adopting Estlund's terms, we would thus be dealing with a “qualified pluralism”. Since, sooner or later, we arguably cannot avoid spelling out what this qualification is or involves, even more so if it contains the moral-political core of the political theory we are working with, I prefer to tackle the issue head on and retain the label “reasonable pluralism”.

<sup>198</sup>Gaus states that every member of the public  $P$  needs to have “conclusive reason(s)” to accept  $L$  (Gaus 2010, 21).

<sup>199</sup>D'Agostino 1996, 3 holds that “[T]he liberal approach to the problem of political legitimacy [through public justification] is (...) doomed inevitably to failure” (see also Vallier 2014, Section 5.11 and Gaus 1996, 175 for a comment on D'Agostino's stance towards public justification).

<sup>200</sup>Eberle holds that public reasons usually display at least some of the following features: “intelligibility, accessibility, in principle public accessibility, replicability, criticizability, dialogicality, independent confirmability, and provability” (Eberle 2002, Section 8.2-8.10).

definition, good reasons from the point of view of all different (reasonable) outlooks on what are valuable aims and goods in life. I thus take it that the most crucial features of public reasons are their shareability, accessibility and transparency. It is, foremost, those features that make reasons public.<sup>201</sup>

Of course, even if we accept this characterization of justifying reasons, it is questionable whether (and why) they would trump other, personal and thus unshared reasons, in case those reasons conflict. The acceptance of a priority of public over personal reasons might be introduced as part of a reasonableness standard, but this simply pushes the question one level higher. We might then ask: Why is it reasonable to endorse the view that public reasons trump personal reasons? Arguably, the answer can be found in a discussion of what respect among citizens, as free and equal, requires. In the fourth essay I will dwell on the proper role of private reasons, such as religious reason, in political argument (see Chapter 5). The role of religious views in public justification is a telling test case for any view on public reason, and thus an important and widely discussed issue. To assess the case of religious views in public justification will help to get a clearer view on what public reasons are and on what is required of citizens when engaging in public justification. I thus leave the issue aside for now.

#### **The Liberal Principle of Legitimacy**

There are difficult issues involved in all the elements of *L* (scope and nature of public justification and the political), *P* (scope and nature of the public) and *R* (nature of public reasons) within the public justification principle just discussed. However, I hope to have clarified the broad outlines of the basic assumptions and issues involved in the political

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<sup>201</sup>The idea of shared or public reasons has been the object of severe criticism. Paul Weithman, for instance, holds that the crucial notion of accessibility in the characterization of public reasons is often ill-specified or highly controversial, and that an accessibility requirement on reasons cannot be spelled out in any plausible way (Weithman 2002, 9). James Bohman and Henry Richardson (in Bohman 2009) too are pessimistic about the common reference to “reasons all can accept” (as opposed to reasons all *do* actually accept) in debates on public justification, legitimacy, civility, or democratic authority. Their main concern about the idea of “reasons all can accept” is that it relies on substantial moral grounds. In order to see what people can (and not actually do) accept, we need a standard of assessment to see what that might be—for instance a standard of reasonableness. In that case, Bohman and Richardson argue, it is this standard which then grounds agreement and normative foundations of the polity, instead of the idea of what people can accept (see especially Bohman 2009, 259-269). Jonathan Quong makes a similar point (see Quong 2011b, Chapter 3). I will address some of these issues along the way, especially in the third essay touching on issues of method (see Chapter 4).

liberal project pursued here. In order to sum up the different aspects of a legitimate political liberal polity as understood here, consider the classic Rawlsian formulation of the liberal principle of legitimacy. The principle holds that:

“Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideas acceptable to their common reason. This is the liberal principle of legitimacy.” (Rawls 2005, 137; see 217 for a similar formulation)

Discussions of political legitimacy often start with Rawls’s formulation of the liberal principle of legitimacy, and do not end with it. I use the liberal principle of legitimacy to conclude our discussion of public justification because the principle summarizes the many points to be drawn from our discussion of Gaus’s principle of public justification.

The first point concerns the formulation of the scope of public justification within the liberal principle of legitimacy. Whereas Gaus’s principle of public justification focuses on coercive laws *L*, the liberal principle of legitimacy stresses a focus on constitutional essentials. This is a sensible restriction of the scope of public justification given a widely diverse but reasonable citizenry. In order to strike a balance between a focus on *L* and constitutional essentials according to context, I propose to settle on a focus on weighty political matters.

The second point concerns the public *P*. According to the liberal principle of legitimacy, members of the public respect one another as free and equal, and proposes one another terms of cooperation they can reasonable expect others to endorse. Citizens are, therefore, reasonable in the sense introduced above.

The reasons *R* presented in such public justification are, then, reasons acceptable to their common human reason or, in short, public or shared reasons.

This is, in a nutshell, the view on legitimacy I will endorse throughout the following essays. The object of public justification are weighty political matters that are crucial for the basic outline of a polity, such as constitutional essentials. The public to whom public justification is owed are reasonable citizens, respecting one another as free and equal and offering one another fair terms of cooperation to which they abide, given that others do the same. The justificatory reasons in public justifications are reasons that are public, i.e. accessible and shared among reasonable citizens. This is the core of the Rawlsian political liberalism adopted here.

### 3.1.3 Respect For Fellow Citizens: What Does Respect Require?

The Rawlsian view on political legitimacy and public justification outlined above has significant implications regarding the question of what reasonable citizens, as members of the same polity, owe one another. The conception of legitimacy outlined here implies an ethic of citizenship, i.e. an account of what the role of a citizen involves and requires.

Crucially, it involves a “duty of civility” (Rawls 2005, 217, 226, 252-253). The duty of civility states that reasonable citizens owe one another public justification through public or shared reasons.<sup>202</sup> This duty is derived from the view on legitimacy outlined in the liberal principle of legitimacy, and from the view that only justifications based on public or shared reasons are properly public.<sup>203</sup>

The duty of civility, and the view on political legitimacy on which it relies, is required by the basic moral-political commitment of political liberalism to respect for persons as free and equal. If reasonable citizens are to respect one another in public justification, then they are to present public or shared reasons that, presumably, are acceptable to fellow citizens and their common human reason. Only public justification of this kind, the duty of civility states, displays respect for all reasonable citizens as free and equal.<sup>204</sup>

If content shepherds and partisans of individual autonomy are to decide together on weighty political matters in order to establish a common legitimate political order, then justifications of particular constitutional essentials are to be based on shared reasons or premises. In our case, this seems to exclude reasons referring to partisan views that each of the groups holds exclusively, such as the value of particular customs or traditions, or the value of an individually autonomous life.

The liberal principle of legitimacy and the duty of civility have been criticized extensively. In the fourth essay I will dwell on some of the criticism more thoroughly (see Chapter 5). For now, I would like to focus on two main matters that were raised in

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<sup>202</sup>Note that the duty of civility has nothing to do with “being civil” in the sense of being attentive or polite, as when we offer our seat to an older person in the tram. The duty of civility is understood in the technical sense just outlined, and clearly restricted to the political domain.

<sup>203</sup>As Rawls puts it, “the ideal of citizenship imposes a moral, not a legal, duty—the duty of civility—to be able to explain to one another on (...) fundamental [political] questions how the principles and policies they advocate and vote for can be supported by the political values of public reason” (Rawls 2005, 217). For critical discussion of the Rawlsian ideals of public reason and the duty of civility, see e.g. Gaus 2010, Section 4 and Weithman 2002, Chapter 7. See also Chapter 5 below for further discussion.

<sup>204</sup>In Rawls’s words, “[i]f free and equal persons are to cooperate politically on a basis of mutual respect, we must justify our use of our corporate and coercive political power, where (...) essential matters are at stake, in the light of public reason” (Rawls 2003, 91).

the first essay. Firstly, I would like to dwell on the proper locus of respect for persons within a political liberal view as adopted here. The issue at stake is that the basic moral-political commitment to respect for persons seems to involve respect for the autonomy of persons. The first question I want to address in this Section is, thus, how this commitment to autonomy can be squared with the criticism of the value of individual autonomy presented in the first essay.

Secondly, I want to ask whether a political liberalism based on the value of respect for persons is not itself a substantial liberal view, and thus as sectarian and value-laden as any other “comprehensive” liberalism. Clarifications on these questions will help to get a clearer sense of what respect for persons, within a Rawlsian political liberalism, means and involves.

### **The Locus of Respect: On Autonomy Again**

In the first essay I argued that the example of content shepherds shows that individual autonomy, as spelled out by Will Kymlicka and John Christman, is not the proper locus of respect for persons within a political liberal approach to political authority and minority rights. The main reason is that with such a view of respect the content shepherds, who are not individually autonomous, would not receive full respect as free and equals. This however, as I tried to indicate, is wrong. Content shepherds deserve to be fully respected as free and equal; their liberty to live according to their ways needs to be taken seriously. Restricting full political standing to ways of life that are individually autonomous excludes content shepherds and thus fails to take diversity seriously.

Why do content shepherds deserve full moral-political standing? So far, the question about the proper locus of respect within a political liberalism remains open. The requirement of consent, the liberty principle, the public justification principle and the liberal principle of legitimacy—spelling out the public justification principle in a certain way—are all concerned with a fundamental interest of citizens to lead a free, and thus somehow autonomous, life. That is, the moral-political foundations of political liberalism are crucially about individual lives that are free of imposition or force through others. This is just another way of saying that it is crucially about the citizen’s autonomy.

It is also the freedom or autonomy of fellow citizens that seems to be the crucial rationale for the citizens’ engagement in public justification and public reasoning (see Weithman 2002, 201). Autonomy thus seems to be a crucial aspect of the locus of

respect for which we are searching. However, as I tried to show in the first essay, the kind of autonomy involved in political liberal theorizing cannot be the kind of individual autonomy presented by Will Kymlicka. Individual autonomy would exclude content shepherds from full standing in our political liberal polity, and thus lead to a failure in taking diversity seriously.

How, then to conceive of the autonomy that seems, after all, to be involved in respect for fellow citizens? What exactly is it that citizens respect in fellow citizens? In order to give a compelling answer, let us look more closely at what autonomy involves.

**A Core Meaning of Autonomy?** As John Christman and Joel Anderson claim, the core meaning of autonomy is to be found in the idea of “being one’s own person, directed by considerations, desires, conditions, and characteristics that are not simply imposed externally on one, but are part of what can somehow be considered one’s authentic self” (Christman 2005b, 3). Arguably, the reference to an authentic self leads towards a view of individual autonomy as proposed by Will Kymlicka. On Kymlicka’s view, what makes selves and lives authentic is the endorsement and revisability of views and beliefs.

Christman and Anderson maintain that such a “standard conception of autonomy fits well with standard accounts of political liberalism” (Christman 2005b, 3), since it specifies only non-substantial (i.e. without reference to the content of a person’s choice), procedural conditions under which individual choice is authoritative and autonomous (Christman 2005b, 3). As the example of the content shepherds shows, however, it seems that an autonomy requirement based on the authentic-self-view—at least as spelled out by Kymlicka, or developed by Christman—is still too strong and too demanding. It does not allow us to take diversity seriously. It is thus not clear why conservative ways of life involving a dedication to customs and traditions, as well as choices that do not count as procedurally autonomous, should be banned from a political liberal point of view. To do so simply because they do not value individual autonomy is not compelling enough.

A way to account for the intuition that content shepherds should be allowed their ways is to distinguish the idea of being self-directed from the authentic-self-view as involved in conceptions of individual autonomy. The idea of being self-directed can be associated with the notion of conscience. The notion of conscience is, for instance, used by Chandran Kukathas to come to terms with the liberal locus of respect. Kukathas holds that “[f]undamental to the liberal standpoint is the conviction that individuals should not be forced to act against conscience—to act in ways they consider wrong. It is

the value of liberty of conscience which lies at the core of the liberal ideal of toleration” (Kukathas 2003, 25).<sup>205</sup> The reference to a person’s conscience is meant to capture the basic intuition that a person’s life cannot go better for her against her own will and judgment (Vitikainen 2013, 137, fn. 212).<sup>206</sup> This holds, furthermore, whether or not a person cherishes the value of individual autonomy. A person needs to will or consent to a way of life in order to live according to her conscience. She does not, however, need to embrace her way of life full-heartedly, or be ready to revise it in order to live according to her conscience.<sup>207</sup>

Suppose thus that the conscience of a content shepherd tells her to follow ancient customs and traditions, and that it is wrong not to honour the ancestors’ way of life.

<sup>205</sup>In a different but somehow related manner, Loren Lomasky conceives of persons as “project pursuers” who are crucially “partial to their own abiding commitments” (Lomasky 1990, 37). Similar to a person’s conscience in Kukathas’s account, a person’s “projects provide him with a *personal*—and intimately personal—standard of value to choose his actions by. His central and enduring ends provide him reasons for action that are recognized as his own in the sense that no one who is uncommitted to those specific ends will share reasons for action that he possesses” (Lomasky 1990, 28, emphasis in the original). Lomasky argues for the view that “[p]roject pursuers enjoy rights in virtue of being project pursuers” (Lomasky 1990, 153), which brings up tricky issues about the boundaries of the moral community and rights of e.g. children, the dead, or animals (who presumably do not pursue projects). Lomasky argues, in short, that “[p]roject pursuers have rights in virtue of being generators of personal value. Children are not project pursuers but have rights because they are prospective project pursuers with individual goods that are a function of the projects they will (...) come to hold. (...) The dead have rights because their erstwhile project pursuit leaves behind significant interests that can be advanced or retarded by others” (Lomasky 1990, 223). No animal, so Lomasky claims, is “a project pursuer, a prospective project pursuer, or an erstwhile project pursuer”. They thus “fail to qualify for membership into the moral community” as right-holders (ibid.), even though he admits that animals still deserve moral consideration (Lomasky 1990, 224–227). Kukathas discusses Lomasky’s approach at Kukathas 2003, 101–102. In the idiom adopted in this thesis, projects are relevant for, or might be spelled out as, conceptions of the good. Conscience crucially depends on projects, goods or ends since they give it content and direction.

<sup>206</sup>Note that this is not the same as Kymlicka’s qualification of good lives as those that are lived “from the inside” (see Section 2.1.3 for discussion). Kymlicka’s lives-lived-from-the-inside are authentic lives based on the value of individual autonomy. The less demanding requirement of will and consent are compatible with lives that are self-directed, but short of authenticity, as in the case of religious persons following willingly longstanding religious customs and traditions.

<sup>207</sup>See also Kukathas 2003, 47–49, 70–71, 114–117. In a similar fashion, Lucas Swaine sketches a “liberalism of conscience” (Swaine 2009, 204) as a view that is accommodating towards autonomous as well as (certain) heteronomous ways of life, arguably including content shepherds. As Martha Nussbaum points out, prominent liberal arguments for “religious liberty and equality (...) [begin] from a special respect for the faculty in human beings with which they search for life’s ultimate meaning [i.e., their conscience]. This faculty was held to be present in all human beings in such a way as to make human beings equal” (Nussbaum 2008, 19). These arguments and liberal views were strongly influenced by the Reformation in Europe, as well as the religious wars in its aftermath (see Rawls 2005, xxv–xxviii).

Also suppose that there is, *prima facie*, nothing wrong with such a directive by her conscience, i.e. no wrong is done to anyone involved. In such a case, political liberals should respect the directives of the content shepherd's conscience, be they embraced or reflected upon or not.

That much, at least, will be assumed here. The conscience involved in the content shepherd's conservative way of life, as well as the reference to the possible wrongness of interfering with what conscience directs, give us hints regarding what kind of autonomy we are dealing with. It gives us a first idea of the proper locus of political liberal respect.

**On Moral and Personal Autonomy** A basic relevant aspect of the content shepherd's conscience is her ability to discern what is right and wrong. This, I take it, is a crucial aspect of the kind of autonomy that we are concerned with as political liberals. The political liberal project, involving the liberty principle and a liberal principle of legitimacy, requires that citizens have the capacity to subject themselves to moral considerations and principles (Christman 2005b, 2). Call the citizen's capacity to do so "moral autonomy".

Moral autonomy involves that citizens can discern moral reasons, and that they can act on moral reasons. It also involves that moral reasons are seen as having the force to override personal, instrumental reasons. Personal or instrumental reasons are those reasons involved in reaching one's own personal goals or goods. Moral reasons have the force to trump personal or instrumental reasons. No matter how rational or compelling personal or instrumental reasons are from the point of view of a citizen, moral reasons can override personal or instrumental reasons. As Gerald Gaus puts it, in contrast to personal or instrumental reasons,

"moral reasons do not confront us as hypothetical, because they do not depend on our affirmation of a goal or an end. They confront us as imperitival [sic] and categorical. Regardless of our ends or goals, they demand that we do the right thing" (Gaus 2005, 283).<sup>208</sup>

Moral autonomy is thus specifically concerned with the "relation between one person's pursuit of his own ends and others' pursuit of theirs" (Waldron 2007, 307). As morally autonomous persons, citizens are not concerned only about their happiness or other

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<sup>208</sup>A main classical formulation of moral autonomy in the liberal tradition, as well as the distinction between moral and other reasons, is developed by Immanuel Kant. See Gaus 2005, 282-283, 291; Kant 1974, 65.

personal ends, but more fundamentally about the ends of all rational fellow citizens with whom they share a polity (*ibid.*).

The distinction between moral autonomy and personal autonomy allows us to discern a crucial element of a citizen's conscience, and thus to pin down what the political liberal locus of respect consists of. Personal autonomy is supposed to be a morally neutral trait that persons can have regarding any aspect of their lives (Christman 2005b, 2). For instance, one can be said to be personally autonomous when one is authentically and competently holding the view that strawberry yogurt is the best yogurt. Individual autonomy, as spelled out by Will Kymlicka, is a kind of personal autonomy. Individual autonomy involves the valuing of certain personal traits, such as the embracement of beliefs and the readiness to revise them. Similarly, content shepherds display the personal traits of valuing herding and traditional customs. Individual autonomy, as understood by Kymlicka, is just another way of perceiving and valuing personal traits. It is, therefore, just another version of personal autonomy.<sup>209</sup>

The distinction between moral and personal autonomy gives us further conceptual tools to assess what is wrong in a case where partisans of individual autonomy try to impose their value of individual autonomy on content shepherds. In such a case, partisans of individual autonomy impose their partisan valuation of personal autonomy on morally autonomous content shepherds who do not value personal autonomy. To impose their views of personal autonomy on morally autonomous citizens through political authority, or otherwise, is wrong. It is wrong because it is not willed or consented to by the content shepherds' conscience. It infringes on the content shepherds' liberty, and more precisely on their liberty of conscience.

Note that the liberty principle and the public justification principle, understood here as the liberal principle of legitimacy, presuppose morally autonomous agents. Citizens need to be morally autonomous and conceive of others as morally autonomous persons worthy of respect, if the liberty principle and the liberal principle of legitimacy are to get a hold on citizens. If citizens are not morally autonomous, then they will not care about the liberty principle or the liberal principle of legitimacy. If moral reasons do not appeal to them, and if those reasons do not have a crucial weight in their practical reasoning, it is hard to see why they would abide to a liberty principle in the first place,

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<sup>209</sup>This objection is in line with, and supported by, the claim that individual autonomy is not a highest-order value, as argued in the first essay (see especially Section 2.2.1).

or feel compelled to engage in public justification at all.<sup>210</sup>

The moral autonomy of citizens thus also helps to account for a standard of reasonableness, i.e. a standard that restricts the set of citizens to whom public justification is owed. If, say, the conscience of evil content shepherds dictates them to hold slaves, then such conscience-based considerations can be ruled out in a political liberal polity because they do not respect the moral autonomy of those considered as slaves. Such views can be ruled out, in other words, because they are unreasonable.

Let us briefly conclude our discussion on the proper locus of respect in a political liberal enterprise. A crucial aspect of the locus of respect in a political liberal polity is the moral autonomy of citizens. Rawls arguably accounts for this idea by introducing the second moral power of citizens, consisting of a sense of justice.<sup>211</sup> The sense of justice is involved when working out a basic and just social structure, or constitutional essentials, and when justifying it to fellow citizens. In these endeavours the moral autonomy, or sense of justice, of citizens becomes key. It is due to the moral autonomy of citizens that such an enterprise can get under way at all.

Where, then, is personal autonomy left in such a picture? Can it simply be ignored, and be set aside? Is it simply void of moral-political significance or force? Arguably not. One suspicion is that moral autonomy presupposes, in some sense, personal autonomy. As Kymlicka holds, there is “no evidence that people who reject the ideal of personal autonomy are likely to accept the ideal of moral autonomy, and there is every reason to think that they won’t” (Kymlicka 2001b, 64). A first suspicion is, thus, that the liberty principle and the liberal principle of legitimacy do not only presuppose morally autonomous agents, but also personally autonomous agents. A second suspicion is that

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<sup>210</sup>I thus follow Gerald Gaus who claims that “the fundamental liberal principle presupposes that agents are morally autonomous” (Gaus 2005, 293). I do not argue further for this claim here. See, however, Gaus 2005, 284-292 for a more thorough defence of this view. Note, in passing, that the role of moral autonomy in liberal theory as well as the distinction between moral autonomy and personal autonomy are contested. For a discussion of these issues, see e.g. Gaus 2005, Section 5 or Waldron 2005. Waldron defends the view that moral and personal autonomy have more in common than is usually admitted, and even that a “sharp distinction between moral autonomy and personal autonomy may not be available” (Waldron 2005, 308). I will accept a very weak version of this claim (see Section 3.1.3 below).

<sup>211</sup>As Rawls puts it, “a sense of justice (...) expresses the willingness (...) to act in relation to others on terms that they also can publicly endorse” (Rawls 2005, 19). It is thus relevantly similar to what is involve in moral autonomy. A sense of justice is, furthermore, “the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation” (ibid.). Note that by labelling the moral powers as first and second does not imply any hierarchy or ordering.

moral autonomy itself somehow presupposes personal autonomy. Let us thus briefly turn to the questions (i) whether the liberty principle presupposes not just morally autonomous agents, but also personally autonomous agents; and (ii) whether moral autonomy itself might require personal autonomy. In short, let us investigate whether and how a political liberal conception of citizens needs to account for personal autonomy.

**Ultra-minimal Personal Autonomy** As we have seen, the liberty principle will not appeal to just anyone. It appeals only to those who somehow care about why and how they act. It thus seems that the liberty principle, apart from presupposing morally autonomous agents, also presupposes self-directed agents. (Gaus 2005, 293)

Consider the case of the content shepherds. If the liberty principle is to get hold on them, then content shepherds need to conceive of their choices and actions as somehow *their* actions. That is to say that content shepherds have to regard themselves as self-directed; furthermore, to be self-directed has to matter to them. Now, suppose that content shepherds do not conceive of themselves in that way. Thus, it does not matter to them who decides what they should do or not. If it does not matter to content shepherds that they are herding because of their own, self-directed choice to follow the ancestors' traditions, then the liberty principle will not appeal to them. They simply would not care about why they engage in certain practices rather than in others. In such a case, it would seem inappropriate to feel resentment or indignation against the majority imposing the value of individual autonomy on them. As far as these not-self-directed content shepherds are concerned, one way of doing things seems as good as any other. (Gaus 2005, 293)

Thus, before morally autonomous agents can become at all interested in the implications of the liberty principle and issues of public justification, they must conceive of themselves as self-directed agents. Gaus conceives of self-direction as the linking of one's own deliberation with one's own action. In order to regard oneself as a self-directed agent, one must conceive of one's action (in crucial parts) as a consequence of one's own deliberation (Gaus 2005, 294). It is this self-direction, where one conceives of oneself as the source of action, that is also necessary for the liberty principle to get hold on agents. Call a view on personal autonomy that is spelled out in this very thin understanding of self-direction a "ultra-minimal conception of personal autonomy" (Gaus 2005, 293).<sup>212</sup>

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<sup>212</sup>Gaus compares his ultra-minimal conception of personal autonomy to what Stanley Benn dubbed a "natural person" (Benn 1988, 91), i.e. a person who conceives of herself as making decisions, and to

Such an ultra-minimal view of personal autonomy is compatible with a life determined by traditions, false beliefs, or inconsistent views (Gaus 2005, 295). In all these cases, the agent's actions still follow from her own deliberations, even though one's own deliberations are based on traditional, false, or inconsistent considerations (ibid.). Thus, a content shepherd following ancient ways of life still conceives of herself as following these ways *herself*, and deliberating about how and why she does so guarantees her self-direction. This also accounts for why she would care about living a life this way rather than another.

Arguably, self-direction is also at the heart of the first moral power that Rawls ascribes to citizens of a political liberal polity, i.e. the power to hold and pursue a conception of the good. This moral power is crucially about being a self-directed and rational citizen.

In Rawlsian terms, the first moral power of citizens to hold and pursue (rationally) a conception of the good, together with the second moral power consisting of a sense for what is (reasonably) just crucially make up the locus of respect for citizens in a political liberal polity.

**Minimal Personal Autonomy** We have just seen that the liberty principle does not require only morally autonomous agents, but also agents who are self-directed and thus display ultra-minimal personal autonomy. Are self-directed and morally autonomous citizens sufficient for a stable liberal polity based on the liberty principle and liberal principle of legitimacy? Let us turn to our second concern about personal autonomy, i.e. the suspicion (ii) that moral autonomy itself presupposes personal autonomy. Let us thus ask: what does moral autonomy require?

To be morally autonomous—to be able at least (a) to discern moral issues and reasons, and (b) give them appropriate overruling weight—is demanding. Both (a) and (b) require one to have the ability to distinguish between personal wants, desires or aims and between what is right or what can be universalized through an appeal to others (Gaus 2005, 297). This ability presupposes “sophisticated cognitive skills” (ibid.), such as taking up the perspective of others, putting oneself in the shoes of others, or considering others' reasons for action (ibid.).

Moral autonomy thus requires of content shepherds to reflect on their reasons for action, and a capacity to decide whether such reasons stem from personal commitment or whether they can be publicly shared. Only with this cognitive ability, so it seems, can

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whom things do not just happen (ibid.). See Gaus 2005, 294 for this comparison.

we speak of citizens as morally autonomous.<sup>213</sup> But does this not introduce a substantial view on personal autonomy through the back door? Are not the capacities to reflect on reasons and on morality part of a substantial view of personal autonomy, maybe even similar to the view on individual autonomy proposed by Kymlicka?

A view similar to this, indeed, seems to be Kymlicka's line of argument against Rainer Forst's criticism of his, Kymlicka's, views on individual autonomy. Forst holds that Kymlicka's version of liberalism is based on a contestable view of individual autonomy, and that liberals should instead focus on versions of liberalism that centre around moral autonomy (see Forst 1997). In his response, Kymlicka claims that people are only likely to accept the norms of moral autonomy if there is something "within their belief system that requires them to do so" (Kymlicka 2001b, 64, fn. 13). Kymlicka suggests that what could require people to accept the norm of moral autonomy is the value of personal autonomy, spelled out in terms of the value of individual autonomy that he puts at the core of his liberal views.

What to think of that? Are moral autonomy and personal autonomy, maybe even individual autonomy as spelled out by Kymlicka, crucially intertwined, or even a par? Arguably not. The capacities to reflect on reasons and on morality are far from the capacities involved in Kymlicka's conception of individual autonomy, involving the ability to embrace and revise beliefs. The conception of personal autonomy consisting of the capacities to reflect on reasons and on morality is less demanding. This minimal conception of personal autonomy merely involves the capacity to reflect on reasons that one has in order to assess their weight in moral argument. A minimal conception of personal autonomy, involved in moral autonomy, does not require that one is self-reflective about one's plans, goals, or projects or that one embraces one's plans, goals, or projects (Gaus 2005, 299). All that is required is an awareness of what reasons appeal only to me, and of what reasons might also be shared and appealing to others.

Minimal personal autonomy in this sense can be achieved by content shepherds who live a life according to traditional customs, and who do not embrace or reflect these

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<sup>213</sup>One of Jonathan Quong's main desiderata for liberal democratic citizenship, namely the "civic priority condition", seems crucially based on the moral autonomy of democratic citizens. The "civic priority condition" requires that "citizens need to prioritize those civic commitments that engender or facilitate a liberal democratic regime that is fair, functional, and reasonably stable" (Quong 2004b, 142). To be able to make out such commitments, and to prioritize them, are arguably the main elements of the capacity of moral autonomy in the political context, where the basis of a just and legitimate political order are at stake.

customs, but were simply reared in them. However, content shepherds cannot be completely encapsulated in their way of living as to be insensible to others' ways of life, and their reasons to do so. Content shepherds have to be able to distinguish reasons provided by their traditional culture, and reasons that might also appeal to others.

Gerald Gaus concludes on this "precarious compromise" that "this is (...) the line that liberal political culture walks. It can admit traditionalism, and need not seek to turn all citizens into liberal-Millian individualists—up to a point. The point is that citizens must be sufficiently liberal to reflect on their traditions and observe that they do not form the basis of public reasoning (...)" (Gaus 2005, 299).

**Conclusion on the Liberal Locus of Respect** Let me briefly conclude on the proper locus of respect for citizens in a political liberal polity. The proper locus of respect for citizens is the citizens' conscience. A crucial element of a citizen's conscience is her moral autonomy, or—in Rawlsian terms, applied to politics—her sense of justice. Moral autonomy is an important trait of citizens in a political liberal polity because the liberty principle and liberal principle of legitimacy both presuppose morally autonomous citizens.

Besides moral autonomy, citizens also need to display some degree of personal autonomy. Thus, in order for the liberal principle or the liberal principle of legitimacy to appeal to citizens at all, citizens also need to be self-directed agents. That is, they need to display ultra-minimal personal autonomy. Citizens have to conceive of their actions as a consequence of their own deliberations. Their actions have to be properly *theirs*, and they have to care that they are, in order for the liberty principle, or liberal principle of legitimacy, to have any appeal to them. The element of self-directedness is also at the core of the first moral power ascribed to citizens by Rawls, i.e. the power to hold and pursue a conception of the good. Thus, rational citizens display the moral power of holding and pursuing *their* conception of the good.

Moral autonomy itself necessarily requires minimal personal autonomy. Minimal personal autonomy includes the ability to reflect on one's reasons for action, to distinguish personal from moral reasons, and to give moral reasons their due weight. These capacities of moral, ultra-minimal, and minimal autonomy are crucial aspects of a citizen's conscience. In Rawlsian terms, this arguably corresponds to the citizens' two moral powers. It is these powers of citizens, then, that make up the proper locus of respect in a political liberal polity.

The necessary elements of personal autonomy of citizens in a political liberal polity, the one of self-directedness and the capacity to reflect on one's reasons and morality, are far from the substantial liberal commitments to embracement and revisability of beliefs in Will Kymlicka's conception of individual autonomy. The elements of personal autonomy sketched here are less demanding, and are displayed also by content shepherds. To answer Kymlicka's concern that moral autonomy will appeal only to those who also display personal autonomy, we can now give a qualified answer. The answer is that personal autonomy is indeed necessary for moral autonomy, as well as for a liberty principle or the liberal principle of legitimacy to get a hold on citizens. However, the requirements of personal autonomy are not as demanding as the substantive liberal value of individual autonomy proposed by Kymlicka. The requirements to count as personally autonomous, as sketched here, are minimal. Content shepherds too, according to these requirements, count as personally autonomous. These requirements thus allow us to take diversity seriously.

That much, then, on the proper locus of respect for citizens in our political liberal polity. Since the aim here is merely to sketch the basic building blocks of a political liberalism that is apt to take diversity seriously, I will leave our discussion about the proper locus of respect for citizens here.

### **Substantive Moral Commitments in Political Liberalism?**

The main criticism against Kymlicka's view on political authority and minority rights proposed in the first essay is that his conception of individual autonomy is based on the substantial and controversial liberal value of individual autonomy. Thus, it is unable to account for the fundamental liberty principle, and fails to take diversity seriously.<sup>214</sup> Now, the discussion of political liberalism so far suggests that political liberals too introduce discernibly liberal views and commitments. The charge raised against Kymlicka might thus fall back on political liberals themselves: Isn't political liberalism, in the end, just another substantial and sectarian liberal view?

When Kymlicka is faced with the charge that his "theory justifies excessive imposition of liberal values" (Kymlicka 2001b, 64) and that his theory of minority rights is based

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<sup>214</sup>To be fair, Kymlicka emphasizes that "liberals cannot simply presuppose that they are entitled to impose liberal norms on non-liberal groups" and that "any enduring solution will require dialogue" (Kymlicka 2001b, 62). I will have to leave aside the question of how this commitment to toleration squares with his commitment to the substantial liberal value of individual autonomy.

on a controversial view of individual autonomy, Kymlicka's reply and defence seems to be the following: The problem of being controversial and distinctively liberal is faced by any liberal political theory. The reason is that in diverse societies there is "no single conception of autonomy, or culture, or justice, or moral justification, which every group will accept" (ibid.). In short, he claims that all liberal views, also political liberal views that try to take diversity seriously, will remain recognizably liberal. They will necessarily be substantial moral views that are controversial, and that will not be shared by most or even many members of a widely diverse liberal polity.

What to think of Kymlicka's charge? Indeed, in the political liberal framework outlined here, certain markedly liberal commitments—such as the liberty principle, the liberal principle of legitimacy, the commitment to respect for citizens as free and equal, and a standard of reasonableness—are manifest. Political liberalism too sets manifest limits on what counts as liberal. If it does so, however, isn't it just another controversial and substantial liberal view? Many have thought so. As Marilyn Friedman puts it, "political liberalism is simply one more political doctrine among many, freestanding or not, with no greater political independent, *consent-based* claim to anyone's allegiance than many of its political rivals" (Friedman 2000, 31, emphasis in the original).<sup>215</sup>

A honest reply is to admit that political liberalism, as the name indicates, is a decidedly liberal view.<sup>216</sup> It is based on liberal moral-political foundations. It presupposes a liberty principle and requires public justification based on public reason for the political framework and weighty political matters. It also requires and presupposes a certain view on democratic citizenship. All of this is admitted. Political liberals do hold liberal moral-political convictions. The common suspicion against the liberal as someone "who can't take his own side in an argument" (Nagel 1987, 215) thus seems unfounded. Lib-

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<sup>215</sup> Such criticism of political liberalism is quite common, see e.g. also van den Brink 2005, 245. I will dwell on a possible reply, or way to avoid the criticism, in the third essay below (see Chapter 4).

<sup>216</sup> See e.g. Estlund 1998, 253 who holds that "political liberalism must assert the truth and not merely the reasonableness—or acceptability to all reasonable people—of its foundational principles that doctrines are admissible as premises in political justification only if they are acceptable to all reasonable people". Stephen Macedo holds that "[l]iberal public reasonableness is itself a moral view (...). Indeed, it is for moral reasons of fairness and civility that public reasonableness asks citizens to honor the authority of reasons they can share in public with others" (Macedo 1997, 20). In Macedo 1990, 298 he adds that "public justification is distinctly liberal and democratic, substantive and partisan. (...) Liberals offer true [religious] believers, like everyone else, a sphere of privacy and the opportunity to continue arguing. The liberal must, in the end, defend his partisanship and not evade it". Charles Larmore takes the commitment to respect for persons to be a basic moral commitment of political liberalism (see Larmore 1999).

erals, and even political liberals, do hold manifest moral-political views. These views are prone to guide them in choosing their side in an argument—at least in an argument about the proper foundations of a liberal polity.

However, even if we admit all of that, we can still aspire to take diversity as seriously as possible. That is, we can still try to work out a liberal view on politics that is as thin, uncontroversial and accommodating to a wide variety of views as possible. The political liberal attempt to do so is, I think, promising. It is, at least, more promising than comprehensive liberal rival attempts. It focus on procedural issues of public justification and public reasoning, i.e. on procedures and mechanisms to yield a publicly justified polity. This allows to sidestep liberal views on legitimate political authority and minority rights that are substantially liberal. The liberal views involved in political liberalism are thin views restricted to political concerns, and thus more accommodating and less controversial than comprehensive liberal approaches.<sup>217</sup>

Thus, even if we accept Kymlicka’s claim that any liberal theory will be committed to liberal outlooks, we can still aspire to work out a political liberal theory that takes diversity as seriously as liberally possible. This is the aspiration to reach a theory of legitimate political authority and minority rights that is as thin and uncontroversial as possible, given reasonable pluralism. This, at least, is the aspiration and hope that underpins the project underway here.

### **3.1.4 Conclusion on Elements of a Political Liberalism**

Let us conclude on some basic political liberal building blocks outlined in this Section, and see where we stand in our overall endeavours to come up with an alternative to Kymlicka’s comprehensive liberal views as the basis for political authority and minority rights.

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<sup>217</sup>Kymlicka might disagree on this point. Thus, he holds that “[t]he fact that Rawls’s theory is less comprehensive does not make his theory more sympathetic to the demands of non-liberal minorities” (Kymlicka 1995, 164). Kukathas also contends that “[w]hy retreat to ‘political’ liberalism if it issues the same injunctions as comprehensive liberalism?” (Kukathas 2003, 187). As the case of content shepherds shows, Rawlsian political liberalism does not issue the same injunctions as a comprehensive liberalism based on the value of individual autonomy. And even though minorities will have to be reasonable to gain full political standing, and thus be somehow liberal, there is arguably also space for unreasonable people and illiberal groups within certain limits, as suggested by Quong 2004a. The main point in a reply to Kymlicka is thus that political liberalism might, over all, be more accommodating to diversity and liberty as any comprehensive liberalism. This seems enough to make political liberalism a compelling liberal theory.

Faced with widely diverse societies, and the question of adequate moral-political principle to deal with them, political liberalism opts “for a shallow theory of toleration with a broad appeal” (Waldron 2004a, 91). The alternative, labeled comprehensive liberalism, would be to develop a “deeper theory of toleration”, i.e. one that is recognizably rooted in a particular liberal-philosophical outlook (*ibid.*).

One of the ground-breaking liberal contributions to discussions of multiculturalism, Will Kymlicka’s theory of minority rights, is decidedly comprehensive in this sense. One of its major criteria to assess justifications of minority rights in a multicultural polity is the promotion or protection of the value of individual autonomy. Kymlicka seems to opt for a comprehensive liberal approach because he deems all political liberal attempts unable to live up to the task they set themselves. Thus, so the reasoning goes, all liberal theories, whether political or comprehensive, will be rooted in decidedly liberal commitments. Comprehensive liberals seem committed to a view on liberalism as “a robust position in political philosophy (...) whose moral partisanship reaches deep into the foundations of our conceptions of persons, freedom, and value” (Waldron 2004a, 91).

Political liberals, on the other hand, deem comprehensive liberalism insufficient to face the moral-political challenges that arise in pluralistic societies. Kymlicka’s views on the proper justifications of political authority and minority rights crucially depend on his commitment to the value of individual autonomy. The problem is, however, that if one does not cherish the promotion or protection of individual autonomy, then justifications based on that commitment will have no appeal. Furthermore, in a thoroughly and reasonably pluralistic society it is highly unlikely that all or even most will subscribe to the value of individual autonomy. This becomes evident when considering cases such as the one of content shepherds. If this holds, however, then comprehensive liberal endeavours are far too controversial to serve as a basis of a liberal polity that all reasonable points of view can accept.

In the second essay underway here, I have thus suggested some basic building blocks for a political liberalism. The aim is to sketch a promising and valuable approach to moral-political issues raised by political authority and cultural pluralism.

The main building blocks made out here are a commitment to consent as a main ingredient that establishes legitimate political rule, as well as a basic commitment to the liberty principle and the public justification principle. The public justification principle is, then, spelled out in Rawlsian terms as the liberal principle of legitimacy. Another crucial issue is the citizens’ conscience as the proper political liberal locus of respect

for citizens in their polity. The commitment to the liberty principle and to the liberty of conscience necessarily involves a respect for the moral autonomy of citizens. It also necessarily involves the respect for the self-directedness and the ability to distinguish between instrumental and moral reasons for action. In other words, it involves the respect for the ultra-minimal and minimal personal autonomy of citizens. These basic elements of a political liberalism are far from Kymlicka's commitment to the liberal value of individual autonomy, involving a commitment to the embracement and revisability of views and beliefs. The view presented here is far more accommodating towards reasonable pluralism. It allows us to accommodate content shepherds. It is, therefore, able to take diversity seriously—or at least more seriously than Will Kymlicka's theory of minority rights based on the controversial liberal value of individual autonomy and, arguably, as seriously as liberally possible.

The task of spelling out the basic building blocks of a political liberal polity is, admittedly, far from complete. Also note that there are very different versions of and approaches to political liberalism. This is so because political liberals will elaborate and weigh basic liberal principles and ideals such as “liberty, equality, democracy, toleration, and the rule of law” (Waldron 2004a, 91) in very different ways. The outline of a political liberal framework grounding a politically legitimate, just and tolerant polity presented here is, then, just a sketchy political liberal view amongst others.

For the rest of this second essay, I intend to show that we have good reasons to opt for a political liberalism with a Rawlsian face, as sketched here, when compared with alternative political liberal views. This will mainly be shown by comparing the Rawlsian political liberal project with a main political liberal alternative in debates on multiculturalism, namely Chandran Kukathas's political liberalism. The main reason for choosing a Rawlsian version of political liberalism is that it strikes a more adequate balance between the aspiration of taking diversity seriously, and certain basic political liberal commitments, such as the commitment to respect for persons as free and equal or the liberal principle of legitimacy. In other words, Kukathas's version of political liberalism takes diversity too seriously, and neglects basic political liberal ideals and desiderata.

## 3.2 Taking Diversity Too Seriously? Chandran Kukathas on Toleration

Let us thus turn to the political liberal views presented by Chandran Kukathas, and compare them to the Rawlsian ones just outlined.<sup>218</sup> Kukathas, an interesting and influential contributor to the debate on multiculturalism, criticizes Rawlsian political liberal endeavours on several grounds. In defence of the Rawlsian political liberal project, I claim that Kukathas's alternative account of a political liberal polity is prone to take diversity too seriously. Thus, it does not account for crucial ingredients of the political liberal enterprise, such as respect of others as equals, or the reciprocity involved when establishing a common political framework.

In order to tackle some of the issues in Kukathas's account of a multicultural polity—or, as he calls it, a “liberal archipelago” (Kukathas 2003) that is engulfed by “a sea of mutual toleration” (*ibid.*)—I would like to start with Kukathas's criticism of the Rawlsian political liberal project. Kukathas prominently defends a political liberal view that attempts to be ultimately tolerant, based on a “minimal moral conception” that abstains from a commitment to substantial liberal values such as individual autonomy (Kukathas 2003, 17).<sup>219</sup> Kukathas's approach, therefore, seems to be a good candidate for a liberal theory that aspires to take diversity seriously. Why, then, not opt for Kukathas's version of political liberalism?<sup>220</sup>

In order to see why not, let us consider Kukathas's criticism of Rawlsian political liberalism. Kukathas criticizes Rawlsian political liberalism for three broad commitments

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<sup>218</sup>Kukathas labels his theory as a form of political liberalism at Kukathas 2003, 16. It can, in the idiom coined by Galston 1995 and used in the first essay, also be described as a version of diversity liberalism that focuses on toleration instead of autonomy as a basic liberal outlook. See Vitikainen 2013, 133, fn. 203.

<sup>219</sup>Kukathas takes this view on political liberalism as being based on a minimal, or thin, moral conception from Charles Larmore in Larmore 1996, 133 (see Kukathas 2003, 17, fn. 21). Whether Kukathas succeeds in doing so is questionable, most of all regarding the crucial right he grants to individuals to exit groups and associations. Such a right seems, through the back door, to introduce some basic autonomy requirements for individual citizens, if such a right is to have any real applicability. See Vitikainen 2013, 140-143 for discussion. See Phillips 2007, 104 for a short overview on Kukathas' criticism of individual autonomy as a basic liberal value. I will not review Kukathas's criticism here, since I devoted the whole first essay to the issue of criticizing individual autonomy as a basic liberal value (see especially Section 2.2.1).

<sup>220</sup>Other prominent approaches that promise to take diversity more seriously can be found e.g. in Galston 2002 or Parekh 2006. Here, I will not dwell on Galston's or Parekh's approach in any depth, but instead focus on Kukathas's political liberalism and his view on multiculturalism.

that are usually associated with it. Some of these commitments are merely implicit in the outline of the Rawlsian approach as sketched above.

What are these assumptions that Kukathas takes issue with? Firstly, Rawlsian political liberalism is often held to be rather abstract or idealized, and thus deemed unable to deal with real-world political issues that come up under the conditions we actually live in. It is not a project about a concrete state or historical setting but about rather idealized rational and reasonable citizens, engaging in public justification on issues such as constitutional essentials that most people in current democracies never decided or voted on. Rawlsian political liberalism is concerned not with actual societies and citizens, but with a well-ordered society marked by reasonable pluralism, hypothetical consent, and that is populated by reasonable citizens that uphold and abide by the liberal principle of legitimacy. Kukathas takes these abstractions and idealizations to be fatally flawed. I turn to this charge first.

Second, the understanding of the polity implicit in Rawlsian approaches is often interpreted in (liberal) nationalist ways. That is, the polity under scrutiny is conceived of broadly in the way in which we conceive of nation states. Thus, it is somehow closed, and citizens are supposed to spend their whole lives within the political framework in question. Also, there seems to be an implicit assumption that there is at least one dominant language, one dominant understanding of the institutional setting with its history and traditions, as well as one common territory and history. Modelling one's political theory on such assumptions, so the criticism goes, is contestable and unhelpful in constructing a compelling political liberal theory. I consider this charge in a second step.

Third, there are rather demanding moral requirements—enshrined in a principle of respect for persons and spelled out in the reasonableness standard—regarding the interaction of citizens. Kukathas takes issue with these demanding moral-political standards as well. I consider this charge in a third step.<sup>221</sup>

In the last part of the essay, I criticize Kukathas's approach and sketch a first take of a Rawlsian political liberalism on multicultural politics.

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<sup>221</sup>Note that there are, of course, further relevant criticisms of political liberalism with a Rawlsian face. I focus on those mentioned here because they seem to be crucial for Kukathas' move away from a Rawlsian political liberalism to his more libertarian version of it. Other criticisms are abundant. See e.g. Benhabib 2002, 108-112, who takes issue with the "minimalist version of political liberalism" (Benhabib 2002, 110) proposed by Rawls as a way of approaching multiculturalism issues.

### 3.2.1 What Kind of Political Liberalism?

Political liberalism is not a particular liberal theory, but a type of liberal position (Waldron 2004a, 91); even though it is often associated with the most recent work of philosophers such as John Rawls, Charles Larmore, Stephen Macedo, and Thomas Nagel.<sup>222</sup> Thus, there are many versions, or conceptions, of political liberalism. In the first Section of this essay, I attempted to outline a Rawlsian—even though not Rawls’s—version of political liberalism that is general enough to get a broad idea of what political liberalism involves. The view involves, however, many parts that imply a particular version of political liberalism. For instance, the views on public justification and public reason commit the conception of political liberalism to a particular stance on political legitimacy and an ethic of citizenship.

Chandran Kukathas, on the other hand, develops a view on the state, toleration and of the proper claims of cultural groups that is highly critical of many Rawlsian assumptions, but that can still be labelled a version of political liberalism.<sup>223</sup> The main contention here is that Kukathas’s version of political liberalism takes diversity too seriously, and cannot live up to certain basic moral-political commitments of a convincing version of political liberalism. The following account is also supposed to establish a Rawlsian version of political liberalism as a convincing mid-way point between Kymlicka’s and Kukathas’ takes on legitimate political authority. Will Kymlicka does not take diversity seriously enough by basing its political morality on the substantial and controversial liberal value of individual autonomy. Chandran Kukathas, on the other hand, is prone to take diversity too seriously by leaving out certain basic political liberal commitments, such as respect for citizens as equals. The claim is then that we can, in a dialectical move, defend a Rawlsian version of political liberalism as a convincing alternative between Kymlicka’s and Kukathas’ versions of liberalism and multiculturalism. Between the two markedly autonomy and a diversity liberal stance towards political authority and multiculturalism, there is room for a Rawlsian political liberal approach.

Let us thus turn to Kukathas’ views on political liberalism. Chandran Kukathas, in his book *The Liberal Archipelago*, raises the following main points against versions of political liberalism with a Rawlsian face. The first one can be dubbed “too far away

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<sup>222</sup>See Rawls 2005, Larmore 1990, Macedo 1997, Nagel 1987. See Waldron 2004a for an overview on political liberalism and further prominent authors within this tradition.

<sup>223</sup>Kukathas points out that his understanding of political liberalism has been greatly influenced by Charles Larmore. See Kukathas 2003, 17, fn. 21, referring to Larmore 1996.

from actual society” or “abstraction charge”, the second one “closed society charge”, and the third one “controversial justice charge”. I discuss them in turn.

### 3.2.2 The “Too Far Away From Actual Society” or Abstraction Charge

The Rawlsian approach to political liberalism involves certain abstractions and idealizations about citizens and their quest for a just and stable polity. It is thus not directly concerned with political arrangements that we find in the world we live in. Rather, it is concerned with arrangements we would find in a well-ordered society. A well-ordered society is taken to be, among others, institutionally complete, and a place where citizens spend their whole lives. It thus resembles strongly the model of today’s nation states with rather closed borders and, at least sometimes, institutionally well-developed governments.<sup>224</sup>

The abstraction charge holds that focusing on a well-ordered society as the framework for investigating diversity “takes us (conceptually) too far away from actual societies” (Kukathas 2003, 7). The charge is thus that the world we live in, with migration and movement across borders, international organizations and businesses, is very different from a well-ordered society, and that it “assumes away many features which make real societies complex, and political principles contentious” (Kukathas 2003, 21). Views focusing on a well-ordered society, Kukathas concludes, cannot be of any guidance for liberal attempts to deal with diverse societies. To put the concern differently, we might well ask why we, as real citizens of real constitutional democracies, should care what people in a well-ordered society would do.

David Miller raises similar concerns when he claims the importance of a “political philosophy for earthlings” (Miller 2008). Paul Weithman too is sceptical about Rawlsian political liberalism, holding that philosophical discussions that focuses on well-ordered societies “would be irrelevant to the obligations of citizenship in actual democracies” (Weithman 2002, 182).

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<sup>224</sup>The term “well-ordered society” is taken from the work of John Rawls (see Rawls 2003, 8-10; Rawls 2005, 35-43). In his terms, a well-ordered society is also, and more crucially, a social system of cooperation, populated and upheld by reasonable citizens. I follow, roughly, this view of a well-ordered society. However, the specifics are not crucial for now since Kukathas’s criticism aims at political theoretical aspirations that build on abstraction and idealization in general, not just at those at work in the idea of a well-ordered society. Rawls himself addresses the abstraction charge in Rawls 2005, 43-46.

The conclusion that philosophical endeavours based on abstractions and idealizations is useless or even harmful in general is, I hope to indicate, too hasty. The issues does, however, raise two interesting concerns about the nature of the political liberal enterprise. The first concerns relates to the aspiration of political liberalism. Thus, we might ask, does political liberalism aspire to deliver real-world guidance in the first place? At least on one understanding of political liberalism, the political liberal enterprise is a conceptual-analytical rather than an empirical-transformative one.<sup>225</sup> The task that Rawlsian political liberalism sets itself is to investigate whether the ideal of a constitutional democracy in the face of reasonable pluralism is coherent, and whether a well-ordered society is stable. It is concerned with the nature, coherence and implications of basic liberal ideals such as liberty, equality and toleration.<sup>226</sup> It is not concerned with the assessment of real-world political issues, or suggestions on how to change real-world politics from a political liberal point of view, and does not “aim to achieve public justification or normative stability in current liberal democratic societies” (Quong 2011b, 143); at least, on an internal understanding of the political liberal enterprise, not foremost.

Even if we conceive of the political liberal enterprise as a conceptual-analytical one, we might still take issue with the fact that it simply “assume[s] away (...) important subject[s] of contention” (Kukathas 2003, 6). Let me note two points in reply to this charge. First of all, abstraction and idealization are not bad in and by themselves. They might enable us to focus on, or highlight, certain conceptual or normative issues of interest. They can be valuable tools to reduce complexity, and help to get a clearer picture

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<sup>225</sup>I am referring here to Jonathan Quong’s distinction between two conceptions of political liberalism, one dubbed “internal conception” (with a conceptual-analytical focus) and the other “external conception” (with an empirical-transformative focus). See Quong 2011b, 138-145. Burton Dreben ascribes an internal conception to Rawls. He states that “[w]hat Rawls has primarily been doing for the last twenty years is to engage in a certain kind of very complex conceptual analysis, namely, he has been investigating the question, Is the notion of a constitutional liberal democracy internally consistent or coherent? (...) [I]t’s not (...) a question of how to bring it about (...)” (Dreben 2003, 322; see also Quong 2011b, 143, fn. 17). I discuss Quong’s distinction more thoroughly in the third essay (see Section 4.1).

<sup>226</sup>This is not to say, however, that real-world considerations or action-guidance do not play any role in political liberal theorizing. They are relevant, with the qualification that political liberals are often interested in conceptual questions relating to basic moral-political problems of a constitutional democracy. The tricky methodological issue of how exactly to conceive of the political liberal enterprise, and how to build a theory accordingly, is tackled in the next essay (see Chapter 4). Note that, interestingly enough, Kukathas has himself been charged with developing a view that is too general and abstract, and thus fails “to give any definitive guidance to the liberal state with respect to its response to cultural diversity” since it leaves “substantive scope for the liberal state to adopt different kinds of minority rights” in practice (Vitikainen 2013, 134, fn. 205).

of moral-political issues at stake. There might, therefore, be valuable abstractions and idealizations.<sup>227</sup>

Kukathas takes particular issue with one idealizing assumption within Rawlsian political liberalism, namely the assumption of a “closed society” (Kukathas 2003, 6), or the assumption that people live complete lives within one institutional setting (Kukathas 2003, 9). Let us thus have a short look at the closed society charge, and whether it can be seen as a valuable assumption or not.

### 3.2.3 The Closed Society Charge

Why assume a well-ordered society to be closed, and why assume that people might live complete lives within it?<sup>228</sup> To assume a closed society simply means to set the conditions for our investigation of a liberal polity, and political liberal accommodation of diversity within it, in a certain way. The assumption might be valuable for the reduction in complexity that it brings. Thus, the closed society assumption might provide us with a sensibly limited and clear set of citizens that engage in justification of the basic political framework. The closed society assumption might also be valuable because it is modelled on the institutional world of nation states, federations, and confederations in which we live. The assumption thus still allows us to address known issues and problems that emerge within this institutional world.<sup>229</sup> To assume a closed society, however, might be no better than to assume a more open one. What assumptions we make heavily depend on our interests of inquiry, or research questions. The assumptions we make set the stage for our conceptual-analytical investigation in a certain way.

The first point that Kukathas raises against the assumption of a closed society is the question of whether “the good society or a free society is, indeed, a closed society”

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<sup>227</sup>Thus, building models, making simplifying but workable assumptions, as well as introducing *ceteris paribus*-clauses, are common practice in many scientific fields. The view that there are valuable and helpful abstractions or idealizing assumptions also underlies my example of imaginary content shepherds. To choose an actual indigenous minority, such as the Saami, arguably brings on board a host of issues and problems related to its particular socio-historical context. Certain contextual issues might well distract from one’s actual research interest and investigation. In these cases, at least, abstractions do seem to be a valuable tool to enable one to carry out relevant and workable investigations.

<sup>228</sup>See Rawls 2005, 12, 18, 40-41, 67-68, 301 on these points.

<sup>229</sup>Kukathas disagrees on this similarity argument (see Kukathas 2003, 7). However, nation states such as Finland, or confederations such as the EU, are closed insofar as they take a strong interest in regulating the movement across their borders. There is, thus, enough relevant similarity to make the similarity argument plausible.

(Kukathas 2003, 6). On the view of the closed society assumption just presented, however, assuming a closed society simply sets the conditions under which a good society—understood as a well-ordered society—is tempted. Other conditions or settings for our theoretical investigations are imaginable and possible. This is not a fatal point against investigations of closed well-ordered societies.

The second main problem that Kukathas sees in assuming a closed society is that such an assumption assumes away an important subject of contention, namely the subject of how (and arguably also why) to draw these boundaries in the first place. Thus, he holds that

“[t]he question of how diverse people(s) can live together freely is not just a question about how a set of people within settled boundaries should arrange their institutions; it is also a question about how those boundaries should be drawn, and what those boundaries mean. To begin, therefore, with the assumption that we should confine our analysis to the problem of specifying rights and duties within fixed boundaries is to assume away an important subject of contention”. (Kukathas 2003, 6)

#### **A Reply: The Well-Ordered Society as a Closed Society**

At stake is, then, foremost the question of whether we are interested in the issues of how and why to draw boundaries. To be sure, this is an important and interesting issue. But so is the question of how to specify rights and duties of citizens in a more or less closed society. To hold that theorizing under the assumption of a closed society is a methodological choice that sets the stage for certain questions and issues, and that other methodological choices can be made given other interest or questions, takes the stain off Kukathas’s criticism.<sup>230</sup>

In short, assuming a closed society simply means to introduce certain conditions to the conceptual laboratory of a well-ordered society. These conditions help to spell out and to investigate the workings of important liberal principles and ideals. Admittedly, other set-ups for and conditions for theoretical investigations are imaginable.

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<sup>230</sup>The view presented here is not very demanding regarding the aims and agenda for political theorizing. It allows for diverse set-ups for questioning and investigating political issues. Still, some questions and issues might be deemed more interesting, pressing or intriguing than others. The issue of how a just and stable polity works, and is justified, in the face of a (reasonably) diverse citizenry is a pressing issue that needs to be addressed in any liberal constitutional democracy.

The conditions of a well-ordered society should not, however, be completely random. There are certain necessary conditions for a well-ordered society in order to be recognizably political liberal. For instance, the citizens of a well-ordered society will be reasonable (variously construed); also, a well-ordered society is a fair system of cooperation between free and equal citizens. Being closed, however, does not seem to be one of the necessarily stable liberal parameters of a well-ordered society.<sup>231</sup>

Similarly, we do not have to assume that a well-ordered society is anything like a closed nation state, as Kukathas seems to suggest (Kukathas 2003, 6; 15; 22). Kukathas holds that the well-ordered society is based on liberal nationalist assumptions (Kukathas 2003, 15).<sup>232</sup> To be sure, accounts of a well-ordered society are usually modelled on nation states, with their features of ultimate institutional rule over a certain territory and population. Multicultural theorists such as Kymlicka also explicitly endorse a focus on nation states and much of their arguments, for instance about the fairness of nation-building measures, draws on such background assumptions.<sup>233</sup>

However, there is nothing in the idea of a well-ordered society as such that presses us to say anything on its scope. Thus, we can leave it open whether we conceive of the well-ordered society as a nation state, a confederation, a federation, or the global community. There is nothing in principle, so it seems, that forces us to associate a well-ordered society with a nation state.<sup>234</sup>

**The Value of Assuming a Closed Society** One way to see why assuming a closed society is valuable is a problem that Kukathas’s view on the liberal polity faces. Kukathas uses the metaphor of an archipelago—instead of that of Rawls’s well-ordered society, or Plato’s analogy of the state as a ship (Plato 1993, 488a-489a)<sup>235</sup>—to describe his vision

<sup>231</sup>See Section 4.3 for further discussion of this point.

<sup>232</sup>Kukathas has a pointedly different view on states than those theorizing under a liberal paradigm of a nation state. He conceives of states as only transitory modes of association that should not be concerned with upholding a societal culture or with anything like nation-building, but merely with securing civility (see Kukathas 2003, 15; Vitikainen 2013, 136).

<sup>233</sup>See e.g. Kymlicka 2001a on liberal nationalist assumptions in liberal multicultural theorizing. For other influential liberal approaches concerned with nations and nation states, see e.g. Miller 1995, Tamir 1993.

<sup>234</sup>Jonathan Quong makes a similar point when he holds that “questions of legitimacy and political justification arise within the context of a state, but I make no assumption about whether there are many states or only one” (Quong 2011b, 7).

<sup>235</sup>See Kukathas 2003, 21 for a discussion of the different metaphors. Rawls also uses the metaphor of a symphonic orchestra or a well-played game to illustrate a well-ordered society as the “social union of social unions” (Rawls 2005, 321). For the orchestra metaphor, see Rawls 2005, 321; for

of a free liberal polity. In Kukathas's archipelago view, the freedom of association is of fundamental importance, together with a right to exit associations. The fundamental freedom of citizens to associate rests, in turn, on every citizen's freedom of conscience. Conscience, according to Kukathas, is at the heart of the liberal ideal of toleration, which crucially involves the "conviction that individuals should not be forced to act against conscience—to act in ways they consider wrong" (Kukathas 2003, 25).<sup>236</sup> In his view, a properly liberal society will be one in which groups and associations put up their respective rules "in a sea of mutual toleration" (Kukathas 2003, 22), and where only a right to exit is needed in order to secure the fundamental individual freedom of conscience. No further consideration, for instance of justice, is needed for the liberal archipelago as a "society of societies" (Kukathas 2003, 22) to be truly free. The main regulating feature of all associations in Kukathas's liberal archipelago will, then, be the right to exit.<sup>237</sup>

Now, the prominence of this right causes delicate problems to Kukathas's view. On the one hand, Kukathas' view on a right to exit has been deemed too formal, and was criticized extensively on this account.<sup>238</sup> Such a formal right, as stated by Kukathas, might not involve much. All that is required to secure a formal right to exit might be absence of force, so that citizens can physically leave an association at any time they want. It might also require a certain receptiveness of the wider surrounding societies regarding those who leave an association, so that departure is not made impossible through obstacles outside the association (Vitikainen 2013, 141).

As has been rightly pointed out, however, a right to exit as a real and effective option for citizens, living embedded in their communities and families, might require quite

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discussion see Gledhill 2015, 196, 200-205; Love 2003; Love 2006, Chapter 3. In contrast, Gerald Cohen compares his vision of a socialist community or polity to a jazz band. See Cohen 1995, 122; for discussion see Gledhill 2015, 196-200.

<sup>236</sup>I draw on Kukathas's idea of conscience above to elaborate a political liberal view on the locus of respect for citizens (see Section 3.1.3).

<sup>237</sup>As Kukathas himself puts it, "[t]he liberal Archipelago is a society of societies which is neither the creation nor the object of control of any single authority. It is a society in which authorities function under laws which are themselves beyond the reach of any single power" (Kukathas 2003, 22). It thus resembles today's international society as a society of states (*ibid.*).

<sup>238</sup>See e.g. Vitikainen 2013, 140-143. For more on the right to exit, see the overview on literature in Vitikainen 2013, 142, fn. 222 and the discussions in Vitikainen 2013, Chapter 5 and Borchers 2012. Rawls discusses the issue of exit e.g. at Rawls 2003, 93, 144, 182. Rawls holds that "membership in all associations is voluntary at least in this sense: even when born into them, as in the case of religious traditions, citizens have a right to leave them unmolested by the coercive powers of the government" (Rawls 2003, 144). Respect for citizens as free and equal requires that.

demanding capacities of citizens to make use of such a right.<sup>239</sup> These capacities involve the awareness of other ways of life in other associations, as well as the concrete availability and skills to travel, enter, and integrate into other associations. Leaving an association might involve considerable costs for individuals, be it in form of psychological hardship, a drastic change in life plans and perspectives, or many other ways.<sup>240</sup> To realize an effective right to exit for individual citizens thus seems to be a rather demanding enterprise.

To take such a right seriously might thus have considerable implications for the associations in Kukathas's archipelago. Associations might have to install far-reaching regulations in order to make exit a real option. This might range from educational policies, over monetary support for realizing one's right to exit, to installing integration policies for those who enter an association.<sup>241</sup>

That much, in a nutshell, regarding a common criticism of Kukathas's archipelago view based on an effective right to exit. Now, consider a second line of criticism of this right. Let us grant, for the sake of argument, that Kukathas' formal right to exit is all that a polity needs to protect the citizens' conscience. Let us thus assume that the problems of the effective-right-to-exit-criticism just discussed does not arise in the archipelago. All that associations have to grant to protect their citizens' conscience is a rather formal right to exit. Such a right, we assume, can thus be reasonably well claimed and realized in the associations we are dealing with. This involves that citizens of different associations are, in general, rather well informed about the wider society they live in, and that no association forces citizens to stay within its borders. Exchange and migration among associations is quite common and easily done.

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<sup>239</sup>Anne Phillips, for instance, claims that discussions of a right to exit usually do not attach enough importance to membership in groups and what such membership involves. See Phillips 2007, Chapter 5.

<sup>240</sup>As Rawls puts it, leaving a society "is a grave step: it involves leaving the society and culture in which we have been raised, the society and culture whose language we use in speech and thought to express and understand ourselves, our aims, goals and values; the society and culture whose history, customs, and conventions we depend on to find our place in our social world. In large part we affirm this society and culture, having an intimate and inexpressible knowledge of it, even though much of it we may question and even reject" (Rawls 2003, 93-94).

<sup>241</sup>The last point is ironic, since Kukathas attempts to show that a polity or, in his idiom, an association of associations does not have to guarantee any special minority rights. All that is needed, according to his view, is an individual "right to exit as the main protection against undue cultural pressures" (Phillips 2007, 133). If the points raised here hold, however, a right to exit might require the kind of rights of immigrants, i.e. rights of those who exit associations and enter another one, that Kukathas attempts to refute.

We would thus have somehow ideal conditions for a right to exit as Kukathas envisions them for his liberal archipelago. What to think of such an arrangement? What is striking is that such an arrangement—ignoring, for now, the remaining practical difficulties of exit that we might be facing—seems to be a rather strange way to manage diversity away. What would happen is, arguably, that people will exit and enter an association again, and exit and enter association again etc. until all the similarly-minded people will have settled on their part of the archipelago. This, however, is a very strange way to deal with diversity. It simply organizes diversity away. It provides for the political possibility to avoid diversity on an individual level through the right of exit, and to push diversity one level higher on the level of groups. The relevant issue thus becomes the diversity amongst associations, in which likely minded people gather. Such an approach does not, however, tell us anything about how to deal with diversity *within* an association or group. It only tells us how to deal with diversity in an association of associations, or a society of societies. To be able to address the first issue, i.e. the diversity of ethical, moral and cultural outlooks *within* an association or group, we have to focus our attention on how to deal with diversity on this smaller scale.

To address the issue of diversity on a more individual level, it makes sense to assume a more closed polity within which diversity amongst individuals and groups occurs and is dealt with. If we are interested in the issue of how to deal with diversity within a society, and not a society of societies, then assuming a closed society seems to be the accurate methodological choice that allows for such investigation.

The criticism raised here is congenial to the charge against Kukathas's view that he focuses too much on toleration between associations, and too little on toleration between individuals living in associations. Thus, on the view Kukathas proposes "it is difficult to see how the requirement of mutual toleration would work if it did not also operate as a guiding principle for interactions between different individuals of different associations" (Vitikainen 2013, 143). A call for toleration seems to imply a call for toleration between individuals as well.<sup>242</sup>

Now, we do not have to go as far as claiming that a concern for toleration necessarily implies a concern for toleration of individuals and their ways of life. Still, once we

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<sup>242</sup>This charge also touches on the important problem of "minorities within minorities" that has been widely discussed in debates on multiculturalism (see Eisenberg 2005 for an overview). In order to do justice to minorities within minorities (say, certain language minorities within an indigenous minority) toleration between individuals living in an association becomes important.

are interested in diversity amongst individuals, restricting the focus of investigation to a manageable context and institutional setting of a closed polity seems helpful. The issue of how such a polity might interact with other polities becomes, then, a different matter.<sup>243</sup> In other words, once toleration on the individual level becomes an issue, then the assumption of a closed society might well be a sensible and helpful methodological choice. It is indeed questionable how, with a lack of a more robust focus on the individual level and on diversity within groups or associations, we can qualify the archipelago view as properly liberal at all.<sup>244</sup>

**Political Liberalism and Immigration** Still, Kukathas presents an intriguing political liberal attempt to take diversity seriously. Much can be mined from his criticism of basic assumptions in Rawlsian political liberalism. Kukathas's criticism rightly raises the question of how to model the conceptual laboratory of a well-ordered society. Most intriguingly, Kukathas raises the issue of how, if at all, to deal with multicultural politics within political liberalism.

In order to tackle issues of multiculturalism within political liberalism, certain qualifications to the conventional conception of a well-ordered society are indeed necessary. To be able to deal conceptually with issues of immigration requires that we adjust our view on the well-ordered society as a society where people do not necessarily live whole lives within one institutional setting.<sup>245</sup> In other words, we have to assume that people might migrate, and that they will face considerable hardship in adjusting to new institutional settings. For such a well-ordered society, this means that there will be people speaking and understanding different languages, people that are not yet citizens but are aspiring to become so, or people with a possible sense of estrangement regarding established practices and institutions. All of this has to be assumed in our conceptual laboratory in order to address issues of multicultural politics regarding immigrants. Similarly, we might wonder how a well-ordered society, or a nearly well-ordered society, deals with

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<sup>243</sup>Rawls investigates the issue of international relations in Rawls 1999. The rules for interaction between states or nations he puts up there are different from and less demanding than those between citizens.

<sup>244</sup>Kukathas addresses an illiberalism charge against his views at Kukathas 2003, 109. There, he addresses the charge that his proposed right of exit is too formal. Thus, he admits that his view might lead to illiberal conditions, and that "only a more robust right of exit would make such a right meaningful, and ward off the charge that the view defended here is illiberal" (ibid.). The problem pointed out here is another way to raise a charge of illiberalism against Kukathas.

<sup>245</sup>Note that not much hinges on the label of a "well-ordered society". We might as well qualify such a society as "quasi well-ordered" or "somehow well-ordered" or "nearly well-ordered" (on the last of these, see Langvatn 2013, 102-104).

issues of historical injustices such as colonialism, or the presence of national and indigenous minorities. I will address this latter issue in the last essay of this thesis (see Chapter 6).

Let us now turn to the third charge raised against Rawlsian political liberalism, namely the charge that disagreement is pervasive and permeates views on what is good as well as views on what is just.

### 3.2.4 The Controversial Justice Charge

As Kukathas and others have rightly pointed out, a diverse society will be marked by different views on justice.<sup>246</sup> “In a world of moral and cultural diversity, one of the subjects over which there is dispute, and even conflict, is the subject of justice” (Kukathas 2003, 6). We do not have to turn to ethnocultural diversity in order to see this. Contemporary liberal democracies are marked by very different views on what is just. Socialists, conservatives, or libertarians all have different views on what is just.

What implications does such a diversity among conceptions of justice have for a political liberal polity? Should we treat disagreement about justice similar to the disagreement about views on the good life? Let me briefly say something about the relationship between justice and legitimacy, and why Kukathas’s approach to dissociate issues of justice from issues of legitimacy is misguided.

To start with, the view that conceptions of justice are controversial in a pluralist society is not something that political liberals, following the footsteps of the late John Rawls, deny or are ignorant of. Indeed, much of the motivation of the political liberal project is, arguably, to account also for the diversity that we encounter when it comes to questions of justice. The change of focus from issues of justice to issues of legitimacy illustrates that.<sup>247</sup>

To accept the view that conceptions of justice, held by reasonable citizens, are controversial has two main consequences. Firstly, it suggest a shift in focus from issues of justice to issues of legitimate political authority. Kukathas proposes this shift because, in his view, “the most fundamental question in political philosophy is the question of au-

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<sup>246</sup>For discussion of this “dissensus about justice objection” (Quong 2011b, 148) see also Quong 2011b, 148-150; Gaus 2003, 191-194; Weithman 2002, 196-200. See also the discussion in the third essay below (Chapter 4).

<sup>247</sup>The work of the early Rawls is, famously, more confident about overcoming disagreement on questions of what a just political framework amounts to, for instance through the device of a veil of ignorance in an original position. See Rawls 1971.

thority” (Kukathas 2003, 7). If citizens do not agree on what view of justice they should build their common polity on, then we will have to turn our attention to the more fundamental question of when political rule and authority is warranted, or justified.

Should we, then, simply discard considerations of justice, given widespread disagreement on what justice is or requires? Arguably not. The relation between justice and legitimacy might turn out to be rather complicated. In a first step, however, it seems plausible to assume that the questions of what justice is and requires and of what legitimate political authority is are not strictly dissociated, as Kukathas suggests.<sup>248</sup> He seems to think of questions relating to justice and those relating to legitimate authority as an either-or-issue: Either we focus on issues of justice, or we focus on issues of legitimacy.<sup>249</sup> This, however, is an inadequate view. Issues of justice and legitimacy are intertwined.<sup>250</sup>

To see that, consider a realist or populist approach to public justification and liberal legitimacy that makes legitimacy dependent purely on actual assent or, as on Kukathas’s archipelago, even merely on acquiescence (Kukathas 2003, 19).<sup>251</sup> On such a view, the

<sup>248</sup>Kukathas holds that “all authority” is “resting in the end on the acquiescence of subjects rather than on justice” (Kukathas 2003, 19; see also 5). Kukathas also explicitly states that his theory is interested in “the most fundamental question in political philosophy” (Kukathas 2003, 7), which is not the one of justice. Rather, it is the questions of “[w]hat is to be done if not everyone agrees with (...) [a] theory of justice: who should have the authority to act? What makes authority legitimate, and what are its bounds?” (Kukathas 2003, 7).

<sup>249</sup>To be fair, Kukathas admits that “[t]he question of the *justice* of an action or an arrangement, and the question of its *legitimacy* are two different matters, *even if they may be importantly related*” (Kukathas 2003, 5, emphasis partly added). He goes on, however, to point out that “[t]he focus here is on the latter” (ibid.). Kukathas thus suggests that matters of legitimacy and of justice can be considered independently. It therefore seems that we can, at least to some degree, ascribe to Kukathas the view that justice and legitimacy can be dissociated.

<sup>250</sup>It is a crucial element of Rawls’s view on legitimacy that the publicly justified political framework is required to be at least reasonably just. This is suggested by Rawls’s view that public justifications require public reasons, and that public reasons are reasons that are drawn from the citizens’ conception of what justice is and requires.

<sup>251</sup>Regarding the populist approach to public justification, I draw on Gerald Gaus’s account of the “actual assent thesis” and “populist theories of public justification” (Gaus 1996, 130-131). According to Gaus, the actual assent thesis is an instance of populist theories of public justification. Such theories are populist because they assume that all judgments, whether reasonable or not, “are on par in the sense of being epistemological equals” (Gaus 1996, 131). As Christopher Eberle points out, populist theories of public justification are (i) *inclusive* since they do not introduce any qualification for being a member of the public, and they (ii) *take citizens as they are*, without idealization or abstraction (Eberle 2002, 200, see Chapter 7 for further discussion). As Gaus points out, such populist takes on public justification are implausible since “[p]eople can withhold their assent” for bad reasons such as “obstinacy, selfishness, laziness, perversity, or confusion” (ibid.). Similarly, considering the case of acquiescence on Kukathas’s archipelago, people can acquiesce to political

question of what is legitimate might be dissociated completely from the question of what is just. Such a view implies that, given that a belief or an attitude is widespread enough, this belief or attitude would justify political institutions, policies or laws and thus make them legitimate—whether they are just or not.

To see that such a populist view on public justification and legitimate authority is implausible, think of evil content shepherds that we encountered in the first essay (see Section 2.2.5). On the populist view of political legitimacy just introduced, it might well be that slavery is deemed a legitimate social institution within the polity of evil content shepherds given that acceptance of slavery is widespread enough. Kukathas might hold that if evil content shepherds lived on a liberal archipelago as he envisions it, then slaves would be protected by a right to exit. They would thus be allowed to leave the association of evil content shepherds, and settle freely in another association on the archipelago.

There is, however, a problem with such a possible reply by Kukathas to the problem of slavery on the liberal archipelago. Given that slaves are excluded from the citizenry of evil content shepherds, it is questionable whether the slaves' claims to exit will be listened to by evil content shepherds. Evil content shepherds might well claim that their association grants a right to exit merely to the relevant part of the citizenry, namely the property- and slave-owning evil content shepherds. They might thus claim that their association lives up to the requirements of a liberal archipelago to grant a right to exit. They can claim so, simply, because they do not deem slaves worthy of membership in their political community. Slaves are not citizens, and thus do not bear the rights granted to members of the liberal archipelago.

Now, to claim that slaves should be included in the political community and be respected as citizens, as the basic liberal commitment to the respect for persons suggests, is most straightforwardly understood as a claim to justice. To exclude slaves from the political community within the polity of evil content shepherds is unjust, and thus wrong. A claim to include them is, in short, a matter of justice. Justice therefore matters.

Even if evil content shepherds granted a right to exit to slaves, and even if that right could effectively be claimed, there is still something wrong with the fact that a liberal

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authority for bad reasons, such as fear, selfishness, or confusion. In the political liberalism adopted here, I thus rely on informed consent by reasonable citizens instead of actual assent or acquiescence of actual citizens. For now, however, let us grant a populist view on public justification for the sake of argument, since Kukathas seems to take a populist stance on actual acquiescence to political rule (see Kukathas 2003, 5, 19).

archipelago tolerates the institution of slavery. Kukathas, however, does not seem able to account for that wrongness. As long as the rights of association and exit are upheld, so it seems, the requirements for a liberal archipelago are upheld.<sup>252</sup> Again, the most straightforward way to point out why tolerating slavery is wrong is to hold that slavery is unjust. For instance, we might insist that slavery is unjust because it infringes on certain basic rights of individuals (other than those of association and exit), or does not allow for equal respect for all persons within an association.

In short, to base a liberal polity merely on acquiescence to political authority, as done in Kukathas's archipelago view, is to set the standards of political legitimacy too low. On the acquiescence view on legitimacy adopted by Kukathas, we will have to live with cases of evil content shepherds in our liberal archipelago. If the slaves and the shepherds acquiesce to the political authority of evil content shepherds and the wider archipelago, and if the right to association and exit are upheld, then criticism of that political authority cannot be raised from within Kukathas's political liberalism. To confer legitimacy on a regime that tolerates slave-owning associations is, however, strange from a liberal point of view (to say the least). To allow for slavery is, indeed, illiberal and wrong. It is, at least, in conflict with basic political liberal commitments, such as the commitment to respect for persons as free and equal.

A most straightforward way to account for the wrongness of slavery on the archipelago is to admit that a political liberal regime has, apart from the virtue of legitimacy, also to display at least some degree of the virtue of justice. Otherwise it will not be able to be recognizably political liberal.<sup>253</sup>

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<sup>252</sup>It is not clear how Kukathas would tackle the issue of slavery on the archipelago, apart from insisting on an effective right to exit. Thus, he holds that people are free as long as they are "not forced to live a life (...) [they] cannot accept" and thus have "liberty of conscience" (Kukathas 2003, 113). He also conceives of "the fact of slavery" as "inexcusable" (Kukathas 2003, 117). However, he does not discuss the case where slavery is upheld on the archipelago, for instance because the right of exit is not enough to make slavery obsolete (assuming that no one would want to live as a slave, and thus that everybody held as a slave would exit slave-holding associations). Clearly, however, the "pure toleration" (Kukathas 2003, 140) that Kukathas elaborates seems to allow groups or associations "to perpetrate grotesque harms upon their members with impunity" (*ibid.*), as Brian Barry indicates (see Barry 2001, 143). Barry therefore labels Kukathas's view an "elaborate and perverse theory" (see Kukathas 2003, 140).

<sup>253</sup>Note that another striking feature of Kukathas's approach is its dissociation of liberalism from democracy. Nothing in Kukathas' approach suggests that associations need to be democratic. Thus, he holds that "[t]here is no necessary connection between liberalism and democracy, whose marriage is simply one of convenience" (Kukathas 2003, 30). However, the public justification principle and the liberal principle of legitimacy suggest that a compelling political liberalism will be essentially (and constitutionally) democratic. Public accountability and justification are at the core of the

It thus seems plausible to assume that a legitimate political liberal order is one that cannot be overly unjust. The main problem at this point is, of course, that we might not know exactly what justice is or requires, or that citizens have very diverse views on these issues. Still, it is also clear that these views on justice cannot be completely disparate either. A claim to justice that holds that justice requires slavery, for instance, will not count as a view on justice but, rather, as a view on oppression, exploitation or something the like.

Even though there are diverse views on what justice is and what it requires, these views will not be radically different. Rather, they will display a certain family resemblance, at least if they are deemed liberal. In other words, these views on justice will be “[m]embers of the [liberal] family” (Weithman 2002, 197). One way to put it is that conceptions of justice in a political liberal polity will be such that they are seen as reasonable by fellow citizens, i.e. citizens who might have very different views on what is good or just.

Rawls thus introduces the view of a family of liberal conceptions of justice. He states that “the content of public reason is given by a family of political conceptions of justice, not a single one. There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions” (Rawls 1999, 140-141).<sup>254</sup>

These political conceptions of justice are thus assumed to be “broadly liberal in character” (Rawls 2005, 223). According to Rawls, requirements for membership in the family of liberal political conceptions are the following: A political conception of justice (i) “specifies certain basic rights, liberties, and opportunities (of the kind familiar from constitutional democratic regimes)”, (ii) “assigns a special priority to these rights, liberties, and opportunities”, and (iii) “affirms measures assuring all citizens adequate all-purpose means to make effective use of their basic liberties and opportunities” (Rawls 2005, 223).<sup>255</sup>

This, I take it, is a sensible way of striking a balance between considerations and demands of justice and demands of legitimacy. It seems sensible to assume that a political liberal regime has to be somehow just, and that not anything goes under the label of justice, in order to be fully legitimate. As the discussion of evil content shepherds

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democratic ideal as well as of Rawlsian political liberalism.

<sup>254</sup>For a discussion of this issue, see e.g. Weithman 2002, 192-200.

<sup>255</sup>For a critical discussion of the “family of liberal political conceptions”-view and reasonable disagreement about justice, see Gaus 2003, 191-194; Weithman 2002, 196-200.

above suggests, the justice of a political framework is one stepping stone to establish the legitimacy of a polity, even if citizens hold (reasonably) different views on what justice is or requires.

A lesson to be drawn from the controversial justice charge is, then, that the diversity of reasonable conceptions of justice suggests more modesty when it comes to the development of a conception of justice. I take it that the main constraint on the range of admissible conceptions of justice will crucially be the test of reasonableness.<sup>256</sup> The list of requirements for family membership in the political liberal family stated above is, then, a helpful way to make out reasonable political conceptions of justice. However, the decisive issues should not be technicalities such as established priorities of rights and liberties, even though such ordering is important. After all, a specific ordering of rights, liberties and opportunities might not be fully elaborated in many reasonable conceptions of justice. These conceptions should arguably not be excluded merely due to such a remediable and rather technical lacuna. The decisive issue should be whether a political conception of justice is reasonable, and thus spells out basic ideals of social cooperation in a well-ordered society.<sup>257</sup>

Another constraint on conceptions of justice put forward by Rawls is implied by their qualification as *political* conceptions. The main feature of “political conceptions” are: (a) “their principles apply to basic political and social institutions”, (b) “they can be presented independently from comprehensive doctrines of any kind”, and (c) “they can be worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime, such as the conception of citizens as free and equal, and of society as a fair system of cooperation” (Rawls 1999, 143).<sup>258</sup>

The shift in focus from issues of justice to issues of legitimacy in Rawlsian political liberalism is thus only partly motivated by granting diversity amongst views on justice. The family-resemblance-view on liberal conceptions of justice allows for reasonable

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<sup>256</sup>As Rawls puts it, “[t]he limiting feature of these forms [of public reason and views on justice] is the criterion of reciprocity, viewed as applied between free and equal citizens, themselves seen as reasonable and rational” (Rawls 1999, 141). I take the issues of political reciprocity and a view of citizens of each other as free and equal to be crucial elements of a standard of reasonableness. See Section 4.4.3 for further discussion.

<sup>257</sup>It might even be that a conception of justice does not rely on the language of rights and liberties at all, but might still be deemed reasonable. Such views might require some efforts of translation and conjecturing to make them accessible and acceptable to other citizens (see Section 5.3.4 for a discussion of issues of translation and conjecturing). The decisive issue here is, again, whether a conception of justice is reasonable, and whether it can be seen as such by fellow citizens.

<sup>258</sup>See Weithman 2002, 192 for discussion.

disagreement amongst conceptions of justice, while upholding the relevance of justice considerations for questions of legitimacy. The relevance of justice is upheld because public reasons and public justification will be based on the citizens' conceptions of justice. A main motivation for a shift to considerations of legitimacy is, then, rather the emerging question of how a polity can, despite the reasonable diversity in views of justice, be stable and thus functioning over time.

To sum up, the view that justice considerations should be left out completely once we focus on issues of legitimate authority seems implausible, at least given certain basic political liberal premises assumed here. To strengthen further the view that justice matters in a political liberal polity, let me now turn to Kukathas's discussion of equality and his case against granting minority rights to cultural minorities on the liberal archipelago. Through a discussion of these points I hope to further establish the plausibility of a Rawlsian well-ordered society in contrast to Kukathas's liberal archipelago.

### **3.3 Political Liberalism and Ethnocultural Minorities: Some Remarks**

Kukathas's political liberalism is deeply hostile towards the accommodation of rights claims by cultural minorities within associations or societies. As we have seen, all that is required to establish a tolerant and legitimate liberal order on Kukathas's archipelago are (i) the freedom to associate and (ii) a right to exit associations. As should be clear by now, the Rawlsian version of political liberalism introduced above is of a very different kind. Rawlsian political liberalism shares with Kukathas's approach the scepticism regarding a single, universally acceptable conception of justice as the binding grounds of a polity. However, the scepticism against finding a single conception of justice on a Rawlsian view is moderate. It does not altogether abandon the ideal of justice within a reasonably diverse polity, as Kukathas seems to suggest.

Apart from the gravity of scepticism against the ideal of justice, Rawlsian political liberalism also disagrees with Kukathas on the value of a well-ordered society as a conceptual-analytical laboratory or thought experiment to investigate a tolerant and legitimate liberal order. The conception of legitimacy based on consent, public justification and public reasoning as applied in a well-ordered society is different from and morally more demanding than Kukathas's conception of legitimacy on the liberal archipelago.

Kukathas' view on legitimacy merely requires acquiescence, as opposed to consent. That is, it merely requires a very weak form of assent, for instance through something like tacit or implicit acceptance or subordination to political authority.<sup>259</sup>

In this Section, I would like to see whether, and how, we can accommodate multiculturalism, i.e. differential treatment for ethnocultural minorities in the form of minority rights, in a Rawlsian political liberalism. A first issue to tackle in such an endeavour is to see how to account for ethnocultural minorities such as indigenous peoples, minority nations or ethnic immigrant groups in a well-ordered society. Kukathas's version of political liberalism prominently suggests that ethnocultural minorities do not have a claim to differential treatment on the archipelago.<sup>260</sup> Does, however, a Rawlsian political liberal approach have to share this view? Do ethnocultural minorities have no claim to differential treatment in a well-ordered society either?

In order to investigate the relation between Rawlsian political liberalism and multicultural politics, I would like to focus on two main questions. First, why is ethnocultural belonging important? If it matters politically, can political liberals with their basic commitments, as outlined above, account for this importance? At first glance, taking ethnocultural belonging into account seems to be in tension with the agnostic outlook on persons and the thin view on toleration introduced earlier (see e.g. Section 2.3.1).

Second, given that ethnocultural belonging matters politically within a well-ordered society, what does the liberal principle of legitimacy imply regarding the behaviour of ethnocultural minorities in the political arena? What, in the name of respectful democratic citizenship within a well-ordered society, can be expected or required from ethnocultural minorities when it comes to political debate and decision making? In the following Subsections I will consider some answers to these questions in outline. I will dwell further on these issues in the following essays (especially Chapters 5 and 6).

### 3.3.1 Why Is Ethnocultural Belonging Important?

In the political liberalism of Kukathas, ethnocultural belonging is of no political importance or consequence, except for being a species of a human association that should be

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<sup>259</sup>To acquiesce to, say, authority or a state of affairs or a descriptions means, at the very least, not to reject that authority or state of affairs or description (Kukathas 2003, 201). Note that Kukathas seems to conceive of acquiescence as consent in "a very weak sense of the term" (Kukathas 2003, 201). See also Kukathas 2003, 204 on this point.

<sup>260</sup>Kukathas holds that no "particular group or class or community should be given special recognition" (Kukathas 2003, 5; see also 235-236).

free to rule itself. Cultures are, then, conceived of as just another form of human associations. Kukathas proposes benign neglect, or a “politics of indifference” (Kukathas 2003, 15), as the adequate political response to claims of ethnocultural groups. Kukathas sees “cultural engineering” (ibid.) as a non-issue for a liberal polity. He “rejects the idea of making the boundaries, symbols, and the cultural character of the state matters of justice” (Kukathas 2003, 15). Ethnocultural belonging is, thus, not worth political consideration or accommodation. It does not matter in politics.

Is Kukathas’s view on how a tolerant liberal polity should respond to ethnocultural diversity sound? Kukathas develops his views on benign neglect for ethnocultural claims to a considerable extent in contrast to Will Kymlicka’s views. Kymlicka’s views are in favour of multicultural accommodation of minority claims in liberal states. Kymlicka prominently opposes the benign neglect view that Kukathas defends.

#### **Against Benign Neglect of Ethnocultural Belonging**

One of Kymlicka’s main reasons to deem benign neglect views inadequate when it comes to ethnocultural diversity is the fact that states necessarily bear ethnocultural marks. Thus, states are being administered in a certain language, they establish certain boundaries of subunits, they favour certain public holidays, and they install state symbols and history curricula in public schools etc. Kymlicka thus concludes that “states cannot help but give at least partial establishment to a culture” (Kymlicka 1995, 111).<sup>261</sup>

Call this the “cultural establishment view”. If this view holds, then cultural establishment seems to become a weighty political matter that affects the basic social structure of a polity and thus has considerable impact on the lives of citizens. The questions of which languages are used in parliament and bureaucracy, on what grounds administrative subunits are drawn and what powers they hold, what state symbols and school curricula should be upheld etc. are all weighty political matters.

Questions and claims linked to cultural establishment, and thus to the issues of official languages, history curricula in schools or publicly recognized celebrations and holidays etc. all involve questions and claims about ethnocultural justice in a polity. The reason is that “it is not fair to make people conform to a culture (...) that they have not accepted

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<sup>261</sup>More generally, this involves that a “government cannot avoid deciding which societal cultures will be supported” (ibid.). See also Kymlicka 2001g, Part II, entitled “ethnocultural justice”; Carens 2000, 10-11, 77-78 and Song 2007, 61-67 for discussion.

for themselves, or to marginalize them if they do not, at least when it is possible to avoid doing so” (Carens 2000, 11).<sup>262</sup>

In a nutshell the main argument is that

“since states cannot achieve complete disestablishment of culture, it must somehow make it up to citizens who are (...) native speakers of other languages. Where complete disestablishment is not possible, one way to ensure fair background conditions is by providing roughly comparable forms of assistance or recognition to each of the various languages and religions of citizens. To do nothing would be to permit injustice.” (Song 2007, 64)

### **On the Importance of Political Equality**

The main reason why Kukathas embraces the benign neglect view, and opposes the relevance of the cultural establishment view for politics, is his “refusal to be guided by the goal of equality in social policy or institutional design” (Kukathas 2003, 237). If we refute Kukathas’s argument against equality considerations in institutional design or politics more generally, we are able to safeguard the plausibility of the cultural establishment view and considerations of ethnocultural justice against Kukathas’ concerns.<sup>263</sup> If

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<sup>262</sup>As Joseph Carens rightly points out, this view is crucially underpinned by the “neutrality ideal” (ibid.). The ideal of neutrality is also built in the liberal principle of legitimacy. The public reason requirement is a way to spell out the ideal of neutrality by holding that justifications of political authority, as well as political authority itself, need to be neutral regarding different ways of life and views on the good. Note that neutrality is different from benign neglect. Benign neglect is a stronger view, since it declares an issue, say religion or cultural belonging, as a non-issue in politics. States should not be concerned with the issues in question at all according to the benign neglect view. The benign neglect view thus relegates religious or cultural considerations to the private sphere. Neutrality, on the other hand, allows for political consideration of, say, religion or cultural belonging, but requires political institutions and justifications to be neutral, i.e. equally accommodating, amongst various religions or cultures. See Kymlicka 1995, 108-115 and Kymlicka 2007, 343-347 for a discussion of the distinction between neutrality and benign neglect.

<sup>263</sup>Note, however, that further trouble is ahead. It would require further argument to actually safeguard justice considerations in the domain of ethnocultural belonging. For instance, there are also less radical ways to criticize ethnocultural claims to differential treatment. One might admit for instance that equality and justice matter, but still uphold the view that ethnocultural belonging is of no consequence regarding these issues. Say, because the burdens that ethnocultural belonging incur are seen as chosen and “expensive tastes”. Such expensive tastes, then, are not to be remedied by the state, at least not in the name of justice, in contrast to, say, physical disabilities. Thus, Brian Barry holds that religious beliefs or cultural disposition or affiliations “are not encumbrances in anything like the way in which a physical disability is an encumbrance” (Barry 2001, 36). For further discussion of such a view, see Barry 2001, 36-37; Quong 2006; Song 2007, 62-64; Vitikainen 2013, Chapter 3.

liberal states should be concerned about equality in a polity, and be guided by equality considerations in establishing a political framework and political institutions, then it is plausible to assume that such a state should also be concerned with issues of cultural establishment and ethnocultural justice. Even though further argument is needed to establish that much, arguing for the importance of equality in a liberal polity is an important first step towards an accommodation of ethnocultural minorities in such a liberal polity.

Why, according to Kukathas, should equality not matter in liberal politics? The main reason why pursuing equality should not be put on the political agenda of a liberal state is the “thought that the goal is unattainable” (Kukathas 2003, 237), and even lacks a coherent description. As in the case of justice, “different groups see equality differently” (ibid.), which, in Kukathas’s view, has fatal consequences for the ideal of equality. Equality considerations are deemed as controversial as considerations of justice, or conceptions of what is good in life.<sup>264</sup>

A first reply to the view that equality has no place in a liberal polity because it is contestable is that, as in the case of justice contestability as such does not dictate the exclusion of considerations of equality.<sup>265</sup> It merely suggests prudence in the elaboration of a conception of equality, and an aspiration of being as thin and appealing as possible to as wide a reasonable public as liberally possible.

Indeed, if contestability as such is fatal, then the idea of liberty would have to be abandoned from Kukathas’s liberal theorizing as well. After all, liberty is also an essentially contested concept.<sup>266</sup>

**Kukathas on the State as Umpire** To explain and make sense of the benign neglect thesis and his sceptical view on the relevance of equality in a liberal polity, Kukathas

<sup>264</sup>An important part of Kukathas’s book is concerned with the analysis of the idea of equality, and the inadequacies of different views on it. See Kukathas 2003, Chapter 6.

<sup>265</sup>Note that the value of individual autonomy, as discussed in the first essay, is not criticized on the grounds that it is controversial as such. Rather, it is criticized on the grounds that a liberal polity founded on the value of individual autonomy alone would not give full moral-political standing to content shepherds, which seems inadequate and wrong. The value of individual autonomy is thus criticized on the grounds that it is controversial in the wrong way, by excluding reasonable points of view such as those of content shepherds when establishing a legitimate polity. The liberty principle or the principle of public justification are, of course, also controversial. Thus, theocrats or fundamentalists will deem these political ideals dangerous or wrong. Remember, however, that this is not the kind of disagreement or diversity I am focusing on in this study. Here, I focus merely on *reasonable* disagreement and diversity.

<sup>266</sup>For such a view on liberty, see e.g. Christman 2005c, 354-355; Christman 1994, Chapter 4.

elaborates his own view of the state. Instead of a state as cultural engineer, he proposes a state as an umpire. On the liberal archipelago the state is an umpire because it is simply one umpire, or association, among others, even though an especially important one (Kukathas 2003, 213).

The analogy of an umpire is, arguably, taken from sports. There, an umpire is usually the entity that assures that a game runs smoothly and that the rules of a game are followed. In order to fulfill this function, players of the game defer the authority to adjudicate the rules of the game to the umpire. The aspects of the state as umpire that Kukathas wants to stress are the following. First, it is the umpire, or ruler, who adjudicates conflicts over justice (Kukathas 2003, 213). On this view of the state, there is “nothing about the state that makes it especially capable of knowing, or implementing, what is just” (ibid.). The main task of the state as umpire is not to create a just social order, but to pragmatically administer the order faced with different conceptions of justice. As Kukathas puts it, “the point about an umpire is that his concern is not to determine the outcome of the game; it is simply to keep the game going by adjudicating when conflicts or disputes arise” (Kukathas 2003, 213).

Second, and relatedly, the main aim of the state as umpire is to preserve social and political order, or to keep the game running smoothly. A main means to this end is to provide “a form of security that is consonant with liberty” (Kukathas 2003, 213). This security is provided “by the exercise of authority to preserve order, so that people might pursue their goals or ends—separately or in groups—in safety and without fear” (ibid.).

Is the umpire view of the state presented by Kukathas a plausible view of a liberal state? Here are a few points indicating that it is not.

First of all, consider the establishment of the authority of an umpire. In order to be an umpire in the first place (i.e. being assigned the role and authority to adjudicating the game, being accepted by those subject to it, having certain powers etc.) there arguably needs to be a framework of rules that establishes the rules of the game, and assigns the roles of those participating or administering the game. In short, the source of the authority of an umpire is relevant, and needs to be part of the story of how the authority of an umpire is established.

This issue of the source of authority is well taken into account by the legitimacy view of a Rawlsian political liberalism. There, a common constitution and its essentials establish a political framework of rules, and underpin an institutional political order that assigns legitimate political authority. According to this view, a constitution and

the consent of subjects to its essentials are crucial for an adequate depiction of legitimate political authority.

Kukathas, on the other hand, merely admits that the acquiescence of the subjects to the authority of an umpire is needed. Acquiescence, however, does not seem to be enough to establish legitimacy. The acquiescence view begs the question of why the subjects would acquiesce in the first place. Force, for instance, seems to be a clear case of an inadequate means to reach acquiescence. Force simply is not the right way to establish a legitimate, liberal political order. Acquiescence by itself thus cannot be the whole liberal story. The way how acquiescence is reached matters too.

Internal to Kukathas's view, we could exclude force as a source of acquiescence because force will most probably hurt the conscience of the subjects.<sup>267</sup> On the view of legitimacy within a Rawlsian political liberalism, force would be incapable of establishing legitimacy because it cannot secure consent. Force does not bind the will by those concerned, at least not in the way it should, i.e. through public justification and public reasons.

We thus want acquiescence for the right reasons. What are these reasons? As a Rawlsian political liberal view suggests, the right reasons are a publicly justifiable set of rules that establish the political framework. It is such a political framework as a set of rules that binds the consent of those concerned by these rules. Such a framework is regulated by constitutional essentials, and forms the political basis of the polity. On the Rawlsian political liberal view on legitimacy subjects would accept, and not merely acquiesce to, the authority of the polity because it can guarantee acceptable terms of cooperation between free and equal citizens, or participants of the game.

Consent is morally more demanding than acquiescence, but it seems necessary in order to live up to basic political liberal premises such as the liberty principle, the liberal principle of legitimacy, or respect for persons. As the Kantian inheritance suggests, this is the only way to respect the citizens' moral autonomy. Acquiescence is not sufficient for this.<sup>268</sup>

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<sup>267</sup>Kukathas notes that "force should not be used (...) because this would constitute a direct violation of conscience" (Kukathas 2003, 101).

<sup>268</sup>This line of argument, relying on the view of citizens as free and equal, can also be used to argue against a view that conceives of a polity as a mere association, as in the case of Kukathas. Rawls points out that it is "a serious error not to distinguish between the idea of a democratic political society and the idea of community" (Rawls 2003, 20) or association. In contrast to an association, in a well-ordered society citizens "affirm the constitution and its political values as realized in their institutions, and they share the end of giving one another justice, as society's arrangements require" (Rawls 2003, 20). They do not merely unite "in pursuing certain shared values and ends" (ibid.) that

If such a view holds, however, then we transgress the conception of the state as umpire. There will be more to the state than simple administration of the political game, or polity. The state will be concerned with the establishment of the rules governing the polity. Due to the importance of legitimacy, it will also be concerned about the acceptance of the governing rules for the right reasons, i.e. public reasons capable of yielding public justification.<sup>269</sup>

A Rawlsian political liberal view, it seems, presents us with a more adequate view on what is required in the establishment of a liberal polity. It better lives up to the basic political liberal ideals, such as the public justification principle or respect for persons. A Rawlsian political liberalism should therefore be preferred to the rather parochial view on legitimate authority presented by Kukathas.<sup>270</sup>

Let me briefly illustrate the main point raised against Kukathas's exclusion of equality considerations in a liberal polity. I claimed that in order to keep a game going, and to have free participation by everybody involved, the rules will have to be legitimate such that those subject to it could consent to it. Acquiescence is not enough. Now, imagine that one team, or some players, cannot participate in the game like everybody else, for instance because they got hurt. Also imagine that the rules of the game are not explicitly broken; nothing in the rules states that hurt players are in any way special or deserve special attention. Furthermore assume, for the sake of argument, that the

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lead them to support their association, but—facing reasonable pluralism—they engage in a political society. That society is organized around a publicly justifiable view on constitutional essentials and a just basic social structure.

<sup>269</sup>Admittedly, the argument presented here rests on the acceptance of several political liberal assumptions introduced earlier in this essay—assumptions that Kukathas may well not accept. The criticism presented here might thus not achieve much relative to Kukathas's own views (thanks to Sune Laegaard for pointing this out). Even though I present no explicit argument, however, I hope that the account give of the adequate administration of a sports game, or a legitimate state, indicates that the assumptions regarding public justification and respect for citizens are sensible; and that they should be preferred over, or added to, Kukathas's overly minimalist moral-political view on acquiescence and political authority.

<sup>270</sup>It is parochial because it excludes equality and justice considerations as irrelevant for the ruling of a liberal polity, with all the consequences this might yield. A possible reply to the criticism raised here is that my criticism of the state as umpire depends on the acceptance of basic political liberal premises, such as the liberty principle, the public justification principle, or respect for persons. Not just that, my criticism is even based on certain particular conceptions of these premises, such as the liberal principle of legitimacy with its particular view on public justification established through public reasons. This reply holds. However, it is hard to see how a convincing political liberalism could do without these basic premises, at least when formulated in general terms. The criticism raised here thus also helps to see more clearly what makes Kukathas's account extravagant, if not outright "perverse" (Kukathas 2003, 140), as a version of political liberalism.

players cannot opt out of the game (or, if you wish, that opting out would not make things better, or be far too costly etc.).<sup>271</sup> At least in such a situation, benign neglect seems inadequate. Even though the game could continue—the rules are not broken and the order could be preserved—it seems to be part of the state’s task to take care of the game in a certain way, namely so that it is continuing for the right reasons. The pragmatic fact that the game can still go on, even if some players are hurt and thus disadvantaged in their contribution to the game, does not seem enough. A legitimate political authority needs to take care of the game in a way that all players could, in principle, consent to it, also those who are hurt. In the given scenario, however, those hurt could reasonably withhold their consent. The reason is that the game continues despite the fact that they cannot participate or contribute to it. In the name of justice and respect for persons, hurt players can ask more from the authority in charge of the game. This, at least, is suggested by basic political liberal premises.

To account for the hurt players’ claims will require the introduction of some conception of equality. Without a conception of equality at hand, it will be hard to see what is wrong with hurt players and different opportunities to participate in the game. However, this is nothing to be feared of as such from a political liberal point of view. Equality, and more precisely political equality, is a crucial political liberal ideal, along others such as liberty and respect. As the hurt-players example suggests, equality deserves its place in an well-ordered society.

Instead of abandoning the ideal of equality, the suggestion here is thus to aspire a thin, or political, conception of equality. Such an ideal of equality underlies a well-ordered society as a system of cooperation between free and (politically) equal citizens.

How to spell out such a political conception of equality? Rawls conceives of citizens as politically equal insofar as they display the two basic moral powers that enable them to engage in social cooperation. As we have seen above, one of these powers is the capacity for a sense of justice that allows to “understand, apply, and act from (and not merely in accordance with) the principles of political justice that specify the fair terms of social cooperation” (Rawls 2003, 18). The other power is the capacity for a conception of the good. It is the capacity to rationally pursue what one values in life (Rawls 2003, 19).

If we accept the view that citizens of a well-ordered society are to be respected as

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<sup>271</sup>Kukathas’s arguments decisively hinge on the right to exit, so this assumption might seem to undermine the whole archipelago enterprise. I introduce this assumption because I want to focus on diversity within a society, and not in a society of societies or an archipelago.

equals in holding these moral powers, and if we accept the cultural establishment view, then disadvantages of certain citizens in the polity due to their ethnocultural background becomes a political concern of justice. The cultural establishment view helps to ground the claim that cultural marks of the polity are a matter of justice.<sup>272</sup> It is a matter of justice because cultural issues of language establishment, drawing borders, history curricula, and public recognition of celebrations and holidays etc. touch on the political questions of how to conceive of the basic social structure and its institutions. These issues thus touch on the terms of fair social cooperation spelled out in constitutional essentials.<sup>273</sup>

Let me briefly conclude on the importance of ethnocultural belonging in a political liberal polity. I argued that acquiescence is not enough to establish legitimate political authority and to live up to basic political liberal ideals such as the public justification principle or respect for persons. What is needed is more full-blown consent. If this holds, however, then Kukathas's umpire view on the state loses much of its plausibility.

This is illustrated by the case of hurt players in a game, or disadvantaged citizens in a polity, administered by an umpire as outlined by Kukathas. The case of hurt players

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<sup>272</sup>Note that the two main steps in the argument so far—i.e. (a) citizens should be respected as free and equal and (b) the acceptance of the establishment view—are necessary to establish cultural disadvantages as a political concern of justice, but they are not yet sufficient (thanks to Sune Laegaard for pointing this out). Thus, an egalitarian justification of multiculturalism is in need of a further explanation that is able to link the stated moral-political principles to cultural issues. In Will Kymlicka's theory, the explanation of why cultural marks of the state raise concerns of justice is provided by the importance that societal cultures have as contexts of choices for the individual autonomy of citizens (see Section 2.1.3). In Alan Patten's recent work, the explanation is provided by an account of state neutrality regarding conceptions of the good (see Patten 2014, Chapter 4 and especially Section 4.3 for Patten's own refined view on neutrality). Admittedly, a Rawlsian justification of minority rights will be inadequate without providing such an explanation as well. The explanation given in this thesis is that the necessary cultural establishment of a polity, touching on the basic social structure as well as the workings of the political institutions, requires public justification. The neutrality and accessibility of justifications, and thus the legitimacy of political rule, are at stake (see Section 6.2 below).

<sup>273</sup>Note that the argument so far does not take a stand about the adequate way of responding to ethnocultural disadvantage. So far, it might well be that the best way to establish ethnocultural justice, would be the quick integration of minority cultures into the established mainstream culture. It might also be that an adequate way would require the establishment of an invented or dead language, such as Esperanto or Latin. These solutions too might be apt to avoid disadvantage due to cultural establishment, and thus to promote political equality. The discussion so far is merely supposed to show that ethnocultural marks of a political liberal polity matter for the basic political framework and institutional setting. For arguments against integration or invention approaches to ethnocultural diversity of indigenous and national minorities based on the ideal of self-respect, see Section 6.2 below.

suggests that political equality remains an important ingredient of the political liberal enterprise. This is so even if, as in the case of justice, we might have to withdraw on a view of a family of conceptions of political equality. To allow for reasonable disagreement on what equality and justice are or require seems congenial to the political liberal aspiration to take diversity as seriously as liberally possible.

The importance of political equality, taken together with the cultural establishment view, suggests that ethnocultural belonging of citizens touches on the political matter of justice. The inevitable ethnocultural marks of a society's political framework and social structure is a weighty political matter that needs to be taken into account in justifications of that framework. The main reason for that is the possible severe political and social disadvantage of some citizens through cultural establishment. In short, considerations of equality and ethnocultural justice matter in a political liberal polity.

#### **3.3.2 What Does a Liberal Principle of Legitimacy Require from Ethnocultural Minorities? A First Take On Cultural Reasons**

In attempts to publicly justify weighty political matters, members of ethnocultural minorities will have to present public reasons. This is a requirement for all citizens of a legitimate political order based on the liberal principle of legitimacy. The public justification requirement, as well as a standard of reasonableness, hold for all citizens. Reasonable citizens abide by commonly established and publicly justified terms of cooperation, and present public reasons in the process of establishing this fair system of social cooperation.

An interesting aspect of having ethnocultural minorities in the public justification process of constitutional essentials is that, faced with a majority aspiring to shape common institutions according to the majority's culture, these minorities might present reasons against that aspiration that explicitly based on their cultural practices and background. Thus, content shepherds might mention traditions and customs when justifying, say, a certain property regime. They might advocate a property regime that is very different from the majority's property regime where, say, most assets such as livestock and tents for housing are communally owned. Let us refer to such reasons in public justification as *cultural reasons*. Cultural reasons are, as a first rough definition, reasons based on or referring to one's cultural beliefs and commitments.

The first important preliminary remark regarding cultural reasons is that our view of

cultural reasons, as well as our view on their role in the public arena, will strongly depend on the view on culture we adopt. Thus, we might opt for a shallow or thin conception of culture as proposed by Kymlicka in his view on cultures as societal culture. A focus on societal cultures implies a focus on societal aspects of ethnocultural groups, such as language, territorial unity, collective history and institutional traditions and practices.<sup>274</sup>

I take it that Kymlicka's view on culture is congenial to a political liberal take on multiculturalism since it avoids the reference to thick values and commitments, such as a particular way of life, religious beliefs, ethical views on the good life, or particular social customs and traditions. Also, it seems to be mainly societal issues picked out by the conception of a societal culture, i.e. language, institutional practices, history and territory, that are involved in the unavoidable cultural establishment of a polity.<sup>275</sup> By focusing on societal cultures, however, we are also focusing on a certain kind of multiculturalism, namely one foremost associated with the lot of indigenous minorities (such as the Saami in Finland), or national minorities (such as Scotland in the UK or the Basque country in Spain).

We can thus distinguish between (i) a generic understanding of cultural reasons, i.e. roughly the view that cultural reasons are all reasons drawn from all kinds of ethnocultural commitments and beliefs, and (ii) a more technical or detailed understanding of cultural reasons, where the definition of cultural reasons depends on a more elaborate conception of culture we adopt. A view on cultural reasons drawn from a conception of culture as societal culture will be restricted to societal issues. Here, cultural reasons will only be those reasons referring to the societal issues of language, institutional traditions and practices, collective history or territorial unity.

Examples of generic cultural reasons (i) are arguably abundant. It is reasons that are derived from or linked to a certain way of living, or a certain way of dealing with things. Many customs, traditions, or rites are of this kind. Reasons in political argument based on these cultural practices would thus qualify as generic cultural reasons.<sup>276</sup> Consider

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<sup>274</sup>On societal cultures see e.g. Kymlicka 1995, 76. For a discussion see Kukathas 2003, 12-13 and Sections 2.1.2 and 6.1.2.

<sup>275</sup>As I tried to indicate above, the cultural establishment view is crucial to establish multiculturalism issues on a political liberal agenda (see Section 3.3.1).

<sup>276</sup>A generic cultural reason is thus, essentially, a reason that is derived from judgments about "how things are done (or thought to be done) around here". The examples of customary law in many legal systems, or the epistemic value of testimony, indicate that such reasons are not, as such, devoid of normative or justificatory force. Thus, in the case of customary law, laws that are simply a law because they are established social practices are given considerable force in legal argument and

the following example of a generic cultural reason as the basis of a political claim:

Practice A (e.g. a certain kind of giving birth, or of child rearing) is valuable and worthy to be pursued, because this is how things have been done for several generations, and are still done, around here. This is our way of doing things, and part of our way of life. The state should therefore protect practice A.

The following, on the other hand, are examples of cultural reason based on a view on cultures societal cultures (ii):

The state should include symbol X in its official representations (flag, official documents etc.) because symbol X is a crucial customary symbol of the majority.

Political decision-making procedure Y (e.g. rule by the elders) should be adopted because it is an ancient and valued way of ruling amongst the majority.

Borders of the polity as well as the borders of administrative subunits are drawn on traditional views held by the ancestors. The borders have a long history, and are based on differences in language and regional customs.

What is the status of cultural reasons in public justification? Generic cultural reasons seem to lack an appeal to the wider public, and thus do not seem to be properly shared or public. The reason that “this is how we do things here” is thus incapable to warrant legitimate state action or minority rights, at least given the view on legitimacy adopted here.

What about cultural reasons based on a view on cultures as societal cultures? What status do reasons relating to issues such as language, institutional practices, collective history, and common territory have in political discussions and public justifications?

A first issue to be considered is the justificatory status of cultural reasons based on the societal-culture-view. Are cultural reasons public or non-public? Are they reasons like

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reasoning. Similarly, testimony can be an interesting and important source of knowledge; much knowledge, for instance in schools as transferred by teachers, is based on or transferred through testimony. On customary law, see e.g. Perreau-Saussine 2009 and Murphy 2014. On the epistemic value of testimony, see e.g. Wolterstorff 1998.

religious reasons, or different from them? A commonly discussed instance of nonpublic reasons in political debate is the one of religious reasons.<sup>277</sup> Religious reasons, such as “The state should do X because the Bible says so”, will not appeal to those who do not take the Bible to be an authoritative moral source. This will be the case in a reasonably pluralist society, where different religions and world views live side by side.

Cultural reasons are similar to religious reasons insofar as they are drawn from a particular world view and traditions. A particular view on what language should be used by the state, or what institutional traditions should prevail, will not be widely shared in culturally diverse society.

However, cultural reasons are also crucially different from religious reasons. The difference has to do with the cultural establishment view, and the implied disanalogy between culture and religion. Whereas a polity can avoid to establish religious commitments and marks, it will necessarily bear certain societal cultural marks such as language, traditional institutional practices, a shared sense of history, and some territorial unity. Otherwise, any kind of political, educational or economic activities will become utterly difficult, if not impossible.<sup>278</sup> Cultural reasons based on the societal-culture-view thus have a different status in public justifications than religious reasons. Cultural reasons based on the societal-culture-view become particularly weight due to the cultural establishment view. Given that cultural establishment is unavoidable, reasons drawn from a conception of societal culture receive a particular weight in public justification about constitutional essentials.

What does this special status amount to? And what does it imply for cultural reasons in public debates? I claim that cultural reasons based on the societal-culture-view are public reasons, drawn from a conception of ethnocultural justice, underpinned by the cultural establishment view. These reasons are “public cultural reasons”. I will investigate this view on cultural reasons as public reasons further in the last essay (see Chapter 6).

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<sup>277</sup>The case of religious persons in a political liberal polity raises many concerns, and has been widely discussed. Thus, it is sometimes held that religious persons are disadvantage in public justification based on public reason, since they cannot refer to their most important religious beliefs in political argument. Many deem the exclusion of religious reasons from public debate inadequate or wrong. I will investigate the issue of religious reasons further in Chapter 5 below.

<sup>278</sup>See Kymlicka 1995, 76-77.

### 3.4 Conclusion

Political liberalism, as a kind of liberal theory, allows for different ways to spell out its basic premises. It thus allows for diverse views on how to conceive of the political liberal enterprise. In this essay, I elaborated on what I take to be basic elements of a political liberalism. The main elements are the liberty principle, the ideal of consent, the public justification principle spelled out as the liberal principle of legitimacy, and respect for persons and fellow citizens.

In contrast, the political liberalism of Chandran Kukathas is based merely on the acquiescence of citizens to political rule, and the basic rights of association and exit. On Kukathas's approach, there is no adequate place for political liberal ideals such as justice or equality. A political liberal polity based merely on the right of association and exit, and no proper concern for justice or equality, is prone to allow for ways of life and practices that are in conflict with basic elements of political liberalism as understood here. Kukathas's version of political liberalism thus takes diversity too seriously. It will have to allow for all kinds of illiberal practices, arguably even slavery.

In the dialectic established here, between Kymlicka's autonomy liberalism and Kukathas's diversity liberalism, I hope to have indicated that the Rawlsian political liberal approach is a convincing moral-political stance, and has much to it in contrast to the other liberal theories discussed here. It is suitably apt to take diversity seriously, without neglecting basic moral-political commitments of liberalism, such as the liberty principle, a public justification principle and respect for persons.

I also tried to indicate that a Rawlsian political liberalism is apt to account for ethnocultural minorities and their claims for minority rights within a political liberal polity. A main element in establishing that claims is the cultural establishment view, according to which a functioning democratic polity cannot abstain from establishing at least certain societal cultural features, such as language for political, educational and economic purposes; traditional institutional practices; a sense of collective history; and territorial bounds. These issues, then, are weighty political matters that need to be addressed in the elaboration of constitutional essentials. They are crucial regarding the ethnocultural justice in a political liberal polity.

When debating or publicly justifying cultural issues, citizens might present "cultural reasons". What cultural reasons are, and whether they might be public or nonpublic, arguably depends on the underlying conception of culture we assume. Here, cultures are

conceived of as societal cultures, and cultural reasons are only those that are based on aspects of societal cultures such as language, institutional practices, collective history, and territorial bounds.

In the remaining three essays, I would like to dwell more thoroughly on several issues raised so far. In the next essay, I am tackling methodological concerns about the political liberal project underway here. In the fourth essay, I will dwell on religious views in political argument within a political liberal polity, and more specifically on religious reasons in arguments about weighty political matters. This will help to develop the kind of political liberalism presented here further, and to sharpen our view on cultural reasons. In the fifth essay, I further dwell on the view on cultural reasons and ethnocultural justice sketched here. The hope is to establish certain cultural reasons as public reasons, and to show that cultural reasons might be an interesting and convincing way to account for issues of multiculturalism from a political liberal point of view.

## 4 A Matter Internal to Liberalism? An Interlude on Method in Political Liberal Theorizing

A major issue for an engagement in the political liberal enterprise is to understand its nature and aims. As we have seen in the contrast of a Rawlsian political liberalism with Kukathas's version of political liberalism, there are widely diverse points of view on how to spell out this political philosophical enterprise. In this essay, I would like to dwell further on some of the methodological issues that have come up during the discussion so far, and take a clearer stand on some of them. It is thus time for an interlude on method.

A major concern for political liberalism, as famously spelled out in John Rawls's late work, is the following puzzle: how to publicly justify a liberal conception of justice, given the deep disagreement that necessarily occurs in a free society (Quong 2011b, 5)?

Our way of addressing and answering this puzzle will depend greatly on the way in which we conceive of the diversity that is involved. Is the justification of a conception of justice addressed to all actual citizens in a liberal democracy, as well as to those that do not share certain fundamental liberal norms? If the answer is yes, then the legitimacy of a polity will depend on the acceptability of a conception of justice to the deeply diverse constituency of citizens as we find it in actual modern democracies. According to this view, pluralism is an external fact about the world—as the fact of scarce resources (Quong 2011b, 6) is. Liberal theory, then, has to take this into account as a given, and attempt to build on it. This version of political liberalism can be dubbed external conception of political liberalism (Quong 2011b, 139).

In contrast, according to an internal conception of political liberalism, the diversity that political liberalism is concerned with is the diversity amongst citizens that are already committed to certain basic liberal norms, such as the idea of persons as free and equal (Quong 2011b, 5). In Rawlsian terms, political liberalism is concerned only with *reasonable* pluralism.<sup>279</sup> Pluralism is thus not seen as a fact about the world, but a fact

<sup>279</sup>Joshua Cohen brings the issue of focusing on “the fact of reasonable pluralism”, instead of “the simple fact of pluralism” (Cohen 2009a, 53), to the fore. See Cohen 2009a, 52-58.

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about liberalism. Pluralism, then, only concerns the “disagreement between rational and well-intentioned people” (Quong 2011b, 6) as it is to be expected under conditions of free democratic institutions.

Jonathan Quong, in his recent work, defends the view that we should understand the project of political liberalism according to the internal conception. Political liberals thus address the puzzle of diversity only as it occurs internally to liberal philosophy (Quong 2011b, 6).

Even though I endorsed an internal view in order to face and reply to Kukathas’s criticism in the second essay (see Section 3.2), I would now like to dwell further on the question of how to adequately understand the nature and aims of the political liberal enterprise. On the following pages, I will thus critically engage with Quong’s view and maintain that even if we restrict our endeavours to an internal conception of political liberalism, an external perspective should not be abandoned altogether. This holds, at least, if we want to scrutinize certain stinging moral-political marks of the world we live in, such as historical or ethnocultural injustice. In other words, in a political liberal account of multicultural politics, an external perspective cannot be abandoned altogether.

I also claim that we can fruitfully engage in a project that links external and internal presumptions. In order to spell out such a middle-ground between an internal and external conception—I will refer to it as a “middle-ground conception of political liberalism”—I propose to account for the moral-political aspirations and factual concessions of each conception to a suitable degree.<sup>280</sup>

In a last step, I consider the problem of posing a standard of reasonableness, and how pluralizing public reason and reasonableness into various standards may be a way out. In conclusion, I propose that a middle-ground conception of political liberalism can elaborate a view of public reason without the pluralizing step, while still taking into account facts about the world we live in. This is done by proposing certain prominent ideals or views as crucial elements of a standard of reasonableness. The elements are sufficient, but not necessary, to establish reasonableness.

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<sup>280</sup>Such a middle-ground conception might indeed be congenial to Rawls’s own perception of the political liberal enterprise. Thus, he describes his later work on political liberalism as aiming at a “realistic utopia” (Rawls 1999, 11). Even though this seems to be a “puzzling and seemingly contradictory concept” (Lassman 2011, 90), it nicely illustrates what a middle-ground conception of political liberalism is about, namely a realistically utopian account of the normative foundations of a constitutional democracy.

## 4.1 Two Conceptions of Political Liberalism: Distinguishing External From Internal Conceptions of Political Liberalism

The debate about the distinction between an external and internal conception of political liberalism has far-reaching consequences regarding the tasks, methods and aims of the political liberal enterprise. It is thus a debate about the question of what kind of theory political liberalism is meant to be. It will affect our sense of what questions political liberalism should answer, how morally demanding it will be, what facts it should take into account, how reasonable people are to be defined, and how political rules and institutions can be justified to these reasonable people (Quong 2011b, 137). It will thus be necessary to get a clearer picture about the distinction between external and internal conceptions of political liberalism and the different political-theoretical agendas they set.

### 4.1.1 External Political Liberalism: Real-World Pluralism, Contemporary Society, Actual Citizens, and the Problem of Legitimacy

Jonathan Quong makes out four ways in which internal and external conceptions of political liberalism differ from each other. External liberalism takes, firstly, the fact of reasonable pluralism to be a fact about the world we live in, and as presenting a constraint on liberal theory. Pluralism thus puts constraints on liberal theorizing in the same way as scarce resources do. Second, the relevant society that political liberalism is concerned with is a current liberal democracy, or “the society of the here and now, and every society sufficiently like it” (Raz 1990b, 6; see Quong 2011b, 140). Accordingly, and thirdly, the reasonable citizens to which public justification is owed are a subset of all real citizens in such current liberal democracies. Conceptions of reasonableness may vary among external liberals, but there are at least some paradigmatic cases of unreasonable citizens—such as Nazis, or religious fundamentalists, or others that reject the liberal framework of the society they live in<sup>281</sup>—that need to be put out of the

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<sup>281</sup>Who is a religious fundamentalist? An example might be deeply religious parents as depicted by Amy Gutmann and Dennis Thompson. Those parents objected to the use of certain teaching material in public schools on the following grounds. They “maintained that the content of the books conflicted with their religious convictions. They objected to exposing their children to information about other ways of life (...). The parents also said that their children should not be taught to make critical judgments, to use imagination, and to exercise choice ‘in areas where the Bible provides the answer’” (Gutmann 1996, 65). Gutmann and Thompson suggest that “[t]he parents’ reasoning appeals to

justificatory picture in order to make sense of such a political liberal enterprise. (Quong 2011b, 140-141)

Given all this, external political liberalism needs to take real-world disagreement amongst the relevant constituency of citizens seriously when developing a theory of justice. If it does not, proponents of this view might claim, it becomes insignificant regarding the world it is supposed to apply to. Furthermore, it would fail to be justifiable to the very constituency of persons, i.e. reasonable citizens in current liberal democracies, to whom it is addressed.<sup>282</sup>

As a fourth, and last, characteristic of an external conception of political liberalism, Quong mentions its particular view on legitimacy. External political liberals will conceive of legitimate laws and policies<sup>283</sup> as those laws and policies that are justified to real-world reasonable citizens. These laws and policies therefore need to be compatible with the views citizens happen to hold. This, however, seems to imply that the justifications for laws and policies need to be compatible with all the disagreeing views that citizens have in current liberal societies. Such a requirement, then, makes it very difficult, if not impossible, to pass any set of laws or policies as legitimate. In order to overcome this problem, external political liberals will tend to lower the standard as to what counts as legitimate. They might, for instance, aim at finding laws or policies that are merely acceptable to the largest possible number of reasonable citizens, and not to all of them. (Quong 2011b, 141-142)

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values that (...) should be rejected by citizens of a pluralist society" (ibid.). The main reason is that "[i]f the parents were successful, their children (and perhaps others) would fail to receive the education that is necessary for developing their capacities as democratic citizens" (ibid.). The parents' claims are thus not, so it seems, compatible with basic aspects of a reasonableness standard, such as the respectful view of others as free and equal, or the idea of reciprocity. See also Cohen 2009a, 57-58 for an analogous example of a fundamentalist view that is characterized by a denial of "the protection of liberties on the basis of the doctrine that 'outside the church there is no salvation'" (Cohen 2009a, 57).

<sup>282</sup>See Quong 2011b, 140. Such concerns are quite common regarding the political liberal enterprise. See e.g. Miller 2008 and Weithman 2002, 182 for a discussion. Paul Weithman claims that political liberal discussions of democratic citizenship focusing on well-ordered societies are "irrelevant to the obligations of citizenship in actual democracies". Regarding this point, see also the discussion of the abstraction charge in Section 3.2.2.

<sup>283</sup>I choose to speak of laws and policies because often the object of public justification in a political liberal polity are taken to be coercive state measures such as laws and policies. As I pointed out in Section 3.1.2, I prefer a view that focuses on more basic political issues, such as constitutional essentials. For the sake of summarizing common external conceptions of political liberalism, I will refer here to laws and policies. On the proper object of public justification, see e.g. further Weithman 2002, 189-191.

### **4.1.2 Internal Political Liberalism: Liberal Pluralism, Well-Ordered Society, Idealized Citizens, and the Problem of Legitimacy**

An internal conception of political liberalism takes an opposite stance on all of the four points just mentioned. Thus, internal political liberals conceive of reasonable pluralism not as a fact about the world that puts external constraints on liberal theorizing, but as a fact about liberalism itself. It is seen as an internal challenge that comes with some of its basic assumptions, i.e. as “a fact about the exercise of rationality under liberal conditions” (Quong 2011b, 142) that is an inevitable result of an open society and the burdens of judgment<sup>284</sup>. (Quong 2011b, 142)

Accordingly, the relevant society that internal political liberals are concerned with are not current liberal democracies with their striking marks of diversity, but well-ordered liberal societies that try to accommodate reasonable pluralism as it occurs within liberal theory. Given that the fact of pluralism is internal to basic liberal assumptions, a compelling and coherent liberal theory needs to take this fact into account. On an internal view, political liberalism is a conceptual-analytical enterprise, one that investigates whether the ideal of a liberal constitutional democracy is coherent, and whether a well-ordered society is stable, rather than an empirical-transformative one. The question of how to bring political liberalism about, or how to accommodate political liberalism within the world we live in, is simply not a concern of an internal conception. An internal conception of political liberalism is therefore confronted with significantly different puzzles than an external conception. (Quong 2011b, 143)

The third point concerns the idea of reasonable citizens. The constituency of reasonable people in an internal conception of political liberalism is not derived from a broader set of actual citizens in current liberal democracies, but it is a hypothetical group of citizens that populates a somewhat idealized liberal society, i.e. a well-ordered society.

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<sup>284</sup>The burdens of judgment account for the fact that people might develop different views on all kinds of issues, even if faced with the similar set of facts. This is due to different weighing of facts, or different valuation of facts and conclusions (see Rawls 2005, 55-58). The burdens of judgment are a crucial part of Rawls’s explanation of reasonable pluralism. Rawls also takes the “willingness to recognize the burdens of judgment and to accept their consequences for the use of public reasons in directing the legitimate exercise of political power in a constitutional regime” to be a basic aspect of the reasonable (Rawls 2005, 54). For a full list of aspects of reasonableness according to Rawls, see e.g. Wenar 1995, 37 or Gaus 1996, 131-132. The view that accepting the burdens of judgment are an element of reasonableness is contested. See e.g. Wenar 1995, 41-48; Lecce 2008, 163-164 and Chapter 6; Vallier 2014, Section 3 and 7.2 for an overview. As Gerald Gaus indicates, accepting the burdens of judgment is, at least, not part of most actual commonsense attitudes towards disagreements (see Gaus 1996, 134).

Internal political liberalism aims at working out “the content and structure of liberal political justification” (Quong 2011b, 143) under conditions of reasonable pluralism in a well-ordered society. Reasonable citizens under such conditions will most significantly accept the fact of reasonable pluralism, and they will be motivated to propose and abide by fair terms of cooperation, given that others will do the same. (Quong 2011b, 143-144)

Such an internal view on pluralism, society, and the relevant constituency of persons has significant consequences regarding a political liberal conception of legitimacy. On the internal view, only those principles are legitimate that could be endorsed by citizens in a well-ordered liberal society. (Quong 2011b, 144)

An internal conception of legitimacy thus maintains that the justification of liberal principles does not depend, at any point, on the beliefs of real people. To say, on an internal view, that a conception of justice could be endorsed by reasonable citizens is simply to say that such principles conform with a normative ideal of society as a fair system of cooperation between free and equal citizens. Reasonable citizens by definition accept this normative ideal of society. To address justifications of principles of justice to reasonable citizens is thus one way to sort out the reasons that can ground a political, as opposed to a comprehensive, liberal society.<sup>285</sup> (Quong 2011b, 144)

## 4.2 Problems of External Political Liberalism

Political liberalism faces many critiques. However, it is not always clear which conception of political liberalism critics actually target, an external or an internal one. Given the very different issues and agendas they raise, however, critics should be clear about which kind of political liberalism they have in mind. For it might very well be that an external conception faces fatal criticism that does not affect an internal approach.

Following Quong, I will thus briefly consider four common objections against political liberalism, the *spare wheel objection*, the *public culture dilemma*, the *dissensus about justice objection* and the *asymmetry objection*.

As we will see, they make sense only when aimed at an external conception, and an internal retreat may be a good way to side-step these critiques. It even seems that internal conceptions are far less prone to fatal criticism raised against political liberalism.

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<sup>285</sup>As Quong points out, such a conception of legitimacy, according to which it needs to be possible for principles of justice to be endorsed by reasonable citizens, is just another heuristic device, like the original position with its veil of ignorance, to present a certain kind of justification for principles of justice (Quong 2011b, 144).

This might be mostly due to its modest outlook, i.e. to simply scrutinize the implications of certain assumptions of political liberalism for political liberal theory. Even though many critiques of political liberalism might not affect internal conceptions of it, this very modesty can be held against it, or so I will argue in the next Section.

#### 4.2.1 The Spare Wheel Objection

Consider, thus, the first common methodological objection against political liberalism. It holds that political liberalism proposes a conception of the legitimacy of political principles that depends on whatever views citizens currently happen to hold. It is, however, questionable why such current views—that might be ill-informed or blinded by self-interest—should have any normative weight.<sup>286</sup> This objection is obviously aimed at an external conception of political liberalism, since it presupposes that political liberalism is concerned with the potentially ill-informed views of current citizens of modern liberal democracies. It therefore only affects an external conception. Internal conceptions are concerned only with hypothetical citizens of an idealized, well-ordered society to whom we simply cannot assign any such current views. (Quong 2011b, 146)<sup>287</sup>

Against this objection, external political liberals might respond that it is not any current view that citizens hold that are relevant, but only reasonable ones. However, once we take this step and refer to some conception of reasonable views as the relevant normative standard in our political liberal theory, it becomes questionable why we referred to actual citizens in the first place. The reference to real citizens stops doing any relevant normative work. It is the invoked reasonableness that ensures the liberal outcome of political liberalism; the views of real citizens seem to become insignificant to the project.<sup>288</sup> Jonathan Quong calls this the *spare-wheel objection*, since the reference

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<sup>286</sup>See Habermas 1995, 122; Gaus 1996, 134-135; Raz 1990b, 45-46 for versions of this criticism. See Quong 2011b, 145-146 for a discussion.

<sup>287</sup>Burton Dreben ascribes an internal conception of political liberalism to Rawls when he states that “Rawls is a good enough thinker not to argue against those who do not believe in liberal constitutional democracy. (...) The outcome of that struggle he takes for granted, just as any sensible person should today. You do not argue in political philosophy over the benefits of constitutional liberal democracy; what you try to do is see what that concept leads to, what it entails, what it demands. As he [Rawls] says again and again, you start with the implicit notions and work them out” (Dreben 2003, 323). A focus on an idealized well-ordered society and hypothetical citizens is supposed to bring out what the concept of a constitutional liberal democracy leads to and what it entails.

<sup>288</sup>James Bohman and Jürgen Habermas criticize the strong normative content of a reasonableness requirement in political liberalism. See e.g. Bohman 2003, 766-770 and Habermas 1995, 126-127.

to real citizens becomes merely a spare wheel within the political liberal enterprise. At this point, external political liberalism seems indeed to collapse into an internal one. (Quong 2011b, 146)

External political liberals might, however, hold on to the significance of an appeal to real citizens. They might hold that it is the views of real citizens that give best guidance in the tricky business of deciding what values or principles actually can meet the test of reasonable acceptability. In other words, we will find commonly held liberal values and beliefs by looking at the public culture of actual liberal democracies. We might find liberal values and ideals such as freedom, equality, fairness, and pluralism. (Quong 2011b, 147)

It is, however, far from clear whether all of these values are actually widely endorsed in real-world liberal societies. The acceptance of the pluralism thesis, based on the burdens of judgment and holding that citizens will develop diverse views on what is good and valuable, seems open to such doubt. Thus, there might be religious persons that are liberal in many respects. They might accept the elements of equality, fairness, and many freedoms within a liberal democracy. However, they might still reject the view that disagreement about the good has anything to do with the burdens of judgment under free institutions.<sup>289</sup> They might claim that it is rather a consequence of closing the eyes to the truth (regarding the origins of the world, the foundation of values etc.). With Rawls, we are then tempted to simply disqualify such views as unreasonable, and therefore to exclude them from the constituency of citizens to whom political justification is owed.

#### 4.2.2 The Public Culture Dilemma

If we do so, however, we face another version of the spare wheel objection: the reference to actual political culture becomes superfluous, since we now define the relevant public culture by referring to some presupposed convictions (such as the pluralism thesis). External political liberalism therefore again seems to collapse into an internal conception. Quong refers to this argument as *the public culture dilemma*. (Quong 2011b, 147-148)

Note that the public culture dilemma could also be raised against internal political liberalism, if we understand the political liberal project as aiming at the best possible

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See Vallier 2014, Section 6 for further discussion and concerns in this direction.

<sup>289</sup>See Wenar 1995, 43-45 for a discussion of this case.

*interpretation* of the values found in our democratic background culture. In this case, the public cultural dilemma poses a grave problem to internal political liberalism also, at least if the relevant shared political values are in fact only endorsed by a few. However, internal political liberals need not conceive of the political liberal enterprise as an interpretative enterprise. Instead, they can conceive of it as a *justificatory* project. On such a view, internal political liberals refer to public culture to make out certain deeply held convictions about justice and democracy. These convictions then deliver a starting point to engage, through the method of reflective equilibrium<sup>290</sup>, in the construction of a normative framework that is able to make sense of these convictions. Given that political liberalism is such a justificatory, and not an interpretative, project it does not need to take facts about our public culture as static or given; and therefore it is not flawed from the outset if certain of its premises are not widely shared by actual citizens. (Quong 2011b, 155-156)

### 4.2.3 The Dissensus About Justice Objection

External political liberals, on their part, might avoid the public culture dilemma by omitting a Rawlsian pluralism thesis from the list of values to be found in actual public culture—even though this comes at the prize of abandoning an arguably crucial ideal for a functioning constitutional democracy. In any case, however, the *dissensus about justice objection* still snaps.<sup>291</sup> Thus, even if we assume that citizens adhere to some basic liberal, political values such as freedom, equality and fairness there will be most divergent views on what they actually mean or involve. “Libertarians, luck egalitarians, socialists, Republican flat-taxers, and Democrat tax-and-spenders” etc. arguably

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<sup>290</sup>The method of reflective equilibrium requires, in a nutshell, to balance principled considerations with applications of these considerations to concrete cases. That is, arguably, how theories and views of justice come about. As Thomas Scanlon puts it, one natural interpretation of the method of reflective equilibrium is “that principles are justified by their ability to explain those judgments in which we feel the highest degree of confidence” (Scanlon 2003, 139). The method of reflective equilibrium proceeds, roughly, in three stages: (i) “identifying a set of considered judgments”, i.e. judgments that seem clearly to be correct (Scanlon 2003, 140); (ii) the formulation of principles that account for these judgments. This is done by attempts to apply the judgments to moral-political issues (Scanlon 2003, 140); and (iii) deciding “how to respond to the divergence between these principles and one’s considered judgment” (Scanlon 2003, 141). For more on the justificatory method of reflective equilibrium, see Daniels 2011; Scanlon 2003; Rawls 2005, 8, 28, 45, 95-97.

<sup>291</sup>See Quong 2011b, 148, fn. 26 for a discussion of this objection and references. The concern was pointedly raised in Baier 1989, 775-776. I also discuss Chandran Kukathas’s concerns in this direction in Section 3.2.4.

all develop conceptions of justice that involve different views on values such as freedom, equality, and fairness. Rawls's conception of justice—and, of course, any other conception—therefore turns out to be controversial among citizens of contemporary liberal democracies. (Quong 2011b, 147-148)

A reply to this dissensus-about-justice-objection might admit that real citizens disagree about the proper interpretation of freedom, equality, and fairness but maintain the claim that citizens endorsing these values therefore also ought to be committed to Rawls's principles of justice as fairness, or some other liberal conception of justice that is part of the relevant liberal “family of political conceptions of justice” (Rawls 1999, 140-141).<sup>292</sup> According to this interpretation of the external political liberal project, we still start from ideas commonly accepted in the public culture. The aim is then, however, to see and demonstrate what political principles citizens *should* endorse given that they accept these basic normative ideas. Such a strategy, however, seems again to lead straight to an internal conception of political liberalism. There is no need, in such an enterprise, to refer to beliefs of real people at any point. The relevant normative work is done by the acceptance of the proposed principles by a (now hypothetical) constituency of reasonable persons endorsing the political values of freedom, equality, and fairness.<sup>293</sup> (Quong 2011b, 148-149)

#### 4.2.4 The Asymmetry Objection

Alternatively, external political liberals might admit that there is reasonable disagreement about justice. Such a move, however, blurs the distinction between conceptions of the good and conceptions of justice—a distinction that is arguably crucial to the political liberal enterprise. Since reasonable citizens now seem to disagree about justice and the good, why should we uphold the priority of the right and just over the good? Since both seem equally controversial, why should a legitimate state be based on a conception of justice, but not on a conception of the good? Political liberalism thus faces what Quong dubs the *asymmetry objection* (Quong 2011b, 149). The asymmetry objection

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<sup>292</sup>As Rawls states in a letter to his editors regarding his earlier work on justice as fairness: “Political liberalism is about a family of reasonable liberal ideas of political justice (...). Justice as fairness [as developed in Rawls 1971] itself (...) has a minor role as but one such political conception among others.” (Rawls 2005, 439) See also Rawls 1999, 141 and Quong 2011b, 139-140, fn. 4 for a discussion of this view.

<sup>293</sup>Quong calls this reply “the bootstrapping argument”. See Quong 2011b, 148 and Cohen 2009a, 48 for a discussion of that argument.

holds that the asymmetric treatment of controversies about the good and controversies about justice beg the question. If we do not find an adequate answer to this objection, political liberalism may seem just like another comprehensive version of liberalism. (Quong 2011b, 149)

External political liberals might hold that disagreement about justice and disagreement about the good are of a crucially different quality. While we find agreement on the concept of justice in current liberal societies, or on a legitimate framework that regulates our disputes of justice, the same does not hold for disputes about the good. Disagreement about the good therefore seems more fundamental and intricate than disagreement about justice. This, then, might justify the asymmetric treatment of justice and the good when it comes to political legitimacy. (Quong 2011b, 150)

This reply, however, is based on the assumption that we, in fact, find such an agreement on the concept of justice in current societies. Such an “empirical reply” (Quong 2011b, 150) in defence of an external conception of political liberalism, however, seems, unavailable to political liberals. The first reason is that such a reply is unable to provide a principled defence of liberal neutrality, since an empirical reply is contingent on the citizens’ actual acceptance of a framework to regulate disputes about justice. If such an agreement is lacking, and if instead citizens share a consensus about the good life, then political liberalism seems unable to oppose perfectionism, since its opposition of perfectionism relies on the priority of the right over the good—a priority that might now well be lacking.

Second, such a reply makes external political liberalism vulnerable to the charge of relativism, since justice now heavily depends on its contingent empirical acceptance. If it so happened that the world we lived in was populated mainly or only by sexists and slave holders, then equal rights for women and slaves would not enter the conception of justice that applies to this world. These are illiberal consequences of an the empirical reply that make it unavailable to political liberals.<sup>294</sup> (Quong 2011b, 150-151)

Note that the issue of dissensus about justice and the implied asymmetry objection also causes problems for internal political liberals. It seems too strong an assumption, or simply implausible, to hold that all conceptions of justice, except for justice as fairness, are unreasonable. Therefore, a defensible version of political liberalism will have to deal with the issue of dissensus about justice and the asymmetry objection as well. How,

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<sup>294</sup>Note that a reference to a standard of reasonableness in an external conception’s reply to the asymmetry objection will make it vulnerable to the spare wheel objection.

then, to justify the asymmetry between the right and the good? Here, too, an answer will turn on the different qualities of disagreements about the right and the good.

As Quong puts it, reasonable disagreement about the good can be deep and fundamental. Disputes about the good life, or humane well-being and ways of life, may not come to an end among reasonable people. Reasonable disagreement about justice, however, is based on shared premises. The disagreement is all about how to understand these premises adequately, or about what they do and do not imply. Reasonable disagreement about justice is therefore, and by definition, justificatory in character. This holds, at least, if we adopt the liberal principle of legitimacy introduced above. (Quong 2011b, 156-157)

### 4.3 When an Internal Retreat Is Not Enough

As we have seen, external political liberalism is open to a wide range of criticism. Indeed, it seems that many critiques of Rawlsian political liberalism push political liberals to retreat from an external conception to an internal one. This internal retreat is, for instance, also pursued in the reply to Kukathas's criticism in the second essay above (see Section 3.2). The more modest character of an internal conception makes it possible to side-step the many problems and criticism that an external conception faces. An internal retreat is arguably also pursued by Rawls himself over the course of his later work.<sup>295</sup> The internal retreat is, furthermore, already inherent in political liberalism's methodological outset, i.e. its political philosophy as ideal theory. Rawlsian political theory is explicitly concerned with a well-ordered society, a conception of justice that is reached in a suitably modeled original position, and citizens as rational and reasonable.<sup>296</sup> It is thus not surprising that the diversity among citizens with which political liberalism should be concerned, as well as the kind of society and citizens it assumes, are idealized and suitably qualified to fit these basic methodological assumptions.

However, there might arise concerns about political philosophical projects that proceed from idealized premises as the ones just indicated. An obvious point that comes up is the one of relevance: why should we care about what reasonable citizens do in a well-ordered

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<sup>295</sup>See Quong 2011b, 139-140, fn. 4.

<sup>296</sup>See e.g. Rawls 2003, 81: "In describing the parties [agreeing in the original position] we are not describing persons as we find them. Rather, the parties are described according to how we want to model rational representatives of free and equal citizens." See, however, Weithman 2002, 182 for an interpretation of the Rawlsian project as an external conception.

society?<sup>297</sup> Some might hold that what we need is a “political philosophy for earthlings” (Miller 2008), one that tackles real-world political issues and that takes all relevant facts into account. To do so, it seems most adequate to start with theoretical assumptions that correspond intimately with the citizens and societies as we observe them, i.e. with something like an external conception of political liberalism.<sup>298</sup>

Such a critique, however, does not adequately account for the relevance of the internal conception. Thus, it is relevant to us whether liberal ideals are coherent and able to found a stable society. This will affect our allegiance to such ideals, as well as principles derived from them. John Rawls mentions the example of the constitutional regime of the Weimar republic before the rise of the Nazis as an example where all faith in a liberal parliamentary regime faded away (Rawls 2005, lix; Quong 2011b, 158). Internal political liberalism can counter such defeatism.

Furthermore, to show how political liberalism works under ideal conditions can serve as a guiding star when it comes to the assessment of our political institutions and behaviour (Quong 2011b, 158-59). For example the moral duty of civility, even if conceived under idealized conditions, is still able to inform—as an ideal—our expectations regarding the voting behavior of judges, legislators and citizens here and now (Quong 2011b, 159).<sup>299</sup>

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<sup>297</sup>Quong 2011b, 158; see also the discussion of Kukathas’s concerns of this kind above (Section 3.2.2).

<sup>298</sup>On this issue see e.g. the discussions in Christman 2009, 221-224. Amartya Sen also argues for an approach to issues of justice that is premised on a “realization-focused comparison” instead of an arrangement-focused “transcendental institutionalism” (roughly his labels for non-ideal and ideal theory). See Sen 2010, 5-10, 96-105 and Simmons 2010, 34-36 for discussion. Note that a stronger charge than this irrelevance charge insists that political philosophy based on idealized premises is bad or harmful. This might be claimed on the grounds that ideal theorizing is prone to serve problematic and ideological ends and thus establishes a “bias in so-called impersonal (ideal) principles” that favour “status quo power relations” (Christman 2009, 223). See Mills 2005, Christman 2009, 220-223 and Simmons 2010, 30-31 for a discussion of this ideology charge. For further discussion of related methodological issues, see the special issue of *Social Theory and Practice* (Vol. 34, No. 3 2008), entitled “Social Justice: Ideal Theory, Nonideal Circumstances”.

<sup>299</sup>Thus, Rawls notes that “[i]n the absence of (...) an ideal form for background institutions, there is no rational basis for continually adjusting the social process so as to preserve background justice, nor for eliminating existing injustice. Thus ideal theory, which defines a perfectly just basic structure, is a necessary complement to nonideal theory without which the desire for change lacks an aim” (Rawls 2005, 285). John Christman seems to agree that “one cannot describe current circumstances with reference to systematic *injustice* (...) without already assuming a (...) theory of *justice*” (Christman 2009, 221, emphasis in the original). Christman suggests, then, to “add to the circumstances of justice the presence of measurable inequality of social power (...) and a pattern of past domination affecting identifiable groups in society” (Christman 2009, 224). My suggestion to take certain cultural issues into account in political liberal theorizing is similar to, and driven by the same impetus as, Christman’s; it is, however, considerably more modest and focuses merely on certain established cultural marks of democratic polities (see Chapter 6).

There seems, thus, nothing wrong as such with the relevance of an internal conception and its kind of modest utopianism.<sup>300</sup> It is an interesting and worthwhile conceptual-analytic enterprise to investigate the coherence and stability of basic liberal ideals. It is also worth the effort because it gives us tools to assess current injustices and political aims that further a just and legitimate political framework.<sup>301</sup>

There is, however, another aspect to the “political philosophy for earthlings”-charge that might be more poignant. Thus, an internal conception seems to idealize aspects of current societies away in order to probe the coherence of liberal ideals. This, however, will blind us towards many stings of our current socio-political situation—stings that liberal political philosophy might want to address and assess.

Think, for example, of issues of reparation for past injustices<sup>302</sup>, legal or illegal immigration<sup>303</sup>, differential treatment of ethnocultural groups in the form of minority rights, political quotas for women or minorities in politics and economics, or environmental devastation. At least some of these issues do not seem traceable in an internal conception, since they fall outside the internal political liberal picture with its focus on a well-ordered society. Such real-world issues are idealized away in an internal conception to get a clear view on ideals underlying democratic constitutionalism, and to concentrate on the coherence of such ideals and the stability of a well-ordered society.<sup>304</sup>

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Regarding the value of different ways of doing political philosophy, David Estlund holds that “aspirational and concessive theorizing are both perfectly legitimate—here are moral truths and insights of both kinds, and neither enterprise is based on some kind of mistake” (Estlund 2014, 123). See also Estlund 2014, 132-134 for a discussion of the value, practical and theoretical, of “ostensibly unrealistic theory” (Estlund 2014, 133) as well as Swift 2008 for a discussion of the value of theory in non-ideal circumstances. Adam Swift holds that “it is for social science to tell us which states of affairs are feasible and how to achieve them but that we need philosophy to evaluate and rank options (...) within the feasible set. Judging what we should actually do, in the circumstances that actually confront us, requires input from both” (Swift 2008, 364). He also holds that “much of what they [philosophers] actually do when they do ‘ideal theory’ is likely to help with the evaluation of options within the feasible set” (Swift 2008, 365). I introduce and discuss Estlund’s views and terminology below (see Section 4.4.2).

<sup>300</sup>Rawls qualifies political liberalism as a “realistic utopianism” (Rawls 1999, 4, 11-12; see also Estlund 2014, 116), thus arguably indicating something like a middle-ground conception of political liberalism as discussed below.

<sup>301</sup>It might, however, also be valuable without having any practical relevance or impact. See Estlund 2014, 132-134 for such a view and further discussion of the issue of practical relevance.

<sup>302</sup>See e.g. Waldron 1992, Meyer 2005.

<sup>303</sup>Rawls himself assumes that the “fundamental political relation of citizens” is “a relation of citizens within the basic structure of society, *a structure we enter only by birth and exit only by death*” (Rawls 1999, 136; Rawls 2003, 182, emphasis added).

<sup>304</sup>In Rawlsian terms, the claim is thus that facts of historical or ethnocultural injustice should be included in something like the “circumstances of justice” (Rawls 2003, 84-85), just as scarcity of

Note that my claim—that the mentioned real-world political issues are not traceable on an internal view of political liberalism—rests on the assumption that once we introduce these issues into a well-ordered society, we do no longer deal with a well-ordered society. This claim presupposes a certain view on what a well-ordered society consists of. What is that view on a well-ordered society?

In a nutshell, the underlying view on the well-ordered society could be summarized as follows: a well-ordered society is well-ordered if it is idealized to a suitable degree, i.e. to a degree that allows it to probe the coherence and stability of basic liberal ideals and principles. By proposing an alternative view, one might sidestep the critique that the theoretical model of a such a society is incapable of taking into account many real-world issues.

Such an alternative view on the well-ordered society might hold, for instance, that it is enough for a society to be well-ordered if the scope of reasonable citizens is clear enough. On such a view, problems of immigration (given borders and nation states), but also abortion, would still cause considerable problems for political liberals, because in these cases it is unclear, or at least contestable, how to define the constituency of persons to whom public justification is owed.<sup>305</sup> Problems such as environmental devastation or quota for women<sup>306</sup>, however, would be traceable in such a nearly well-ordered society,

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resources, the necessity of social cooperation to reach decent standards of living, or the fact of reasonable pluralism are included (*ibid.*; see also Rawls 2005, 66).

<sup>305</sup>Is it owed to immigrants too, even though they do not (yet) hold citizenship rights? How about illegal immigrants? Or those—now foetus, but arguably future persons—being aborted?

<sup>306</sup>Feminist critics have argued that the historically grown oppression of women in patriarchal family structures is not traceable in a Rawlsian approach. It thus fails to secure “substantive equality” (Hartley 2009, 495) among men and women, since family life is not part of the justificatory picture of political liberalism; it only manages to secure a “formal model of equality” limited to political participation, so the critique goes. Feminist critics thus tend to conclude that “[p]olitical liberalism just seems too tolerant of sexist doctrines and gender-based practices that privilege men over women when it comes to power, opportunities and resources” (Hartley 2009, 496). See Okin 1994 for a classic formulation of this criticism. Susan Okin asks “[h]ow can a belief in natural hierarchy among persons [as it might occur in religious views within a society marked by reasonable pluralism] be consistent with the requirements of the political conception of justice, which views them as free and equal citizens?” (Okin 1994, 29). According to Okin, it arguably cannot: “There is a serious conflict between freedom of religion and the equality of women” (Okin 1994, 31). See also Hartley 2009, 495-496 and fn. 3 for a short discussion and overview on feminist concerns of this kind. In his later work, where he takes into account many feminist concerns, John Rawls includes the family clearly “as part of the basic structure”. It thus becomes relevant for political issues of justice (Rawls 1999, 156-164, especially fn. 58). See also the defence of political liberalism from such feminist charges in Lloyd 1994 and De Wijze 2000. On political liberalism and environmental issues, see Bell 2002; Miller 1999, 156-157, 159-161 and discussion in Section 5.2.3.

since the scope of subjects of public justification seems clearer.<sup>307</sup>

The fact that an internal conception of political liberalism does not take certain real-world political issues into account, such as those just mentioned, is still not a flaw of an internal approach as such. An internal conception simply does not seem to be interested in such issues and questions, but other, not less interesting ones.

We might also grant that no political theory can be expected to cover all relevant issues and problems, from the very abstract to the very concrete—some division of labor is necessary and desirable. It is understandable, then, that Rawls explicitly unwilling to apologize for the “abstract and unworldly character” of his questions and texts.<sup>308</sup>

However, given that we are interested in more concrete, real-world political problems, and if we want to stick to political liberal theory, then we seem to be in need of something like an external conception of political liberalism.

## 4.4 The Search For a Middle-Ground

As already indicated, internal conceptions of political liberalism can be understood as a way to address or answer problems with which external conceptions are confronted. Many critiques raised against an external conception do not concern an internal one. As Jonathan Quong indicates, we should therefore hold on to an internal conception rather than an external one.<sup>309</sup>

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<sup>307</sup>Thanks to Silje Langvatn for drawing my attention to these issues. Note, again, that nothing hinges on the label “well-ordered” here. We might introduce the idea of something like a quasi or nearly well-ordered society. See e.g. Langvatn 2013, 102-103 on public reason under “nearly well-ordered” conditions. Rawls himself seems to think that political liberalism should be receptive for such challenges to the well-orderedness of its model society, since “[s]ocial changes over generations also give rise to new groups with different political problems. Views raising new questions regarding ethnicity, gender, and race are obvious examples, and the political conceptions [of justice] that result from these views will debate the current conceptions [of justice]. The content of public reason is not fixed, any more than it is defined by any one reasonable political conception” (Rawls 2005, li). The project underway here can be understood as an attempt to give political liberal underpinning for the fair treatment of certain cultural minorities, such as national and indigenous minorities, through multicultural politics and a regime of minority rights.

<sup>308</sup>See the last sentence of the introduction to the paperback edition at Rawls 2005, lx: “I do not apologize for that”.

<sup>309</sup>See Quong 2011b, 153-160 (Quong spells out an internal conception in Chapters 6-10). He holds that his view on internal conceptions should not be misunderstood to mean “that political liberalism is not also addressed to real citizens, right now” (Quong 2011b, 159), since values such as freedom, equality and fairness concern us here and now. Still, the point holds that internal conceptions are blind to certain real-world problems because the context for conceptual-normative investigation, i.e. the well-ordered society, is not sensitive to these problems.

Given the modesty of an internal conception, but also its inability to account for certain moral intuitions relating to moral-political issues in the world we live in, we might therefore be tempted to search for a middle-ground between an internal and an external conception of political liberalism. Call such a conception a middle-ground conception of political liberalism. This is a position that is able to address moral intuitions related to certain real-world political issues, as an external conception or non-ideal theory tries to do, while holding on to a suitably idealized and generalizable theoretical framework, as an internal conception or ideal theory does. Such a middle-ground stance should not come as a surprise. Since the labels “internal” and “external” describe certain ideal types of political liberal theorizing, concrete political liberal theories or attempts at solving moral-political issues are likely to lie in between these poles.

Still, the search for a middle-ground might also seem misguided. This holds if we assume that the internal/external dichotomy is primarily about the kinds of questions asked and not, as I assume, to a large extent about the range of facts taken into account, i.e. about the degree of realism of a theory.<sup>310</sup> Thus, on such an alternative view the best way to proceed might be to remain within an internal perspective in order to investigate the meaning and coherence of basic liberal commitments. Only in a second step, then, we might take these clarified liberal commitments and apply them to real-world problems. This is not the same as re-modelling the internal approach. Now, I do not see any problem with such an alternative view. It seems to be an interesting way of linking fundamental liberal questions with current real-world problems. However, investigating a middle-ground conception of political liberalism also seems to be an interesting way to investigate real-world problems from the point of view of our basic liberal commitments. This is so because the questions we ask, or are able to ask, regarding our basic liberal commitments will also depend on the degree of realism we adopt in our theorizing. Thus, to be more concessive regarding certain facts about the world we live in will allow us to ask and formulate certain questions linked to these facts. With a higher degree of concession about real-world facts we can, for instance, ask what our liberal ideals fundamentally consist of *regarding minority rights and ethnocultural justice*. To be sure, we might approach this question also as the second step after having investigated, internally, our basic liberal commitments. But it strikes me as interesting to consider how basic liberal commitments—such as respect for persons or the public

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<sup>310</sup>Thanks to Sune Laegaard for bringing this issue to my attention.

justification principle—are understood and cohere in a world marked by ethnocultural diversity that is still suitably utopian. To investigate a middle-ground conception strikes me as an interesting and promising way to engage questions about basic liberal values with foundational and justificatory issues of minority rights.

#### **4.4.1 Remarks on the Internal/External and Ideal/Non-Ideal Distinctions**

Before I try to spell out such a middle-ground more concretely, let us briefly turn to the relation between the internal/external and ideal/non-ideal distinctions. As I implicitly suggested throughout the last Section, they seem to be related. I thus briefly note some observations regarding the link between these two ways of mapping political theories.

A straightforward way to define ideal theory, at least in contractarian theory, is by the assumption of full compliance. On that view a theory is ideal if it assumes that people comply with what the moral or political theory in question demands of them. Such a theory is ideal because it assumes an idealized, as opposed to an actual, version of reality. In the actual or non-ideal world people do not always comply with what a moral or political theory might ask of them. (Stemplowska 2008, 320)

By assuming full compliance, we idealize away the blameworthiness of persons in a polity. Since all persons comply with what a moral or political theory asks of them, there will be no individual conduct that is “morally blameworthy” (Räikkä 2004, 36). The moral or political blameworthiness of persons is, however, just one aspect of the world we live in that can be idealized away. Other aspects about the world we live in that we might assume away are certain current unjust social arrangements, institutions or policies. It is hard to see why theories that engage in such ways of politically relevant idealization would be somehow less ideal than those assuming full compliance. This is not to deny that full compliance might indeed be necessary for a theory to qualify as ideal. However, other aspects than full compliance might as well be crucial to make out what ideal theorizing is or involves. (Stemplowska 2008, 320)

Let us thus assume that full compliance is just one relevant way of idealization in political theorizing. It is just one instance of assuming away relevant facts about the world we live in. Arguably, the idealizations that an internal conception postulates—i.e. diversity as a result of abiding to liberal principles and institutions only (the fact of pluralism under free institutions), a well-ordered society as a fair system of social cooperation, an idealized conception of citizens to whom alone political justification is

owed (Quong 2011b, 143-144)—are sufficiently relevant to qualify a theory as ideal. This holds under the assumption that the bracketing of facts is indeed a defining mark of the ideal/non-ideal theory distinction.

Thus, the distinction between internal and external conceptions of political liberalism seems to map onto the one between ideal and non-ideal political theories, at least regarding the issue of the range of facts that are taken for granted.<sup>311</sup> The bracketing of facts is crucial both to ideal theory and to internal conceptions of political liberalism. Internal conceptions of political liberalism might thus be described as a political liberal way of engaging in ideal theory. External conceptions, on the other hand, by taking real-world circumstances into account as far as possible, seem to be the political liberal attempt of engaging in non-ideal theory, or of applying political liberalism to the world we live in.<sup>312</sup>

#### 4.4.2 Aspiration and Concession in Political Liberal Theorizing

Let us now turn to the attempt of elaborating a middle-ground conception of political liberalism, i.e. one that is sufficiently internal but still allows us to theorize about certain real-world political issues that seem lost on a purely internal approach. For this task it

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<sup>311</sup>One might hold that there are several different issues at stake in the ideal/non-ideal distinction that are not entirely reducible to each other. Thus, the issue of compliance and the degree of well-orderedness of a polity is distinct from the issue of the range of external facts taken for granted (i.e. the degree of realism of a theory), and those two issues are again different from the issue of the constituency of citizens to whom public justification is owed (and thus also the issue of what values are taken for granted). Even though all these issues might still be related in relevant ways, I will assume, as prudence suggests, that these are indeed all different issues raising different problems and questions. Here, I will thus mainly focus on the issue of realism, or the extent to which facts about the world are bracketed, and how the internal/external and ideal/non-ideal distinction relate regarding that particular issue. Accordingly, the middle-ground conception of political liberalism suggested below will be restricted to the issue of the degree of realism. A more fully developed account of a middle-ground conception would have to be developed regarding all the different issues and dimension just indicated. Thanks to Sune Laegaard for bringing this issue to my attention.

<sup>312</sup>At this point, it would also be interesting to investigate the differences between the two ways of mapping political theories. One question would be how we might make sense of internal non-ideal theories or external ideal theories, given that such chimerical theories indeed make sense. Given that the ideal/non-ideal distinction involves different issues—such as compliance of citizens, the degree of realism, and the nature and scope of the constituency of citizens to whom public justification is owed as indicated above—there might indeed be interesting chimerical theories of these types.

Another interesting question is whether the internal/external distinction is specific to political liberalism, or whether the distinction might make sense regarding libertarian, socialist, conservative, or other liberal theories as well.

will be useful to get a clearer picture of what is at stake when we search for a middle-ground between an external and internal conception.

What do internal and external conceptions differ in, and how could a middle-ground look like? As already indicated, I take it that one main difference between an external and internal conception concerns the range of facts (about individuals, society etc.) that are taken into account. An internal conception is ideal in the sense that it abstracts from more facts about our world than a non-ideal external conception. One way to express this is to say that an internal conception applies to more possible worlds than an external conception. The range of limiting facts by which an internal conception has to abide is smaller than the range of facts an external conception has to comply with. The external conception, for instance, takes certain facts about actual citizens into account—a range of facts that is irrelevant in an internal conception.

A middle-ground political liberalism would then be one that steers between taking too much for granted, i.e. to weigh certain facts about our world too heavily in our normative reasoning, and ignoring too many relevant facts about the world we live in. We might call the first position, i.e. one that takes too much for granted, “complacent realism” (Estlund 2008, 263; Estlund 2014, 115). The second position, i.e. one that ignores too many relevant facts, we describe as “an extreme version of (...) utopianism” (Estlund 2008, 263) or bad utopianism.<sup>313</sup>

Now, a theory can be too realistic or too unrealistic in various ways. So far, I have only mentioned the degree of certain non-moral facts that are taken into account. A different kind of utopianism is involved when a normative conception of society posits moral standards for its inhabitants and institutions that are impossible for them to ever live up to (Estlund 2008, 263).<sup>314</sup> We might call this bad moral utopianism.

Let us assume that the degree of *aspiration* a normative political theory displays is specified by its moral utopianism, i.e. the moral-political standards it posits for the

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<sup>313</sup>Estlund holds that the epithet of utopianism, with its negative connotations, “is rightly applied to some (...) approaches” (Estlund 2014, 116). Political theories “can be unrealistic in various ways”, and might involve a “form of utopian defect” (ibid.).

<sup>314</sup>Apart from the range of facts that are bracketed in a theory, the issuing of achievable and desirable recommendations for political action is a main distinguishing feature between non-ideal (issuing such recommendations) and ideal (roughly, not issuing such recommendations) theories, according to Zofia Stemplowska (see Stemplowska 2008, 324, 339). For further discussion on the ideal/non-ideal theory distinction, see e.g. Simmons 2010 and Stemplowska 2012. Questions of feasibility are a crucial matter in the discussion of ideal and non-ideal theory, and in methodological considerations within political theory more generally. See e.g. Estlund 2014, 114 fn. 3, 115-120; Rääkkä 1998; Rääkkä 2004, 32, 36, 41.

inhabitants and institutions of a polity. Its degree of *concession*, on the other hand, is specified by the number of facts about the world we live in that a theory takes into account.<sup>315</sup> In a middle-ground conception of political liberalism, we want to settle on a position that retains a suitable degree of aspiration towards a morally realistic utopia, and a suitable degree of concession regarding certain facts about the world we live in so that we can account for moral intuitions relating to real-world political issues.

A suitably aspirational political liberalism sets sound standards—of justice, for instance—that might currently not be met, but that could be met; and, as a normative political theory, it tells us to meet them (Estlund 2008, 267). A suitably concessive political liberalism accounts, in addition, for how people and institutions are, or are likely to act, and thus concedes to a certain range of facts about the world we live in (Estlund 2008, 268).<sup>316</sup>

The concessive part of our political theory guarantees that the moral conclusions and aspirations are not overly *harsh*, and thus that they do not expect more than what can reasonably be demanded from citizens, even if what is demanded would be possible for them to do. Estlund mentions utilitarianism as an example of an overly harsh political theory. It is overly harsh because it might require that we sacrifice our own goals and welfare if it promotes overall well-being. This might be possible for us to do, but it cannot be reasonably demanded from us. Given certain facts about us as citizens, such

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<sup>315</sup>About the concessional side of political theories, Estlund points out that “[f]ew writers believe that things are already, or are bound to be, precisely as they ought to be, and so almost all normative political theory departs from realism in this strict sense. Any theory that implies criticism of actual institutions or behavior is not as realistic as it could be” (Estlund 2014, 115). The question is thus where to draw the line between facts to be taken into account and facts to be omitted, not whether to draw a line at all. There are pitfalls for theories that are too realistic as well, not only for those that are too utopian. As Joshua Cohen points out, “in matters of justice, realism is an uncertain good. By accepting the ‘demands’ of realism, we may be led to build an accommodation of unhappy, grim, and even hideous facts of political life into the foundations of political justification and into the fundamental principles of justice themselves” (Cohen 2009a, 39). According to Cohen, positions that are too realistic also tend to be cynic. This cynicism, “tendentiously self-styled as *realism*, sometimes more simply as the grown-up view” (Cohen 2009b, 2, emphasis in the original), becomes evident in views holding that, say, “the Universal Declaration of Human Rights is [merely] a strategy of political control by Western powers” or that “normative conviction and argument [merely] provide a smokescreen for the interests of those who have power and a distraction for those who don’t” (ibid.). Cohen thinks that this is “an implausible position, though its tireless reiteration threatens to turn it into a self-fulfilling prophecy” (ibid.). I share Cohen’s view about overly cynical and realistic stances.

<sup>316</sup>Estlund thus describes the realistic utopianism indicated and attempted in Rawls’s later work in his own terms as the “noncomplacent nonutopian range of normative political theories” (Estlund 2014, 116).

requirements are too harsh. (Estlund 2008, 267)

Arguably, external political liberalism is not aspirational enough, because it takes— to mention just one example—citizens to be a subset of actual, current citizens. On such an external vie, reasonable is what a current subset of actual citizens happens to hold. It thus sets contingent limits on the standard of reasonableness as a standard for moral-political assessment. On the other hand, it is also too concessive, since public justification is subject to actual consent of actual citizens and whatever views they happen to hold. It thus takes too much for granted. External political liberalism is, therefore, on the one hand morally too restricted or not utopian enough and, on the other hand, too concessive or even complacently realistic.

Internal political liberalism, however, might be too aspirational, since the reasonable-ness standard it sets for a well-ordered society might not possibly, or entirely, be met in the kind of world in which we live. It might be that according to an internal view on society and reasonableness, only very few actual citizens of real-world liberal democracies might count as reasonable. This might be an instance of bad moral utopianism, and thus be a flaw of an internal conception. On the other hand, an internal conception might not be concessive enough, since it does not account for how people and institutions are in the world in which we live, but only how they are in a well-ordered society. A well-ordered society is, by definition, not marked by the kind of historical injustices and marginalization of national or indigenous minorities with which I am concerned in this work. Given that these facts are not taken into account, the theory might therefore also be too harsh—at least for national and indigenous minorities.

Note that the search for a middle-ground conception of political liberalism proposed so far might be controversial, since political liberalism as such is supposed to be a theoretical project that is realistically utopian, or—in Estlund’s idiom—non-complacent non-utopian.<sup>317</sup> It might thus seem that by proposing a middle-ground conception, I simply tell political liberals to be political liberals. However, as the dispute between political liberals with internal or external inclinations indicates, the issue is just that it is not clear whether a realistically utopian political liberalism is more of the external or more of the internal kind. Here, I assume that it is neither. That is, a realistically utopian political liberalism is neither overly internal nor overly external. It integrates elements of both internal and external theories to a suitable degree.

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<sup>317</sup>See Rawls 1999, 4, 11-12; Estlund 2008, 264; Estlund 2014, 115.

Note furthermore that there are a number of ways to spell out the idea of a suitably realistic utopianism within the two dimensions of aspiration and concession. One might argue, for instance, that an external political liberalism is not aspirational enough, but in fact suitably concessive; or that an internal conception is suitably aspirational, but not concessive enough. The most obvious middle-ground would then be to opt for a conception of political liberalism that takes the aspiration from an internal conception, and the concession of an external one. If such hybrids are possible, then they are the simplest ways to formulate a middle-ground conception of political liberalism. Again others, however, will see realistic utopianism only within the range of an internal conception, but not an external conception.<sup>318</sup> Additional positions along these lines are imaginable.

Be this as it may, I will not pursue this issue here. I simply assume that realistic utopianism consists of a suitable compromise between an internal and external conception regarding their moral aspirations and factual concessions. A suitable middle-ground political liberalism could account for historical and ethnocultural justice in our world by being concessive to facts about our world to a necessary and suitable degree, but without giving up certain moral-political aspirations. Whether and how such a middle-ground might work will be considered in the following Section. I thus turn to a core issue of political liberalism, the issue of reasonableness.

#### **4.4.3 The Problem of a Suitably Reasonable Constituency of Citizens**

The way we model reasonable citizens, and spell out the reasonableness standard, is crucial for a conception of political liberalism. Let us thus briefly consider what we can draw from the main objections against an external conception of political liberalism regarding a standard of reasonableness.

The common objections against an external conception of political liberalism force it to admit its moral-political aspirations and to reconsider its concessions regarding facts assumed about citizens (see Section 4.2 above). A main point was that a suitably aspirational conception of political liberalism is in need of a standard of reasonableness

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<sup>318</sup>Such a view can be ascribed to Jonathan Quong. He holds that “[p]olitical liberalism, on my account, is (...) a theory that explains how the public justification of political power is possible amongst an *idealized* constituency of persons who are committed to certain fundamental, but fairly abstract, liberal values” (Quong 2011b, 5, emphasis in the original). He also states that the theory he presents and defends “is a version of the internal conception” (Quong 2011b, 6).

that is independent of what current citizens happen to hold. This seems required to yield the moral-political desideratum of publicly justifiable constitutional essentials in an overlapping consensus of different world views and conceptions of justice. How, then, to reconcile this moral-political aspiration with a suitable degree of concession to facts about the world we live in?

One option is to model the idealized reasonable citizens in a way that they resemble as far as possible actual citizens in liberal societies (Quong 2011b, 149, fn. 28). This would allow to keep a decent degree of aspiration in our political theory, but also to introduce fine grained real-world moral issues that actual citizens are concerned with. Why, however, choose this standard of reasonableness over the one of an internal conception? The main reason is that it allows us to take into account at least certain issues of historical, ethnocultural, gender, or environmental justice. Given that these are relevant for the moral-political endeavors in this thesis, a standard of reasonableness modeled as closely as possible on actual citizens is more attractive than a highly idealized one that applies to a distant well-ordered society.

As already indicated, an idealized conception of reasonableness that makes the acceptance of the burdens of judgment a necessary condition to qualify as reasonable may exclude many religious citizens that otherwise share basic liberal values. This example indicates insufficient concession of an internal conception to the facts about the world we live in. It seems strange, from the point of view of the world we live in, to exclude a wide range of more or less liberal citizens just because they think their religion asserts the truth (and that everyone who ignores this fact is simply ignorant).<sup>319</sup>

This problem of an internal conception's approach to reasonableness can be generalized. The standard examples of Nazis, fundamentalists and theocrats regarding the need and shape of a reasonableness standard are, to be sure, persuasive enough.<sup>320</sup> However,

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<sup>319</sup>See Estlund 2008, 50-52 for an interesting discussion of public justification and political legitimacy premised on the truth of the statement "Christianity is a truth of the utmost importance" (Estlund 2008, 50). Estlund concludes that "Christianity might be true. But even if it is, there will also be other truths about how doctrines such as Christianity may figure in our justifications of political power. These are truths about how we are to treat each other in certain ways" (Estlund 2008, 52). According to Estlund, the "view that some objections to Christianity, even if they are mistaken, are qualified to defeat any justification that relied on the truth of Christianity" (ibid.) might be such a truth about how we are to treat each other. See Chapter 5 for further discussion of the case of religious views in public justification.

<sup>320</sup>The presence of Nazis, fundamentalists and theocrats are quite clear-cut cases that indicate that the set of citizens to which public justification is owed needs to be restricted by a reasonableness standard. If public justification would also be owed to Nazis, fundamentalists or theocrats, then the

in the world we live in, these paradigmatic cases alone will not do to distinguish between reasonable and unreasonable citizens. There are not only Nazis and non-Nazis, or fundamentalist and non-fundamentalists, that might qualify as unreasonable or reasonable. What about less obvious or weaker cases of unreasonableness, such as the case of the truth-holding, but otherwise quite liberal religious person? Or how about all the other persons with only partly, or only seemingly, unreasonable views? Or those living in very different social arrangements and according to very different socio-economic standards, as it might be the case with indigenous peoples? Given the complexity of the world we live in, there will be grey areas and hard cases.<sup>321</sup>

This issue indicates a crux of an internal conception when we deal with certain real-world issues. Since an internal conception is not interested in real-world issues, it is liable to be too harsh regarding the not-quite liberal religious persons, or non-liberal indigenous peoples (to mention just the two examples). Certain facts about religious and indigenous peoples might make the reasonableness standard of an internal conception too harsh regarding many of their views and attitudes.

How could we decide, in such hard cases, whether we deal with unreasonable citizens, or whether the standard of reasonableness is too harsh? The answer is that in many cases, given the epistemic restrictions under which we operate, we will not be able to do so. It will, most of the time, be very hard to come to a decision.

I would now like to turn to a certain strategy to deal with such problems of a standard of reasonableness. Consider, thus, James Bohman's proposition of plural public reason, and a standard of reasonableness that is itself open to reasonable contestation.

### **Plural Public Reason**

A basic political liberal concern regarding political legitimacy and public justification is to push these issues beyond the reach of controversies about religion, philosophical

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political liberal enterprise of justifying a stable constitutional democracy becomes hopeless. This is because Nazis and fundamentalists do not share basic democratic commitments that seem necessary to achieve this goal.

<sup>321</sup>Stephen Macedo thus asserts that “[i]t certainly would be a mistake to think that the contours of reasonableness and unreasonableness could be specified with any clarity in the abstract” (Macedo 1997, 15). He adds that “the contours of reasonableness need to be clarified in tackling concrete controversies” (ibid.). Even though it is important to underline the importance of contexts and concrete controversies, I still hope to engage in a discussion about the standard of reasonableness that will yield a clearer sense of what such a standard is about and what it involves, also in the abstract.

doctrines, or the meaning of life. Political liberalism seems, however, required to take a substantial and controversial stand regarding the distinction between reasonable and unreasonable points of view. (Estlund 2008, 44)

This leads to the problem that, wherever we end up drawing the line between the reasonable and unreasonable, it will be contestable. Some might hold, as I indicated above, that the range of points of view it takes into account is too exclusive. However, the opposite view might be claimed as well, for instance by internal political liberals. A reasonableness standard might be deemed too inclusive, and thus to allow for views in the political justificatory process that should not be taken into account (for instance, because they are manifestly false). (Estlund 2008, 45)

If it could be shown that some reasonableness standards are neither overly exclusive nor overly inclusive, this would indicate a range of reasonableness standards that might fit the aspirations of a middle-ground conception. Note the parallels here. Just as external political liberalism seems liable to favour an overly inclusive conception of reasonableness, and internal political liberalism an overly exclusive one, so a middle-ground conception of political liberalism will favour the range of reasonableness standards that are neither over-exclusive nor over-inclusive.

One way to avoid over-exclusion and over-inclusion is somehow to open reasonableness standards for discussion and contestation. In this case, reasonable points of view would get a say on what counts as reasonable points of view (Estlund 2008, 53). Such opening up the reasonableness standard for contestation can function as a corrective towards an overly static, and potentially over-exclusive or over-inclusive, standard of reasonableness.

James Bohman, being concerned with the role of minority cultures in modern liberal democracies and what he calls “deep cultural conflicts” (Bohman 1995, 255), proposes such an account. According to him, deep cultural conflict makes public reason as the basis of a publicly justified polity, as well as any standard of reasonableness, essentially contestable.

One part of Bohman’s answer to that problem is to make public reason “plural” instead of “singular”. A plural conception of public reason denies one single, public standpoint for working out a reasonable moral compromise to resolve deep conflicts in pluralist democracies. (Bohman 1995, 255-256)

Singular public reason involves one global standard of reasonableness that settles to whom public justification is owed. On this view, reasonable citizens will come to agree upon some justification or decision for the same, public reasons (since there is only

this one reasonableness standard). Plural public reason, on the other hand, does not presuppose a single standard of reasonableness regarding public justification. On this view, reasonable citizens might come to agree with one another for different reasons, since there are different standards of reasonableness that will allow for different sets of public reasons. (Bohman 1995, 262-263)

To diversify the standard of reasonableness in this way might seem like an attractive approach for a middle-ground conception of political liberalism. It brings the reasonableness standard itself in the realm of political contestation, and thus takes deep moral conflict and epistemic diversity seriously (Bohman 1995, 264-265). This move might be a corrective to overly exclusive or overly inclusive reasonableness standards.

The problem with pluralizing public reason and reasonableness in this way is, however, that it simply pushes the problem one level higher. For the relevant question now becomes: how to assure agreement among the different, plural public reasons regarding the question of what counts as reasonable? How to reach an agreement on what is reasonable among different standards of reasonableness? Do we have to introduce something like a public plural public reason?<sup>322</sup> Furthermore, it seems that plural public reason settles too far on an external conception's side. The account of plural public reason does not seem to be aspirational enough regarding a suitably demanding and moral account of public justification. Given that there will be, at best, a mere compromise among different views on public reason and reasonableness, the account of plural public reason tends towards being overly inclusive. A compromise of different views on what counts as reasonable is likely to be too accommodating towards morally repulsive or deeply illiberal views. Such a compromise is thus likely to undermine the rationale of a political liberal reliance on a standard of reasonableness.<sup>323</sup>

Even if we might not, as middle-ground political liberals, favour Bohman's track of pluralizing public reason, there are issues that we can mine from it. Thus, when it comes to a standard of reasonableness, it is indeed questionable why citizens have to comply with, and agree on, one single, unified standard of reasonableness. After all, what is or

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<sup>322</sup>Note that Bohman side-steps this issue by claiming that a compromise—even if a “compromise that is distinctly moral” (Bohman 1995, 267)—will suffice on this higher level of agreement. Even though this might be a compelling reply, it remains open why and how such a compromise would pertain. More needs to be said on that account. For now, however, I take it that the proposed retreat to a compromise on reasonableness standards on a higher level remains problematic.

<sup>323</sup>This claim requires further argument and testing, with thought experiments or examples. For now, I simply assume that this claim holds, for the sake of argument.

seems reasonable might well be a very complex matter, and depend greatly on contexts and social interaction.

It is, however, not clear why we need to pluralize public reason, as proposed by Bohman, to account for the involved complexity and context. It might be possible, so to speak, to internalize the pluralizing step in a singular public reason view. By doing so, it might suit better the aspirations of a middle-ground conception of political liberalism. Let me now turn to an attempt to provide such an account.

### **Prominent Parts Reasonableness**

Is there room, then, for a middle-ground standard of reasonableness? Here is what I have tentatively drawn from our discussion so far. There might be room for such a standard if we keep some prominent features of reasonableness (the ideal or internal conception part), but do not take these prominent features to be the whole story about reasonableness, but merely a striking part, and thus leave it open to any real-world influences or concerns (the non-ideal or external conception part).

By doing so, we might keep a certain degree of sensitivity to yet unknown views, or only barely reasonable views etc. We thus concede to the importance of certain facts and conditions about the world we live in. This makes our view less harsh, but arguably still aspirational enough. This also makes it possible to converge on reasonableness on other (yet unknown) paths.

To put it differently, we might think of the acceptance of certain ideals and views as crucial to a standard of reasonableness. Think, for instance, of the political ideals of freedom and equality, respect for fellow citizens, or the general view on society as a fair system of cooperation between free and equal citizens. We might thus hold that the acceptance of certain ideals, political values or views are a sufficient condition to count as reasonable. If the acceptance of these values or views is satisfied, then this assures reasonableness.<sup>324</sup>

What are these sufficient, prominent parts of reasonableness? Even though I do not attempt to settle that matter here, I take it that the following quotation indicates such a set of prominent parts of a reasonableness standard, establishing the core of what reasonableness is in a political liberal polity:

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<sup>324</sup>Note that I attempt to grasp what it means for persons to be “reasonable in (...) [a] basic aspect” (Rawls 2005, 49).

“Reasonable persons (...) desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept. They insist that reciprocity should hold within that world so that each benefits along with others.”<sup>325</sup> (Rawls 2005, 50)

I take this to suggest the following prominent parts, or crucial elements, of a standard of reasonableness within a middle-ground conception of political liberalism. Reasonable persons (i) respect fellow citizens and thus aim at social cooperation between free and equal citizens, (ii) cooperate with others on terms that all can accept (given that others do the same), and (iii) uphold political reciprocity within a well-ordered society so that each benefits along with others.<sup>326</sup>

Note that an acceptance of the fact of reasonable pluralism, or the burdens of judgment, is not within the prominent parts of reasonableness as conceived of here. It might be, however, that their acceptance is implied by some of the prominent parts proposed. For instance, it might be that respecting fellow citizens as free and equal implies that we respect the fact of reasonable pluralism, i.e. the fact that people, when free to do so, will end up holding different reasonable views and pursue widely diverse ways of life. After all, as Gutmann and Thompson put it, “mutual respect is a form of agreeing to disagree”, involving “a favorable attitude toward, and constructive interaction with, the person with whom one disagrees” (Gutmann 1996, 79). This seems to suggest that respect for fellow citizens involves accepting something similar to the fact of reasonable pluralism and the burdens of judgment. I do, however, not take an explicit stance on the issue here in order to avoid the controversy of whether the acceptance of the fact of reasonable pluralism is indeed a requirement of reasonableness or not.<sup>327</sup> The view of reasonableness proposed here does not, then, explicitly require citizens to accept the fact

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<sup>325</sup>Rawls goes on to note that “people are unreasonable in the same basic aspect when they plan to engage in cooperative schemes but are unwilling to honor, or even to propose, except as a necessary public pretense, any general principles or standards for specifying fair terms of cooperation. They are ready to violate such terms as suits their interests when circumstances allow” (Rawls 2005, 50).

<sup>326</sup>I introduce the qualification of “political reciprocity” to distinguish it from possible other, more comprehensive conceptions of reciprocity. Reciprocity has, for instance, an important place in Amy Gutmann and Dennis Thompson’s view on democracy (see Gutmann 1996). However, as Rawls indicates, “public reason [and with it the ideal of reciprocity] in political liberalism is purely political, although political values are intrinsically moral, whereas Gutmann and Thompson’s account is more general and seems to work from a comprehensive doctrine” (Rawls 1999, 137, fn. 19). Arguably the account of Gutmann and Thompson is more general because it elaborates a more fully fleshed moral view on “deliberative reciprocity” (Gutmann 1996, 55).

<sup>327</sup>See Quong 2011b, 148, fn. 25 for references regarding this controversy.

of reasonable pluralism to count as reasonable—given that respect for fellow citizens, social cooperation on terms all can accept, and political reciprocity are upheld.<sup>328</sup>

Also note how modest, abstract and general the prominent parts of reasonableness are. All that such a list of prominent parts is supposed to guarantee is that something like deliberative or communicative cooperation, and thus a moral agreement on weighty political matters, becomes possible in the first place. It is not to determine the agreement already in advance (see Bohman 1995, 267).

The acceptance of these political ideals, values or views is, then, not necessary to ensure reasonableness.<sup>329</sup> There might be other views, political values or ideals that establish reasonableness as well, and that enable communicative cooperation and moral-political agreement on weighty political matters; but we simply leave that open.<sup>330</sup>

Whether other views are reasonable might be investigated through reasoning aiming at a reflective equilibrium. When aiming at a reflective equilibrium, we assess the co-

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<sup>328</sup>However, some citizens C might still hold the conviction that accepting the burdens of judgment is necessary for respecting fellow citizens as free and equal. They might thus conclude that certain religious citizens RC—who do not accept the burdens of judgment, but all the crucial elements (i)-(iii) of our reasonableness standards introduced above—are unreasonable and should be excluded from the constituency of citizens to whom public justification is owed (thanks to Sune Laegaard for making this point). Given our discussion above, can C reasonably claim the exclusion of RC from the constituency? Or is the claim by C itself somehow unreasonable (because it does not extend respect for fellow citizens far enough)? The case indicates that the conception of reasonableness presented here faces hard cases and difficulties of adjudication in concrete cases. One way to defend the approach presented here is to hold that it is only a general framework for assessing the reasonableness of citizens, one that states certain fundamental political values that should guide political interaction among democratic citizens. Concrete adjudications of unreasonableness, as in the case of somewhat liberal religious citizens, are then a different issue. In adjudications of these cases, many concrete contextual and pragmatic issues will have to be taken into account. I am thus conceding to the truth in Macedo's statement that, at least at some point, "the contours of reasonableness need to be clarified in tackling concrete controversies" (Macedo 1997, 15). In general, however, the impetus of the open ended framework to assess reasonableness presented here seems to imply a very accommodating attitude regarding all kinds of views. Thus, in the case of C, it seems that they can well have their views on RC as being unreasonable, even though RC will remain with full standing in the justificatory process. This might make it hard for C to interact with RC, but arguably not impossible. C can still act *as if* RC accepted the burdens of judgment, and aspire to find common political grounds through such a move. This should not cause any problems since RC fulfill all the criteria of reasonableness (i)-(iii); social cooperation and moral-political interaction with them is possible and fruitful.

<sup>329</sup>I take it that an internal conception of political liberalism, with its high aspiration and low concession, defines reasonableness in necessary and sufficient terms, and thus tends to be overly aspirational and insufficiently concessive.

<sup>330</sup>An example might be republican political values such as non-domination or self-mastery, or at least certain conceptions thereof. See e.g. Bellamy 2007, 80, 154-156, 159-162 for a discussion of these republican ideals regarding constitutional issues.

herence of our reasonableness standard by weighing our beliefs about what is reasonable and our beliefs about moral and factual issues we encounter (see Daniels 2011, Section 1). In this way, the reasonableness standard keeps a suitable degree of sensitivity towards real-world facts, and therefore is not overly harsh. The core, or prominent parts, of our reasonableness standard is, however, sufficient to explain and establish what reasonableness is and requires, and thus keeps our theory aspirational enough.

## 4.5 Conclusion

Political liberalism can be spelled out in at least two different ways: as an internal conception and as an external one. I held that an internal conception is not concessive enough regarding certain facts about the world we live in. Internal approaches should thus be modeled closer to an external conception in order to become relevant for our moral-political investigation of rights of national and indigenous minorities, and cultural diversity more generally. However, the resulting conception of political liberalism should avoid as many pitfalls as possible of an external conception, pitfalls such as an overly inclusive standard of reasonableness and being complacently realist. The question thus arises of how to conceptualize a possible middle-ground between an external and an internal view on political liberalism: How to reach a middle-ground conception of political liberalism that is concessive enough, or not overly harsh, but still suitably aspirational?

I maintain that to open the standard of reasonableness itself to reasonable contestation is not an attractive way out, because it merely pushes the problem one level higher. At best, it settles on a compromise on different views of what is reasonable. Such a view tends to be overly inclusive, and not aspirational enough, regarding the reasonableness of citizens.

As a way to internalize the pluralizing step proposed by James Bohman into a singular standard of public reason, I propose to settle on a reasonableness standard that takes the acceptance of a basic set of prominent political liberal ideals and views to be a sufficient condition to count as reasonable. This set of prominent ideals and views is, however, not to be understood as the whole story about what reasonableness is or involves. We leave open the question of what is necessary to count as reasonable. By this move we keep the standard of reasonableness sensitive to yet unknown views, or only barely reasonable views that might, after all, turn out to enable communicative cooperation and moral-political agreement on weighty political matters as well. This arguably makes the

standard aspirational enough, but not too harsh; it also makes the standard concessive enough, but not complacently realistic. Such a conception of reasonableness consisting of prominent but not necessarily defining parts is a suitable candidate for a view on reasonableness within a middle-ground conception of political liberalism.

## 5 Religious Reasons and Public Justification: On The Role of Religious Views in Political Argument

As we have seen in the second essay, a major issue for a legitimate political order is the public justifiability of its main tenets. On the view of public justification adopted here, public justification is reachable and tempted through presenting reasons everyone can accept, i.e. public reasons or shared premises. In this essay, I would like to dwell on several issues that arise when adopting such a view on public justification. I thus aim at working towards a more fine-grained view on what a duty of civility, i.e. the duty to present public reasons in deliberations about weighty political matters, requires from citizens of a liberal constitutional democracy.

One might wonder how an essay concerned with religious views and reasons fits into the main concern of this thesis, namely justifying a minority rights regime within a political liberal perspective. A main reason to discuss religious views regarding the issues of public justification and legitimacy is that they help to clarify, on a basic level, the nature of public justification, legitimacy and democratic citizenship. The focus on religious views and reasons in a liberal polity is also commended because it has been a standard problem discussed in the political liberal debates, so that many of the political liberal insights will be found in these debates. The discussion here thus helps to clarify the framework that will then be applied to issues of minority rights and ethnocultural justice for indigenous and national minorities.

A closer look at religious diversity is also interesting because “the diversity that sets the liberal impulse in motion is religious diversity and the doctrine of toleration to which it ultimately gives rise” (Galston 1995, 518). Religious diversity in Europe and the United States have been, historically speaking, a major source of philosophical challenge for liberals of different strands.<sup>331</sup>

To engage more thoroughly with religious reasons and their role in public justification will also help to explain, as well as contrast, *religious* and *cultural* reasons. The

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<sup>331</sup>See Rawls 2005, xxvi, 159 on the Reformation as the historical origin of political liberalism and its attitude to toleration.

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differences between these two kinds of reasons are crucial and will be discussed more thoroughly in the next essay. Thus, a main point I will make is that there are public cultural reasons but no public religious reasons (see 6.1). To dwell more thoroughly on religious reasons will help to establish why they are not public, and to show how they are different from (public) cultural reasons.

Given the view on legitimacy and the duty of civility adopted here, I am also interested in the role of citizens with a religious or cultural minority background in the justificatory process. This role is addressed in this essay, with a first focus on religious citizens. Even though it is true that public justifications of political authority or or minority rights regime will attempt to offer general and public reasons, the question remains what the role and the status of religious and cultural reasons offered by citizens in the justificatory process are. My proposal to conceive of certain cultural reasons as public, but not of any religious reasons, indicates that the role and status of these reasons is rather interesting.

Also note that the essay at hand consists of large parts in discussion of arguments and contributions made by others, and in reflecting and systematizing these contributions. The aim here is to develop a clearer picture on the political liberal view on public justification, legitimacy and democratic citizenship as adopted in this thesis.

The main question I would like to address in this essay is, then: Given the shared premises requirement, and the duty of civility that goes with it, what role—if any—can religious views and reasons play in political argument? Apart from refining our view on public reason and the duty of civility, the discussion of this question prepares the ground to discuss, in the next and last essay, the role of cultural views and cultural reasons in political argument.

In the first part of this essay I am interested in the status of religious reasons in public justification. This involves an interest in the divide between public and nonpublic reasons, and the classification of religious reasons as the latter kind. More concrete questions I will address are then: Why do religious reasons lack justifying force in public justification? What are religious reasons in the first place? What are public reasons, and how to find or track them?

In the second part of the essay, I am interested in what we can expect from religious citizens in a constitutional democratic regime, given the duty of civility. I will dwell on different interpretations of the duty of civility, an “exclusionist” interpretation and

an “inclusionist” one<sup>332</sup>, and briefly contrast such a duty with alternative and more permissive views on religious views in political argument and decision-making. What is at stake here is, then, an adequate view on the democratic ethos that guides the citizens’ engagement in public justification of weighty political matters.

I propose that adding the elements of reasoning from conjecture to the inclusionist view is apt to make it strongly inclusionist. The advantage of a strongly inclusionist conception of the duty of civility is that it takes concerns of religious persons about alienating effects of the political liberal project seriously, without abandoning the public reason requirement. With the element of reasoning from conjecture in place, religious reasons can be presented even without underpinning public reasons—at least for the time being. When efforts of conjecturing, i.e. the efforts of linking the presented religious views in questions to political values that all can accept, are pursued and sooner or later actually do yield shared grounds, then the strongly inclusionist view of the duty of civility is apt to accommodate religious persons and views. This should counter the alienating effects of a duty of civility bemoaned by religious citizens.

My main claim in this essay is, then, that a strongly inclusionist interpretation of the duty of civility, involving an accommodating view on the role of religious reasons in political argument, is a compelling way to spell out the duty of civility in a polity with a widely diverse citizenry. The proposed conception of a duty of civility is apt to counter the possible alienation of religious persons from the political liberal project. It is a compelling way to walk the tightrope between accommodating diverse views on the good, such as religious and progressive views, as well as a commitment to public justification based on shared premises. It is thus apt to foster trust among citizens and a stable democratic polity.

## **5.1 Religious Views in Political Argument: The Case of Religious Content Shepherds**

In order to see what is at stake in our discussion of the role of religious views in political argument, consider the example of religious content shepherds.

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<sup>332</sup>I take the labels from Boettcher 2009, 9. Exclusionist conceptions of a duty of civility entail, roughly, “that religious doctrine should play no role in public political discussion and decision-making” (ibid.). Inclusionist conceptions of a duty of civility, as the name suggests, grant some role to religious views and reasons in political deliberation and decision-making.

As suggested in the first essay, suppose that the citizenry P of the polity under scrutiny is composed roughly of two main groups, a broadly secular majority and a small minority of content shepherds living according to the guiding tenets of their traditional shamanic religion.<sup>333</sup>

In arguments with the majority on weighty political matters—i.e. on matters where the issue of the legitimacy of the political order is at stake, and thus matters such as constitutional essentials or the basic social structure, and possibly certain coercive laws and policies—the content shepherds advocate and argue for their views with strong references to their religious views. They are thus strongly relying on religious reasons in their arguments on weighty political matters.

Consider, furthermore, a policy of major importance to the polity under scrutiny. The polity is to allow for the mining of essential resources on a large scale and in many regions of the polity's territory, including the territory of religious content shepherds. The secular majority is mostly in favour of the policy. Support is based on various reasons, such as economic or social interests linked to employment and increased tax revenue. There are, thus, established and widely shared reasons in favour of the policy to allow for mining. The religious content shepherds, however, unanimously and strongly oppose the policy. The main reasons they cite are:

- (a) The policy strongly conflicts with their religiously based view that nature (in general) is holy, and that nature (in general) should be respected and protected.
- (b) The policy would allow the destruction of natural sites (in particular) that are most important to their shamanic religion, such as certain holy sites and sacred places. There are numerous sites and places like this on the territory on which the content shepherds live.<sup>334</sup>

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<sup>333</sup>The reference to a shamanic religion is supposed to underline the similarity of the case with some instances of indigenous minorities and their religious views. Otherwise, the case of content shepherds remains the same as discussed in the foregoing essays.

<sup>334</sup>Greenawalt 1988, 3 makes up the somehow similar case of Jean to discuss "the connection between peoples' religious convictions and their political choices" (*ibid.*). Jean, a legislator, has to vote on the protection of an obscure species of fish. Even though she sees no present or future human interest that could justify this protection, she also thinks that the natural environment was created by God, and should therefore be protected. The case of Jean is construed in a much more individualistic way than the one I propose. As I underlined, the content shepherds, as a community, share a certain religious view. What I am interested in is, however, the same issue as in the case of Jean: Do content shepherds "properly rely on their religious convictions in deciding what public laws and policies to

Also suppose that the polity under scrutiny aspires to be well-ordered, and thus to be as legitimate and just as possible given its inextricably, but still reasonably, diverse citizenry. It adheres to the liberal principle of legitimacy, according to which weighty political matters such as constitutional essentials or the basic social structure have to be justified by reasons all can accept or agree to.<sup>335</sup> In other words, publicly justifying arguments need to be based on shared premises.

This view underpins the moral, as opposed to a legally enforceable, duty of civility.<sup>336</sup> I thus take it that our view on the ethics of public justification underpins our view on the ethics of citizenship. The duty of civility is a crucial part of an ethic of citizenship as adopted here. Still, the ethic of public justification and the ethic of citizenship are two distinct issues (Boettcher 2009, 7-8). I do not claim that there is any necessary connection between the proposed views on public justification and citizenship. The possibly contingent connection is, however, fairly straightforward and intuitive: To require public reasons or shared premises in order to establish public justification *can* support the view that citizens, in order to attempt public justification, should present to one another public reasons or shared premises.

The case of religious content shepherds raises, then, at least the two following questions for our polity at hand. First, what is the status of the religious reasons (a) and (b) in public political arguments against the mining policy, given our views on public justification and democratic citizenship? I consider this question in Section 5.2 below.

Second, what does the duty of civility require from religious content shepherds in public political argument? Should religious content shepherds be allowed, from a point of view of a moral duty of civility, to refer to their shamanic views in political argument of weighty political matters such as the mining policy? I consider this question in Section

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support" (Greenawalt 1988, 3)?

<sup>335</sup>See Section 3.1 for an outline of some basic political liberal assumptions adopted here.

<sup>336</sup>The moral quality of the requirement to present public reasons is intriguing. However, I will not pursue this matter further here. Note, however, that following the duty of civility does not seem to be an issue of moral rights and duties, even though the label suggests so. Rather, there seem to be moral requirements at play that are different from moral rights. Thus, not to follow the duty of civility might not infringe on anybody's moral rights. Still, not to meet the duty of civility seems morally wrong. This suggests that certain acts might be wrong even if no moral rights are violated. Robert Audi presents such a view in Audi 1997a, 10. See also Eberle 2002, 55-56 or Lomasky 1990, 224-225 for a discussion of the issue. The requirement to present public reasons might thus be similar to a requirement for politicians and citizens not to lie. Even though there is no legal ban or requirement regarding the issues of lying, nor the issue of presenting public reasons, there is still, arguably, a politically relevant moral obligation for politicians and citizens not to lie as well as to present public reasons in decisions on weighty political matters.

5.3 below.

Let us thus turn first to the status of religious reasons in public political argument on weighty political matters. I am interested in the “question of public reason and religion” (Boettcher 2009, 7): May citizens rely on religious doctrines in public discussion or advocacy of weighty political matters such as constitutional essentials or the basic social structure? (Ibid.)

## 5.2 On Religious and Public Reasons

The reasons against the mining policy presented by religious content shepherds, that (a) nature is holy and that (b) certain sites in the mining area are sacred, are not public, at least not in a reasonably diverse polity as the one under scrutiny. Religious reasons are not public because they are not shared among the public P.<sup>337</sup>

By imposing a shareability requirement on reasons to qualify as justifying reasons, reasons that are not shared will therefore not have justificatory force. Reasons (a) and (b) presented by religious content shepherds thus lack justifying force in political argument. Let us now consider more closely why religious reasons lack justifying force in public justifications.

### 5.2.1 Why Religious Reasons Lack Justifying Force Regarding Weighty Political Matters

I conceive of religious reasons, tentatively, as reasons that are based on religious views. They seem to lack justifying force regarding the justification of political authority and constitutional essentials for the same reason that the value of individual autonomy discussed in the first essay lacks justifying force (see especially Section 2.2.1). The reason is that other members of the citizenry P do not accept arguments based on religious views or the value of individual autonomy. Weighty political matters such as constitutional essential or the basic social structure thus cannot be justified to them solely on those grounds.

In the discussion of individual autonomy the issue was that it is a reasonably contested view on what is good or valuable in life. In other words, individual autonomy is a contro-

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<sup>337</sup>Note that the shareability requirement is contestable. See e.g. Gaus 2009b, 56-58 for a discussion. Nevertheless, I take it to be a reasonable way to spell out the public reason requirement: public reasons are, crucially, shared reasons.

versial conception of the good.<sup>338</sup> A political regime crucially based on the promotion and protection of individual autonomy therefore cannot be publicly justified to those who do not value individual autonomy. The value of individual autonomy alone is not a shared ground among all reasonable citizens that could justify the political authority and social structure of a polity.<sup>339</sup>

Now, religious views arguably also provide views on what is good—they pose a supreme good, such as a God or Gods, salvation, or enlightenment (depending on the religion). As Brian Barry points out, “religions compete with secular conceptions of the good in that they all offer some answer to the question of the meaning of life”, and they provide this meaning, usually, with reference to God as origin and destiny (Barry 1995, 29). As in the case of other conceptions of the good, such as individual autonomy, religious views have “no authority with those who do not accept the religious account” (Barry 1995, 29) of what is good in life. They thus lack justificatory force for the establishment of legitimate political authority.

A further important feature of religious views, apart from providing a good in life, is their comprehensiveness. Religious views usually cover, rather comprehensively, all kinds of domains, be they metaphysical, theological or ethical. Religious views are thus rather pervasive in scope, and extend to all kinds of issues and questions. Their comprehensiveness also makes them contestable under conditions of reasonable pluralism.<sup>340</sup> As Rawls puts it, religious doctrines are comprehensive insofar as they apply “to all subjects and cover all values” (Rawls 2003, 14). Religious doctrines or views arguably share this feature of comprehensiveness with many other philosophical, metaphysical or moral doctrines, such as “utilitarianism, perfectionism, and intuitionism, among others” (ibid.).<sup>341</sup>

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<sup>338</sup>Thus, Rawls notes that “[w]hatever we may think of autonomy as purely moral value, it fails to satisfy, given reasonable pluralism, the constraints of reciprocity, as many citizens, for example, those holding certain religious doctrines, may reject it”. (Rawls 1999, 146).

<sup>339</sup>This, as I tried to indicate in the first essay, is an important reason to move away from a comprehensive liberal approach to a political liberal one, since the latter one takes diversity more seriously, and thus accommodates diversity and liberty more adequately.

<sup>340</sup>The issue of comprehensiveness might also be relevant regarding the value of individual autonomy, although I did not stress that aspect in the first essay. Thus, Samuel Freeman holds that the “value of autonomy is part of one or more ‘comprehensive doctrines’ which (because of certain ‘burdens of judgment’) could not be generally endorsed by conscientious moral agents, even in a well-ordered society” (Freeman 2004, 2025).

<sup>341</sup>Kent Greenawalt also points out that religious reasons share many features with “nonreligious fundamental premises” (Greenawalt 1988, 10). For more on comprehensive doctrines, see also Rawls 2005, 13. Political liberalism aspires to formulate a political conception of justice, as opposed to a

Rawls often mentions philosophical, moral and religious doctrines in one sentence, so that one might get the impression that a comprehensive doctrine is defined as a philosophical, moral, or religious doctrine. What is crucial, however, is not the fact that a certain doctrine is moral, philosophical, or religious. What is crucial is its scope, i.e. the range of issues to which a view applies, such as the meaning of life, ethics, theology, politics etc. (Rawls 2005, 13; Gaus 2003, 181)

The main reason that religious views lack justifying force in political argument on weighty political matters is thus that these are controversial conceptions of the good that are rather comprehensive in nature. Religious views take a stand on all kinds of issues, be they metaphysical, epistemological, moral, or political etc. (Gaus 2004, 100)<sup>342</sup> The posing of a controversial good, the feature of comprehensiveness, together with the claim that these views are true, make religious reasons—so to speak—sectarian.<sup>343</sup>

Starting from the liberal principle of legitimacy, the political liberal view on comprehensive doctrines as lacking justifying force regarding constitutional essentials can thus be explained as follows:

- (i) In our polity, there exists a reasonable pluralism of comprehensive religious, philosophical and moral views.
- (ii) Free and equal citizens, holding different and irreconcilable comprehensive doctrines, cannot reasonably be expected to endorse a constitution whose

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comprehensive one. It thus aspires to a theory of justice that is “designed for the special case of the basic structure of society and is not intended as a comprehensive moral doctrine” (Rawls 2003, 19). This political character is also important in the conceptualization of other crucial ideas, such as the idea of a person (ibid.), equality (Rawls 2003, 20), freedom (Rawls 2003, 21, 23), citizens and a well-ordered society (Rawls 2003, 22). Rawls notes that a main motivation to write *Political Liberalism* was his realization that, in his earlier work *A Theory of Justice*, justice as fairness was a “comprehensive, or partially comprehensive” (Rawls 2005, xvi) doctrine. See e.g. Gaus 2003, 178ff. for a discussion of Rawls’s political turn.

<sup>342</sup>Rawls notes that “the serious problem is this: A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines” (Rawls 2005, xvi). Reasonable comprehensive doctrines are thus important to spell out the idea of a reasonable pluralism.

<sup>343</sup>Note that I do not claim that religious reasons cannot, ever, have any justifying force. I only hold that they do not have such a force under conditions of reasonable pluralism as considered here. Religious reasons might, arguably, have a justifying force in a political community that shares only one faith, i.e. a society that is not marked by pluralism. Also, there are many religious views or reasons that might be shared by other religious or secular views, for instance certain basic moral rules (see e.g. Macedo 1997, 24-25 on this point). I will dwell on this point further at the end of this essay and underline the importance of searching for common grounds through conjecturing (see Section 5.3.4).

justification requires endorsing a comprehensive doctrine they do not endorse.

(iii) A constitution relying on a comprehensive doctrine that some free and equal citizens do not endorse violates the liberal principle of legitimacy.

(iv) For every reasonable comprehensive view, there exists another comprehensive view held by some free and equal citizen that is irreconcilable with it.

(v) Therefore, there exists no constitution satisfying the liberal principle of legitimacy that requires the endorsement of any specific comprehensive view. (See Gaus 2003, 179-180)

Steps (i) to (iii) explain basic premises of political liberalism and implications of the liberal principle of legitimacy. Step (iv) explains why comprehensive doctrines—under conditions of reasonable pluralism—are sectarian. Step (v) concludes why sectarian comprehensive views lack justifying force regarding constitutional essentials.

Characteristic of political liberal views are, then, also the following steps:

(vi) There exists a political conception PC (spelling out the basic social structure, or constitutional essentials) such that all reasonable comprehensive views held by free and equal citizens can endorse PC within their diverse comprehensive doctrines.

(vii) A constitution relying on PC for the justification of political power does not violate the liberal principle of legitimacy. (Gaus 2003, 179-180)

Steps (vi) and (vii) give the political liberal answer to overcome the impasse faced by those who want to justify political authority on the basis of a comprehensive doctrine under conditions of reasonable pluralism. Since all justification based on a comprehensive doctrine is necessarily sectarian, political liberals propose to rely on a political conception of justice that is supported by all comprehensive doctrines, i.e. by reasons shared among all free and equal citizens.<sup>344</sup>

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<sup>344</sup>Note that I intend to outline a Rawlsian political liberal view, not Rawls's view itself. Rawls himself has a rather complicated justificatory procedure in place. See e.g. Freeman 2004 or Langvatn 2013 for an overview on the details of his account. Going into too much detail of Rawls's account is not the purpose of this thesis, and would take too much space and attention.

Political conceptions, as opposed to comprehensive views, have the following features. First, they are narrow in scope. Their principles apply solely to weighty political matters, such as the basic structure of society and constitutional essentials. Second, political conceptions are freestanding. That is, political conceptions do not rely on any single, contestable comprehensive doctrine, such as religious views or the value of individual autonomy. Still, political conceptions are supported by comprehensive doctrines, or fit into them as “modules”.<sup>345</sup> The political conception of justice enshrined in constitutional essentials is the object of an overlapping consensus, publicly justified to all citizens holding different views on what is good and what is just. It will thus be supported by all reasonable comprehensive doctrines.<sup>346</sup> Third, political conceptions can be worked out from fundamental ideas found in the public political culture of a constitutional democracy.<sup>347</sup>

The distinction between the political and the comprehensive seems essential to the political liberal project. Indeed, it is the name-giving feature of political liberalism to focus on the political as opposed to the comprehensive. Gerald Gaus, however, criticizes the political/comprehensive distinction, and thus the aspirations of political liberalism. He worries, first, that most people do not actually have, and do not rely on, fully comprehensive moral, religious and philosophical doctrines (Gaus 2003, 183).<sup>348</sup> If this holds, however, it might seem strange that the comprehensiveness of doctrines plays such a vital role in political liberal accounts of public justification. Also, it seems to be the case that individual moral, religious and philosophical *beliefs*—as distinct from more general and comprehensive doctrines or views—need not be, and often are not,

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<sup>345</sup>As Rawls puts it, “the political conception is a module, an essential constituent part, that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it” (Rawls 2005, 12, see also 144-145).

<sup>346</sup>As Rawls puts it, “a society can be well-ordered by a political conception of justice so long as (...) citizens who affirm reasonable but opposing comprehensive doctrines belong to an overlapping consensus: that is, they generally endorse that conception of justice as giving the content of their political judgment on basic institutions [such as constitutional essentials and the basic social structure]” (Rawls 2005, 39). An overlapping consensus thus “consists of all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherence (...)” (Rawls 2005, 15). For a more thorough discussion, see Rawls 2005, Lecture IV. Since I admit that there can be disagreement also among conceptions on justice (see Sections 3.2.4 and 4.2), I add the element that the ruling political conception of the overlapping consensus also needs to find support of the different reasonable views on what is just.

<sup>347</sup>See Rawls 1999, 43 and Gaus 2003, 182-186 for a discussion of these three formal features of political values and political conceptions of justice.

<sup>348</sup>Note that Rawls admits that much in Rawls 2005, 160.

comprehensive or pervasive in nature. Such individual beliefs may well stand alone, or cover a very limited scope of issues.

Gaus cites the following beliefs as examples: (A) “God exists”, (B) “the external world is real, and a proposition is true if it describes the world accurately”, (C) “stealing is wrong” (Gaus 2003, 183). All these views are narrow in scope, and are embraced by many people. If this holds, however, then it is not clear why these beliefs could not meet the test of (vi) and count as political—after all, they seem to be narrow in scope and freestanding, i.e. they are not linked to any particular comprehensive doctrine.

However, it seems strange to formulate beliefs such as (A)-(C) as freestanding beliefs. The belief that God exists, for instance, is usually linked to other, more particular beliefs about the nature of God that are again linked to more comprehensive religious views—as found in, say, religious views such as Christianity, Judaism or Islam. Gaus seems right, however, that these beliefs *can* stand independently of more pervasive religious doctrines.

This leads us to an interesting point about public or shared reasons. Given that public justification is established through public, shared reasons—without reference to the truth of these reasons—many general views such as (A)-(C) might indeed be public, and thus have justifying force. Depending on the degree of reasonable pluralism faced in society, and given that these beliefs are indeed freestanding and narrow in scope, such views might be widely shared. This, however, seems to allow for reasons such as (A), “God exists”, to be used as justifying reasons in political argument (given that the reason is narrow in scope and freestanding).

Consider the following two points in reply. First of all, in a thoroughly pluralist society, as it is our concern here, beliefs such as (A) cannot be assumed to be uncontested and widely shared. Even though possible in principle, these reasons cannot justify political authority and a basic social structure because under reasonable pluralism the reasons are contested. Reasonable secular citizens, or those embracing religious views that do not involve God, can reasonably reject to be ruled on the ground of (A), even though the view is widely shared by others, narrow in scope, and freestanding.

Second, beliefs (A)-(C), even though they might be freestanding, narrow in scope, and widely shared, are still not political, i.e. they do not apply to weighty political matters such as the basic social structure or constitutional essentials.<sup>349</sup> In order to establish

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<sup>349</sup>Nor are they, by the way, implicit in the public political culture of a liberal constitutional democracy, as the third part of the definition of the political states.

such a link to constitutional essentials, the view in question would arguably become markedly more comprehensive. For instance, the belief “God exists” would have to be linked to a story that explains why the existence of God is relevant to spell out what our basic social structure looks like, or what the constitutional essentials consist of. This will involve a rather comprehensive view with elements from, at the very least, metaphysics (the existence of God) and politics (God’s involvement in governing a polity). If this holds, however, the objection to comprehensive views as a ground for legitimate political authority snaps again. The politico-religious doctrine in question becomes, as such, unable to publicly justify a political conception in a reasonably pluralist society.

How about the fact that many people, arguably even in a well-ordered society, do not have any comprehensive doctrines, but at best partly comprehensive ones? Even views that are only slightly or partly comprehensive tend to be contested and sectarian. The comprehensiveness of a view seems to be a rather reliable way of tracking how contestable or sectarian a view is. The more comprehensive a view, so the rule of thumb goes, the more difficult it seems for the view to be shared and freestanding. The idea of a comprehensive doctrine arguably shares the feature of tracking the contestability of views with the idea of conceptions of the good. The domains of the good and the comprehensive indicate where we can reasonably disagree. Gaus is thus right that the relevant distinction is actually the one between the “reasonably disputed and the not reasonably disputed” (Gaus 2003, 185), and not so much the one between the political and the comprehensive or the right and the good.

However, in support of the comprehensive-political divide, as well as the divide between the right and the good, we might still hold that these distinctions are useful ways to track the divide between the “reasonably disputed” and the “not reasonably disputed”. I take it that qualifying views as comprehensive or partly comprehensive doctrines, or as conceptions of the good, conveys interesting information about the reasonable disputability of that view, and is thus relevant for political liberal theorizing.

### **The Religious Reasons of Content Shepherds Revisited**

Let us, then, briefly come back to the reasons presented by religious content shepherds in their political argument. Reasons (a) and (b) are derived from a comprehensive religious doctrine, involving references to holiness and sacredness. The reasons thus lack justifying force because they are derived from a comprehensive, religious doctrine—

a doctrine involving views on the good, and claiming the truth regarding all kinds of matters within a unified religious world view.<sup>350</sup> The references to “holiness” and “sacredness” are crucial indicators for religious views and reasons, since they presuppose a certain attitude common to many religions to comprehensively explain and order the universe. These explanations commonly involve a creator and a creation. They also usually assign a place to humans within that order and the universe.<sup>351</sup>

Given all this, it seems clear that the religious reasons (a) and (b) presented by content shepherds are part of a comprehensive religious view that is reasonably disputable. Similar to the value of individual autonomy, the religious view of content shepherds is sectarian and, on its own, unable to publicly justify weighty political matters.

### **Shared Individual Beliefs and the Error of Symmetry**

Before we move on to the next issue, let me briefly add two comments on the view developed so far. The first issue relates to the possibility of sharing individual beliefs among various and opposing comprehensive doctrines. As indicated above, I assume that the comprehensiveness of a view is a way of checking whether a view is reasonably contested. The reasons presented by content shepherds thus seem, *prima facie*, sectarian. This is so because they rely on a rich metaphysical view that is not shared by members of the majority. Since the members of the majority are not sharing the comprehensive, shamanic religious doctrine of the shepherds, they will therefore not accept the view on

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<sup>350</sup>It has been questioned, for instance by Brian Barry, how people endorsing a comprehensive doctrine that admits the truth can also be political liberals. The issue is this: How can we affirm the truth offered, say, by God and at the same time affirm restraint on reasons derived from what we take to be the truth, or even the whole or absolute truth? That is, how can we reconcile a claim to truth with “epistemic abstinence” (Raz 1990b) on the question of truth as required by Rawlsian political liberalism? This is an interesting issue, one that I do not, however, pursue further here. Still, one answer might be that Barry overstates the contrast between truth claims and epistemic restraint. Thus it might not, after all, be so problematic to claim the truth on *certain matters*, such as metaphysics, ethics, or the meaning of life, and still be favorable of epistemic restraint on other, *political matters*—most of all if we admit the burdens of judgment and the implied reasonable pluralism about many issues. Indeed, accepting this conditions is most common in democratic societies where people with different views on religion and the world—such as Protestants, Orthodox Christians, Catholics, Jews, Muslims, Pacifists, and Vegans—share a polity. See Barry 1995, 179 and Horton 2010, 64-66 for discussion of the issue. Rawls raises similar issue in Rawls 2005, 174ff. For further problems arising from the requirement of epistemic abstinence see Raz 1990b.

<sup>351</sup>This arguably holds, most of all, for some common monotheistic world religions such as Judaism, Christianity and Islam. I will dwell further on the more specific characterization of religious reasons in the next Section, also with the aim to distinguish religious from cultural reasons (see Section 5.2). That distinction will be crucial for the investigations in Chapter 6.

nature as sacred and holy *on these grounds*. However, they might still share the reason to protect nature *on other grounds*.

To see this, let us assume that a considerable part of the members of the majority are ecologically minded, and adhere to an ecocentric secular ethic.<sup>352</sup> In such a case, support for the protection of nature might gain wide-spread appeal (even if it remains contested among some parts of the citizenry). This indicates that even though the comprehensiveness of a view might reliably track sectarian views, it does not say anything on the shareability of *individual beliefs* within a comprehensive view. Individual beliefs and reasons embedded in comprehensive views might well be widely shared. If, furthermore, they are political (i.e. freestanding, applying to weighty political matters and implicit in the public culture of constitutional democracies) then they might become part of an overlapping consensus of conceptions of justice and reasonable comprehensive doctrines.

Second, so far we have discussed only one particular case of how religious reasons can be involved in public justification. We considered, namely, the case where religious reasons have no justifying force in the wider secular community when *establishing* constitutional essentials or the basic social structure. Religious reasons might, however, still be strong enough to *defeat* concrete proposals to establish constitutional essentials. Gerald Gaus and Kevin Vallier dubbed the mistake of treating reasons for coercion and reasons objecting to coercion on the same footing as the “error of symmetry” (Gaus 2009b, 62ff.).<sup>353</sup>

Gerald Gaus and Kevin Vallier’s view about the asymmetry between (positive) justifications of and (negative) objection to weighty political matters has considerable consequences for religious content shepherds in their struggle for the preservation of nature. Given that their reasons (a) and (b) are reasons offered to defeat the imposition of the weighty mining policy, reasons (a) and (b) might defeat reasons in favour of that mining policy.

This, however, seems too strong. Given that it is the content shepherds’ integrity and conscience that is the crucial rationale for the defeating force of their religious reasons

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<sup>352</sup>See Barry 1995, 20-21 for a discussion of ecocentrism (an ethic built around the value of nature and ecosystems) as opposed to zoocentrism (an ethic built around the interests of animals) and anthropocentrism (an ethic focusing merely on the interests and concerns of human beings).

<sup>353</sup>As Gaus and Vallier maintain, the “liberal commitment to non-domination and sanctity of conscience implies that religious citizens must not have laws imposed upon them which they have no conclusive reason to accept. Even if a secular rationale is necessary in our society for a publicly justified law, it can be defeated by a reasonable religious conviction without any secular backing” (Gaus 2009b, 63).

(Gaus 2009b, 63), a more finely-grained and balanced trade-off with the otherwise widely supported mining policy seems required. It seems too strong that religious content shepherds would be granted such a grave veto power to outweigh an otherwise widely shared consensus on the mining policy. How would such a sensible trade-off look like?

One way to accommodate the content shepherds' valuing of nature with the majority's valuing of economic and social aims is by differential treatment of these two groups (to which both agree). The content shepherds' territory could, for instance, be exempt from mining activities. This might happen, more concretely, through the protection of certain sacred sites and natural parks that are particularly important to the shepherds, or through a ban on mining on the whole territory on which content shepherds live. Mining would then be allowed on most of the territory of the polity under scrutiny, but would be restricted to those regions where it is welcomed and publicly accepted.

Exemptions seem to be a good way out from impasses of public justification, as they occur in the example of shamanic content shepherds opposing an otherwise widely accepted policy on mining.<sup>354</sup> To see why, it is helpful to remember why we are committed to public justification in the first place. A main rationale is the liberal principle of legitimacy, based on the liberty principle, the requirement of consent, and respect for fellow citizens as free and equals.<sup>355</sup> If we respect fellow citizens and do not infringe on their liberty, and therefore do not require consent, then we do not owe public justification. Differential treatment in the form of exemptions helps to sidestep the public justification requirement in certain cases.<sup>356</sup>

After having looked into some aspects of the justifying force of religious reasons, I

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<sup>354</sup>There are also downsides of such an approach. For instance, such a "rule and exemption approach" tends to make political matters more complicated, and the dealing with them also more costly given that, say, all kinds of special measures need to be installed to make exemptions possible. These issues will have to be taken into account in a decision on whether to pursue differential treatment or not.

<sup>355</sup>See Section 3.1.

<sup>356</sup>Gaus puts the point as follows: "It is important to keep in mind why we are committed to public justification: respect for others leads us to justify coercive impositions to the persons imposed upon. If we do not coerce, then we have no commitment to publicly justify." (Gaus 2010, 33) Of course, one might contest the underlying liberty principle, but then we are departing from the framework of investigation set for this essay. Joseph Raz does so, for instance, by holding in a perfectionist manner that "there seems little reason to reject valid or true principles, the implementation of which may actually be of benefit to all, just because a small sector of the population cannot be convicted of this fact" (Raz 1990b, 45). The problem is, of course, precisely how to establish truth in a diverse society, most of all on basic political matters, such as a far-reaching mining policy. Political liberalism attempts to sidestep truth issues in these matters and focuses instead on public justification and public reasons.

will now briefly turn to the issue of what, more precisely, religious views are and what qualifies as a religious reason.

### 5.2.2 What Are Religious Reasons?

Religious reasons are reasons—for our purpose: in moral-political argument—that are derived from religious views, beliefs or convictions. What religious reasons are will thus depend crucially on how we conceive of religious views, beliefs or convictions, and on what counts as a religion more generally. What, then, are religious views, beliefs or convictions? What are religions?

As Kent Greenawalt and others point out, what counts as religious views is “itself a perplexing topic” (Greenawalt 1988, 30).<sup>357</sup> To pin down exactly how to define religions and religious convictions is a tricky issue. Either definitions tend to be too exclusive, and thus to exclude instances of views that are religious after all. For instance, the focus on monotheism or theism more broadly<sup>358</sup> might exclude certain views and beliefs—such as Buddhist ones<sup>359</sup>—that many consider thoroughly religious.

On the other hand, definitions of religion also easily tend to become overly inclusive. Thus, for more inclusive definitions of religion, it might become difficult to exclude mock-religions, such as kopimism or pastafarianism<sup>360</sup>, that do not seem genuinely religious after all.

Here, I aim merely presenting a tentative working definition of religious views and religion. The definition should, however, still be helpful in clarifying what kind of reasons we have in mind when we speak of religious reasons.

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<sup>357</sup>Robert Audi also underlines that “the vagueness of the notion of a religion remains a problem for political philosophy” (Audi 2012, 230). See also Nussbaum 2008, 166-174 for an instructive discussion of defining features of religions, and differences between religious commitments and weighty secular ones.

<sup>358</sup>As an example of the dominance of a focus on theism in definitions of religion, consider e.g. an encyclopedia entry on the philosophy of religion, such as Stump 2005.

<sup>359</sup>Michael Perry, when challenging distinctions between religious convictions and secular ones, plays on the ambiguity of Buddhism as a non-theistic religion and asks: “Buddhism is, in the main, nontheistic. Are Buddhist convictions ‘religious’ or ‘secular’?” (Perry 1991, 19)

<sup>360</sup>See BBC 2012 and Henderson 2006 respectively. In the case of pastafarianism, worshipping a “spaghetti monster”, the mock-religion is set up to challenge the special legal status and protection of religions and religious beliefs. They thus also challenge standard assumptions and definitions of religions. In the case of kopimisms, the aim is to benefit from legal protection clauses for religions and religious beliefs regarding otherwise illegal downloading and copying (thus the name) on the Internet.

Robert Audi, in his attempt to grasp what religions crucially consist of, focuses mainly on “the Hebraic-Christian tradition”, even though he holds that the points he makes about religions “will apply, to varying degrees, to other traditions, including, to some extent, certain non-theistic religious traditions” (Audi 1997a, 10). Consider thus Audi’s list of relevant but not strictly necessary features of a social institution to count as a religion, or for an individual to count as having a religion<sup>361</sup>:

- (i) appropriately internalized belief in one or more supernatural beings (a God or gods)
- (ii) observance of a distinction between sacred and profane objects
- (iii) ritual acts focusing on those objects
- (iv) a moral code believed to be sanctioned by the God(s)
- (v) religious feelings (such as awe and mystery) that tend to be aroused by the sacred objects and during ritual
- (vi) prayer and other communicative forms concerning the God(s)
- (vii) a world view according the individual a significant place in the universe
- (viii) a more or less comprehensive organization of life based on the world view
- (ix) a social organization bound together by (i) to (viii). (Audi 2012, 230)

As Audi points out, some features are more important—such as (i), (iv), (vii), (viii)—for understanding religion. He also adds that a person can be religious without belonging to an institutional religion. Religions are thus not necessarily embedded in institutional structures but can consist merely of religious views and practices. Think of marginalized or suppressed religious sects that are forced to practise their faith in such a non-institutional way, for instance Anabaptists during a certain time in European history, or Christians during the founding days of their religion.

There is, as Audi further points out, a difference between spirituality and religion. One can be spiritual and, say, be devoted to meditation and nonviolence, or be sensitive to supernatural communication with animals or plants. One can be spiritual in these

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<sup>361</sup>For an alternative, but somehow similar list of defining features of the main monotheistic religions such as Islam, Christianity and Judaism see Greenawalt 1988, 30.

ways without being religious, or belonging to any religion. Spirituality is thus compatible with secularism, while being religious is not.<sup>362</sup>

In Audi's definition, as well as Greenawalt's, the comprehensiveness of religions and religious views becomes apparent. In Audi's definition it is even explicitly stated (see feature viii). Religions thus tend to provide answers and guidance on a wide range of issues, be they metaphysical, theological, social or ethical.

Crucial to religious views, beliefs and convictions is also the importance they often have for individuals. Religious beliefs often are most important to those holding them, as the examples of martyrs, as well as the endurance of many prosecuted religious minorities, indicates.<sup>363</sup> Religious views are thus commonly comprehensive and important in the lives of those who hold them.

Religious reasons, then, are those that are derived from religious views as understood here. Reasons (a) and (b) presented by the religious content shepherds against the mining policy, for instance, are religious reasons derived from their religious views on what is holy and sacred, and on the proper place of humans in the natural world and the universe more generally (features (ii), (v) and (vii) in Audi's characterization of religions).

Religious reasons need not always be stated explicitly, referring directly to a religious belief. This is the case with reasons (a) and (b) against the mining policy in our example of religious content shepherds. Religious beliefs may sometimes be more "general and lie in the background of some chain of evaluation" (Greenawalt 1988, 35). In such a case, religious beliefs underpin, say, political views even if they are no longer identifiably religious. For example, the ethical requirement to help those in need might not seem religious, mostly because it also has secular moral grounds. For certain religious person, however, this conviction might be deeply rooted in religious views, and thus constitute a reason embedded in their religious views. Reasons based on religious views that do also have secular grounds—such as the Samaritan imperative to help those in need—might well have wide appeal, and thus be widely shared and public.<sup>364</sup>

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<sup>362</sup>See Audi 2012, 230-231 for further discussion of this point. As the compatibility of secular outlooks with spirituality indicates, and as Audi rightly notes, it is thus the case that "secularity is no easier to characterize than religion and shares the vagueness of 'religion'" (Audi 2012, 230).

<sup>363</sup>This point is relevant since deeply-held beliefs, such as religious beliefs, do arguably have a special weight, commanding "fundamental obligation" to those holding them (Cohen 2009b, 246), that should be respected and accounted for within reasonable limits. See Cohen 2009b, 245-246 for such a view and Gaus 2003, 129-131, 185 for a discussion.

<sup>364</sup>The Samaritan imperative is, therefore, an overdetermined moral view, i.e. a moral view that can be

In conclusion, the characterization of religions presented by Robert Audi gives us a clear enough picture of what religions and religious views, beliefs and convictions might encompass. I take it that religious views crucially involve the elements (i)-(ix) in the list, even though the list above is merely a tentative definition focusing on certain main theistic religions. Religious beliefs usually involve views on a wide range of related issues—metaphysical, theological, social, ethical, political etc. —and give guidance to individuals on how to lead their lives in many different respects. Religious views, beliefs and convictions also tend to be most important to those holding them.

### 5.2.3 What Are Public Reasons, and How to Track Them?

As suggested by the liberal principle of legitimacy, “[public reasons] are reasons that everyone can reasonably be expected to endorse in a liberal democratic society” (Sterba 2000, 36). They are thus reasons that do not depend on any particular comprehensive view. This is so because, given reasonable pluralism, “there is no (...) set of comprehensive reasons and guidelines for reasoning that all can appeal to in applying principles of justice” (Freeman 2004, 2027). The aim of public reason is, then, “to delineate (...) a shared set of considerations that are not peculiar to any comprehensive view, but which can be accepted by all reasonable views in so far as they accommodate democratic ideals” (Freeman 2004, 2027).<sup>365</sup> What, however, are these reasons more exactly? What are reasons that could be endorsed by everyone in a liberal democratic society?

An interesting feature of public reasons is that we do not know, and we do not settle before political deliberation, which reasons are public and which reasons are nonpublic.

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reached on different paths. For another example of an overdetermined moral view, take forgiveness. Hanna Arendt claims that “[t]he discoverer of the role of forgiveness in the realm of human affairs was Jesus of Nazareth” (Arendt 1998, 238), but that “[t]he fact that he made this discovery in a religious context and articulated it in religious language is no reason to take it any less seriously in a strictly secular sense” (ibid.). Rather, she claims, forgiveness is a “necessary corrective for the inevitable damage resulting from action” (Arendt 1998, 239). See Wolterstorff 2011, 1161-163 for discussion.

<sup>365</sup>Note that this is a specifically Rawlsian understanding of public reason. The history of thought on public reason is long and venerable. There are many different conceptions and theories of public reason, so that the phrase public reason “can be used to express a variety of different (and indeed opposing) ideas” (Solum 1993, 373). Robert Audi, an important contributor to the debate on religious views in political argument, characterizes public reasons as “reasons that all fully rational citizens in possession of all the relevant facts (and so fully informed) would affirm” (Sterba 2000, 36; see e.g. Audi 2000, 66). For an overview on classic formulations of public reason, see Solum 1993, 368-376 (Appendix: Historical Formulations of Public Reason) and Gaus 2003. Here, I will focus on the idea of public reason as found, roughly, in the Rawlsian liberal principle of legitimacy.

To gain such knowledge, we need to test our reasons among the citizenry of our well-ordered society. Still, we know about the following general features of public reasons. Reasons are public if they are based on political values (such as liberty and equality) and a political conception of justice (concerned with weighty political matters, such as constitutional essentials and the basic social structure) instead of comprehensive values or conceptions of the good.

Public reasons are, furthermore, reasons that I reasonably assume others could reasonably accept. I can assume so because I make reference to basic political values, spelled out in a conception of justice, that are shared among reasonable citizens of a liberal constitutional democracy.<sup>366</sup>

Let us, for a moment, step back from the Rawlsian view and consider some more general features of reasons that are widely shared and public. Reasons might be shared and public more easily when they are formulated in a general way, abstaining as far as possible from controversial background assumptions. Many reasons, if stated sufficiently in a general and freestanding manner, might thus be or become public. Generality and freestandingness are thus ways to track public reasons. Reasons that tend to be general and freestanding are more likely to pass as acceptable public reasons than, say, highly contextual claims and fully comprehensive views.<sup>367</sup>

Another most important feature involved in public reasoning is the “criterion of reciprocity” (see e.g. Rawls 1999, 133, 137, 168).<sup>368</sup> When it comes to public reasons, the criterion of reciprocity requires that citizens propose (what they take to be) public reasons. This involves that citizens must think that it is at least reasonable for other citizens

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<sup>366</sup>Public reason is thus, as Rawls puts it, “characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship” (Rawls 2005, 213). However, as Samuel Freeman indicates, “the mere fact that people in a society commonly accept and reason in terms of some common religion or other comprehensive doctrine does not make that doctrine part of public reason. Even assuming that all the members of an Islamic state, such as Saudi Arabia, accept the Muslim religion and appeal to religious reasons in deliberating and discussing laws, this does not make Islam part of public reason. Saudi Arabia has no public reason in Rawls’s sense, only shared comprehensive reasons the nature of which rules out the possibility of a public reason.” (Freeman 2004, 2027). The point is, then, that public reason presupposes free and equal citizens in a well-ordered society.

<sup>367</sup>Note that premises might be shared even though it is contested that they are shared. A shared premises requirement thus goes beyond a non-controversial premises requirement, and is arguably more plausible (Räikkö 2011, fn. 7).

<sup>368</sup>Rainer Forst argues that the criteria of reciprocity and generality (“Reziprozität und Allgemeinheit”) are crucial for the distinction of acceptable and non-acceptable reasons (see Forst 2007, 306).

to accept the reasons in question.<sup>369</sup>

The criterion of reciprocity is thus another way to track public reasons. Public reasons are those that, arguably, all others can reasonably be expected to accept as well. The political criterion of reciprocity is crucial to the political liberal enterprise. It underlies the political liberal ideal of political legitimacy and is at the heart of the duty of civility, assuring that the political relation between citizens is one of civic friendship among equals (Rawls 1999, 136-137).

Christopher Eberle presents a number of other properties that are often taken to be characteristic of shareable and acceptable public reasons, such as (A) intelligibility, (B) accessibility, (C) replicability, (D) criticizability, (E) independent confirmability, (F) proofability.<sup>370</sup> Even though all these features of public reasons raise a number of epistemic problems and concerns<sup>371</sup> this tentative list of features of public reasons should give a general sense of what shareable, acceptable public reasons are.

Following Eberle's list, public reasons are thus, roughly, reasons that others understand and that are accessible for them from their point of view. They are reasons that can be presented and reproduced in different contexts. They are open to debate or criticism and not simply dogmatic assumptions. Public reasons can also be confirmed by different independent sources, and can be proved by accepted and common standards of science or argumentation.<sup>372</sup>

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<sup>369</sup>This helps to explain why, in a democracy, also those outvoted can be expected to follow a law they, the citizens, themselves did not vote for. Even if the passed law is not the most reasonable law from their point of view, but merely a reasonable one, the law is still politically binding on them due to its legitimacy based on reasonable public reason (Rawls 1999, 137).

<sup>370</sup>See Eberle 2002, Chapter 8 and Gaus 2009b, 73, fn. 14. On accessibility or, in Audi's terms, "public comprehensibility" see also Audi 2000, 156-160. Audi makes the point that the strong or unique focus on public reasons might be misguided, since "we should also look to the kinds of reasons people *have* and are *moved* by" (Audi 2000, 160, emphasis in the original). I take it that this criticism is adequately accommodated by an inclusionist view on the duty of civility as discussed below (see Section 5.3.2).

<sup>371</sup>Some of them are: What do intelligibility, accessibility etc. mean and involve exactly? How to reach replicability, or proofability etc.? Also note that some of the criteria are too weak to establish shareability or acceptability. Intelligibility, for instance, is not enough to establish either of them. Thus, infringements on my basic rights might well be intelligible to me. I might very well understand reasons justifying an infringement on my right to, say, freely express myself without accepting these reasons. Intelligibility might, thus, be a necessary to establish acceptability, but it is by no means sufficient. As Rawls holds, "we must give them [fellow citizens] reasons they can not only understand—as Servetus could understand why Calvin wanted to burn him at the stake—but reasons we might reasonably expect that they, as free and equal citizens, might reasonably also accept" (Rawls 1999, 138).

<sup>372</sup>It is not clear whether all these conditions need to hold for reasons to be public, or whether some

Some have taken the epistemic problems regarding public reasons to be inextricably difficult and, indeed, fatal to the ideal of public reason as a whole. Paul Weithman, for instance, criticizes the requirement that political principles and arguments should be “accessible to all persons” on the ground that “the crucial notion of accessibility is hardly self-explanatory. The most promising attempts to explain it and to isolate accessible reasons are (...) ill-specified or highly controversial” (Weithman 2002, 9).

Another criticism holds that all these epistemic requirements—from intelligibility and accessibility to proofability—might be excessively demanding, especially if taken all together. Furthermore, if these requirements are taken to exclude religious convictions as well as many nonreligious premises from political argument, then they will leave no “ample grounds for citizens to resolve many political issues” (Greenawalt 1988, 49). The concern is, in short, that the shared premises requirement is far too demanding, and makes day to day politics very difficult, if not impossible.

These are tricky issues that any account of public reason will have to address sooner or later. As to Weithman’s concerns, I take it that we can spell out the ideal of public reason to a sufficient degree in order to work with it. As with many other crucial and contested notions in this thesis—such as liberty, equality, culture or religion—I take it that we can elaborate these ideas tentatively to a workable degree that allows us to construe a political liberal account of a stable constitutional democracy.

As for Greenawalt’s concern, a way to avoid the charge that the public reason requirement makes political issues irresolvable is to limit the public reason requirement to weighty political matters such as constitutional essentials. At least regarding constitutional essentials citizens of a well-ordered society respecting each other as free and equal should be able to find common grounds. A public reason requirement should thus merely apply with respect to weighty political issues.<sup>373</sup>

As already indicated, I do not attempt to explain public reasons further through investigating any of the indicated epistemic notions (A)-(E). Instead, I would like to consider how we might track reasons that display at least some of these epistemic features, and are thus good candidates for public reasons. The question I would like to pursue is thus: How do we find, or track, reasons that stand good chances to pass a publicity

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are more essential than others, or whether some might be skipped completely. Since I do not aim at a precise definition of public reasons, but merely a general account of what they involve, I do not dwell further on these issues. Arguably, however, public reasons will have “some or all” (Gaus 2009b, 73, fn. 14) of the features mentioned.

<sup>373</sup>I will dwell on this view more thoroughly below, see Section 5.3.3.

test involving some or most of the above mentioned epistemic requirements (A)-(E)? In short, how to track public reason?

### **Commonsense Knowledge and Uncontroversial Science**

John Rawls proposes (i) “the adherence to the criteria and procedures of commonsense knowledge” and (ii) “the methods and conclusions of science when not controversial” (Rawls 2003, 92) as ways to track public reasons.<sup>374</sup> Commonsense knowledge is, obviously, widely shared, otherwise it would not be commonsense. Commonsense knowledge is arguably also likely to have many of the epistemic features (A)-(E) indicated above, otherwise it would be impossible for them to be widely shared.

Note that Rawls has a rather benign view on commonsense knowledge as a way to yield public reasons. On a more critical view, commonsense knowledge might be judged as, say, unreflected prejudice or ideology. Since we assume that free and equal citizens are rational and reasonable, however, a benign view on commonsense knowledge as proposed by Rawls seems warranted when investigating a well-ordered polity. As Rawls holds, “[t]he hope is that a well-ordered society (...) is a society without ideology (understood in Marx’s sense of false consciousness)” (Rawls 2003, 121). He admits, however, that “much is required for this to be so” (ibid.). A main liberal way to overcome ideological consciousness, Rawls adds, is “to affirm the institutions of freedom of thought and liberty of consciousness; for rational inquiry and considered reflection tend over time, if anything does, to expose illusions and delusions” (Rawls 2003, 121).<sup>375</sup> With the ideology charge

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<sup>374</sup>More fully, he holds that the values of public reason “include not only the appropriate use of the fundamental concepts of judgment, inference, and evidence, but also of the virtues of reasonableness and fair-mindedness as shown in the adherence to the criteria and procedures of commonsense knowledge and to the methods and conclusions of science when not controversial. These values reflect an ideal of citizenship: our willingness to settle the fundamental political matters in ways that others as free and equal can acknowledge are reasonable and rational” (Rawls 2003, 92). Note that there are different formulations of the same idea throughout Rawls’s work. See for instance also Rawls 2005, 224 and Rawls 2003, 89-90. He thus also speaks of “accepted general beliefs and forms of reasoning as found in common sense” (Rawls 2003, 89-90) instead of “commonsense knowledge” as cited above. I take it, however, that all these formulations roughly indicate the same idea, namely that public reasons are traceable in widely accepted and general beliefs as well as uncontroversial science.

<sup>375</sup>As Peter Lassman points out, “the realistic utopia of full publicity” thus shares “at least one characteristic with Marx’s vision of communism”, namely “a society without ideology understood as false consciousness” (Lassman 2011, 136). Such a benign view on commonsense knowledge is assumed in our discussion of a somewhat well-ordered society.

addressed, I thus take it that common sense knowledge is a good way to track public reasons in a well-ordered society.<sup>376</sup>

Another criticism of a focus on common sense knowledge for tracking public reasons has been presented by Jeremy Waldron. Waldron criticizes the focus on commonsense knowledge as “precluding the introduction of novel ideas about justice” (Weithman 2002, 200). As he puts it, a Rawlsian conception of public reason “seems to rule out (...) the novel or disconcerting move in political argumentation: the premise that no one has ever thought of before, but which, once stated, sounds plausible or interesting” (Waldron 1993, 837-838).

This, however, only holds if we assume that *solely* common sense knowledge (and uncontroversial science) is able to yield shared, public reasons. As understood here, however, commonsense is merely one way to track shared, public reasons. If there are premises “that no one has ever thought of before, but which, once stated, sounds plausible or interesting” (Waldron 1993, 838), then of course these reasons would also be shared and public, even if they are not commonsensical.<sup>377</sup>

As to the issue of uncontroversial science, it is indeed striking how the epistemic features of public reasons discussed by Eberle are similar or equivalent to epistemic requirements for scientific findings. All, or most, of the epistemic elements seem to be crucial requirements of scientific investigation and argument. Uncontroversial science too, thus, is a good way to track public reasons. Since we need standards of evidence and epistemic guidelines of inquiry to establish what justifications and reasons are public, science seems the obvious place to look for these standards and guidelines (see Rawls 2005, 224).

Note, however, that scientific findings are, similar to commonsense knowledge, not

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<sup>376</sup>I choose to speak of “tracking”, rather than of “finding” or “yielding”, because “tracking” leaves open whether the thing tracked is indeed found. Even though commonsense knowledge might be a paradigmatic way to track public reasons, it does not necessarily yield public reasons. This is, in part, due to the reasonable pluralism we face. In an inextricably diverse polity, what might be commonsense knowledge for some might not be commonsense knowledge for everyone. Such commonsense knowledge shared only among parts of the polity would thus fail to yield shared, public reasons. To speak of “tracking public reasons” through commonsense knowledge allows one to take into account the epistemic barrier that bars us from knowing which particular reasons are public among free and equal citizens in a well-ordered society.

<sup>377</sup>Such an introduction of novel ideas of justice is not a strange or surprising event. Many moral and political concerns that are today widely accepted—such as a feminist concern about domestic violence, the protection of women and children by the state even within the private sphere—became commonly accepted only over time and after having been introduced to the political debate as rather eccentric or radical.

public reasons *per se*. Scientific investigation is bound to the conditions and constraints of the scientific community and universities—not the political society or “public political culture” (Rawls 2005, 220) of free and equal citizens more generally. The scientific community has its own rules and methods for, say, weighing evidence. These rules and methods are different from those used in courts or churches. These standards will depend, partly, on the aim and purpose of the association in question (such as a scientific community, a church, or a university).<sup>378</sup> Scientific societies and universities are thus, together with other associations such as “churches (. . .) and professional groups” (Rawls 2005, 220), nonpublic. Their criteria and methods of investigation and justification are bound to the social and institutional context to which they are applied.

The point here is, then, that it is questionable whether scientific rules of evidence as used in the scientific community can be transferred in any straightforward way to issues of political concern. Arguably, they cannot. This becomes apparent, firstly, when considering the diversity of criteria and methods within science itself. There are different standards or rules of evidence depending on which scientific domain one considers. They are quite different in history, mathematics, literary studies or economics. Second, think of the controversy of scientific theories within certain scientific fields. In the scientific fields just mentioned, there might be many well-founded but conflicting historical, literary, and economic hypothesis and theories.<sup>379</sup> In short, the context and conditions under which one is reasoning, as well as the values one is embracing, will arguably have a considerable effect on one's conclusions (Rawls 2005, 221; 487).

Take the example of diverse values. Depending on one's values, one will weigh and judge evidence or arguments differently, and be likely to accept certain conclusions but not others. The burdens of judgment (Rawls 2005, 56-57) thus seriously challenge

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<sup>378</sup>Rawls also mentions that these standards and constraints might be motivated and necessary to “protect certain rights or to achieve certain values” (Rawls 2005, 221) of the associations in question.

<sup>379</sup>Certain scientific fields, such as economics or policy science, are sometimes seen as somehow ultimately objective and apt to “speak the truth to power” (Bianco 1999, 40; Wildarsky 1979). This, however, seems to be inadequate and overly aspirational. There are different economic theories as well as ways of approaching policy analysis. They might diverge regarding basic assumptions or axioms, for instance about human agency, as well as start from different normative assumptions about, say, what good a policy is supposed to promote, or to what exactly an economic theory should aspire in order to maximize the good in question. Thus, for the field of policy analysis, Joseph Bianco admits that “[i]n place of the early optimism and grand aspiration of the policy science field (. . .) there is now pessimism and re-examination. Some of the most prominent practitioners and theoreticians of policy science strongly criticize its record of achievement” (Bianco 1999, 40-41). For a critical and interesting view on economics, pressing for methodological diversity within the field and a need to assess the normative dimensions of the science, see Sedlacek 2011.

the assumption that scientific findings and evidence could, as such, establish common political grounds. Scientific findings are still, however, a good way to track reasons that might be widely shared among free and equal citizens. Scientific findings can be used to support one's view on weighty political matters, or to make one's view more appealing to others. That is, anyway, how science is often used in actual political discourse.<sup>380</sup> In and by itself, however, scientific findings might only rarely establish public justification.

Let us briefly sum up our findings on public reasons so far. Reasons that are formulated in rather general terms and that are freestanding, as found in commonsense knowledge or uncontroversial science, are prone to be public reasons, i.e. reasons with some or all of the epistemic features (A)-(E), among free and equal citizens.

Before we continue with the further issue of what the duty of civility requires of religious persons, let us briefly return to our example of religious content shepherds. The reasons (a) and (b) that they present clearly are no shared premises or public reasons. They are controversial, depending on a more or less comprehensive religious view, involving views on the good and on what is valuable in human life as well as in the universe more generally. The reasons are, even though quite general, not freestanding as presented by the shepherds, even though there are aspects involved in their view that can be said to have wider appeal. The view that nature is valuable or that it is worthy of protection is shared by many secular views as well, for instance by an ecocentric ethic.

A question that arises at this point is: How could we formulate the reasons presented by religious content shepherds in a more publicly accessible way, so that they might have a wider appeal and be widely shared? As indicated above, turning to commonsense knowledge and scientific findings, where uncontroversial, might be helpful.

Rawls himself cites several "political values" for the protection of nature and animals. According to Rawls nature has, firstly, life-sustaining importance for our generation as well as for future ones. Second, biodiversity is important for "biological and medical knowledge with its potential applications to human health" (see Rawls 2005, 245). Third, protected nature is important for "public recreation" and the "pleasures of a deeper understanding of the world" (*ibid.*).<sup>381</sup>

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<sup>380</sup>Scientific information is crucial to much political argument and decision-making, for instance regarding employment policies, environmental protection and climate change, and housing. Note that these issues might not count as weighty political matters relevant for our investigation. However, the examples illustrate the role that scientific findings often have in common political argument and decision-making.

<sup>381</sup>See Bell 2002 and Miller 1999 for a discussion. Note that at other points in his work, Rawls holds

Now, even though these reasons to protect nature and animals seem commonsensical, sustained by science, and applicable to fundamental political matters, it is still questionable whether religious content shepherds would actually accept these values “as alone sufficient to settle the case” (ibid.). They might well think it “utterly wrong to appeal solely to those values (...) to determine our relations with the natural world” (ibid.; see also Rawls 2003, 152, fn. 26). Suppose, thus, that they insist that their shamanic underpinning for the protection of nature is most crucial for their cause.

This problem, then, brings us to the second major question of this essay: What does our ethic of citizenship, or ideal of democratic citizenship as expressed in the duty of civility, require from religious content shepherds in public political argument on weighty political matters? Can they, for instance, be expected to refrain from basing their argument for the protection of nature on their comprehensive religious view?

### 5.3 What Does the Duty of Civility Require From Religious Persons?

The duty of civility with its requirement to present public reasons in political argument on weighty political matters can be interpreted in at least three different ways. Firstly, it can be taken to mean that *only public reasons* (or those that are taken to be public), and no other reasons, shall be presented in political argument. This view on what respect for fellow citizens requires can be dubbed the *exclusionist view of public reason*.

Secondly, the duty of civility can be taken to mean that all kinds of reasons, for instance comprehensive ones, can be presented in political argument, as long as there are *also public reasons* that are presented in due course. This view on what respect for fellow citizens requires can be dubbed the *inclusionist view of public reason*.

Thirdly, the duty of civility can be interpreted in an inclusionist way and be very lax regarding the requirements of the “in due course”-clause. I dub such views *strongly inclusionist* views. On such a strongly inclusionist view we abstain, for instance, as far as possible from claims about who should present the required public reasons, when they should be presented or how they are to come about. Within such a strongly inclusionist view, I propose to assign a crucial role to attempts of conjecturing when it comes to

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that environmental issues such as “establishing national parks and preserving wilderness area and animal and plant species” (Rawls 2005, 214) do not concern fundamental political matters, and thus are not a matter of justice and public reason.

other, alien views. This allows for a very tolerant attitude towards all kinds of views and reasons in political argument, while safeguarding the public reason requirement.<sup>382</sup> I thus propose to settle on a strongly inclusionist view on the duty of civility. Let us thus turn to all three possibilities and see what they suggest regarding the role of the religious content shepherds' religious views in political argument.<sup>383</sup>

### 5.3.1 The Exclusionist View on Religious Reasons in Political Argument

Let us first consider the exclusionist interpretation of the moral-political duty of civility. An exclusionist view holds that citizens should, morally speaking, not use or rely on religious (or other comprehensive) views in political argument on weighty political matters—even if this is legally permitted, and might not infringe on anybody's moral rights.

Bruce Ackerman, in his article "Why Dialogue?" (Ackerman 1989), seems to be in favour of such a view. Ackerman holds that citizens, in political dialogue, should avoid normative premises that are not shared. Instead, they should search for reasons that all sides find acceptable. In this way citizens can focus on common political grounds, instead of divisive issues on which they disagree. (Ackerman 1989, 17-18; see Rääkkä 2012, 2)

Steven Macedo holds a similar view. He claims that

"the only way that we can achieve a public moral framework while accepting the deep and permanent fact of diversity is by putting aside not only the personal interests and religious beliefs, but also the many philosophical and moral convictions that reasonable fellow citizens will disagree with. (...) We must abstract away from or leave behind grounds that we cannot share with reasonable fellow citizens". (Macedo 1990, 392-393)<sup>384</sup>

Similarly, Thomas Nagel states that, in order to reach impartial political justification, only reasons based on "common critical rationality" and "considerations of evidence that

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<sup>382</sup>Note, however, that not anything goes. Thus, before a political decision on weighty political matters is taken, public reasons will still have to be presented.

<sup>383</sup>Note that the distinctions between exclusionist and inclusionist views do not, in many details, follow Rawls's terminology or classifications. Most importantly, I do not make the distinction between an inclusive and a wide view as introduced by Rawls (Rawls 2003, 90, fn. 12). See Langvatn 2013, 11-101 for an overview on the different views on public reason according to Rawls.

<sup>384</sup>According to Gaus and Vallier, "Macedo is perhaps the most exclusivist [political theorist], arguing that religious reasons simply are inappropriate vehicles for public justification" (Gaus 2009b, 56).

can be shared” (Nagel 1987, 232) should be presented in political argument. The reason is that “it must be possible to present to others the basis of your own beliefs, so that once you have done so, *they have what you have*, and can arrive at a judgment on the same basis” (ibid., emphasis in the original). As reasons in political justification, our personal faith or revelations are thus excluded.<sup>385</sup>

The duty of civility can also be understood as requiring the exclusion of nonpublic reasons, such as religious reasons, in political argument on weighty political matters. The moral requirement to present public reasons in political argumentation—without further qualifications—might imply that all reasons that are not public shall be excluded from such political argument.

Now, the exclusionist stance seems overly harsh on persons of faith, or so it has been argued by many religious persons. It has, quite understandably, “generated outcry among those friendly to religion” (Gaus 2009b, 56). A typical and well-known objection is the *integrity objection*.<sup>386</sup> Let us briefly turn to this issue. It will help to see why a more inclusionist stance is preferable to an exclusionist one.

### **The Integrity Objection**

The integrity objection claims that a civic duty to exclude religious views and reasons from political argument on weighty political matters might heavily affect a religious person’s moral and political integrity (see Rääkkä 2011, Section 2). The exclusion of religious reasons thus seems to prevent the religious person’s aspiration to “organize their identities and choices around the tenets of a religious doctrine” (Boettcher 2009,

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<sup>385</sup>Kent Greenawalt might also be seen as holding an exclusionist view, as Michael Perry suggests.

The following passage, cited by Perry, supports this view: “The government of a liberal society knows no religious truth and a crucial premise about a liberal society is that citizens of extremely diverse religious views can build principles of political order and social justice that do not depend on particular religious beliefs. The common currency of political discourse is nonreligious argument about human welfare. Public discourse about political issues with those who do not share religious premises should be cast in other than religious terms” (Greenawalt 1988, 216-217; see Perry 1989, 18). Greenawalt subsequently qualifies this statement in various ways, see Greenawalt 1988, 217-218.

<sup>386</sup>The integrity objection is also relevant for more inclusionist stances towards religious reasons in political argument, but it is strongest when confronting the exclusionist view. Other major criticisms take issue (i) with the underlying conception of political justification that implies a shareability requirement for justifying reasons; (ii) with the feasibility of an exclusionist stance, most of all for citizens with strong religious convictions; (iii) the possible negative consequences of an exclusionist view, e.g. that it undermines religious struggles against injustice. See Boettcher 2009, 9-11 for an overview on these criticisms. I will consider (i) more thoroughly below (see Section 5.3.3).

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Nicholas Wolterstorff, for instance, holds that

“[i]t belongs to the *religious convictions* of a good many religious persons in our society that *they ought to base* their decisions concerning fundamental issues of justice *on* their religious convictions. (...) It is their conviction that they ought to strive for wholeness, integrity, integration, in their lives: That they ought to allow the Word of God, the teachings of the Torah, the command and example of Jesus, or whatever, to shape their existence as a whole, including, then, their social and political existence. Their religion is not, for them, about *something other* than their social and political existence; it is *also* about their social and political existence.” (Wolterstorff 1997, 105, emphasis in the original)

Wolterstorff adds that the requirement to exclude religious views from political decisions and discussion “is to infringe, inequitably, on the free exercises of their religion” (Wolterstorff 1997, 105). The integrity objection alone is grave enough. It suggests that religious persons somehow do not fit with political liberal requirements for democratic argument and decision-making. Or that, in order to fit in and fulfill the duty of civility, they somehow have to deny who they are, or cannot rely on what is very dear to them, namely their religious convictions and beliefs.

The additional discrimination or fairness objection makes things look even grimmer. To expect the alienation from religious views is discriminating or unfair, arguably, because it requires an alienation from religious persons but not from others, say secular persons, when it comes to political argument on weighty political matters.<sup>388</sup>

Similarly, Michael Perry, in some of his earlier work, holds that his religious views and beliefs are important for most of his views on fundamental political and moral issues. In a debate with a secular person, Perry states, he would not be allowed to refer to any of these views, given the exclusionist view on religious reasons. This, however, leaves him at a disadvantage compared to the secular person. The secular person could rely on most of his beliefs whereas Perry merely on some of his relevant beliefs. This is due

<sup>387</sup>Main proponents of different variants of the integrity objection are Nicholas Wolterstorff, Michael Perry, Christopher Eberle and Kent Greenawalt. See Gaus 2009b, 56 for an overview.

<sup>388</sup>See Sterba 2000, 38-43 for a discussion of this issue. James Sterba’s main point is that Wolterstorff’s argument based on fairness considerations presupposes itself some of the liberal tenets that Wolterstorff intends to criticize, and thus fails to get off the ground.

to the fact that religious reasons, necessarily, cannot be shared between Perry and his fellow secular citizens. Furthermore, Perry would have to refrain from relying on some of his most important and dearly held religious beliefs (see Rääkkä 2011, Section 2).

Perry too, then, takes the issue of integrity to raise a problem of discrimination against religious persons, similar to Wolterstorff. According to them, religious citizens are, by the moral-political requirement to present public reasons, not treated as equals. The integrity objection thus indicates that the political liberal approach to religious reasons in political argument is flawed.

Does this criticism hold? As a way of reply, it is helpful to reconsider why exactly a shared premises requirement, and the duty of civility, are at the heart of a political liberal polity. The main aim is not to exclude or discriminate against anyone, but precisely to make accessible and acceptable to all the grounds on which political authority and institutions rest. The aim is, thus, not to exclude anything or anyone, but rather to include reasons and grounds all can share.

If this holds, then the exclusionist interpretation of the duty of civility and its view on religious reasons in political argument seems implausible. The exclusionist interpretation of the duty of civility does not adequately spell out the ideal of civility and its aspiration. With this clarification in place, it is hard to see why religious persons should not be allowed to refer to their religious views in political argument, as long as there are *also shared, public reasons*. Because of this primacy of including shared reasons over any kind of exclusion, I take it that an inclusionist interpretation of the duty of civility has, at least *prima facie*, more plausibility within a political liberal project.<sup>389</sup>

Let us now turn to such an inclusionist view on religious reasons in political argument and consider some issues that arise there.<sup>390</sup>

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<sup>389</sup>See, however, Hartley 2009 for a defence of the exclusionist view.

<sup>390</sup>Note that there are ways to reply to the integrity and discrimination charge other than a retreat on a more inclusionist interpretation of the duty of civility. For instance, we might reply that religious persons are not especially or inequitably burdened by the exclusionist view. Rather, all kinds of views, also secular ones (such as feminist, utilitarian, Marxist, conservative, and libertarian views), will have the same burdens of restraint (see e.g. Rääkkä 2011, Section 3). Another reply might be that the importance of religious views for many political issues, even weighty ones, seems overstated by critics of the exclusionist view. If religious views do not matter much regarding many political issues, however, then a civic duty not to use religious premises has no practical relevance, and thus would not overly burden religious persons (see Rääkkä 2011, Section 3).

### 5.3.2 The Inclusionist View on Religious Reasons in Political Argument

An inclusionist or, in more Rawlsian terms, a wide view holds that the duty of civility allows for all reasons derived from reasonable comprehensive views and conceptions of the good in political argument on weighty matters, given that—in due course—also public reasons are presented. The requirement to present *also* public, political reasons is labelled *the proviso* (Rawls 1999, 152).

Note that the proviso can still be quite demanding. The proviso requires that it is still the public, shared reasons that do the justificatory work. In other words, there have to be sufficient or, in Gaus's terms, conclusive public reasons to justify the weighty political matter in question. If they are mainly religious reasons that justify, say, the protection of nature, and public reasons merely insufficiently or superficially justify that protection, then the proviso would not be met.<sup>391</sup>

The inclusionist view on the duty of civility takes at least some stain off the integrity objection. Under the proviso, religious persons are free to refer to all their religious views when arguing about weighty political matters, provided that there are at some point also public, shared reasons. Since religious persons can refer to all their dearly held beliefs, as well as their most important religious ones, the problem of integrity or alienation should not occur.

The inclusionist view with the proviso thus allows for the religious content shepherds' insistence on the crucial link between their view to protect nature and their shamanic religious outlook. As long as the protection of nature *also* has public grounds and is shared by other outlooks—as, e.g., in secular environmentalist views, or other religious views that take nature to sacred—the proviso and the duty of civility is met.

Furthermore, on an inclusionist interpretation of the duty of civility, a political view can be political and freestanding, even if the view in question is strongly coloured by a comprehensive view, or a conception of the good. To see this, let us develop our example of shamanic content shepherds. Suppose that the political view “the state should protect nature” is very widely shared. Some citizens of our polity support the view based on their comprehensive religious beliefs, such as the view that protecting nature is ordained

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<sup>391</sup>Rawls himself formulates the wide view as follows: “[R]easonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.” (Rawls 1999, 152).

by shamanic gods or a holy spirit. Others support it on secular grounds, such as the view that persons, also those of future generations, have a basic right to an intact environment and sustainable livelihood. In other words, the view “the state should protect nature” is overdetermined. This means that it is held by different views and reachable from within different outlooks.<sup>392</sup>

Suppose further that the view “the state should protect nature” is, for the religious content shepherds, underpinned by a religious view that “protecting nature” means literally “protecting the holy spirit”. Arguably, the particular religious colouring of the meaning of “nature” as “holy spirit” by the shamanic outlook is unproblematic, as long as the content shepherds also share the view that “the state should protect nature”. The inclusionist view of the duty of civility thus allows for all kinds of controversial and comprehensive stories leading to a shared, public belief.

A problem occurs if content shepherds insist on their interpretation of “nature” as “holy spirit” as the only true and admissible interpretation, so that more secular interpretation of “nature” are not accepted by the content shepherds as a common ground. In such a case, content shepherds deny that views can be overdetermined and shared because they are wrapped up in different views and stories, or based on different world views. In other words, they insist on the truth of their interpretation of “nature” as “holy spirit”, and thereby disqualify all other interpretations.

The claim to a single and ultimate truth seems, indeed, problematic for political liberalism. This is so because such claims deny the fact of reasonable pluralism, including the fact that there are different views on nature, the world and the universe. It also seems to deny the burdens of judgment. It is thus tempting, given all this, to qualify such views as unreasonable.<sup>393</sup>

What to think of this case of content shepherds insisting on the truth of their interpretation of a shared reason? The insistence on truth by content shepherds can arguably be

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<sup>392</sup>The parable of The Good Samaritan is an example of an overdetermined view. The moral premise to help others if they are in need of help, even though we do not like them, can be shared by secular views, e.g. a Kantian ethic, as well. Rawls briefly discusses the Samaritan story and reference to the Gospel e.g. at Rawls 1999, 146.

<sup>393</sup>As Stephen Macedo claims, “the willingness to acknowledge the fact of reasonable pluralism” is a “cardinal virtue of public reasonableness” (Macedo 1997, 12). Rawls holds that “we must each give up forever the hope of changing the constitution so as to establish our religion’s hegemony, or of qualifying our obligations so as to ensure its influence and success. To retain such hopes and aims would be inconsistent with the idea of equal basic liberties for all free and equal citizens” (Rawls 1999, 150). See also the discussion of this issue in Section 4.4.3.

granted, given two further qualifications. First, content shepherds should not force their interpretation onto fellow citizens, and second they should allow public justification to proceed on the basis of other interpretations as well. That much seems required by the principle of respect for fellow citizens as free and equal. This also seems necessary to allow for trustful social cooperation and a common political engagement.

Thus, even if the content shepherds insist on a particular interpretation of “nature”, given that the political grounds to protect nature are shared *as a matter of fact*, this might not cause further trouble given that the two qualifications hold. That is, given that all sides share the reason to protect nature, even though on different interpretations of what nature means or is, the political view still seems widely shared. In that case, content shepherds can insist that their view on nature is the only true one.

As we have seen, an inclusionist view on the duty of civility is apt to sidestep many concerns about the integrity and alienation of religious persons in a political liberal polity. The inclusionist view also allows, within certain limits, that religious persons insist on the truth of their views in political argument. Still, an inclusionist view faces the challenge of approaches to religious reasons in political argument that are even more permissive or open than that. The question thus arises: Why should we favour an inclusionist interpretation of the duty of civility over an even more permissive ethic of citizenship? Before we turn to the discussion of more permissive alternatives to the inclusionist view let us consider, however, a further issue that inclusionist views will have to face.

### **What If There Are Only Religious Reasons, But No Public Reasons?**

The inclusionist view seems apt to reconcile religious persons with the duty of civility. As long as there are overdetermined, shared grounds that sufficiently underpin arguments and claims on weighty political matters, religious persons can refer to all their controversial, dearly-held religious views in political argument. The duty of civility is taken into account, and public justification is attempted with the right kind of reasons, namely public reasons.

The problems of integrity and alienation resurges, however, once that such shared, public grounds seem missing. What, for instance, if the religious content shepherds are, at least *prima facie*, the only ones in their polity having a protective attitude towards nature.

Given that the proviso is not met, i.e. there are no public reasons in due course, adherents of a duty of civility seem to have at least three options: (i) to fall back on an exclusionist view on religious reasons in political argument. In that case, if the proviso is not met and there are no public reasons in arguments on weighty political matters, citizens should abstain from using these arguments and comprehensive reasons in political argument on weighty political matters. In other words, citizens should exercise restraint on the kind of reasons they present. In that case, however, the integrity or alienation charge snaps again.

The second option (ii) is to try to elaborate an even more inclusive view of the duty of civility that accounts for such cases. The third option (iii) is to abandon the duty of civility and to search for a more permissive ethic of democratic citizenship.

In the next Section, I will consider alternatives to the duty of civility and thus investigate option (iii). I start from the assumption that falling back on an exclusionist view on the duty of civility, once the proviso is not met, is unattractive and that the integrity objection motivates us to search for a more permissive ethic of citizenship. In the last Section of this essay I consider option (ii), i.e. a strongly inclusionist view on the duty of civility.

### **5.3.3 Some Challenges of Permissive or Open Views on Citizenship**

Another main challenge to the duty of civility is posed by views on the role of religious reasons in political argument that are more permissive or “open” (Rawls 1999, 164), and that do without a moral requirement to base one’s arguments on weighty political matters on shared premises or public reasons. In order to see the argumentative strategy of such challenges, let us briefly outline two main argumentative routes to criticize the duty of civility.

The first main argumentative route against the duty of civility and its public reason requirement challenges the standard of public justification on which it is built. In this vein, Gerald Gaus argues that an appeal to public justification does not require shared views or public reasons, as suggested by the duty of civility, but merely an agreement on shared outcomes. In other words, public justification does not require a *consensus* of shared justifying *reasons*. All that public justification requires is a *convergence* of different kinds of arguments on political *outcomes* such as coercive policies and laws (see

Gaus 2009b, 56-59).<sup>394</sup> Such a view on public justification allows for a more permissive ethic of citizenship, and thus challenges the duty of civility. I will discuss this approach in the following Subsection.

Another way to challenge the duty of civility is to attack its ethic of citizenship more directly. Christopher Eberle and Paul Weithman prominently propose well-developed alternative ethics of citizenship that are more open and accommodating to religious views in political argument.<sup>395</sup> I will turn to these more direct attacks on the duty of civility below.

### **The Convergence View of Public Justification and the Complexity of Politics Charge**

Why, then, might an inclusionist view on religious reasons in political argument not be enough? Why might religious persons prefer a more open or permissive view? One reason, proposed by Gerald Gaus, is that the underlying standard of public justification based on a consensus of justifying reasons is faulty or overly demanding. Also, the convergence view that Gaus proposes seems apt to elegantly side-step the alienating, disrespectful or discriminating effects of political liberalism that are often decried by religious persons.

On the convergence view of public justification, all reasons are welcome in political argument and advocacy, be they religious or secular or otherwise. Public justification is reached through the convergence of reasons on an outcome, not through a consensus of shared premises. According to Gaus, the convergence on outcomes is enough to satisfy the public justification requirement. As he puts it, “[p]ublic justification can (and should) take account of the division of epistemic labour” (Gaus 2010, 26) so that

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<sup>394</sup>The distinction between consensus and convergence conceptions of public justification is introduced in D’Agostino 1996, 30. For more on the convergence view, see Gaus 2003, 190-191; Gaus 2010, 25-26.

<sup>395</sup>James Boettcher labels Eberle’s and Weithman’s views as “more strongly inclusionist (...) models of citizenship” (Boettcher 2009, 11). Eberle argues, in a nutshell, that respect for persons does require public justification, but nothing like the duty of civility. Weithman claims that churches and religious persons “make valuable contributions to liberal democracy”, and “are part of what makes liberal democracy ‘work’” (Weithman 2002, 4). Therefore, principles defining responsible citizenship “should allow citizens latitude in the reasons on which they may rely in voting and in public political advocacy” (ibid.). In a similar vein, Galston 2002, 16-17 holds, for the context of the US, that “there seems little doubt that (...) [many religious groups] have fostered political education and engagement to an extent few other associations can match, at a time when most social forces are pushing toward political and civic disengagement”.

“at the end of the day, many different reasons from many different perspectives” (ibid.) may converge on an outcome.

The convergence view, then, is in stark contrast to the consensus view of public justification. A consensus view insists that “public justification (...) proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept” (Rawls 1999, 155). On the convergence view, however, any kind of reasons are welcome in public justifications. The crucial issue is that the reasons converge on the same political outcome, for instance a policy or a law.

Gaus’s argument for a convergence view of public justification crucially builds on a certain view or understanding of politics. Gaus maintains that once we appreciate how democratic politics actually works, i.e. once we appreciate all its functions and complexities, a convergence view instead of a consensus view of public justification recommends itself. The consensus view on public justification, Gaus claims, builds in turn on an unconvincing view of politics, one that is based on a “Principle of Politics as Public Reasoning” (Gaus 2009b, 65). It is this flawed view on politics as public reasoning, which is also strongly associated with “deliberative democracy” (ibid.)<sup>396</sup>, that underpins a duty of civility. Once we appreciate that the principle of politics as public reasoning and its accompanying views on politics are inadequate, so Gaus’s argument runs, we will also appreciate that the duty of civility, even in its inclusionist version, is inadequate (Gaus 2009b, 65).

Let us thus have a closer look at Gaus’s view on politics and his criticism of the principle of politics as public reasoning, and whether the view of politics that he criticizes really is inadequate. My contention is that the principle of politics as public reasoning is adequate in certain contexts. It is, namely, a sensible view on politics when it comes to weighty political matters, such as constitutional essentials and the basic social structure.

What are, then, the aspects of politics that are not sufficiently taken into account by a principle of politics as public reasoning?

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<sup>396</sup>Rawls holds that political liberalism is “concerned only with a well-ordered constitutional democracy (...) understood as a deliberative democracy. The definitive idea for deliberative democracy is the idea of deliberation itself. When citizens deliberate, they exchange views and debate their supporting reasons concerning public political questions. They suppose that their political opinions may be revised by discussion with other citizens; and therefore these opinions are not simply a fixed outcome of their existing private or nonpolitical interests” (Rawls 1999, 138-139).

**Registering versus Generating Political Institutions** The first faulty assumption about politics within the politics as public reasoning view is, according to Gerald Gaus and Kevin Vallier, the assumption that democratic politics and its institutions are only or mainly about registering views of the citizenry on an issue and putting them into laws and policies. Gaus and Vallier label this the “Institutions as Registers” view (Gaus 2009b, 66). On the institutions-as-registers-view of democratic institutions, politics is mainly conceived of as a forum where citizens debate and exchange views. Thus, the main function of core democratic institutions, such as the legislative body, is to “adequately register the results of the discussion in the forum” (Gaus 2009b, 67).<sup>397</sup>

It is such a view on democratic institutions as registers that seems congenial to a principle of politics as public reasoning. When politics is conceived of as a forum of exchange of arguments and views, then a main function of democratic institutions is to enable this exchange and to adequately register the results of this exchange (Gaus 2009b, 67).

Alternatively, and more congenial to a convergence view on public justification, we can conceive of democratic institutions not merely as input registering, but rather as output generating institutions. Gaus and Vallier label this the “Institutions as Generators” view (Gaus 2009b, 66). In such a view, the function of political institutions is to amalgamate, or aggregate, the citizens’ views in an adequate way so that they yield a publicly justified outcome (Gaus 2009b, 67). The focus here is not on the nature of the forum of debate and exchange of argument, as in the register view of political institutions, but rather on democratic procedures that yield publicly justified outcomes, given “citizen’s views that may reflect a wide variety of concerns and interests” (ibid.). The approach to institutions as generators can be compared to market mechanisms, since the market mechanism is also a procedure that amalgamates the views of economic agents, yielding desirable outcomes such as prices and the distribution of goods.<sup>398</sup>

Why choose a generator over a register view of democratic institutions? The main reason presented by Gaus and Vallier is that politics is much more complex than a register view suggests. Politics is a “complex system of interaction characterized by convergence justification” (Gaus 2009b, 67) rather than a simple justificatory situation

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<sup>397</sup>The distinction between politics as a forum and as a market that underlies Gaus and Vallier’s view is developed by Jon Elster in Elster 1986 (see also Gaus 2009b, 66, fn. 41).

<sup>398</sup>See Gaus and Vallier’s discussion of Adam Smith’s “invisible hand” and Friedrich von Hayek’s view on the market to illustrate and spell out the generator view of political institutions (Gaus 2009b, 67-69).

of two or several people that seems, according to Gaus and Vallier, to underly the register view held by many deliberative democrats. The principle of politics as public reasoning and its accompanying view on political institutions as registers, it is claimed, is simply a “poor account of political life” (Gaus 2009b, 69).

Instead, democratic institutions should, in order to yield publicly justified outcomes, draw on the knowledge that citizens have and views they hold, i.e. their “local and personal knowledge” as analyzed in the work of Friedrich von Hayek (see Gaus 2009b, 67-68, fn. 43 to 45). That knowledge and these views should be amalgamated or aggregate in adequate political procedures. This is, then, claimed to be a more adequate way to administer political decision-making and to reach public justification.

A consequence of refuting the principle of politics as public reasoning, and adopting a generating view on democratic institutions with its conception of public justification as convergence, is a shift of attention away from “ethical constraints on the activity of justification” towards “the task of constitutional design as a way to help generate publicly justified outcomes in light of highly imperfect citizen inputs” (Gaus 2009b, 70).<sup>399</sup>

### **Other Aspects of Political Life: Strategic, Instrumental, and Expressive Voting**

Gerald Gaus makes further points about the complexity of politics that are in line with the criticism of the principle of politics as public reasoning just outlined. Thus, Gaus claims that political activity can, and sometimes even must, be strategic or instrumental. One might vote strategically for a party or candidate that one does not sincerely think is the best party or candidate, in order to promote another end, e.g. increasing the chance of a certain coalition, or diminishing the chances of another candidate that one really dislikes.<sup>400</sup>

Against this view it can be maintained that, even though political activity can be justifiably strategic or instrumental, such behaviour is still uncivil. On this strategic

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<sup>399</sup>This would also imply, so Gaus and Vallier state, that “a good deal of the groundwork for the constitutional structure of justificatory liberalism has already be laid by public choice theory” (Gaus 2009b, 70). Gaus and Vallier also hold that “[r]ather than seeking to restrain citizen inputs, the important project for justificatory liberals is to develop the theory of constitutional government that takes real-world imperfect inputs we confront, and yields laws that tend to be publicly justified” (ibid.). They further claim that “[j]ustified political outcomes need not, and often will not, be the result of a refined activity of public reasoning, but of electoral and legislative institutions and procedures that generate outcomes that all members of the public accept, taking as inputs the local and personal knowledge of citizens about their own reasons and concerns” (Gaus 2009b, 71).

<sup>400</sup>See Gaus 2010, 26-28 for examples of this kind.

and instrumental behaviour in politics means to treat fellow citizens disrespectfully, and not as free and equal partners (Gaus 2010, 28). The insincerity involved in strategic or instrumental behavior in politics is problematic. Respectful civic behaviour is, on this view, linked to sincerity.<sup>401</sup>

Another, but similar, aspect of political activity is the case of expressive voting. It is not uncommon that people use their votes to express attitudes such as discontent or anger towards a government or administration. Again, the principle of politics as public reasoning and the accompanying duty of civility seem to suggest that one should not vote expressively, since political decision-making and voting, at least on weighty political matters, should be based on shared reasons. Expressive reasons are, however, quite clearly not shared or public reasons (Gaus 2010, 29). They are reasons expressing a certain emotional attitude.<sup>402</sup>

However, banning expressive or strategic voting is, according to Gaus, again based on an inadequate conception of politics. The view on politics that underlies the exclusion of expressive or strategic voting behaviour focuses only on how to turn the views of citizens into laws, as in the register view on democratic institutions. Gaus suggests, however, that politics has many other functions and aspects that are important. Thus, it is also “an information-collecting system” (Gaus 2010, 29). Once we appreciate these other functions and aspects, expressive or strategic voting behaviour will no longer seem inadequate. (Ibid.)

One such function or aspect of politics missed by the register view is that citizens often use their political power (however small it might be)<sup>403</sup> not only to decide, but also to convey an attitude. Say, the attitude that one is discontent with recent decisions or actions of the government. This is, in Gaus’s view, an important function of politics,

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<sup>401</sup>A public reason requirement seems to rely on a sincerity or “good faith” requirement (see Schwartzman 2011, 376). The issue of sincerity is a major issue in a public reason approach to politics, e.g. to avoid public reasons being cited in a purely instrumental manner without actually believing in them. Such an instrumental or insincere public use of reason might, quite paradoxically, create “an atmosphere of cynicism, suspicion, and hostility” (Schwartzman 2011, 376). For a discussion of the sincerity issue within inclusionist views of the duty of civility and problems that arise, see e.g. Schwartzman 2011, 367, fn. 5. Rawls, too, stresses the importance of sincerity and introduces a good-faith-clause. See e.g. Rawls 2005, 226, 241-242, 253, 390. For further discussion, see also Cohen 2009b, 237-249.

<sup>402</sup>Of course, emotional responses or attitudes might be widely shared among citizens. This might be the case when politicians break ethical standards that are widely shared, as in the case where politicians, say, take expensive gifts and bribes, or lie about their income.

<sup>403</sup>Indeed, some have argued that it is precisely the fact that the individual political impact of a citizen in a democracy, when casting a vote, is so weak that citizens are tempted to vote rather expressively. See Gaus 2010, 29 for a discussion of this view.

and not an anomaly. It is one important way how a citizen uses her political liberties.<sup>404</sup>

The register view of democratic institutions arguably focuses only on one aspect of politics, namely its function as a decision-making system. Gaus's main point in his criticism of the principle of politics as public reasoning is thus that an adequate view on constitutional democracies also has to appreciate certain other vital aspects of democratic institutions. Gaus thus claims that a democracy is not merely a decision-making system. Instead, it is also one that collects and displays information. Once we appreciate that, the exclusion of strategic, instrumental or expressive reasoning from politics appears inadequate. (Gaus 2010, 29)

### **A Reply to the Convergence View of Public Justification and the Complexity of Politics Charge**

The criticism of the principle of politics as public reasoning outlined above stresses many important aspects of real-world politics that seem to undermine the plausibility of the principle in question. In reply, and in order to strengthen the plausibility of a principle of politics as public reasoning, let me briefly focus on two issues. First, a methodological defense of the principle of politics as public reasoning. Second, some underestimated virtues of the principle of politics as public reasoning.

**A Reply Based on Methodological Considerations** As we have seen in the third essay (see Chapter 4), political liberal theories navigate between an internal and an external focus in their elaboration of a view on constitutional democracy and politics more generally. An internal conception of political liberalism is concerned with elaborating and defending a political liberal theory addressed to liberals only, and thus focuses on politics in a well-ordered society. In such an internal view of the political liberal project, normative-conceptual issues such as the following take centre stage: What do free and equal citizens owe one another? How do basic political liberal commitments cohere in an inextricably diverse and reasonably pluralist polity?

An external conception of political liberalism, on the other hand, attempts to make a political liberal theory relevant and applicable to the world we live in. On such a view

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<sup>404</sup>As Gaus puts it, "when voting, or making a political argument, a person" can have the "aim to *communicate* to her fellows that she is unhappy with the status quo or that she is worried or troubled by certain events. The political arena, especially as it concerns voters, has far more tasks than simply turning voter's judgments into laws: voters employ their political liberties to convey their concerns and aspirations" (Gaus 2010, 29, emphasis in the original).

of the political liberal project, certain real-world issues need to be taken into account in political liberal theory building if such theories are to be of any interest and relevance for us here and now.

Gerald Gaus and Kevin Vallier's criticism of the principle of politics as public reasoning thus seems to be that the principle of politics as public reasoning is not external enough. They seem to hold that the principle does not take real-world political issues seriously enough.

In reply, we can simply insist that the aim of the political liberal exercise of conceptualizing a stable constitutional democracy, and of assuming the principle of politics as public reasoning, is to test conceptual and normative issues *internal* to political liberalism and its understanding of politics. Thus, an internal conception is concerned with a well-ordered society, not with actual Western democracies. Its aim is not to describe the workings of current real-world democracies and their institutions as adequately as possible. Rather, an internal conception asks: How to arrange a basic structure of a constitutional democracy assuming a principle of politics as public reasoning?

In other words, an internal political liberal project conceives of the principle of politics as public reasoning as a desirable normative starting point and aspiration, not as an adequate description of current democratic institutions. On this view, the point of the (internal) political liberal enterprise is, then, to gain heuristic insight into basic conceptual issues of a constitutional democracy within a well-ordered society. Such an enterprise furthers our understanding on what reasonable people under conditions of reasonable pluralism, given the demanding view on politics at hand, owe one another in a legitimate and stable well-ordered polity.

This is not the same task that Gaus and Vallier seem to pursue in their project of a justificatory liberalism. They make other methodological assumptions, and pursue other questions. From this, I understand that political liberal theorizing under the assumption of a principle of politics as public reasoning remains an interesting and worthwhile political liberal enterprise, given the virtues of an internal conception of political liberalism.<sup>405</sup>

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<sup>405</sup> Admittedly, the convergence view of public justification might still turn out to be a convincing alternative to the consensus view also within an internal conception of political liberalism (thanks to Sune Laegaard for pointing this out). Even though this might well be, I will leave this discussion aside due to space constraints. Note, however, that the methodological reply given here—one that aims at shielding the consensus view of public justification from criticism raised by Gaus and Vallier—arguably gains in strength when presented together with a more positive answer concerning the

**Some Virtues of the Politics as Public Reasoning View** The main claim in this second reply to the criticism of Gaus and Vallier is that a view on politics as public reasoning is appealing in certain contexts, such as the context of deciding on a basic structure of society or constitutional essentials. One way to indicate this is to consider the case of legislators, as opposed to voting citizens. At least in the case of legislators, we deal with a straightforward case of political decision-making where displaying information and attitudes seem far less important than claimed by Gaus and Vallier. Gaus and Vallier admit that even if their convergence view of public justification with its view on democratic institutions as generators would be appreciated, the case of legislators would remain importantly different. They thus concede that a version of the duty of civility, and a view on politics that goes with it, might remain relevant at least “for legislators (and not for citizens)” (Gaus 2009b, 75, fn. 33).<sup>406</sup>

This should not come as a surprise. Much of the criticism of the principle of politics as public reasoning does not apply when it comes to immediate and face-to-face political decision-making among legislators. Decision-making is the crucial function of legislating bodies. Deliberation and the exchange of views and reasons is possible and desirable in the context of immediate political decision-making.

The main point in reply to Gaus and Vallier’s criticism here is, thus, that the context for decisions on weighty political matters, such as constitutional essentials and the basic structure of society, is comparable to that of legislators passing policies and laws. This might even hold if all citizens are involved in the process of constitution making. On the most fundamental political question of what constitutional essentials are to be installed, a principle of politics as public reasoning seems recommendable. This is a context where public justification should come about through public reasons—and not through strategic, instrumental or expressive reasons.

Now, Gerald Gaus insists on a convergence view of public justification and democratic institutions as generators also regarding legislators, and arguably also regarding constitution making. The main reason is that democratic institutions as generators are still more apt to track public justifications of laws since “even virtuous legislators cannot appreciate all the reasons for and against proposals” (Gaus 2010, 30) and because “democratic procedures may work better when legislators do not always seek a synoptic perspective, but focus on presenting a good case based on an admittedly partial

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virtues of a consensus view of public justification, as given in the next Subsection.

<sup>406</sup>See also Gaus 2010, 29-30 on the issue of legislators.

perspective” (ibid.).

Still, at least for some contexts a conception of public justification modelled on the case of face-to-face decision-making of legislators and the principle of politics as public reasoning is recommendable. One such paradigmatic context is when citizens are to decide on the moral-political bedrock of their polity, i.e. the constitutional essentials and the basic social structure of their polity. At least in such a situation, citizens are to be seen in the same function as legislators, and a view on politics based on public reasoning should apply.

Consider Gaus’s concern that legislators, or citizens engaging in constitution making, cannot appreciate all the reasons for or against a political proposal. Why is it necessary or desirable to appreciate or track all the reasons? To gather reasons as diverse as possible seems relevant only on a convergence view, where we are interested on as many converging reasons as possible in order to secure public justification. Such reason gathering is less relevant on a consensus view. All we have to track, in deliberation based on a consensus view, is public reasons—not all the reasons or as many reasons as possible—for or against a proposal.

In short, the information conveying virtues of the convergence view of public justification and its accompanying view on democratic institutions as generators are less important in the context of constitution making. A more weighty issue than displaying information is that citizens engaging in constitution-making track their shared, public grounds on which to build a common polity.

In defence of an approach to constitution-making based on a consensus view of public justification, consider a situation where constitutional issues are not treated in this special and cautious way. Consider a case where the decision on constitutional issues are often mixed with decisions on other, more ordinary political issues, and where this leads to strange and undesirable situations about the constitution at hand. In Switzerland, citizens have the chance of directly proposing changes to the federal constitution, given that they reach a certain number of signatures of fellow citizens supporting these changes. Swiss citizens can, in short, propose something like a referendum on changes of the constitution that they themselves drafted and proposed.<sup>407</sup>

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<sup>407</sup>They cannot, however, directly propose laws. Still, they can propose a referendum on laws passed by the parliament through gathering a certain number of signatures from fellow citizens. Political instruments of this kind also exist on the level of Cantons, i.e. within the federal units with their own constitutions. See Linder 1999, 113-114, 118-120 for an overview (in German) on such and related citizenship rights in Switzerland.

This political instrument to directly change the constitution, called “popular initiative” (Volksinitiative), has long been a powerful way of drawing attention to certain political issues, with few initiatives actually passing the vote and becoming constitutional law (Linder 1999, 119, 120). This changed recently, when several controversial initiatives—such as a limitation on “mass migration”, a ban on building minarets, or the possibility to expel foreigners from Switzerland on the grounds of fairly minor legal offences<sup>408</sup>—were enshrined in the Swiss federal constitution.<sup>409</sup>

This led to an odd and undesirable situation in Swiss constitutional law. One major problem is that some of the adopted initiatives are in conflict with other principles written down in the constitution, as well as with international legal norms to which the Swiss constitution also adheres. This is arguably a result of rather careless voting on fundamental constitutional issues. Thus, votes on changing the constitution are often taken together with votes on particular policies and laws of far less political gravity such as, say, granting a sum for the building of a public swimming pool in one’s local community.<sup>410</sup> In an adequate process of constitution-making and constitutional design, much more care should arguably be taken regarding the spelling out of the bedrock of a constitutional democratic polity. This care assures a stable and legitimate political order. It is, also assured by a view on politics as public reasoning. Given that such care on constitutional issues is desirable and required, a view on politics as public reasoning seems adequate—at least when it comes to decisions on basic constitutional issues.

Another virtue of the principle of politics as public reasoning is that it yields solid grounds for a fair and stable agreement. To concur on shared, public reasons is to agree on strong reciprocal grounds. Reciprocity reached through public reasons is a strong guarantee for civic friendship and trust. A view on politics as public reasoning,

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<sup>408</sup>All these popular initiatives were accepted during the years 2010-2014. For an overview on accepted popular initiatives, see Schweizerische Bundeskanzlei 2015.

<sup>409</sup>In his later writings, Rawls insists that the ideal of public reasons “does not apply to all political discussions of fundamental questions” but applies only to the “public political forum” with its three parts, i.e. “the discourse of judges in their decisions, and especially of the judges of a supreme court; the discourse of government officials (...); and finally, the discourse of candidates for public office (...), especially in their public oratory (...)” (Rawls 1999, 133). In the argument under way, I take it that something like a public reason requirement and a duty of civility can be expected from citizens voting on the constitution as well, most of all if it affects essentials of the constitution or the proper interpretation thereof.

<sup>410</sup>Given the further fact that there are about two to four votes per year in Switzerland, many involving constitutional issues, the gravity of a particular constitutional vote might not always be apparent, and might become even less apparent over time.

and of citizens as something like legislators, therefore seems adequate when it comes to constitutional questions and the basic social structure.<sup>411</sup>

To conclude, the case of initiatives and constitutional votes in Switzerland suggest that citizens should take special care when debating and voting on constitutional essentials and the basic social structure. To safeguard such care regarding constitution making is a virtue of the principle of politics as public reasoning. Such care should not only be expected from legislators, but also from citizens when they decide on constitutional issues. The principle of politics as public reasoning also provides strong reciprocal grounds for agreement, and thus fosters civic friendship and trust.

**A Short Conclusion on the Convergence View of Public Justification** An important criticism of the duty of civility aims at the consensus view of public justification on which it builds. Critics propose an alternative standard of public justification based on the convergence on outcomes, as opposed to the consensus of reasons. The case for the convergence view of public justification is mainly built on an alternative view of politics, where aspects of politics are underlined that arguably are missed on a conception of politics as public reasoning. Such missed aspects are the information-conveying function of democratic institutions, as well as the view on democratic institutions as generators of publicly justified outcomes. Such a view on politics, so the critics hold, is more realistic regarding the functioning of modern liberal democracies and allows one to take citizens' imperfect inputs into account in public justifications.

In reply, I held that a focus on the principle of politics as public reasoning remains a sensible methodological choice given an internal conception of political liberalism. Furthermore, the principle of politics as public reasoning remains compelling in certain contexts, such as the context of deciding on constitutional essentials and the basic structure of society. Thus, at least for decisions on these issues, a view on politics as public reasoning with its view on democratic institutions as registers, focusing on decision-making and the accompanying duty of civility, remains compelling. It allows for more care in constitution-making and secures a suitably reciprocal decision that fosters civic

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<sup>411</sup>These solid grounds for a fair and stable agreement come at a price. Thus, a consensus on public reasons is harder to obtain and thus arguably more divisive, as long as no consensus is found, than a convergence on political outcomes (thanks to Sune Laegaard for this clarification). If the reply outlined here holds, however, it seems that at least regarding the bedrock of a liberal polity—i.e. its constitutional essentials and basic social structure—this is a price that political liberals should be willing to pay in order to safeguard an adequately stable and just political order.

friendship and trust. This holds, even if for law and policy making a convergence view might turn out to be preferable.

### **An Alternative Ethic of Democratic Citizenship: Eberle's Ideal of Conscientious Engagement**

Another way of challenging the duty of civility is not through an attack of its underlying standard of public justification, but through a direct criticism of its ethic of citizenship. Thus, it could be claimed that there is an ethic of citizenship that guarantees respect for fellow citizens, but that does not require anything like a duty of civility. This line of critique holds that respect for persons or fellow citizens does not, after all, require a duty of civility, and that such a duty is therefore not part of a compelling ethic of citizenship.

Christopher Eberle holds such a view. He proposes an alternative ethic of citizenship—one that he labels “ideal of conscientious engagement” (see Eberle 2002, Section 4.6). Let us thus briefly turn to Eberle’s view on democratic citizenship. I will claim that is not a fully compelling view of what citizens of a constitutional democracy can expect from one another. My contention is that Eberle’s ideal of conscientious engagement is not able to fulfill certain important desiderata regarding an ethic of citizenship in a stable constitutional democracy.

**What Respect Requires: Eberle’s View** Christopher Eberle holds that a citizen in a liberal democracy shows respect to other citizens, and discharges all her duties towards other citizens, if she abides by the following “six constraints on the reasons she employs in political decision making and advocacy” (Eberle 2002, 104):

- (1) She pursues a high degree of rational justification for the claim that a favoured coercive policy is morally appropriate.<sup>412</sup>
- (2) She withholds support for a coercive policy if she has not a sufficiently high degree of rational justification for the claim that a policy is morally appropriate.

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<sup>412</sup>Eberle discusses the issue in terms of coercive laws, and not constitutional essentials or the basic social structure. I will adopt his vocabulary for the discussion at hand and simply assume that his account also covers the weighty political matters of constitutional essentials and the basic social structure.

- (3) She attempts to communicate to her compatriots her reasons for coercing them.
- (4) She pursues public justification for her favoured coercive policies.
- (5) She listens to her compatriots' evaluation of her reasons for her favoured coercive policies with the intention of learning from them about the moral (im)propriety of those policies.
- (6) She will not support any policy on the basis of a rationale that denies the dignity of her compatriots. (Eberle 2002, 104)

The rational justification requirement in (1) and (2)<sup>413</sup> guarantees that the case for a weighty political matter is—at the very least—intelligible. Without such a basic requirement, communication and interaction becomes utterly difficult, if not impossible. Imagine an alien from outer space providing reasons that are not intelligible, e.g. due to language. Without basic intelligibility, as guaranteed by a rationality standard, political interaction seems impossible.

The requirement of rational justification is, according to Eberle, based on the premise that respect for compatriots requires citizens “to accord due weight” to what matters to their compatriots (Eberle 2002, 94). In other terms, respect requires that every individual perspective, every conception of what is good and meaningful in life, is accorded due weight.<sup>414</sup>

(3) and (4) raise the stakes, and introduce considerations of public justification. Eberle claims that respect requires citizens to address compatriots and inform them about the reasons for imposing coercive laws on them (Eberle 2002, 95). This leads to a

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<sup>413</sup>Eberle holds that the rationality of justification strongly depends, first, on the manner in which beliefs are formed. Beliefs should be formed on the “best available evidence” (Eberle 2002, 61). The rationality of justification also crucially depends, second, on the “fund of beliefs and experiences” or the “evidential set” that citizens already have and take to be true or reliable while evaluating beliefs (ibid.). Thus, for religious persons, truths expressed in a holy scripture can be part of their evidential sets, and thus help to establish rationally justified religious beliefs. Eberle himself uses the example of Socrates and his Ptolemaic understanding of the solar system to illustrate the role of evidential sets in the establishment of rationally justified beliefs (see Eberle 2002, 62). On Eberle’s view, the rationality of justification is thus a function of a citizen’s evidential set and the manner in which beliefs are formed (ibid.). According to Eberle, therefore, “rational justification is a radically *perspectival* phenomenon (. . .)” (ibid., emphasis in the original). See Eberle 2002, 61-66 and 88-94 for further discussion of rationality and rational justification.

<sup>414</sup>See Eberle 2002, 20. Eberle discusses Charles Larmore’s views on respect as developed in Larmore 1987. See also the discussion of the locus of respect in Section 3.1.3.

requirement for public justification: Since citizens are “legitimately and deeply averse to being coerced” (Eberle 2002, 89), and since there is a “prima facie obligation to refrain from coercing compatriots” (ibid.), respect dictates that citizens owe their compatriots the pursuit of public justification.<sup>415</sup>

Up to (4), the focus is mostly on how a citizen should, actively, engage with compatriots. But respect does not seem to be exhausted by this active engagement. Respect is a two-way street. Thus, Eberle argues, a citizens should also be willing to learn from others. This willingness requires her to submit her political commitments to discussion and scrutiny by compatriots. Respect also seems to require her to change her commitments, given that she has sufficient reason to do so. Respect does not just require of a citizen “that her own noetic house is in order, and not just to show her compatriots that they should endorse her political commitments, but also to submit her political commitments to their better judgment” (Eberle 2002, 102). In short, Eberle claims that respecting compatriots requires that one remain fallibilist about one’s political commitments—even in the light of high rational justification given one’s evidential set (ibid.). Therefore, something like (5) is required.

(6) assures that a substantive aspect of respect is safeguarded, namely that no one’s personhood may be infringed through coercive laws, even if (1)-(5) are fulfilled. Respect requires that citizens “ought not to support a coercive law on the basis of any reasons that deny (...) [someone else’s] personhood” (Eberle 2002, 104). (6) is taken to play a “unifying role” (Eberle 2002, 106) in his list of constraints regarding political advocacy. It is out of respect for the dignity of compatriots that a citizen adheres to the other elements of the ideal of conscientious engagement (ibid.).

This, Eberle argues, is all we can reasonably ask of citizens to “ameliorate the tensions and frustrations inevitably generated by our disagreement regarding the coercive laws to which we are subject” (Eberle 2002, 108). He thus claims that his ideal of citizenship considerably reduces resentment of citizens when faced with coercive laws (Eberle 2002, 107). If citizens adhere to the ideal of conscientious engagement, out of respect for compatriots, then compatriots need not feel disrespected when faced with certain coercive laws, and thus will find it easier to accept and acquiesce to those laws.

That much for Eberle’s view on the ethic of citizenship. Compared to a duty of civility, his ideal of conscientious engagement seems less demanding in many respects

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<sup>415</sup>Eberle holds that requiring the pursuit of public justification is very different from requiring success of public justification. Pursuit is less demanding than success.

(and maybe more demanding in others). Thus, no requirement for shared or public reasons is introduced. All kinds of reasons and justifications are morally permissible in political argument, as long as the proposed justification is rational, attempts to be public, and is presented in an open-minded way that allows for readjustments of the view if confronted with better evidence.<sup>416</sup> Following this recipe for respectful interaction among compatriots, citizens seem to be free to refer to all their religious views. The reason is that religious views can, arguably, be formulated rationally (see e.g. Eberle 2002, 234), aspire (but maybe not reach) public justification, and be presented in an open-minded way.

Now, one might wonder whether the requirements of the ideal of conscientious engagement are all we can reasonably expect, morally speaking, from respectful citizens in a liberal constitutional democracy. It is also questionable whether the requirements introduced by Eberle are indeed a good remedy for the resentment of compatriots faced with coercive laws. I am sceptical about both issues. I think that there are situations in which respect for fellow citizens requires more—where we can, reasonably, ask more from citizens than conscientious engagement, and where the remedy of resentment might require more than conscientious engagement.

To see why this is the case, let me introduce two further requirements or desiderata that I take to be imposed by the norm of respect for fellow citizens in a liberal constitutional democracy. Respect for fellow citizens also requires, arguably, that citizens (a) see one another as free and equal, and (b) that citizens abide by fair terms of cooperation, given that others do likewise. These are two main constraints of reasonableness. They are part of the (substantial) moral-political commitment of political liberalism (see Sections 3.1.3 and 4.4.3 for discussion). Eberle's claim that the ideal of conscientious engagement is all that we can *reasonably* expect from democratic citizens should thus also be evaluated in the light of (a) and (b).

In order to assess what we can reasonably expect, we need to know what reasonableness is. (a) and (b) help to spell out the reasonableness requirement—at least partly, but

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<sup>416</sup>Note that the ideal of conscientious engagement can do without a shared premises or public reason requirement because it does not endorse a consensus view of public justification. Eberle endorses a more general and ambiguous standard of public justification throughout the first two parts of his book, in which the ideal of conscientious engagement is also introduced. The standard of justification is developed only in a “vague and amorphous way” at the beginning of his work “as a rationale (...) which she [the citizen] can employ to justify some coercive law to her compatriots” (Eberle 2002, 68). For a discussion, see Eberle 2002, Section 3.2 and Part 3. Part 3 in Eberle 2002, entitled “What is Public Justification?”, discusses the issue of a standard of public justification more thoroughly.

hopefully to a sufficient degree.<sup>417</sup> I also take it that Eberle's ideal of conscientious engagement is reasonable. However, it does not exhaust what we can reasonably expect from citizens. (a) and (b) allow for, and possibly also require, more from citizens than what Eberle requires from them in his ideal of conscientious engagement.<sup>418</sup>

An interesting way to spell out what respect requires in an ethic of citizenship, trying to take (a) and (b) seriously, has been proposed by Robert Audi and others who stress the importance of a principle of reciprocity for democratic citizenship. To consider what is at stake when it comes to such a principle of reciprocity will help to see what is missing in Eberle's account. It will also help to determine that respect requires, after all, something like a duty of civility, at least in certain contexts.

**The Reciprocity, or Role-Reversal, Argument** Robert Audi takes reciprocity to be crucial in public political argument. He argues, roughly, for the claim that citizens necessarily need adequate secular reason for the advocacy or support of a coercive law. If there are only religious reasons for such a law, then citizens have a *prima facie* obligation to abstain from advocacy and support for that law (Eberle 2002, 134; Audi 1997a, 25). Although it is important for Audi's approach that we deal with secular reasons, I take it that we can expand what he has to say on secular reasons also more generally to public reasons or shared premises. I thus take it, for the sake of argument, that the secularity requirement is one way to track public, shared reasons.<sup>419</sup>

Why do citizens necessarily need secular—or, in our idiom, public—reasons for political advocacy, such as voting? Even though Audi himself does not seem to rely on the norm of respect (see Eberle 2002, 367, fn. 33), he seems to rely on crucial issues involved in (a) and (b). Thus, a basic premise of his argument for the use of secular reasons is that citizens ought to treat one another as equals. Treating one another as equals requires, according to Audi, that citizens be willing to reverse roles with their compatriots (Eberle 2002, 135; Audi 1997b, 141). The role reversal requirement is also linked to (b), which enshrines a principle of reciprocity. One's abiding to established

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<sup>417</sup>See Section 4.4.3 for further discussion of the reasonableness standard.

<sup>418</sup>For Eberle's critical discussion of arguments based on reasonableness standards and the question whether theists can be reasonable, see Eberle 2002, 148-151, 369 fn. 63.

<sup>419</sup>Rawls holds that Audi's view on secular reasons is ambiguous between Rawls's own understanding of secular reasons as comprehensive doctrines, and a possible view on secular reasons as public reasons. See Rawls 1999, 148, fn. 40 for a discussion of Audi's definition of secular reasons. I thus assume, for now, that secular reasons are rather of the second, public sort.

terms of cooperation depends on other citizens' abiding to established terms of cooperation. The requirement to reverse roles when proposing coercive laws is a way to ensure that others could abide to the terms I propose. Through putting myself in the shoes of others when proposing coercive laws, I will propose only those terms of cooperation that others could, presumably, also accept. The role-reversal test is thus a way to track shared grounds that guarantee common adherence to terms of cooperation established in a polity.

Now, in Audi's view, the role-reversal requirement applies not just to outcomes, i.e. to laws that citizens support, but also to citizens' reasons for these laws (Eberle 2002, 135). Thus, if I have only religious reasons to support a coercive law, and if I do not want to be coerced only on grounds of someone else's religious reasons, then I should abstain from supporting the law in question.

A few qualifications are in place regarding the role-reversal test. First, when applying the role-reversal test, one should consider a suitably similar case. If my reasons to support a law are to be found in the Bible only, and if I do not want to be coerced only on grounds of someone else's main religious book (say, the Q'ran), I should abstain from supporting the law on reasons found only in the bible. The cases are arguably similar enough because in both cases, i.e. the Bible case and the Q'ran case, we deal with most important religious scriptures for the religions in question. Thus, it seems that referring to religious reasons only in one's justification of coercive laws does not pass the reciprocity or role-reversal test. To pass the reciprocity test, however, is a crucial part of determining what respect for fellow citizens requires given (a) and (b). To support laws only on religious grounds, without sufficient shared grounds, therefore does not show due respect to fellow citizens. The role-reversal test as a device to test whether (a) and (b) are met does, instead, suggest something like a public reason requirement, as spelled out in the duty of civility. It is through shared, public reasons for coercive laws that justifications for such laws pass the reciprocity or role-reversal test.<sup>420</sup>

Given the requirement for a role-reversal test inherent in (a) and (b), a duty of civility thus becomes a more adequate ethic of democratic citizenship than Eberle's conception. The question that remains, however, is whether role-reversal is indeed required in political argument. Eberle does not seem to think so. Let us thus turn to Eberle's argument against a reciprocity requirement—the dandelion case.

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<sup>420</sup>See Eberle 2002, 135-136 for the summary of Audi's views as presented here, and Audi 1997a, 28, 51 for the role-reversal argument and the case of religious persons failing the reciprocity test.

**The Dandelion Case** Suppose that a small religious community in our polity proposes a law to protect dandelions based on their religious beliefs alone. The law has as a consequence considerable job losses (in agriculture etc.) and many legal restrictions affecting many citizens in their every-day lives. For instance, tending a garden or mowing a lawn would become very difficult since dandelions have to be protected.

In such a case, many citizens, among others religious content shepherds, will feel resentment against the law. The reason is that the law imposes a grave restriction on the liberty of religious content shepherds, for instance through a ban on herding (let us assume that their herding endangers dandelions). What is the source of this resentment? Arguably, the resentment of content shepherds is linked to the justification of the law on purely religious reasons which they cannot share. The law, after all, did not pass the role-reversal test and is not acceptable to the content shepherds.

Christopher Eberle holds, however, that the resentment against protecting dandelions is not due to a justification of the law based on religious reasons alone, and thus the lack of role-reversal in justification. Rather, his view is that the shepherds will resent the law because (i) it lacks rational justification, or (ii) because of the content of the law. In short, Eberle holds that we can account for the resentment of the shepherds without reference to the lack of role-reversal, or to the justification in purely religious terms. Instead, resentment is due to some of the issues involved in (i) or (ii).

According to Eberle, we are thus able to account for the dandelion case within the ideal of conscientious engagement, and do not need to introduce the issue of reciprocity or public reason as spelled out in a duty of civility. The issue with the law is, simply, that it is very strange, and that it arguably lacks rational justification as required by the ideal of conscientious objection.

As Eberle notes, the case of dandelions indeed strikes us as absurd. It is hard to see how someone could have rational justification to ban dandelions (Eberle 2002, 137). It is, however, a tricky issue to judge rational justification in such a case. All kinds of items are held dear by different religions—including buildings, cows, rivers, and hills. One might thus wonder: Why not dandelions? Within the evidential set of a certain religion, dandelions might very well be held sacred.

This reply plays on a problem with Eberle's view on rationality. Given that the rationality of a justification depends strongly on evidential sets, and given that there is no way to distinguish between good or bad evidential sets, all kinds of justifications will qualify as rational as long as they adequately take the evidential set into account.

Thus, if dandelions are sacred in an evidential set, and if we do not make any evaluative statement about that evidential set, then it is very possible that justifications referring to the sacredness of dandelions are rational. The first of Eberle's explanations of the resentment against the legal protection of dandelions, namely that it is due to a lack of rational justification, is therefore questionable. There might, given the conception of rational justification that Eberle himself adopts, very well be evidential sets in which dandelions are sacred.

Now, suppose we have checked that dandelions are indeed sacred in the given religious view, and that religious persons could somehow explain why and how dandelions are most important to them. In short, rational justification is safeguarded. In this case, Eberle claims, citizens' frustration or resentment regarding such a law is still not due to its religious grounds, but due to its content. In short, it is the coercive law itself that infuriates us.

Suppose the law is not proposed by religious citizens, but by environmental activists who want to protect dandelions because they are endangered. Suppose further that we reject that rationale. Our resentment, or frustration, would arguably remain the same also given such a secular rationale.<sup>421</sup> As Eberle holds: "So long as the content of the law is sufficiently objectionable, my allergic reaction to that law persists, whatever its rationale. Thus, the cause of my resentment is not that the law has only a religious rationale." (Eberle 2002, 139)

Now, resentment and frustration are complex emotions, and it is hard to see how conceptual arm-chair contemplation alone could help to resolve what triggers and constitutes them in the particular case of a ban on dandelions.<sup>422</sup> That said, however, I think we can still extract a few aspects of the issue from our arm-chair. Thus, surely the content of a law and the lacking rational justification or intelligibility of the dandelion law is in part responsible for our resentment against such a law. This is well illustrated by the support of the dandelion law by secular environmentalists. This, however, is just to make the rather basic point that the content, and related what-question ("What does it say?"), of a law matter about how we feel about that law. If I do not agree with a law or with what it implies, and if the law imposes costs on me, then I am apt to feel

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<sup>421</sup>See Eberle 2002, 138-139 for the discussion of this case.

<sup>422</sup>Eberle notes this too. He takes the reason to be that the possible world we are discussing, where dandelions are about to be banned, is strange and that the intuitive reactions we display might not be of any guidance in the real world. See Eberle 2002, 138.

frustrated about that law. Eberle, in his account of the resentment against a law that one does not support, takes the content or what-issue of a law to be the main problem.

There is, however, a procedural or how-question relating to laws as well (“How did the law come about?”). Thus, we might wonder whether the procedures that led to the law were adequate, or just. We might thus wonder whether all relevant views and arguments on the issue were heard, whether some views were forcefully suppressed, or whether citizens and legislators acted appropriately in the process of passing the law. In this vein, we might also wonder whether all citizens engaged in a respectful way in their advocacy and support of the law. At least part of our resentment might, then, derive from how the law came about. Let us thus consider an alternative dandelion case to show that how-questions are crucial to our resentment against the passing of laws, and how this indicates that the missing role-reversal test or duty of civility might well be part of the resentment we feel against the dandelion law.

**The Harmless Dandelion Case** In actual democracies, as well as in a well-ordered society, it is common that citizens have to live with concrete laws and policies they did not vote or agree to. This seems to be a consequence of the burdens of reason and a majority voting system for legislation. It is thus quite a common frustration in a well-ordered, or somewhat well-ordered, liberal constitutional democracy.<sup>423</sup> How, then, to account for the adherence to laws one did not support or vote for? Citizens might disagree on laws and outcomes (content or what-issues in the idiom used above), but they still abide by the laws because they agree on certain principles underlying political institutions, as well as mechanisms and procedures that bring these laws and outcomes about (procedural or how-issue in the idiom used above).<sup>424</sup>

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<sup>423</sup>The case of laws is thus different from constitutional essentials or the basic social structure. The aim of political liberalism is to avoid such frustration at the basic political level to reach a just and stable polity. Still, on that basic level we might agree on a majority voting system in legislation that will lead to frustration regarding particular laws that are not voted for by the minority. As Rawls puts it, such a law is still “politically (morally) binding” on citizens “and to be accepted as such”, since “each thinks that all have spoken and voted at least reasonably” (Rawls 1999, 137).

<sup>424</sup>As Brian Barry states, citizens accept the implementation of a referendum they voted against “because it was the outcome of a fair procedure, fairly conducted. That is all.” (Barry 1995, 150) This holds, at least, if at the “constitutional stage” there was laid down some procedure “by which a definite decision may be reached about controversial issues”, and if “the procedure is a referendum” (Barry 1995, 149). Barry also holds that if a certain procedure is endorsed as just, then this endorsement also “indirectly endorses the outcomes as just” (Barry 1995, 151). Barry discusses Rawls’s related view on “pure procedural justice” as developed in *A Theory of Justice* at Barry 1995, Section 35. The basic idea of pure procedural justice is that “if the rules defining the range of legitimate choices

Now, the main point I want to make is that at least when it comes to these underlying procedural or how-issues, reciprocity in justification is required by respect for fellow citizens. If this reciprocity is lacking, then it is hard to see why citizens would abide by laws from which they feel deeply alienated.

Consider, thus, a case where a law on dandelions is passed according to the original scenario above, but that religious content shepherds are not concerned by that law at all—they do not care about dandelions, dandelions do not grow in their region, they might not even have heard of dandelions before. In short, the coercive law would not affect the lives of content shepherds at all. Would they care about, or feel resentment against, the law?

If they cared and felt resentment against the law, which might very well be the case given that a minority religion is able to impose a strange law, this resentment would hardly be due to the content of the law. Since they are not concerned by the content of the law, and no costs are imposed on them by the law, there seems little reason for them to feel resentment about the content of the law. At most, they might think the law is deranged or stupid. The shepherds do, however, still have reason to feel resentment about the law, or so it seems. Religious content shepherds might feel resentment regarding flaws in underlying procedural issues that led to the law.

How-issues matter at least as much as what-issues. As citizens of a constitutional democracy we are concerned not only about what the laws and policies that govern us say or imply. We are, or should be, also concerned about how these laws and policies come about. The question of what principles and procedures govern our democratic institutions that issue laws and policies greatly matters for us as citizens. At least regarding such issues, reciprocity in justification and a duty of civility seems desirable.<sup>425</sup>

Even if we could account for the resentment of religious content shepherds in the dandelion case purely within the ideal of conscientious engagement, I doubt that this is

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are just, then justice can also be ascribed to the outcomes that arise when people make choices within the permissible range” (Barry 1995, 213).

<sup>425</sup>Rawls presents a related point as follows: “Of course, it is too much to expect complete agreement on all political questions. The practical aim is to narrow disagreement at least regarding the more divisive controversies, and in particular those that involve the constitutional essentials (. . .); for what is of greatest urgency is consensus on those essentials, for example (1) the fundamental principles that specify the general structure of government and the political process (. . .); and (2) the equal basic rights and liberties of citizenship that legislative majorities must respect, such as the right to vote and to participate in politics, freedom of thought and of association, liberty of conscience, as well as the protections of the rule of law.” (Rawls 2003, 28)

possible in the harmless dandelion case where the resentment is linked to flaws in the procedures that brought the law about. After all, there is something flawed if a religious minority can impose a strange law such as that protecting dandelions.

On a fundamental level of democratic principles and procedures, Eberle's ideal of conscientious engagement is, then, not enough. The justification of those underlying constitutional essentials should pass a role-reversal test and thus be based on public reasons. A good way to safeguard common adherence on fundamental political matters such as constitutional essentials is through a public reason requirement as spelled out in the duty of civility.

The actual problem or issue might thus be that Eberle is focusing on the wrong kind of cases in his argument against role-reversal. Laws protecting dandelions simply do not matter greatly when it comes to public justification based on public reasons. Reciprocity and a public reason requirement do, however, matter greatly when fundamental questions about constitutional essentials and the legitimacy of the political order are at stake.

### **Conclusion on Challenges From Permissive or Open Views**

In this Section, I considered, firstly, a challenge to the duty of civility based on an alternative underlying conception of public justification that focuses on convergence of outcomes rather than a consensus of reasons. Secondly, I considered a challenge to the duty of civility that develops an alternative, and more permissive, ethic of democratic citizenship. Both alternatives, I take it, pose interesting challenges and insights. However, with a proper focus on weighty political matters such as constitutional essentials and the basic social structure in place, a duty of civility with its underlying conception of politics and public justification seems a compelling way to safeguard respect for fellow citizens and reciprocity among free and equal citizens.

Thus, the more permissive or open alternatives to a duty of civility, either reached through a criticism of the principle of politics as public reasoning or an alternative ethic of citizenship as conscientious engagement, do not undermine the plausibility of an ethic of citizenship based on reciprocity and a public reason requirement, at least not when it comes to weighty political matters. In reply to both proposed alternatives a reference and restriction of political liberal efforts to fundamental political matters, such as constitutional essentials, seems apt to safeguard the plausibility of a duty of civility based on a shared premises requirement.

Still, the challenges are relevant because they deliver a crucial further desideratum regarding an ethic of citizenship. I take it that the integrity objection presses political liberals to embrace an inclusionist interpretation of the duty of civility. Given a situation where there are only religious reasons in an argument on weighty political matters, falling back on an exclusionist view is not a viable option because of the lurking integrity or alienation charge.<sup>426</sup> Opting for more permissive or open views on the role of religious reasons in political argument is thus a tempting option. However, as I tried to show in the discussion of Eberle's version of such a permissive view, a reciprocity principle as spelled out in a public reason requirement, and a consensus view of public justification is desirable when it comes to fundamental political matters such as constitutional essentials. Abandoning a duty of civility is, thus, not an option either.

The two desiderata in place—(i) no, or as little as possible, alienation of religious as well as all other citizens in our political liberal polity and (ii) a duty of civility in political argument on weighty political matters—lead us to the third interpretation of the duty of civility, namely a more strongly inclusionist view on religious reasons in political argument. The aim of this interpretation of the duty of civility is to adequately take into account, or balance, the two desiderata regarding an ethic of democratic citizenship.

### 5.3.4 A Strongly Inclusionist View on Religious Reasons in Political Argument

How, then, to amend the inclusionist view on religious reasons in political argument on weighty political matters so that it comes close to a permissive or open view but retains the ideal of public reason with its duty of civility and shared premises requirement? How to adequately reconcile the two ambitions of giving religious, and all other, persons as much room to argue from their most important and dearly held comprehensive beliefs, and at the same time holding on to the moral-political standard of legitimacy as spelled out in the liberal principle of legitimacy? I propose to live up to this aspiration with a very accommodating or strongly inclusionist interpretation of the duty of civility and the proviso.

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<sup>426</sup>Of course, some might hold that falling back on an exclusive view is appropriate. A view like this might be ascribed to Stephen Macedo, who holds that “if some people (...) feel ‘silenced’ or ‘marginalized’ by the fact that some of us believe that it is wrong to seek to shape basic liberties on the basis of religious or metaphysical claims [alone], I can only say ‘grow up!’” (Macedo 1997, 21). I do not follow Macedo in this point; I think this attitude smacks of brow-beating and impatience. See Gaus 2009b, 64 for discussion.

One way to approach this task is to ask: What does it take, more precisely, to fulfill the public reason requirement and thus to remain “within public reason” (Langvatn 2013, 96)? Consider, as Rawls does, the case of Abolitionists or Martin Luther King Jr. (MLK), a leader of the Civil Rights Movement, in the United States. Both were strongly motivated by religious beliefs and based their political arguments on religious grounds. Their political struggles against slavery and segregation were strongly marked by their religious convictions. Did they, thus, “go against the ideal of public reason” (Rawls 2005, 250)? Rawls holds that they fulfilled the proviso and thus did not go against the public reason requirement, “however much they emphasized the religious roots of their doctrines” (Rawls 1999, 154-155). This is so “because these doctrines supported basic constitutional values—as they themselves asserted—and so supported reasonable conceptions of political justice” (ibid.).

The cases of religious content shepherds reasoning solely from within their comprehensive views, or of abolitionists and MLK engaging in political struggles due to their religious views, all raise interesting questions regarding the limits and requirements of public reason and the duty of civility. Thus, do citizens *actually* have to embrace public reasons for a political cause in public justification, or might it be enough if the political cause *could* be defended in terms of public reasons—even if it is not actually defended in these terms (Langvatn 2013, 97)? This issue is related to the question of when, in time, public reasons have to be presented.

Another question that comes up is whether citizens, such as content shepherds, have to present public reasons for a political cause themselves, or whether it is enough that public reasons are proposed by others on behalf of the shepherds.<sup>427</sup>

Before I address these questions, however, I will discuss a mode of reasoning that I take to be crucial for a strongly inclusionist conception of the duty of civility, namely reasoning from conjecture. I will thus start with the question of what reasoning from conjecture requires, and what makes it a possible and important element of a duty of civility.

I take it that reasoning from conjecture, despite being a form of nonpublic reasoning, is a powerful tool to make the inclusionist view very accommodating towards religious, and other, reasonable views in political argument. Giving reasoning from conjecture a

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<sup>427</sup>Another issue that I do not dwell on here relates to the motivation of citizens: Should citizens be motivated, in their political endeavors, by a political conception, or can they be motivated on purely religious grounds? See Langvatn 2013, 97 for a discussion.

weighty role in our interpretation of a duty of civility, I maintain, allows us to spell out the duty of civility in a strongly inclusionist way that is very accommodating regarding the use of religious view in political argument on fundamental political matters. In order to test such a strongly inclusionist view, I will also consider whether citizens, given such a strongly inclusionist interpretation of the duty of civility, do still live up to the core requirement the duty of civility.

### **Public Reason and Reasoning From Conjecture**

In the example of Abolitionists, Rawls conjectures that “they could have seen their actions as the best way to bring about a well-ordered and just society in which the ideal of public reason could eventually be honored” because “their political agitation was a necessary political force leading (...) to the destruction of the great evil and curse of slavery” (Rawls 2005, 250). Rawls thus reasons from the Abolitionists’ point of view—facing the evil of slavery, and their options to overcome it—and indicates how their reasoning is compatible, or indeed linked to, a reasonable political conception of justice. Reasoning from conjecture is thus the attempt to show how a certain view involves common grounds that are shared by other views as well.

As Rawls claims, when we reason from conjecture

“we argue from what we believe, or conjecture, are other people’s basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reasons. The ideal of public reason is thereby strengthened” (Rawls 2005, 465-66).<sup>428</sup>

Conjecturing seems to be a good way of establishing further common, shared grounds or of bringing such already existing grounds to the fore.<sup>429</sup> By engaging with other views

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<sup>428</sup>Together with conjecturing, Rawls mentions two other relevant “forms of discourse”, namely declaration and witnessing (Rawls 2005, 465-66). As Silje Langvatn points out, these can also be important modes of reasoning when it comes to overcoming distrust and animosity among citizens (Langvatn 2013, 104-105). Even though these are also interesting modes of reasoning, I will not dwell on these forms here.

<sup>429</sup>In a different context, conjecturing has been invoked not just to further common ground among citizens, but also to establish a commitment to public reason itself. As Micah Schwartzman holds, given that there is a conflict between a citizen’s non-public reasons and public reasons, conjecturing can help “in demonstrating that particular doctrines should endorse a commitment to public reason” (Schwartzman 2012, 544).

and showing how certain premises or tenets might be more widely shared than usually thought, reasoning from conjecture seems to be a good way to further trust and fraternal bonds among citizens. It helps to highlight fundamental political issues that are shared beyond all the disagreements on more particular moral and political questions.

The element of conjecturing also allows us to be very relaxed about all kinds of comprehensive views presented in political argument. Religious persons can, given the element of conjecturing, be allowed to present political arguments in purely religious terms, given that sooner or later they present public reasons, or that conjecturing yields, or could yield, public reasons for the arguments in question.<sup>430</sup>

It is important, however, that there is actual or possible common ground reachable through conjecturing. It is these overdetermined grounds, established or unveiled through conjecturing, that provide us with shared, public ground accessible to all. Reasoning from conjecture is thus one way to pursue the public reason requirement.<sup>431</sup>

Before we go into some more detailed questions about reasoning from conjecture, let me briefly comment on how reasoning from conjecture relates to public reasoning. I referred to conjecturing as an element of public reasoning, suggesting that conjecturing is itself part of public reasoning as involved in political arguments on basic political values. Is conjecturing indeed such an integral element of public reasoning? Arguably not. But not much depends on an answer to this question. Conjecturing remains important for public reason even if it is conceived of as a merely supportive, nonpublic mode of reasoning. Let me briefly present this issue.

In Rawls's view, neither conjecturing nor declaring or witnessing express "a form of public reasoning" (Rawls 1999, 155). Why not? The answer can be found in our conception of public justification. Public reasoning aims at public justification. Public justification is attempted through "an appeal to political conceptions of justice, and to ascertainable evidence and facts open to public view, in order to reach conclusions about what we think are the most reasonable political institutions and policies"<sup>432</sup>(Rawls

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<sup>430</sup>For efforts of conjecturing working towards an overlapping consensus among different religions, see e.g. the work of Andrew March (March 2007, March 2009) engaging with Islam and Svend Andersen (Andersen 2010) engaging with Lutheranism. Andersen explicitly works towards a, what he calls, reconstructed Lutheran political ethic that is compatible with the basic outline of Rawlsian political liberalism (see Andersen 2010, Chapter 3).

<sup>431</sup>Note, however, that a theocratic imposition of laws solely based on religious views is still not possible. No amount of reasonable conjecturing could suffice to establish theocratic beliefs as public in a pluralist society.

<sup>432</sup>The citation goes on: "Public justification is not simply valid reasoning, but argument addressed to

1999, 155). Conjecturing, then, could be an integral part of public reasoning if it is aimed at public justification. Does reasoning from conjecture aim at public justification? Arguably not. Rather, it aims at making visible possible connections between political conceptions of justice and different comprehensive doctrines or world views. It does not necessarily aim at public justification itself, even though conjecturing can play a role in public justification, as in the case of a citizen convincing another citizen that certain constitutional essentials are publicly justified also from within her own world view.

Conjecturing does, thus, not itself aim at public reasons, but rather at a rational explanation on how a certain comprehensive view might endorse such public reasons. In short, the aim of fostering common ground regarding basic political issues is not itself an engagement in public reasoning. Rather, it is an attempt to establish or indicate links between political conceptions of justice and diverse comprehensive views.<sup>433</sup>

Still, conjecturing strengthens public reason (Rawls 1999, 155-156), even if it is not itself a form of public reasoning. In any case, however, conjecturing can be an important tool for the establishment of a consensus regarding the grounds of a constitutional democracy, most of all if there are “deep tensions and lack of trust” (Langvatn 2013, 104) among citizens.<sup>434</sup> At the very least, then, and even if no common grounds are established, conjecturing is likely to strengthen “political trust and civic friendship in certain contexts” (ibid.) if it is done in a respectful way.<sup>435</sup>

For our purpose, reasoning from conjecture is important because it helps to make sense of a more strongly inclusionist view of the duty of civility, one that allows for justifications on merely comprehensive grounds, given that these justifications can sooner or later be

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others: it proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept” (ibid.).

<sup>433</sup>Schwartzman 2011, 376 also explicitly states that reasoning from conjecture is decidedly nonpublic in nature. As he puts it, “reasoning from conjecture is a way of continuing the process of rational justification beyond the limits of public reason” (Schwartzman 2012, 544). He also claims that “this form of non-public reasoning can be conducted in a manner which is sincere, respectful, and nonmanipulative” (Schwartzman 2012, 544).

<sup>434</sup>A corollary of a view on conjecturing as nonpublic reasoning is that we can, arguably, not morally *demand* conjecturing from citizens. Even if, given an inextricably diverse citizenry, it would be *wise* to engage in conjecturing in order to strengthen public reason. See Langvatn 2013, 272, 274 on these points.

<sup>435</sup>There is also the further question of whether conjecturing, maybe together with declaration and witnessing, is necessary for public reasoning. Langvatn holds that these forms of reasoning are necessary supplements to a public reason requirement, at least in certain contexts (Langvatn 2013, 272).

bound to a political consensus on fundamental political matters through conjecturing.<sup>436</sup> With these preliminaries in place, let us now turn to some details and requirements of conjecturing.

### **What Does Reasoning From Conjecture Require? Sincerity, Overdetermination, Translation**

Conjecturing is a tricky issue and involves various aspects and problems. Here, I would briefly like to focus on three conditions that seem necessary to enable fruitful conjecturing, and to make it an appealing supplementary element of public reasoning. These aspects are (i) sincerity on part of the conjecturer, (ii) the overdetermination of views with which the conjecturer engages, and (iii) the translatability of views with which the conjecturer engages.

**Sincerity** An important requirement for reasoning from conjecture is that efforts of conjecturing are “sincere and not manipulative” (Rawls 1999, 156). Engaging in the interpretations of world views as an outsider—i.e. as somehow intruding, as someone not actually holding the world view—is a delicate matter. It is necessary to declare openly the intentions behind efforts of conjecturing, and to be explicit about the fact

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<sup>436</sup>The issue of conjecturing also points to the more general question of what is required—institutionally, economically etc.—to make public reasoning possible in the first place. See Rawls 2005, lvi-lvii for a list of institutional requirements for public reasoning, such as (1) public financing of elections and availability of information on matters of policy, (2) fair equality of opportunity, “especially in education and training” (Rawls 2005, lvii), (3) a decent distribution of income and wealth so that all citizens can “take intelligent and effective advantage of their basic freedoms” (ibid.), (4) a sense of long-term security and the opportunity for meaningful work, as well as “basic health care” (ibid.) assured to all citizens (see Langvatn 2013, 105-106 for a discussion). For Rawls, these are merely an “indication of institutions required for (...) stability” (Rawls 2005, lvii). However, these seem to be reasonable assumptions regarding the institutional background for citizens to be able to engage in public reasoning in good faith. Indeed, at least the first three points seem necessary “for deliberation to be possible and fruitful” (Rawls 2005, lvii) at all. Some might object that such an institutional setting goes far beyond what could be justified by, say, the principle of liberty. Even though I cannot pursue this question here, I think that Rawls gives a sensible answer to such concerns, one focusing on the required balance within political liberalism between the political values of liberty and equality: “[g]uaranteed liberties [as implied by a principle of liberty] taken alone are properly criticized as purely formal (...). By themselves they are an impoverished form of liberalism, indeed not liberalism at all but libertarianism (...). The latter does not combine liberty and equality in the way liberalism does; it lacks the criterion of reciprocity and allows excessive social economic inequalities as judged by that criterion” (Rawls 2005, lvi). Given this concern, it is questionable whether Chandran Kukathas’s view on liberalism as discussed above (see Section 3.2) is a version of political liberalism at all. It seems closer to libertarian stances.

that the world view with which one engages is not actually one's own.<sup>437</sup> Otherwise conjecturing, instead of fostering trust and civic friendship, might be seen as arrogance of those engaging in conjecturing, or as intruding and disrespectful. In such cases, efforts of conjecturing might promote "an atmosphere of cynicism, suspicion, and hostility" (Schwartzman 2011, 376) instead of civic friendship and confidence in the common polity.

Now, insisting on sincere political engagement raises several problems. The main problem is that a sincerity standard is open to several interpretations and might thus be understood in quite different ways. Different interpretations might disagree, for instance, on whether sincerity requires an endorsement of the conjectured views also within one's own outlook, or whether a declaration of non-endorsement is enough. Another sensible issue is the one of motivation. If an endorsement of conjectured views within one's own outlook is required, do citizens also have to be *motivated* by precisely those, presumably public, conjectured reasons?<sup>438</sup>

Even though these are tricky questions, we should hold on to an ethos of sincerity within the public reason requirement.<sup>439</sup> Such an ethos is required to safeguard that public reasoning fosters trust and civic friendship instead of suspicion and hostility. It is also open to various interpretations and conceptions of the sincerity standard. I think that we do not have to insist on any particular conception of sincerity, and what it requires.<sup>440</sup> What is important is that such an ethos is in place, and adequately taken into consideration, so that the aim of fostering civic friendship is pursued.

Still, let us have a closer look at what conceptions of sincerity need to account for. An ethos of sincerity requires from conjecturers at least to state clearly that they reason

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<sup>437</sup>See Rawls 1999, 156: "We must openly explain our intentions and state that we do not assert the premises from which we argue, but that we proceed as we do to clear up what we take to be a misunderstanding on others' part, and perhaps equally on ours." On the delicacy of conjecturing, see also Langvatn 2013, 275; March 2007; March 2009.

<sup>438</sup>See Schwartzman 2011, 376-377 on all these issues.

<sup>439</sup>As Sune Laegaard points out, an ethos is "something (...) a community shares", a "prevalent tone of sentiment" (Laegaard 2011, 81). As the discussion indicates, the ethos of sincerity is part of the duty of civility, and thus also of the broader democratic ethos of a well-ordered society. Interesting about such a "social ethos" is that it is concerned with a "certain manner of horizontal social interaction among ordinary people in civil society rather than a legalised vertical relationship between citizens and state or union" (Laegaard 2011, 82). Note that Laegaard is concerned with "multiculturalism as a non-institutional social ethos" (ibid.) in his discussion, and not with sincerity or a democratic ethos. I take it, however, that his points about a social ethos are also relevant regarding sincerity and democratic citizenship more generally. For an interesting discussion of the role of civility in a multicultural social ethos, see Laegaard 2011, 86-93.

<sup>440</sup>Similar to a reasonableness standard, the requirement of sincerity will, for instance, depend on concrete contexts.

from within a view that is alien to their own one, and that they do not support the premises from which they argue. Micah Schwartzman calls this the “principle of disclosure” (Schwartzman 2012, 530). Is such disclosure sufficient for sincere conjecturing? Arguably not. Disclosure of this kind is not enough for successful conjecturing because the arguments derived from conjecturing need to be *good* arguments from within the view with which the conjecturer engages.

Thus, argument A for a proposal on a weighty political matter P has to be a good argument for P from within the comprehensive view C from which one conjectures. That is, it has to be an argument that those holding C can actually accept as a good reason to embrace P. Conjecturing, so it seems, should not be about coming up with just any kind of far fetched and inadequate reason for P that one finds within C—otherwise “[j]ustification gives way to mere rhetoric (and perhaps cynicism)” (Gaus 1996, 139).<sup>441</sup>

Now, those engaging in conjecturing can arguably not be expected to embrace argument A as a good argument, since they reason from premises which they anyway do not assert. However, those engaging in conjecturing can be expected to sincerely believe that argument A is a good argument for those holding C. Of course, this is a tricky requirement, since there are considerable epistemic barriers that will make the judgment that A is actually a good argument from the point of view of C, very difficult. This also indicates that we can expect, from those who engage in conjecturing, to have considerable knowledge and sensibility regarding C.<sup>442</sup> Otherwise it will be hard to come up with arguments which one takes to be good arguments from within C, and to judge whether those actually holding C will share this view.

In order to take these issues into account, and to yield sufficiently sincere conjecturing, Schwartzman proposes a “principle of full disclosure”, holding that “reasoning from conjecture is sincere and non-manipulative if, and only if, conjecturers (i) disclose that they do not believe in the premises from which they argue, and (ii) disclose whether they believe their arguments are justifiable from within the comprehensive views of their intended audience” (Schwartzman 2012, 531). I take it that a principle of full

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<sup>441</sup>See also Schwartzman 2012, 530. Note that Gerald Gaus discusses a principle of sincerity for public justification more generally, not regarding conjecturing in particular. Still, the points made there apply to sincerity in conjecturing as well.

<sup>442</sup>As Langvatn says, “[i]n order to engage in reasoning from conjecture, one obviously needs a deep understanding of the traditions and doctrines one seeks to interpret. One should also build on the internal sources and relate to the on-going discussions within communities” (Langvatn 2013, 275).

disclosure is a way to reach sincere, and thus trust fostering, conjecturing.<sup>443</sup>

**Overdetermination** For conjecturing to be possible and successful, the two conditions of overdetermination and of translatability also have to hold. These conditions do not involve subjective and cognitive requirement from citizens, as the sincerity requirement, but rather objective conditions or states of affairs that enable conjecturing. Thus, if conjecturing is to be successful, the views subject to conjecturing have to be *overdetermined*. A view is overdetermined if there are several different and independent ways to reach and endorse this view. For instance, the belief that rituals are socially important is overdetermined, because there are different views, some religious and some secular, that hold such a belief regarding rituals.

Engaging in conjecturing is thus essentially the project of showing that certain values or beliefs within a view *C* are overdetermined, and to indicate how they might be compatible with, or even supportive of, democratic political principles. If there are no overdetermined values within a view, i.e. if views are utterly idiosyncratic, then reasoning from conjecture is likely to fail. In such a case, there is simply nothing to connect when conjecturing; no common moral-political ground can be established. This is, of course, a real possibility. We can imagine views that are not in the least compatible with each other, or even mutually exclusive, most of all if we deal with unreasonable views. (Weyermann 2011)

Consider, again, the Abolitionists' religious views against slavery. As Stephen Macedo holds, "many people's beliefs about why slavery is wrong will 'grow out of' or be 'rooted in' religious considerations. But the force of antislavery arguments does not depend upon adopting a particular religious point of view" (Macedo 1997, 25).<sup>444</sup> The reason

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<sup>443</sup>See, however, Schwartzman 2012, 531-534 for further concerns, where he discusses Audi's view that all kinds of reasons that do not move me "smack of manipulation" Audi 1989, 282. Two other major issues regarding conjecturing are the charge of "cultural imperialism" and of "epistemic authority" (Schwartzman 2012, Sections III and IV). The problem with cultural imperialism is that the conjecturers, usually, lack a commitment to the culture or view with which they engage, and this causes imperialist problems for an ethic of conjecturing (Schwartzman 2012, 535ff.). Those having concerns about imperialism might claim that interpretations of views should come from within a culture or view only. The problem of epistemic authority is that conjecturers might lack contextual authority to judge which interpretations are right. Even though these are real and important concerns regarding conjecturing, I take it that, also with the help of an adequate ethos of sincerity, they can be sidestepped more often than not.

<sup>444</sup>Macedo even alleges that "[a]t some level, virtually every moral argument could be said to grow out of, or originate in, a religious development or a dispute among theologians. (...) Many moral arguments also have long pedigrees, and no doubt many or most could be traced back to antecedents

why this is so is that the view that slavery is unjust and wrong, together with many other moral views as indicated by Macedo, are overdetermined. They are accessible to and embraced by many different religious and secular outlooks.

**Translation** The other condition mentioned for successful reasoning from conjecture is that views and values subject to conjecturing have to be *translatable*. Why? Suppose that certain values held by religious content shepherds, such as the value that preservation of nature is most important, are overdetermined. Thus, the value is also held by secular environmentalist groups, even though not in the religious idiom that content shepherds use. Now, even if the value is overdetermined, the shepherds might still insist that something essential is getting lost if the overdetermined value, i.e. the value of preserving nature as something most important, is detached from the shamanic religious view held by the shepherds. In that case, the value is taken to be untranslatable. If values are considered to untranslatable, however, then conjecturing seems likely to fail. If values of a comprehensive view cannot be translated in more public terms, or if they cannot be linked to more public views, then it is hard to see how conjecturing could proceed or succeed.<sup>445</sup>

The issue of translatability also crucially links to the issue of overdetermination. Thus, to be able to see whether views or values are overdetermined, it seems crucial that views and values can be put into different words and contexts. If translation is deemed impossible, or unacceptable because something essential might get lost through it, then reasoning from conjecture seems toothless. Of course, this is a real possibility. There are views that might resist efforts of conjecturing and of accommodation to an overlapping consensus on political values. However, the shepherds' attitude to insist on the

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that were embedded in theology. It was not that long ago that, for most people, religious and moral arguments were hardly distinguishable. The very principle of religious toleration, for example, is often said to have Protestant origins" (Macedo 1997, 25).

<sup>445</sup>It is interesting to note that the issue of translation is also involved in at least some postcolonial approaches to intercultural relations. Thus, it is sometimes claimed that intercultural relations rely on "the partial, imperfect and painstaking work of translation" (Iverson 2002, 46), and not on the search for a universally acceptable political framework. On this view, intercultural relations should not be about the search for a "Kant in every culture" (ibid.), but about intercultural dialog and translation. Postcolonial theorists of this strand thus propose translation as an alternative to the "philosophical project of identifying and justifying universal moral principles capable of gaining a cross cultural rational assent" (Iverson 2002, 47). The project underway here, on the other hand, aspires to incorporate translation within political liberalism as a way to foster cross-cultural understanding and consensus in a well-ordered constitutional democracy.

idiosyncrasy of their formulation of overdetermined normative grounds does not seem to fit basic expectations we can reasonably have towards democratic citizens.

Their isolationist attitude seems incompatible with basic premises of reciprocity and requirements for social cooperation. Democratic citizens should, arguably, seek fair terms of cooperation, and they should do so in a way that is respectful towards other citizens. In return, citizens can expect the same from fellow citizens. To fence off one's own views and values as completely unique and idiosyncratic does not seem compatible with these basic expectations of democratic citizenship. In short, it seems that we can expect from reasonable shepherds, *prima facie* at least, that they deem their views translatable in other terms, and are open to link their views to shared, public grounds. Otherwise a common political community with a deeply diverse citizenry, even when supplemented with the element of conjecturing, seems likely to fail.<sup>446</sup>

However, if there are overdetermined grounds, and if translation is deemed possible, then reasoning from conjecture seems a powerful tool to uncover common grounds on weighty political matters. In the case of religious content shepherds, their view that nature is holy can then be translated, or linked to, more widely shared political views on the importance and the value of nature for a political and social community. For another example, think of the religious views on the creation of human beings through God. Such a view can be linked, through conjecturing and translation, to the dignity of persons more generally (see Habermas 2009b, 116). Or think of the biblical story of the Good Samaritan. The story might underpin the normative belief of a religious person that we should help those in need, even if they are strangers and we do not like them—and that this is a moral-political requirement. This political view, however, is not only acceptable for Christians. The moral point of the biblical story can be translated in non-religious, or different religious, terms. A political requirement to help those in need could be based on a Kantian view on moral-political duties, or a consequentialist view

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<sup>446</sup>Note that the case of denying translatability is different from, and more grave than, the case where the shepherds deny that others actually hold the same, public reasons as they do. This was the case when content shepherds insisted on their interpretation of “nature” as “holy spirit” (see Section 5.3.2). This latter case is less grave because it is merely about how to understand “nature” more precisely, and thus a matter interpretation and not translation. We might simply ignore the issue of interpretation since reasons are actually shared, and we might hope that efforts at conjecturing that aim at showing that the reasons are actually shared, will erase the misunderstanding. The issue of translatability is different. To deny translatability is to deny that there can be a difference in interpretation in the first place. If translatability is denied, then there is no room for different interpretations. The issue of translatability thus raises different, and more fundamental, issues for an ethic of citizenship and conjecturing than insisting on the truth of one interpretation over another.

on right political action. In such a case, the political value in question will also appeal to non-religious persons. This holds because the moral point of the biblical story about the Samaritan, as well as many other religious normative beliefs, are overdetermined, translatable and thus also reachable on other than religious grounds.<sup>447</sup>

Let me thus briefly conclude on the issue of conjecturing. Given that certain views are overdetermined and translatable, and given that conjecturers follow the principle of full disclosure so that conjectures are sincere and respectful, conjecturing becomes possible and politically valuable. It becomes a compelling tool to foster common grounds among diverse comprehensive views. Conjecturing is able to make public reason strongly inclusionist, through allowing a very relaxed attitude towards religious views in political argument on weighty political matters, while remaining within a public reason requirement and upholding the duty of civility.

A few questions remain, however. Given a duty of civility with an element of conjecturing, religious persons might present purely religious grounds for a political cause—given that, at some point, sufficient public shared grounds are, or could be, uncovered for that cause. What, however, does “at some point” (or “in due course”) mean? And is it enough if they could be (but not actually are) uncovered by those who advocate a political cause on purely religious grounds? Also, do public reasons have to be presented and embraced by those arguing on weighty political matters themselves, or is it enough if this is done by other citizens for them (in their name)? These are the questions I now turn to.

### **When in Due Time Do Public Reasons Have to Be Presented?**

In order to test the limits of a strongly inclusionist view on the duty of civility, consider the case where religious content shepherds get acquainted with Liberation Theology<sup>448</sup>

<sup>447</sup>For more on the Samaritan story, see Rääkkä 2011, Section 3.1. Regarding the Samaritan story and other overdetermined religious beliefs it is important to note that “[i]t is a mistake to assume that if a non-religious person values the belief that we should help those in need, then she also should value the Samaritan story” (Rääkkä 2011, Section 3.1). This holds because, “[t]he acceptance of the belief that we should help those in need simply does not depend on the acceptance of the Samaritan story. This is so because the belief that we should help those in need is overdetermined, and accessible and acceptable on religious as well as non-religious grounds. It is quite plausible that people’s shared beliefs are valuable for them even when the beliefs are not presented together with their personal, for instance religious, normative views” (Rääkkä 2011, Section 3.1).

<sup>448</sup>Liberation Theology is an “important development in Christian theology” (Planas 1986, iv) of the 20th century. It is “ecumenical and spans many cultures, though rooted more particularly in the Latin American culture and in the Catholic context” (ibid.). Liberation Theology “brings forth

and start to believe that their shamanic Gods have a preference for the poor and that the polity under scrutiny has an obligation to eradicate poverty and the disparities of life opportunities in the world. Suppose, thus, that the following constitutional essential E is at stake: the polity should spend a high degree of its budget on poverty reduction in the world, until world-wide poverty is eradicated or has reached a certain low level.<sup>449</sup> Also suppose that the shepherds support this constitutional essential on religious grounds alone.

What does an inclusionist conception of the duty of civility require regarding the question of when public reasons should be presented? Arguably, the answer will depend greatly on the historical and social context, as well as on the degree of civic friendship and trust that one finds in a polity.

Let us assume that the society of shepherds with which we are dealing is a reasonably diverse society, with different ethnocultural groups and religions living on a common territory of the polity. The society also aspires to be well-ordered, and thus legitimate and just.<sup>450</sup> Under such conditions, given the widely disparate ways of living in different cultures and religions, civic trust among the diverse citizenry is arguably hard to come by. In order to sidestep the integrity charge and possible alienation of the shepherds from the common polity, the shepherds should thus be allowed to adhere and present their most important beliefs and reasons in political arguments on weighty political matters. Under such conditions, conjecturing might become a crucial tool to foster civic trust among deeply diverse views.

It thus seems adequate to allow religious content shepherds to present their case for the poverty eradication article E even if they have only religious reasons in its favour. Common grounds and public reason can then be fostered through translation and conjecturing.<sup>451</sup>

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a strong socio-political orientation" (Planas 1986, 3). It is, historically speaking, "a Third World response to the social and political conditions prevailing in Latin America" that operates within "a loose Marxist framework which serves, functionally, as a catalyst to religious and social ideas oriented toward structural and personal change" (ibid.).

<sup>449</sup>The case is taken from Eberle 2002, 112 and adapted to the example of content shepherds.

<sup>450</sup>It thus fits the aspirations and concessions of a middle-ground conception of political liberalism as discussed in Section 4.4.

<sup>451</sup>Note that the details of the example are relevant. Eberle explicitly chooses the example to make reference to religious grounds in political argument more appealing. In his view, much of the aversion of liberals against religious reasons in political argument is due to the repulsive cases and examples used when discussing religious reasons in politics—as in the case of anti-gay and anti same-sex marriage legislation (Eberle 2002, 112) Eberle attempts to unveil this bias with an example of

On a strongly inclusionist view, it seems enough that public reasons are presented sooner or later. On a strongly inclusionist view, “in due course” is thus understood as “sooner or later”. The extreme contrast to this view, i.e. a weakly inclusionist interpretation of the duty of civility, would hold that public reasons always have to be presented together with, or immediately after, controversial comprehensive views. Given the lurking alienation of religious persons, and to foster trust in political institutions among diverse religious and ethnocultural groups, such a weakly inclusionist interpretation of the proviso seems too demanding.

The important point is, at least on a strongly inclusionist view, that there will be sufficient public reasons at some point, sooner or later. Conjecturing is, then, a valuable tool to search for these required shared grounds. The element of conjecturing allows to be less demanding as to when public reasons should be presented. Conjecturing is one way to come by public reasons on a different route than the explicit statement of such reasons, and thus makes a lax interpretation of the proviso plausible.

The element of conjecturing thus allows for an interpretation of the duty of civility that is very accommodating to religious, and other, reasons in political argument on weighty political matters. Controversial comprehensive views can thus be presented at all times even without public reasons. But the public reason requirement still holds that, sooner or later, there should also be public reasons. At the very latest, then, public reasons should be presented before the decision on a weighty political matter is taken, and arguably soon enough for all to consider the public grounds in the political argument.

Also, civic trust seems best served if public reasons are presented and available rather sooner than later. It is thus wise, but not required, to reach public reasons—be it through interpretative efforts internal to a comprehensive view or through conjecturing efforts from outside—rather sooner than later (see Langvatn 2013, 272). Even though “later” will do as well to fulfill the public reason requirement.

It is important to underline, however, that the public reason requirement as such is

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a political argument based on political grounds that is not repulsive.

Also note that the requirements of respect and fostering civic trust still put important moral restrictions on the kind of reasons that should be presented in a strongly inclusionist as well as a permissive or open view. Thus, reasons that clearly disrespect—or, in Eberle’s terms, deny the dignity of—certain individuals or groups in the citizenry such as, say, reasons for the subjugation of one group by another, will still not be morally permissible. They do not live up to the requirement of respect within an ethic of citizenship. See Eberle’s last element of his permissive ethic of citizenship at Eberle 2002, 105 and the discussion above (Section 5.3.3).

not weakened, even if it is interpreted in this rather lax and accommodating way that allows for conjecturing to yield public reasons rather later than sooner. Thus, before a decision is taken, public reasons are still required. The duty of civility and the public reason requirement are therefore not substantially weakened.

In our case of religious content shepherds proposing the poverty eradication article E for the constitution of their polity, it is enough that the religious justification is supported through internal efforts of public reasoning or through external conjecturing. One way to show that poverty eradication can be linked to shared, public grounds is to conjecture that poverty eradication is, say, part of a view on justice that is strongly committed to political values such as the equal political, social and economic standing of democratic citizens. On a strongly inclusionist interpretation of a duty of civility, such a conjecture can come at any point, and thus also rather late in the decision-making process. However, it has to be there before the crucial discussion and decision on the constitutional article E takes place.

Let us, then, turn to the next issue. Is it enough that there exists, or could exist, such a conjecture? Or do religious content shepherds actually have to accept a conjecture establishing shared, public grounds?

### **Is It Enough That There Could Be Public Reasons?**

Can we, then, expect from religious content shepherds as reasonable citizens of a somewhat well-ordered constitutional democracy to *actually* hold public reasons for their political cause E? Can we expect from them that they should actually hold public reasons for their view, or is it enough that there are, or could be, such reasons available, for instance thorough efforts of conjecturing?

As Silje Langvatn points out, the view that it is enough that there would be common ground, or that there could be a conjecture establishing common ground, but that there is none that the content shepherds actually endorse seems insufficient from a point of view of a public reason requirement (see Langvatn 2013). After all, the shepherds are reasonable democratic citizens, and we can expect from them to engage with other citizens in a respectful way. Even though respect seems to require that the shepherds can refer to all their views in political arguments on weighty political matters, it also requires them to engage with other citizens, and to do so respectfully.

This means that public reasons should be endorsed within a comprehensive view

sooner or later. Thus, the case for the constitutional essential E has to be defended by the shepherds with actual reference (sooner or later) to political values and a conception of justice. This is, so it seems, part of what it means to be a reasonable citizen. One needs to *actually*, and not just potentially, engage in public justification and adhere to “basic ideas of a constitutional liberal democracy, like the idea about citizens as free and equal, and ideas that citizens should have equal political and social rights etc.” (Langvatn 2013, 96).

It is important, here, to be clear about the nature of the hypothetical twist in a political liberal enterprise. The public reason requirement states that citizens should present reasons that others *could* reasonably be expected to endorse. The hypothetical formulation is important in order to avoid complacent realism. Thus, political liberalism as understood here is not about actually finding reasons that all can accept living in the world we live in, but rather to address a restricted and idealized set of reasonable citizens. However, those idealized citizens seem to be required to *actually* uphold public reasons in public justification as to engage respectfully with other citizens. This, so it seems, is part of what it means to be reasonable: to respect others as free and equal, to engage in the search of fair terms of cooperation and thus to engage in public justification of these terms, as well as to actually accept public reasons justifying weighty political matters.

### **Can Public Reasons Be Presented by Others?**

Let me briefly consider three questions regarding the issue of *who* is required to present public reasons. (a) Can we leave the task of actually presenting public reasons for a weighty political cause to someone else? (b) Does the fact that other citizens reason from conjecture relieve, say, religious persons from presenting public reasons? And (c) can we expect from citizens to reason from conjecture in order to foster common moral-political ground?

Consider (a), the question of whether we can leave the task of presenting public reasons to someone else. In the case of religious content shepherds and the poverty eradication article E they propose, would it be enough that other citizens present a widely shared political rationale for such constitutional essential E?

The answer is yes if there is an actual, and sincere, commitment to these reasons also by the shepherds, even if they are not presented by themselves. Such a commitment

is possible even if the case for the constitutional essential is made by others in the political forum. Such a commitment to the public political rationale can, for instance, be made through the shepherds' declaration that the public reasons for the poverty eradication article E are sincerely endorsed.<sup>452</sup> In order to foster civic trust, the wider public arguably needs to know that there is this commitment. A declaration of adherence to public reasons for E makes this commitment clear.

However, the answer seems to be no if there is no such commitment to public reasons by religious content shepherds. This would mean to make a political argument for the poverty eradication article E based on political values without any involvement by the content shepherds. As indicated above, this does not seem to be enough for a reasonable engagement in the search of a common political framework among reasonable citizens. More is needed from reasonable democratic citizens to make a democracy work. Even though public reasons need not actively be searched for and presented by content shepherds, they at least need to declare their commitment to such shared grounds. As Langvatn puts it, “[i]nsofar as the ideal of public reason seeks to realize a constitutional democracy well-ordered by its public reason, and the idea of people as a collective sovereign, it seems necessary that all citizens actively participate in the deliberative process”. (Langvatn 2013, 97)<sup>453</sup>

How about (b)? Does the fact that certain citizens engage in conjecturing release religious content shepherds from presenting public reasons themselves? To answer this question, consider two ways of how to conceive of the duty of civility. One view conceives of this duty as collective, i.e. one held by the political community as a whole.<sup>454</sup> This is an interesting approach if we are interested in a “flexible and integrative” (Langvatn 2013, 99) way of interpreting the duty of civility. The duty is, then, somehow held collectively, and can thus be met by anyone within the political community who is able and willing to meet it. The problem with this view is, however, that it applies the reasonableness requirement too broadly on the whole political community instead of individual citizens. The aim of including religious content shepherds within an overlapping consensus on constitutional essentials in this way comes at a price. The price is that the involvement of the shepherds in decisions on weighty political matters no longer seems to matter

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<sup>452</sup>The sincerity requirement is necessary to rule out merely alleged and instrumental endorsements.

<sup>453</sup>With the weak requirement of declaring sincere adherence to public reasons, I present a rather modest interpretation of what “active participation” requires.

<sup>454</sup>See Langvatn 2013, 99 for a discussion of such a view.

anymore. A reasonableness standard should, however, apply to individual citizens as well, not only to a political community as a whole. Just as individual citizens can be expected to actually endorse public reasons, they should also be expected to be actually—and not only potentially—reasonable. This, after all, is a core requirement of what it means to be a citizen of full standing within a well-ordered constitutional democracy.

Also, the individual focus seems important in order to figure out what an ethic of citizenship requires horizontally among citizens.<sup>455</sup> An ethic of citizenship is essentially about what citizens owe each other, what we can expect from religious content shepherds as well as all the other citizens in their respectful and civic engagement in a common polity. This individual focus is crucially embedded in the principles of liberty and the liberal principle of legitimacy. These principles are about individual liberty, and about public justification to all individual points of view. The individual focus should not, in a political liberal project, be abandoned. The individualist moral-political commitment is enshrined in its core principles.<sup>456</sup>

Still, burdens to search and present public reasons can be eased through the element of conjecturing, given that the conjectures are later declaredly endorsed by the shepherds themselves. Such a modest endorsement requirement, instead of a more demanding one that would require the shepherds to present and come up with public reasons themselves, seems enough for a strongly inclusionist interpretation of the duty of civility and the proviso.<sup>457</sup>

How about (c)? Can we expect from citizens to engage in conjecturing? Given that conjecturing is a valuable tool to foster common grounds and thus civic trust, engagement with other citizens' views seems desirable within a constitutional democracy. On the other hand, conjecturing is a time consuming and demanding task. Can we expect from

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<sup>455</sup>Langvatn speaks of the duty of civility as a “horizontal civic duty”, implying that it is one aimed at fellow citizens on the same level of the political hierarchy (see Langvatn 2013, 99).

<sup>456</sup>The individual focus is explicit in several formulations by Rawls as well. Thus, he sees citizens “as sharing equally in ultimate political power to exercise that power so that *each of them* can reasonably justify their political decisions to *each other*” (Rawls 2005, xlv; emphasis added). See Langvatn 2013, 99 for discussion and further references to Rawls’s view on the issue.

<sup>457</sup>There are still some tricky epistemological issues involved in knowing that the public reasons are actually, individually and sincerely endorsed by all religious content shepherds. Such epistemological issues regarding sincerity are, however, a problem for any sincerity or reasonableness standard. They are not particular problems of a strongly inclusionist view on the duty of civility. I will thus leave the issue aside here and assume that we can handle these tricky epistemological issues in a more detailed account of sincerity and reasonableness.

citizens to get acquainted with other comprehensive views and to figure out how they are, or could be, part of an overlapping consensus on constitutional essentials? Arguably, this is too demanding a requirement within an ethic of citizenship.

Jürgen Habermas, however, claims that “a liberal political culture can (...) expect, from (...) [its] citizens, to participate in efforts to translate relevant religious inputs into a publicly accessible language” (Habermas 2009b, 118).<sup>458</sup> Given that the burdens of engaging in conjecturing are considerable—just think of how time-consuming as well as cognitively and motivationally demanding it might be—a requirement to engage in conjecturing seem too demanding, or harsh, on democratic citizens. Even though it might often be wise to engage in conjecturing to foster a stable and trustful political culture, it seems overly demanding to morally require citizens to engage in such conjecturing.<sup>459</sup>

Even if a requirement for conjecturing might be overly demanding on individual democratic citizens, it might well be required from the broader public culture of a democracy. Schools, universities, the media and other relevant institutions or nonpublic associations might be encouraged or asked to engage in conjecturing efforts, and thus to further mutual understanding among a widely diverse citizenry.

Even if the point holds that a civic requirement for conjecturing is too demanding within a duty of civility, democratic citizens should at the very least be open to other views than their own, and be willing to engage in dialogue and exchange with other citizens holding different views (Habermas 2009a, 137). Otherwise, it is hard to see how a respectful deliberative democracy could work at all.<sup>460</sup>

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<sup>458</sup>The translation is mine. The original states: “Eine liberale politische Kultur kann sogar von den säkularisierten Bürgern erwarten, dass sie sich in Anstrengungen beteiligen, relevante Beiträge aus der religiösen in eine öffentlich zugängliche Sprache zu übersetzen.” (Ibid.) See also Habermas 2009a, 137-138 on this issue.

<sup>459</sup>This view might be qualified in certain contexts. Thus, there might be situations where conjecturing can be demanded from citizens, e.g. if a comprehensive view is so alienated from the common democratic culture that conjecturing is one of the last remaining ways to see whether the view is indeed able to participate in an overlapping consensus on basic political values.

<sup>460</sup>This intuition is also spelled out in Eberle’s permissive ethic of citizenship, requiring of a citizen to “[listen] to her compatriots’ evaluation of her reasons for her favored coercive policies with the intention to learn from them about the moral (im)propriety of those policies” (Eberle 2002, 105).

### **Concluding Remarks on a Strongly Inclusionist View on Religious Reasons in Political Argument**

Let me briefly conclude on the strongly inclusionist interpretation of a duty of civility as proposed here. The strongly inclusionist view aims at accommodating two different aspirations within a duty of civility. The first aspiration is to adequately live up to the public reason requirement. The second aspiration is to leave as much room as liberally possible for comprehensive views in political arguments on weighty political matters in order to avoid integrity charges and alienation of religious, and all other, citizens.

In order to spell out a conception of a duty of civility that allows one to mediate between these two aspirations, the element of reasoning from conjecturing is introduced. Conjecturing allows one to engage in argument from within other views, and to show how these views are part of an overlapping consensus on fundamental political values. The element of conjecturing is also able to ease certain burdens on religious persons that are imposed by a public reason requirement. Thus, public reasons can be presented rather late in political argument, and they can be presented by conjecturers instead of religious persons themselves. Even though, in the end, sufficient public reasons for weighty political matters have to be declaredly endorsed by those advocating the political cause.

Furthermore, conjecturing cannot in general be morally demanded from citizens, even though it might often be wise to engage in conjecturing to foster common ground on fundamental political matters. A democratic policy might, however, ask institutions or associations of the background culture to engage in conjecturing efforts, for instance universities and the media, to foster understanding and knowledge about different world views, religions and ethnocultural groups in the polity.

### **5.4 Conclusion**

Let me briefly sum up the main findings of this essay. As we have seen in the first Section, religious reasons lack justifying force because they are derived from a controversial comprehensive doctrine. Under conditions of reasonable pluralism with different religions and ethnocultural groups living side by side attempting to establish a common polity, these reasons will not be able to establish a publicly justified political framework.

Public reasons, on the other hand, are reasons that all reasonable citizens could rea-

sonably accept, and thus are apt to establish a publicly justified political framework. We saw that public reasons can be tracked through common sense knowledge as well as uncontroversial findings of science. A public reason requirement, furthermore, only holds within the political forum where discussions and decisions about weighty political matters, such as constitutional essentials and the basic social structure, take place.

In our search for an adequate interpretation of the duty of civility, we established two desiderata regarding that moral duty. The public reason requirement is assumed to be the moral-political core of a well-ordered constitutional democracy that aspires to be just and legitimate. The requirement to present public reasons is thus one of the core requirements of the duty of civility. However, the public reason requirement seems likely to alienate, among others, religious citizens from the common polity. Political liberalism should avoid the alienation of religious, as well as all other, citizens. It should instead aim at trust and civic friendship in order to secure a stable political order. The balance between the two desiderata—i.e. the public reason requirement and avoiding alienation of religious citizens—seems best accommodated through a strongly inclusionist interpretation of the duty of civility. A strongly inclusionist view is marked by a very accommodating interpretation of the proviso, requiring public reasons merely sooner or later. It also stresses the tool of reasoning from conjecture as a means to foster common grounds. It is also the element of conjecturing that allows for a lax interpretation of the proviso while upholding the public reason requirement.

On a strongly inclusionist interpretation of the duty of civility, religious reasons can be introduced at all times in political argument on weighty political matters, given that sooner or later there will also be sufficient public reasons establishing the political cause. Public reasons can thus be introduced late in the debate. Still, reasons should be presented so that an assessment of the reasons is possible by others before the decision on the weighty political matter is taken.

Sincere conjecturing is a way to establish links between certain comprehensive doctrines and shared public grounds. It is a way to engage with comprehensive doctrines that one does not endorse, that is as an outsider. The established links can be presented by conjecturers, and thus by others than those who actually hold the comprehensive view in question. In the end, however, those holding the comprehensive view in question also need to endorse the established public grounds as sufficient grounds to justify the weighty political matter they advocate. Given that many normative grounds within religious views are overdetermined and translatable into other religious or secular views,

conjecturing is a promising tool to further public reason among a diverse citizenry. It is thus also a way to foster trust, civic friendship and political stability in a reasonably pluralist polity.

## 6 Political Liberalism and the Moral-Political Foundations of Multiculturalism

As the discussion in my previous essay indicates, and as Gerald Gaus rightly points out, “the focus of political liberalism on reasons deriving from ‘comprehensive views’ indicates its preoccupation with the political implications of theistic religious disagreement” (Gaus 2003, 185). Indeed, political liberal discussions with their strong focus on religious matters seem strange in a European perspective, where forms of reasonable pluralism—other than religious pluralism—seem more pressing. The strong focus on religious matters is arguably due to the importance of these matters in the United States where political liberalism, in its contemporary form, was mainly developed and discussed.

To see the contrast between the European and US contexts, just consider the claims by national minorities in different parts of Europe (e.g. the Scots, Catalans, or Basques)<sup>461</sup> or social-political issues arising from immigration that are quite different on the two continents. Thus, Gerald Gaus adds that “[a] more general political liberalism—one suited to the modern condition of reasonable pluralism rather than simply its American manifestation of religious pluralism—would concern itself with disagreement arising from the plurality of reasonable beliefs in general” (Gaus 2003, 185).

The aim of this essay is such a broadening of the political liberal perspective. I hope to show that political liberalism can be more general in scope. It need not mainly concern itself with religious pluralism, but can accommodate further instances of reasonable pluralism, such as ethnocultural pluralism. It can also account for multicultural politics, i.e. the differential treatment of ethnocultural minorities in the form of minority rights or legal exemptions.<sup>462</sup>

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<sup>461</sup>See Section 2.1.2 for further discussion.

<sup>462</sup>Chandran Kukathas’s political liberal theory of multiculturalism seems to have the same aspiration, i.e. providing grounds to assess multiculturalism and the foundations of minority rights. However, Kukathas’s account differs fundamentally from a Rawlsian approach to political liberalism, and comes to very different results than those of the project taken underway here. See Section 3.2 for a discussion of Kukathas’s views.

The aim is also to see whether basic tenets of multicultural politics—as proposed by Will Kymlicka in his liberal theory of multiculturalism involving differential treatment for different ethnocultural groups through minority rights and legal exemptions—can be justified on political liberal grounds as they are spelled out here. I thus hope to indicate that many elements of Kymlicka’s comprehensive theory of multiculturalism can be based on more political liberal foundations.

In short, I aim at making a moral-political case for multiculturalism based on political liberal assumptions, instead of comprehensive liberal ones such as those chosen by Kymlicka. The case for minority rights of indigenous and national minorities presented here builds on many insights of his theory of minority rights, but aspires to side-step some of the graver problems that arise from the comprehensive liberal assumptions that underpin it.<sup>463</sup>

The main claim of this essay is that there are public reasons based on cultural considerations that can underpin public justifications of group-specific rights of indigenous and national minorities within a political liberal polity. This shows that political liberalism is apt to accommodate reasonable conceptions of ethnocultural justice, and that there are public cultural reasons that help to justify a minority rights regime. It also helps to find good political grounds to argue for group-specific right of indigenous and national minorities, as well as multicultural politics more generally.

In order to show this, I argue that certain cultural reasons are public reasons when issues of social justice are at stake. The case for this claim builds (i) on a certain sensible conception of cultures as “societal cultures”, (ii) on the cultural establishment view according to which a functioning polity necessarily establishes certain cultural features, and (iii) on considerations from self-respect that guarantee that the established cultural features correspond to the cultural features of the citizens concerned. With these basic building blocks, I hope to show that we can safeguard much of Will Kymlicka’s theory of minority rights from its controversial comprehensive underpinnings, and put it on more political liberal foundations.

The main question of this Chapter is thus: What role do cultural views play in public justifications of multicultural politics for indigenous and national minorities, i.e. differential treatment of such ethnocultural minorities in the form of minority rights and legal exemptions? In order to answer this question, I introduce the concept of cultural

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<sup>463</sup>See Chapter 2 for the discussion of some of these problems.

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reasons.<sup>464</sup> I argue that some cultural reasons are public and apt to figure in a political conception of ethnocultural justice that aspires to publicly justify a multicultural regime accommodating indigenous and national minorities.

Questions that will also be of interest along the way are: What are cultural reasons? How, if at all, are cultural reasons different from religious reasons? And how are political justifications based on cultural reasons different from political justifications based on religious reasons? Answers to these questions will be relevant in an argument for my claim that some cultural reasons are public reasons. That claim is, in turn, relevant to build a political conception of ethnocultural justice for the issues of indigenous and national minorities.

I am going to proceed as follows. In the first Section, I introduce and develop a conception of cultural reasons. I distinguish generic views on culture from a more technical and, for our purpose, more useful conception of culture, namely the view on cultures as “societal cultures”. This latter conception of culture is a rather thin one since it focuses merely on certain socio-cultural features such as language, territory, history, and traditional institutional practices, as politically relevant. It thus focuses on the common social structure of cultures, in contrast to rather thick conceptions of culture that focus on shared values, beliefs, or ways of life.

Linked to the view on culture adopted here, I introduce the cultural establishment view and discuss how political concerns relating to societal cultures are different from political concerns relating to religion. According to the cultural establishment view, certain cultural marks such as language, territory, history, and traditional institutional practices are necessary for a functioning constitutional democracy. These cultural marks are thus weighty political matters. In order to treat all citizens as free and equals, these cultural marks therefore need to be publicly justified. They are thus crucial for any conception of ethnocultural justice.

In the second Section I formulate and argue for my main claim. I argue that reasons referring to essential cultural marks of a functioning democracy, as covered by the cultural establishment view, are public reasons.<sup>465</sup> The cultural establishment view and

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<sup>464</sup>See also Section 3.3.2.

<sup>465</sup>Examples of such reasons are those referring to language issues (e.g. “laws and policies have to be drafted and passed in a certain language that citizens understand and appreciate”), territorial issues (e.g. “societal cultures such as indigenous and national minorities necessarily occupy and function within a given territory”), historical issues (e.g. “public institutions unavoidably promote views on different ethnocultural groups (their history, practices etc.)”), and institutional traditions

the view on public cultural reasons is, arguably, vindicated by common sense.

I also argue that self-respect, as a crucial primary good and a basic moral-political value of political liberalism, helps to establish why members of a societal culture have a right to *their* societal culture, and not just any societal culture.

In the third and last Section of the essay, I consider a last case of content shepherds, namely the case of “measles valuing content shepherds”. I consider whether and how such shepherds can build on public cultural reasons in their argument for an exemption from a policy that imposes a vaccination against measles on all citizens. I thus hope to indicate how an argument based on ethnocultural justice might look like for a *prima facie* right of measles valuing content shepherds to be exempt from an imposition of measles vaccination.<sup>466</sup>

Even though there are many and different kinds of minority rights<sup>467</sup>, the case of measles valuing shepherds indicates how political liberal arguments based on considerations of ethnocultural justice might be developed and employed also for other cases, at least when issues of language, territory, history and traditional institutional practices are at stake.

## 6.1 Cultural Reasons

The main claim of this essay is that there are public cultural reasons that help to justify a regime of minority rights. What, however, are cultural reasons? And are there any public cultural reasons? If so, then what makes them public? These are the guiding questions in this Section.

### 6.1.1 Generic Views on Culture

As we saw in our discussion of religious reasons (see Section 5.2), our conception of religious reasons will greatly depend on how we perceive of religion. Similarly, our view

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(e.g. “societal cultures have a rich background of institutional-political practices that bears on the citizens’ views on a wide range of particular political matters, as well as their views on the necessity and shape of political institutions as such.”).

<sup>466</sup>*Prima facie*, because this argument might be overruled by other weighty moral considerations. For instance, measles valuing shepherds working as nurses in hospitals might not have the same claim to the right in question than measles valuing shepherds living on an isolated territory, say an island, where only content shepherds opposing vaccination live.

<sup>467</sup>See e.g. Levy 1997, 25; Vitikainen 2013, 43 for a long list of different existing cultural rights and exemptions.

on culture will determine our view on cultural reasons.

As we have also seen (see Section 2.1.2), the term culture is notoriously broad. It is used to describe a wide range of social phenomena, from micro phenomena such as “coffee culture” to more macro phenomena such as “European culture” (see Kymlicka 1995, 18). Also, as Mark Risjord points out, there have been many ways of conceptualizing culture since the mid-twentieth century, so that in 1963 researchers put forward no less than 164 definitions of culture in the anthropological literature alone (Risjord 2012, 387).

Definitions of culture in this literature usually aspire to be rather encompassing. Thus, culture might be defined in terms of certain social traits (ideas, material objects, habits, texts) or, more generally, refer to certain norms, values, and beliefs as central elements of cultures (ibid.).<sup>468</sup>

On such and similar views on culture, most of our traits, norms, and beliefs are culturally marked. Thus, arguably almost any belief or reason we encounter in political argument would be culturally marked, and thus be a cultural reason—be it a religious view, an ethical theory, or metaphysical belief.<sup>469</sup> Such views on culture conceptualize culture as genuinely “pervasive”<sup>470</sup> or comprehensive. On such views, most—if not all—of our traits, values or beliefs are a result of our cultural background. Virtually all reasons we present, then, would be cultural reasons. The term “culture” thus becomes overly generic. Such a generic view on culture explains too much, namely everything about a person’s social traits, values or beliefs. In such a case, “culture” becomes an ominous label that is able to explain everything away. By explaining everything, the idea of culture is overly inflated and becomes uninteresting as an explanans.

Another main problem with such overly generic or pervasive views on culture is that they have the tendency to represent individuals, and mainly members of minorities or non-Western groups, “as driven by their culture and compelled by cultural dictates to

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<sup>468</sup>Risjord points out that some more contemporary theories focus rather on cognitive psychological traits or on “integrated patterns of human response” (Risjord 2012, 388). For a discussion on different definitions of culture, see Risjord 2012 in general.

<sup>469</sup>Such a view on religion as an element of a culture seems, for instance, to be held by Ricardo Planas when he holds that “[r]eligion is the cultural expression of a faith or a set of beliefs shared by many” (Planas 1986, 1).

<sup>470</sup>See Margalit 1990, 443–444 for Avishai Margalit’s and Joseph Raz’s account of culture in this vein. More precisely they dwell on national cultures, or peoples, and describe them as having “pervasive cultures”, where the member’s “identity is determined at least in part by their culture” (Margalit 1990, 444). Such cultures, they go on, “possess cultural traditions that penetrate beyond a single or a few areas of human life, and display themselves in a whole range of areas, including many which are of great importance for the well-being of individuals” (ibid.).

behave in particular ways” (Phillips 2007, 9).<sup>471</sup> In short, such generic conceptions of culture seem too thick and comprehensive.

Again, another problem with such an individual-agency-denying view of culture is that it represents culture falsely as a “homogenising reification” (Phillips 2007, 14), instead of something fluid, changing, and evolving. If such conceptions of culture are employed as the basis of political decisions and policy-making, then they might end up doing more harm than good. As Anne Phillips points out, under such premises “[m]ulticulturalism then appears not as a cultural liberator but as a cultural straightjacket forcing those described as members of a minority cultural group into a regime of authenticity, denying them the chance to cross cultural borders, borrow cultural influences, define and redefine themselves” (Phillips 2007, 14).

An example of such an attitude can be found in recent policies of European governments that, in order to protect women from forced marriages, banned marriages with overseas partners for anyone under the age of eighteen (or so). By doing so, these governments “operate on the (highly stereotypical) assumption that all parents from (...) [the relevant] cultural groups are coercive and all young women are submissive, and hence, that any marriage arranged with an overseas partner should be regarded as forced” (Phillips 2007, 14).

All this indicates that a more careful understanding of culture is needed. Not only to provide a better basis of concrete political decisions and multicultural policy making, but also more generally for a political liberal take on the foundations of multiculturalism.

What, then, could such a more adequate conception of culture be? How to conceive of cultures? A hint can be found in a further problem of generic or comprehensive conceptions of culture. Generic views on culture are not apt, so it seems, to account for more modern nation states and their democratic societies in terms of cultures. In modern nation states, very different religions, values, beliefs, ways of life and the like coexist within a national culture, governed and promoted by a nation state. Thus, it does not seem adequate to speak, say, of French culture in terms of a comprehensive conception of culture. Traits, norms, values, and beliefs are as diverse in France as in other Western democracies. A focus on shared traits, norms, values and beliefs does not adequately describe modern national cultures as we know them.

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<sup>471</sup>Phillips continues: “Culture is now widely employed in a discourse that denies human agency, defining individuals through their culture, and treating culture as the explanation for virtually everything they say or do.” (Ibid.)

Similarly, the generic view on culture does not adequately capture what is at stake when minority nations or indigenous peoples claim national or collective self-determination or a right to cultural integrity. In these cases, as in the case of more modern nation states, a reference to a common generic culture consisting of shared values and beliefs seems inadequate. In the case of minority nations and indigenous minorities, it is other cultural features that are relevant for political claims to self-determination. Cultural features that seem more politically relevant are, for instance, the use of a language, the sharing of and authority over a territory, or the recognition of a common history that establishes a sense of common belonging and solidarity.

For a political liberalism, the focus on cultural features that are *politically* relevant is crucial. The challenge is thus the following: How to conceptualize culture so that it focuses on matters that are relevant for considerations of justice, without relying on a thick or pervasive view on culture as proposed in generic views on culture? Are there thinner, and more political, conceptions of culture? I take it that Will Kymlicka's more technical view on cultures as societal cultures lives up to such a desideratum regarding a more political conception of culture.

Before we turn to Kymlicka's account of societal culture, let us briefly consider the role of reasons derived from a generic view on culture when it comes to political argument. If we adopt a generic view on culture, then virtually all reasons we present would be comprehensive, cultural reasons. On the strongly inclusionist interpretation of the public reason requirement adopted here, citizens can rely on all of these cultural reasons in political argument given that there are also, sooner or later, public reasons that members of other cultures can reasonably accept.<sup>472</sup> As we have seen, these reasons might come about through translation and conjecturing. On the generic view of culture, then, cultural reasons are just another instance of comprehensive reasons. They are thus similar to religious reasons, or reasons derived from comprehensive ethical and metaphysical views.

### 6.1.2 A Technical View on Culture: Cultures as Societal Cultures

As indicated in the discussion of the generic view on culture, a main strand of criticism against multiculturalism takes issue with the ambiguous and contestable use of the term

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<sup>472</sup>On the strongly inclusionist interpretation of the duty of civility, see Section 5.3.4.

“culture”.<sup>473</sup> In order to side-step such criticism, it is worthwhile to be more precise regarding the aspects of culture that are politically relevant or interesting. Given our political liberal aspirations, we should be concerned with aspects of culture that are of fundamental political relevance, touching on constitutional essentials and social justice.

Will Kymlicka’s more technical view on cultures as societal cultures arguably lives up to such aspirations. It focuses on a certain limited range of societal features of cultures—such as language, territory, a common sense of history, and traditional institutional practices. Societal cultures are thus marked by a common language, a tendency to be territorially united, a common history, as well as a set of institutional practices that are more or less complete, i.e. covering most relevant private and public issues through “social, educational, economic, and political institutions” (Kymlicka 1995, 78, for an overview see 76-78). These socio-cultural features touch on questions regarding the basic social structure. They thus touch on fundamental political matters and issues of justice.

The conception of societal culture does not focus on common shared values or beliefs as cultural markers. It merely focuses on a common social structure. Societal cultures are thus cultures “in some ‘disembodied’ sense” (Festenstein 2005, 19). The conception of societal culture focuses on aspects of cultures that are relevant, and arguably even vital, for a functioning and modern pluralist democracy. However, it also highlights cultural aspects that are prominent in many political claims of minority nations or indigenous minorities in modern constitutional democracies.<sup>474</sup> Such claims are claims to organize

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<sup>473</sup>Anne Phillips, who is primarily interested in feminist concerns about multiculturalism, points out that it was necessary “to step back from the supposed tension between the rights of women and the rights of cultures” and to instead begin with an objection to multiculturalism that “strikes deep at the heart of the multicultural project” (Phillips 2007, 14). This objection takes “issue with the notion of culture itself, representing it as a falsely homogenising reification” (Phillips 2007, 14).

<sup>474</sup>The conception of societal culture is thus apt to describe relevant political elements not only of modern democratic states but, arguably, also of many traditional societies—such as “tribes” and “chiefdoms” (see Diamond 2012, 14 and 16-18 on the characterization of different types of traditional societies). It is apt to do so because it focuses on certain basic social features that are, arguably, shared by most societies, be they traditional or modern. Given that societal cultures correspond to what we might describe as “peoples” or “nations”, the view that traditional societies often also are societal cultures is supported by Jared Diamond’s view that “traditional societies (...) behaved like tiny nations” (Diamond 2012, 75). Many of them maintained, according to Diamond, “their own territory or core areas (...) and in some cases delineated, defended, and patrolled boundaries as rigorously as do modern nations” (ibid.). Similarly, issues of a common language and common institutional practices are arguably crucial to many traditional communities too. For an opposing view, holding that societal cultures “did not always exist” and that “their creation is intimately linked with the process of modernization”, see Kymlicka 1995, 76. Even though there is much to say

a polity in a community's own language or vernacular, claims to sovereignty and self-determination over a certain territory, claims to an adequate depiction of history (such as that in official documents, schools, policy making and funding decisions) or claims to uphold certain traditional institutional practices.

### **Contexts of Choice, Functional States, and Cultural Establishment**

Three features of societal cultures seem most relevant when it comes to political issues of social justice. First of all, as Will Kymlicka points out, societal cultures provide a “shared vocabulary of tradition and convention” (Kymlicka 1995, 77) for its members. They are thus crucial in establishing social bonds and social meaning. According to Kymlicka, it is a societal culture that “provides a meaningful context of choice for people” (Kymlicka 1995, 93). In Kymlicka's comprehensive liberal argument for multiculturalism that is strongly based on the value of individual autonomy, this aspect of societal cultures as context of choice is most important. In Kymlicka's view, it is societal cultures that are the cultural context “in which people are enabled to develop as autonomous beings” (Phillips 2007, 105) and within which they make choices and live their autonomous lives.<sup>475</sup>

Now, as political liberals we cannot refer to the controversial liberal value of individual autonomy as the only rationale for the political importance of societal cultures for citizens. Instead of a controversial liberal value such as individual autonomy, we need to find less controversial, political grounds for the relevance of societal cultures. Such political grounds can be found in a second important feature of societal cultures. This second, politically relevant feature of societal cultures is that societal cultures are crucial for the functioning of modern democratic states as well as, arguably, also for many traditional societies. It is the context of a societal culture—displaying a common language, territorial proximity, a sense of common history, and shared institutional practices—that enables and facilitates a shared social, economic, and political engagement with fellow

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in favour of societal structures of many traditional societies, not much depends on taking a stand on this issue here. We can simply concede that the investigation underway here is concerned with the modern condition, and thus a world consisting of nation states with social and economic features of societal cultures as we more or less know them. In such a world, there should be room for traditional societies as well, such as the community of content shepherds. However, this is compatible with the concession, or fact, that the general background conditions of our polity are generally modern in character. It is, then, this background in front of which indigenous and national minorities formulate their political claims.

<sup>475</sup>See Section 2.1.3 for further discussion of Kymlicka's views.

citizens. Through that feature, societal cultures are arguably also a major issue in fostering civic friendship and political stability. Call this thesis about the importance of societal culture for functioning political communities the *functionality thesis*.<sup>476</sup>

Kymlicka himself seems to restrict the functionality thesis to “a modern economy, with its need for a mobile, educated, and literate work-force” (Kymlicka 1995, 77). However, he adds two other reasons why polities need the diffusion of a common societal culture throughout society. Thus, the “need for a high level of solidarity within modern states” (Kymlicka 1995, 77) as required for a functioning welfare state. Arguably, such solidarity is fostered by a sense of common membership in a societal culture. I take it, therefore, that such a sense of common membership in a societal culture promotes civic friendship.

Furthermore, a common societal culture seems required by “the modern commitment to equality of opportunity” (ibid.). Standardized public education, for instance, seems crucial to guaranteed equal access to institutions and opportunities (jobs, public services etc.) amongst a highly diverse citizenry. I take it, thus, that all the aspects mentioned by Kymlicka—i.e. economic functioning, solidarity and civic friendship as well as equality of opportunity—are all crucial elements of a functioning democratic polity.<sup>477</sup>

In what follows, I will thus take the functionality thesis to cover the following domains of a functioning democratic polity: (i) economic, social (including education) and political functionality; (ii) civic friendship, or the “ties that bind” (see Kymlicka 1995, Chapter 9) among a diverse citizenry; and (iii) equality of opportunity as an aspect of social justice.

Note that the societal-cultures-as-contexts-of-choice-view fits nicely with the functionality thesis. Thus, to be able to make socially meaningful choices and decisions (about education, work, family and the like) requires not just a societal culture as the cultural context of these choices but also a functioning, as well as stable, polity. An element of a functioning polity is, for instance, that people can communicate with one another for political, educational or economic purposes—and thus engage in meaningful social interaction—in a shared language. Another element is that a citizen’s choices make

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<sup>476</sup>See Kymlicka 1995, 77 and e.g. Festenstein 2005, 19 for discussion and further references concerning the functionality thesis.

<sup>477</sup>The list of important contributions of societal cultures to a functioning constitutional democracy is, arguably, not exhausted here. Still, it should be enough to establish the plausibility of the functionality thesis. Furthermore, societal cultures are also crucial regarding other social, educational and political issues arising in a stable and well-ordered constitutional democracy (e.g. regarding the functioning of the media, of courts, and of meaningful public deliberation). I do not investigate these issues further here.

sense in the polity in which she lives. Such socially meaningful choices and decisions are choices and decisions that are understood by others, and that fit the broader political-institutional setting that administers them. That choices and decisions by citizens are socially meaningful is thus one crucial element of a functioning polity.<sup>478</sup> The societal-cultures-as-contexts-of-choice-view is thus of political relevance because a meaningful context of choice for citizens is part of what it means to have a functioning polity.

The third politically relevant feature of societal cultures can be mined from the functionality thesis. Thus, if we accept that societal cultures are necessary for a functioning, modern constitutional democracy, then a polity arguably cannot help but to, at least partly, establish a societal culture (or several societal cultures). The functionality thesis thus underpins the claim that modern, constitutional, democratic states, as we more or less know them, necessarily bear cultural marks, such as being administered in a certain language, establishing certain boundaries and subunits, favouring certain public holidays, state symbols or history syllabi in schools. As Kymlicka puts it, “states cannot help but give at least partial establishment to a culture” (Kymlicka 1995, 111), at least if it is to be functional in the sense indicated above. Call this thesis that states necessarily bear cultural marks, if they are to be functional, *cultural establishment view*.<sup>479</sup>

A few remarks are in order. First, note that the cultural establishment view can also stand without being backed up by the functionality thesis. However, the claim that cultural establishment is necessary for a *functioning* democratic polity is weaker, and arguably more plausible, than the claim that cultural establishment is necessary for any kind of democratic polity, functioning or not. The political function of societal

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<sup>478</sup>Just think, for example, of the decision which profession to learn. The choice to become a blacksmith, or an electronic engineer, or a teacher will greatly depend on the societal cultural conditions within which such a choice is made. Some choices might not make any sense in a given societal culture with its political-institutional framework, for instance because certain professions do not exist there, or because they are outdated nowadays. Thus, certain professions that were abundant, say, in societies dominated by rural agriculture have been extinct since the Industrial Revolution. Similar issues of social meaningfulness are at stake when it comes to choices about marriage (who can marry whom in a given political framework? Think of the issue of gay marriage) or family (family policies and laws).

<sup>479</sup>As Matthew Festenstein holds, “the starting point of much current writing on the political theory of cultural diversity is the sense that states are not neutral containers for whatever homogeneity or diversity is displayed by their populations, but unevenly accommodate, tolerate and promote different cultural identities, through those institutions (...) [that are] central to societal cultures” (Festenstein 2005, 22-23). The view on states as, necessarily, culturally partial thus lies at the core of the establishment thesis presented here. For a discussion of the establishment thesis and further references thereon, see Song 2007, 61-67.

cultures and of cultural establishment is an interesting and important political matter. Second, note that the claim that cultural establishment is necessary, or unavoidable, for a functioning democratic polity is very strong, and might indeed turn out to be too strong. There might, after all, be ways in a more cosmopolitan spirit to build a functioning democratic polity without establishing societal cultural features.

Thus, we can imagine a political world that is not based on nation states, but on other forms of political organization even though nation states are dominant in the world in which we live. Seyla Benhabib, for instance, asks “What lies beyond the nation-state?” (Benhabib 2002, Chapter 7) and, as a possible alternative to citizenship within a nation state, hints at a Kantian version of “cosmopolitan citizenship”<sup>480</sup>. Such an alternative indicates ways to conceptualize states and citizenship beyond the model of nation states and established societal cultures.

However, even a main classic advocate of cosmopolitanism such as Immanuel Kant holds that a cosmopolitan world government, as opposed to a world federation, would mean “soulless despotism” (Benhabib 2002, 183). Thus, cosmopolitanism should be realized through a federation of more bounded “individual republics” (ibid.) and political communities (such as, say, societal cultures) and not through a single world government.<sup>481</sup>

In the face of such challenges, Iris Marion Young tries to safeguard political claims to self-determination of certain cultural groups, such as indigenous minorities, by “rejecting the idea of a nation while affirming that of a distinct people”, and relying on a “relational social ontology” rather than the essentialism that is typical of nationalism (Young 2000, 252).<sup>482</sup>

As Kwame Appiah puts it, a “nation (...) is an ‘imagined community’ ” (Appiah 2005, 244).<sup>483</sup> In his view, “[i]f nationals are bound together, it is (...), on the Roman model, by language, law, and literature, and if they share an experience of events, it is not in propria persona, but through their shared exposure to narrations of those events”, for instance “in the national histories taught in modern national schools” (Appiah 2005,

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<sup>480</sup>See Benhabib 2002, 183-184.

<sup>481</sup>See Benhabib 2002, 183-184 for discussion, and Kant 1777, 102. For another interesting approach along these lines see Kukathas 2003 (discussed in Section 3.2) who also challenges the assumption of nation states as a default position in political theory and, instead, conceives of political communities as mere associations amongst others (Kukathas 2003, 171-175).

<sup>482</sup>See also Appiah 2005, 244-245 for a similar view on nations.

<sup>483</sup>For a definition of nations as “imaginary [communities]”, see also Tamir 1993, 8; Anderson 1983.

245).<sup>484</sup> How, then, are nations or societal cultures politically relevant on a view such as Young's or Appiah's? Appiah holds that "the reason nations matter is that they matter to *individuals*" (Appiah 2005, 245, emphasis in the original).

Now, a view on nations or peoples as societal cultures along Kymlicka's lines is arguably compatible with an approach that conceives of nations as relational or narratively constructed. If people recognize themselves and others as members of imagined communities such as a societal culture (or people, or nation) through "family resemblance" (Young 2000, 252), then no heavy ontological assumptions about the essence of such groups need to be made.<sup>485</sup> In such a case, nothing hinges on an essentialist nationalism to define membership in a societal culture, but rather, as suggested by Young and Appiah, social relations, narratives and individual ascriptions.<sup>486</sup>

In short, thinking about nations and societal cultures does not commit us to an essentialist ontology.<sup>487</sup> Membership in a societal culture can be conceived of in more individualized, relational and political terms as well. Thus, societal cultures can be conceived of as a relational matter that binds individuals together regarding issues that

<sup>484</sup>I take it that Kymlicka's account of societal cultures is congenial to Kwame Appiah's account of nations, and that they roughly cover the same issues of language, institutional practices ("law" in Appiah's list) and history ("literature" and "narrations of events" in Appiah's list), with the exemption of territory.

<sup>485</sup>Yael Tamir relies on the idea of family resemblance in her definition of nations, since "all attempts to single out a particular set of objective features—be it a common history, collective destiny, language, religion, territory, climate, race, ethnicity—as necessary and sufficient for the definition of a nation have ended in failure" (Tamir 1993, 65). She thus suggests that "[a] nation could (...) be understood as a cluster concept, that is, in order to count as a nation a group has to have a 'sufficient number' of certain characteristics. Although they do not necessarily share the same set of identifying features, all members within the category 'nation' will, therefore, show some family resemblance" (Tamir 1993, 65). Tamir concludes that "[o]nly one factor is necessary, although not sufficient, for a group to be defined as a nation—the existence of national consciousness" (ibid.). Societal culture too can be understood as a "cluster concept", where the listed elements of societal cultures might be more or less shared among different societal cultures. Family resemblance is, in the end, arguably the crucial matter in a decision whether we deal with a societal culture or not.

<sup>486</sup>For a more thorough discussion of the problem of membership in cultural groups and ascription thereof, see e.g. Vitikainen 2013, 104-114, Chapter 4, 370-371.

<sup>487</sup>The problem remains, however, that citizens who imagine their, say, national community might still do so in essentialist terms (thanks to Sune Laegaard for pointing this out). However, the fact that there might be citizens who imagine their membership in a societal culture in essentialist terms does not seem to cause any grave problems for our political theory; the important point is that our moral-political view is not committed to any such contestable and controversial ontology of communities. If citizens do imagine and embrace membership in a community in essentialist terms, and at the same time are not fundamentalists regarding that view but instead remain open to other views on the nature of groups and group membership, this does not seem to cause any grave problems for a political liberal theory.

are relevant for the socio-political functioning of nation states in the world we live in, i.e. issues such as “language, historical connection with a territory, self-understanding as having a shared history”<sup>488</sup> (Young 2000, 253).

Given the points just made, we might weaken our cultural establishment view in an additional respect. Instead of claiming that cultural establishment is necessary or unavoidable for all functioning democratic polities, we can merely claim that cultural establishment is necessary for the functioning of a dominant way to organize states in the world we live in, namely nation states organized around one or several societal cultures. The claim that cultural establishment is necessary or unavoidable thus merely applies to instances of (i) functioning democratic polities and (ii) a socio-political world like ours that is organized around societal culture. This, then, is the proper focus of the arguments to come. They involve a considerable concession to facts about the world in which we live.

### **The Limited Scope of a Focus on Societal Cultures: Indigenous and National Minorities**

As we have seen, a view on cultures as societal cultures has the advantage that it is congenial to a political liberal take on justice and legitimacy, since it avoids the reference to thick values and commitments such as particular ways of life, beliefs or religion. A further advantage of the idea of societal cultures is that it fits with the cultural establishment view. The conception of a societal culture focuses on those cultural aspects that are necessarily established in a functioning nation state, as suggested by the cultural establishment view. According to the cultural establishment view, it is mainly the aspects of a societal culture (i.e. language, territory, history, institutional practices) that are at stake when we talk about the issue of ethnocultural justice.

However, there is also a downside to the societal culture view. Thus, it seems that by focusing on societal cultures we are focusing only on a certain kind of ethnocultural diversity, namely one associated with indigenous minorities, such as the Saami in Finland, or national minorities, such as Scots or Welsh in the UK or the Catalans and Basques in

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<sup>488</sup>I choose this quotation from Young to indicate that she focuses on similar politically relevant aspects of cultures as Kymlicka does with his idea of societal cultures. The passage runs, more fully, as follows: “People experience themselves as sharing affinity with some and as distinct from others in many possible respects: language, historical connection with a territory, self-understanding as having a shared history. Some groups are distinct from one another in only some of these ways, while others are distinct from one another in all these respects” (Young 2000, 253).

Spain. This might be a shortcoming of the view presented here since it does not allow one to deal in any straightforward way with other possible instances of multiculturalism where other issues than language, territory, history or institutional practices are at stake. Immigration is the most pressing example at hand here.

The problem is thus that on the proposed view, only territorially concentrated and institutionally complete cultures matter. We lack an explanation why cultural groups that are not territorially concentrated—such as, say, the Sinti and Romanies minorities in Europe—or why cultures that are not institutionalized at all matter politically.<sup>489</sup> This problem seems, indeed, to be a corollary of the view on cultures as societal cultures. Note, however, that the limited scope of the view on culture and the arguments based on it does not exclude that there are *further relevant grounds* to show that these groups matter politically. These further grounds are merely not the focus of this thesis. In this thesis I only focus on the rights of indigenous and national minorities, i.e. on the most relevant minority instances of societal cultures. This focus is compatible with further theoretical endeavors to account also for other groups that are not societal cultures. Such endeavors even seem required for a more complete and thorough understanding of what cultural justice requires.<sup>490</sup>

A further issue that might be held against a view on cultures as societal cultures is the fact that the societal culture view is not sensitive to religious considerations. Thus, even though religious views are not covered by the cultural establishment view, i.e. it is claimed that states can function without bearing religious marks, religious views often play an important role in multicultural politics in current Western democracies.<sup>491</sup> For instance, drug law exemptions in the case of Indian religious rituals, slaughtering law exceptions for orthodox Jews, and conscientious objection to military service are all important legal exemptions that are based on religious practices and membership.<sup>492</sup> As

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<sup>489</sup>Thanks to Sune Laegaard for pointing out this problem.

<sup>490</sup>Note that it is mainly the chosen focus on indigenous and national minorities, based on Kymlicka's distinctions and analysis of this particular instance of multiculturalism, that brings about the restriction to societal culture in my discussions as well as the particular view on ethnocultural justice it suggests. Even though much I have to say in this thesis touches on quite fundamental problems involved in multicultural politics, the main focus on indigenous and national minorities in my arguments should be kept in mind in order to make them more plausible and allow a *bona fide* reading of them. Thanks to Annamari Vitikainen for pressing me to be more explicit regarding this point.

<sup>491</sup>For an opposing view on the political role of religion compare Jean-Jacques Rousseau's proposition to establish a "civil religion" (Rousseau 2004, Book IV, Chapter 8) to make a polity more harmonious and stable. For a discussion, see e.g. Kymlicka 2007, 344; Nussbaum 2012, 216.

<sup>492</sup>In Switzerland, for instance, those who opt for a civil instead of a military service (compulsory for

far as the sketched view on ethnocultural justice, crucially linked to the cultural establishment view, goes these exemptions would not be matters of ethnocultural justice.<sup>493</sup>

Just a brief comment on this point. Take the issue of conscientious objection to, say, military service.<sup>494</sup> I take it that justifications for claiming exemption to be recruited to the army are not usually directly based on religious views or reasons (such as “I cannot go to the army because God says so” or the like), even though this is of course possible. Rather, justifications rely on arguably more public reasons that are based on more fundamental considerations of conscience (such as “No one should be forced to learn to fight and kill if this hurts some very fundamental and deeply held convictions of conscience”). Religious views are, then, taken to be a paradigm case of, or short-hand for, such fundamental and deeply held convictions of conscience.<sup>495</sup> It could thus be argued that the religious view or reason only indirectly, via some more public reason relating to a persons’ conscience, justifies exemption from military service.

### **Why is Cultural Establishment Necessary or Unavoidable?**

Let us now turn to some open questions about the cultural establishment view. Why exactly is the cultural establishment of a societal culture necessary, or unavoidable, for a functioning democratic nation state? The main reason seems to be that nation-building,

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all men over 18) have to state a justification of why they want to do so. In these justifications, only certain reasons are accepted, namely reasons relating to one’s conscientious objection to military service, for instance one’s opposition to violence and learning to kill (be they based on religious or ethical considerations). Other reasons—such as a rejection of the authority of the state, or concerns about the meaningfulness of military service or the individual benefit thereof—are not accepted. This case is interesting because the established requirements seem tailor-made to conscientious objections to military service based on religious grounds (such as respecting God’s creation, or following the Ten Commandments).

<sup>493</sup>This does of course not mean that they are not justified, or justifiable, on other grounds. For an overview on such grounds, see e.g. Seglow 2011.

<sup>494</sup>For a discussion of the general issue of conscientious objection, see e.g. Galeotti 2011. Anna Galeotti is asking whether there is “any place left for conscientious objection (CO) in liberal democracy” and, if there is, “which claims to CO may be accepted” (Galeotti 2011, 17). Emanuela Ceva asks “[w]hat types of minority claims is the appeal to conscious capable of conveying in a liberal democracy” (Ceva 2011, 32).

<sup>495</sup>In order to establish this short-hand, historical considerations will arguably be crucial. Thus, the sacrifice and hardships that many religious persons, such as martyrs or reformers, were ready to endure are often impressive and suggest deeply-held and fundamental convictions touching on a person’s moral integrity and deeply-held convictions. Also, religious views allow an easy assessment of the genuineness of such conscience-based claims, since “religious reasons are typically reasons that pertain to a group of people, and (...) we can (...) study the tradition, understand its debates” (Nussbaum 2008, 165).

i.e. the promotion of one or several societal cultures within a nation state, enables social, economic, and political interaction. It is, furthermore, an important basis of political goods such as civic friendship, political stability and equality of opportunity as a matter of social justice.

**Language** Consider the case of language. A common language enables common understanding and deliberation, as well as efficient communication. Social, economic, and political life, most of all in a deliberative democracy, seems impossible without a common, mainstream form of communication.<sup>496</sup> After all, work contracts, laws and administrative decisions have to be formulated in a certain language, just as teaching, policing, or social services need to be provided in a certain language. In a legitimate democracy, where most or all citizens are involved in social, economic and political interactions, citizens need the relevant language skills to understand these interactions. The easiest and most convenient way is to base these interactions on the language of a societal culture.<sup>497</sup>

The need for a common language is also linked to the required and desired participation of citizens in democratic debates and procedures. Thus, the issue of a specific common language in politics is intriguing because “[t]he average citizen only feels comfortable debating political issues in their own tongue” so that “we can expect (...) that the more political debate is conducted in the vernacular, the more participatory it will be” (Kymlicka 2001a, 213-214).<sup>498</sup>

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<sup>496</sup>Consider, in this regard, the dominance of Latin as a scientific language at European universities during many centuries, or the dominance of French in the early days of European diplomacy, or the role of English in our globalized world today. English has become a dominant way to communicate internationally. A globalized interaction seems to require, or is at least crucially supported by a common international standard way of communicating.

<sup>497</sup>Note that this is not just a purely pragmatic argument for the use of a certain language in public, political life. Even though there is a pragmatic side to it, holding that it is simply the easiest and most obvious solution to base social, economic, and political life on a dominant language of a territory, there are also morally more important issues at stake. I will present a stronger argument to be ruled in one’s own language on the primary good of self-respect below (see Section 6.2). There is also the politically important link between language and equality of opportunity. For a discussion of this link, see e.g. Barry 2001, 103; Lagerspetz 1998, Section 3; Kymlicka 2003a. As Eerik Lagerspetz points out, established languages raise the issue of language rights, and thus justice: “[B]y recognizing some languages as official languages, the state (re)distributes burdens and benefits among its citizens. The task of language rights is to guarantee that these burdens are not distributed in a too unequal way.” (Lagerspetz 1998, 181)

<sup>498</sup>Kymlicka also states that “[t]he evidence from Europe suggests that linguistic differences remain an obstacle to the development of a genuine ‘public opinion’ ” (ibid.).

**Territory** Territorial issues are important since spatial proximity of citizens seems crucial for a common political project. Such proximity is, arguably, a main reason why common political projects got under way in the first place. As Kukathas notes, “a political community generally has a territorial base” (Kukathas 2003, 173). It is usually among those living together, within a shared space, that solutions to political matters need to be found. Political matters include questions such as how to establish fair social cooperation and how to deal with the scarcity of resources. Also, traditional links to a territory are essential to some societal cultures, for instance to certain indigenous peoples. Thus, for many indigenous peoples their way of life is “attached to a particular region, territory, or hunting and fishing domain” (Benhabib 2002, 185).<sup>499</sup>

**History** A view on the common history of a political community, as taught in schools and promoted through public holidays and celebrations (such as Independence Days), arguably promotes ties that bind among citizens also under conditions of reasonable pluralism and different interpretations of the collective history of a societal culture. As Kymlicka points out, a common binding tie in “culturally diverse countries like the United States or Switzerland” is usually a view on “certain historical achievements (e.g. the founding of the American Republic)” (Kymlicka 1995, 189), or the political institutions of direct democracy, federalism, and military neutrality in Switzerland (see Linder 1999; Vatter 1999; Gabriel 1999, 40-46).<sup>500</sup>

To teach and critically discuss the history of a polity and its political framework

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<sup>499</sup>Seyla Benhabib, explicitly following Will Kymlicka in this regard, thus advocates “certain land, language, and representation rights for indigenous populations” (Benhabib 2002, 185). The arguments in this essay are supposed to support this claim. For a general discussion of the territorial dimension of self-determination, see Moore 1998. For an overview on political issues involved in indigenous minorities’ political claims around the globe, where territorial issues often are crucial, see e.g. Al Faruque 2004; Hendry 2005; Waldron 2007. For an overview on the case of the Saami in Northern Europe, see e.g. Brantenberg 1985; Beach 1994; Eide 2001; Minde 2001; Oskal 2001; Baer 2005. For an interesting discussion of the drawing of boundaries, the establishment of territories and different ways of land use amongst traditional societies in New Guinea, see Diamond 2012, 37-49.

<sup>500</sup>Note that the history of actual nation states is “saturated with invented traditions”, and that “nation-builders compulsively search for ‘ancestral origins’ (...), [and] cling to even the faintest testimony of historical continuity, and advance patently false claims locating the nation’s roots in a distant path” (Tamir 1993, 64). This is not the kind of sincere and critical engagement with the history of a polity as envisioned for a somewhat well-ordered constitutional democracy, organized around a societal culture, as discussed here. Admittedly, however, this rather ideological use of history has been, and still is, common in the construction of most current nation states. For further discussion of traditions and history in the construction of nations and nation-states as well as related issues, see Tamir 1993, 63-65; Hobsbawm 1983; Hobsbawm 1990.

and institutions can help, if done adequately, to create ties that bind citizens and their political community. Civic solidarity and friendship, as well as political stability, is thus supported.<sup>501</sup> Now, certain interpretations of the history of a societal culture or polity might alienate citizens from the polity rather than knot ties that bind. For instance, certain minorities might feel that their contribution to the collective history of a polity is not adequately taken into account in the history syllabi of schools. In such a case, a more balanced view on the collective history of a polity is called for. In order to bring such shortcomings to the fore, discussion and contestation of established views on history are important and fruitful.<sup>502</sup>

To establish ties that bind, not just any view on the history of a polity will do. Jeremy Waldron argues that remembering past injustices, and the lessons learned from them, are particularly intriguing. As he points out, history provides “a lesson about what it is like for people like us—human, all too human—to face real moral danger” (Waldron 1992, 5). Historic injustices in particular are, according to Waldron, important for the identity of groups and communities, and thus also for political communities and societal cultures. Waldron holds that the determination to remember past injustices

<sup>501</sup>As Jürgen Habermas points out, a self-critical “politics of memory” (“Gedächtnispolitik”) is a valuable tool to strengthen civic solidarity and allegiance to the German constitution, as the debates about the Holocaust in Germany indicate (Habermas 2009b, 111, my translation). The idea of a “constitutional patriotism”, as proposed by Habermas and others, is often thought to rely merely on a common commitment to a polity’s basic political framework or constitution, instead of any national sentiments, as the basis of civic solidarity. Habermas, however, states that “‘constitutional patriotism’ means that citizens embrace the principles of the constitution concretely from within the historical context of their particular national history” (Habermas 2009b, 111, my translation). This view is congenial to the view developed here, stressing the political relevance of the history of a political community, as well as the views thereon. On constitutional patriotism, see further e.g. Habermas 1990, 135-142; Müller 2007.

<sup>502</sup>Martha Nussbaum, in her elaboration of a patriotism that promotes “particular love [for a nation, or nation state] while not silencing the critical faculties” (Nussbaum 2012, 232-233) thus underlines the importance of figures such as Martin Luther King for an adequate historical-civic education in the USA (see Nussbaum 2012, 232-250). Also note that keeping track of the collective history of a group is, arguably, not particular to Western democracies. It can happen in written or oral form, and cover various amounts of time and space. For the Enga people for instance—“the largest language group in the Highlands of Papua New Guinea” (Diamond 2012, 479)—written history began only “with the arrival of literate Europeans in the 1930s” (ibid.). Before that, they kept track of historical events “through a body of historical traditions (termed *atone pii*) that they recognize as distinct from myths (termed *tindi pii*), and that got back 8 to 10 generations (250-400 years)” (Diamond 2012, 479). Jared Diamond also mentions Piraha Indians of Brazil who would refuse to discuss “anything that they had not seen with their own eyes” (ibid.). In this latter case, keeping track of one’s personal and collective history would obviously take radically different shape than in the case of the Enga, or Western societal cultures. Still, dealing with a community’s history seems widespread among many human societies, not only modern democratic ones.

“is bound up with the desire to sustain a specific character as a person or community against a background of infinite possibility” (ibid.). Remembrance, in other words, is important to persons and communities because they establish a sense of themselves “in terms of (...) [the] ability to identify the subject or agency of the present thinking [and acting] with that of certain acts and events that took place in the past” (Waldron 1992, 6). A view, or set of views, on collective history and on past injustices in particular thus seems important to political communities built around societal cultures because these views provide common narratives for citizens. They thus give a sense of being part of a larger political project or effort. This, arguably, establishes ties that bind citizens to their political community.<sup>503</sup> Historical narratives and views among citizens, particularly on past injustices, are important building blocks in the construction of a political community. Waldron even concludes that “[t]o neglect the historical record is to do violence” (ibid.) to a sense of personal or communal identity.

To see the importance of history to polities organized around societal cultures, it is illustrative to ask why modern democracies afford history departments at universities, or why they spend a considerable part of compulsory schooling time on teaching history.<sup>504</sup> There arguably are venerable arguments for the intrinsic value of knowledge and knowledge production, or the value of searching for truth. There are, however, also relevant political aspects about research into and teaching of history. A major function of historical research and knowledge in constitutional democracies seems to be to inform current citizens about the world they live in, how this world came about, what development it took, as well as how it could have turned out differently. As suggested above, the history of a political community seems to be important for the sense of citizens to share in a common political project organized around a societal culture. Furthermore, historical information and knowledge is important for informed deliberations and decisions of citizens in the democratic decision-making process.<sup>505</sup>

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<sup>503</sup>Note that this does not exclude critical discussion of a polity’s history and of past injustices, as in the case of, say, colonialism, forced assimilation of minorities or Nazism etc. On the contrary a critical, honest and thorough historical engagement with the collective past seems important to promote ties that bind.

<sup>504</sup>This question indicates that other cultural aspects taught in school, not merely history, might have a political relevance for establishing ties that bind. I will not pursue this issue here, but merely focus on history as a relevant part of the cultural establishment view. Still, Jürgen Habermas makes an important point when he states that “it is in the interest of the constitutional state to treat with care all cultural sources that underpin (...) the solidarity between citizens” (Habermas 2009b, 116, my translation).

<sup>505</sup>Rawls argues that the case for allocations of “great public resources to pure science” or, say, history

**Traditional Institutional Practices** Traditional institutional practices are important because they arguably play a crucial role for the social coordination of a group or community.<sup>506</sup> Traditional practices such as institutionalized property regimes, political decision-making procedures, ritual passages from childhood to adulthood, or marriage arrangements all keep “the costs of coordinating behavior to a minimum” (Barry 2001, 259). Thus, “each person knows what to expect from others and what are the expectations of others” (ibid.). Such established institutional practices can, thus, play a role in coordinating social life, and help to establish an institutional horizon in which individual choices and social expectations make sense. This is politically relevant. In this way, these institutional practices also contribute to the stability of a socio-political framework.

Traditional institutional practices, when reasonable, might also help to overcome indeterminacies in political debates and attempts to public justification. Thus, a particular traditional practice for, say, political decision-making in a societal culture might be the most obvious political choice for a citizenry in attempts to publicly justify political decision-making institutions. For instance, if a societal culture has a long tradition in direct democratic decision-making—as in ancient Athens, or in some communes in Switzerland—then such direct democratic decision-making procedures are a prominent option in attempts to publicly justify political decision-making procedures. This holds, at least, as long as the political decision-making procedure in question is reasonable. Traditional institutional practices might thus provide valuable options in attempts to publicly justify the basic political framework of a polity.<sup>507</sup>

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departments should not be argued “solely on the grounds that their study and practices realize certain great excellences of thought, imagination, and feeling” (Rawls 2003, 152). Such arguments arguably do have a perfectionist touch to them, since science is then promoted in order to reach the good of excellence in science as such. Instead, Rawls suggests that “it is far better to justify the use of public funds to support them by reference to political values” (ibid.). Rawls thus argues that funding museums “is certainly vital to the public political culture: to a society’s sense of itself and its history, and an awareness of its political tradition” (ibid.). Rawls also seems to claim, then, that the history as well as the traditional institutional practices of a societal culture are crucial for a polity and its public political culture. He also indicates that there are important political values underpinning the promotion of the citizens’ sense of their socio-political history.

<sup>506</sup>What are institutions? As Robert Audi indicates, “[w]e might conceive an institution as, very roughly, a historically established rule-governed social structure with a unifying purpose of a certain kind and some degree of autonomy” (Audi 2007, 84). The historical establishment is important because it “is the historical realizations in space and time that we have in mind when we ordinarily speak of institutions” (ibid.). I underline this historical aspect of institutions by focusing on *traditional* institutional practices. See Audi 2007, Section 4.1 and e.g. Lagerspetz 1995 for further discussion of the nature of institutions.

<sup>507</sup>As Jeffrey Stout points out, the normative commitments to which democratic citizens are committed

Note that the scope of relevant traditional institutional practices is explicitly narrow. Thus, it is only traditional institutional practices that bear on weighty political matters, such as constitutional essentials or the basic social structure, that are taken to be politically relevant. Without such a restriction, arguably anything might count as a cultural institutional practice. The focus here is, then, explicitly on socio-politically relevant institutional practices of societal cultures, not on any traditional practice. This fits the political liberal aspiration pursued in this thesis.

**Contestable Interpretations of Language, Territory, History and Traditional Institutional Practices** Of course, all issues relating to societal cultures—i.e. to language, territory, history and traditional institutional practices—can be the source of controversies and tensions rather than of unity and civic friendship. As Seyla Benhabib points out, national culture “is formed by the contested multiplicity of many traditions, narratives and historical appropriations” (Benhabib 2004, 120). Thus, views on history can diverge greatly within a societal culture. Different social groups, religions, or sexual minorities might have different views on, and evaluation of, the history of a polity organized around a societal culture. History therefore can be a “source of resentment and division between national groups, not a source of shared pride” (Kymlicka 1995, 189). Similarly, territorial claims and the distinction between languages are rarely precise or clear. They might be rather contested issues. Decisions on where dialects stop and new languages begin, for instance, are themselves a political issue. Also, territorial claims might overlap, or be driven by expansionist aspirations, and change dramatically over time. Just think of colonialism, or indeed the history of kingdoms and nation states in Europe and elsewhere more generally, and the many wars that were fought over territorial claims.

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evolve, i.e. “they are constantly in dispute, subject to revision, and not fully determinate” (Stout 2004, 5). Because of that, it is hard and unfruitful “to reduce them to a determinate system of rules and principles” (ibid.). Instead, because the normative commitments evolve, “we need the historical category of ‘tradition’ to bring them into focus” (ibid.). In Stout’s view, democracy thus “*is* a tradition. It inculcates certain habits of reasoning, certain attitudes towards deference and authority in political discussion, and love for certain goods and virtues (...)” (Stout 2004, 3, emphasis in the original). He also holds that “[t]he democratic practice of giving and asking for ethical reasons (...) is where the life of democracy principally resides” (Stout 2004, 6). I take it that Stout’s view on democracy is somewhat congenial to the view presented here. Stout too stresses the political importance of reasonable traditional institutions and practices for a democracy. He focuses, however, more on the “tradition of democratic reasoning, dispositions, and attitudes” (Stout 2004, 4) and not so much on institutional aspects. Both views might agree, however, that traditional (democratic) institutional practices are politically important for modern democracies.

Does the fact that the history and territory as well as other aspects of a societal culture are contestable, and that they can create social tensions, suggest that we should not rely on the conception of societal culture in political theorizing? To put it differently, does the idea of a societal culture unduly reify certain aspects of a cultural? One might hold that the understanding of culture adopted here is rather “static and preservationist”, and reduces cultures to “language and locates them in a specific geographic space” (Phillips 2007, 105).<sup>508</sup>

A first defense against the reification charge admits that we do not have to conceive of the elements of a societal culture—language, territory, history, institutional practices—as necessary and sufficient elements of a definition of culture. Rather, we can rely on the “family resemblance” amongst societal cultures to make out instances of societal cultures.<sup>509</sup> Also remember that the view on cultures as societal cultures is compatible with a view on nations, peoples or cultures as imagined communities and social constructs. In this regard, societal cultures might well be similar to social phenomena such as gender or money. Societal cultures thus admittedly depend heavily on nation-building efforts of states (see e.g. Kymlicka 1997, 28). They resemble, thus, “methodological fiction[s]” (Benhabib 2004, 120). The latter point, however, does not imply that they do not have any moral-political weight. Rather, it is because societal cultures are important for functioning constitutional democracies—i.e. cultural establishment is necessary and serves the functionality and stability of the polity—that they bear relevant moral-political weight.

Furthermore, in a world such as ours that is (still) organized along the lines of nation states, societal cultures remain politically relevant. Martha Nussbaum points out that the focus on nations or, in our terminology, societal cultures “is important, because the nation [or, in our terms, the nation state organized around a societal culture], in the modern world, is the central source of people’s rights and duties as citizens” (Nussbaum 2012, 219). Kymlicka also holds that minority nations and indigenous peoples, as societal cultures, are intriguing types of “ethnocultural pluralism in Western democracies” (Kymlicka 2001b, 57). To take their political claims and aspirations seriously, and to make “headway on these cases” (ibid.), seems morally important and urgent. An interesting and fruitful way to do so, in the world we live in, is to take their claims to be

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<sup>508</sup>See Benhabib 2002, 67 for a similar criticism along these lines. See also Benhabib 2004, 212 for a criticism of democratic theories that conflate an *ethnos* with the *demos*.

<sup>509</sup>See Section 6.1.2 above.

claims about upholding their own societal culture.

Many claims by indigenous and national minorities—to various degrees of self-determination, territorial autonomy, institutional recognition etc.—make sense, and are explicable, through a reference to their societal culture. The cultural establishment view and the functionality thesis, in turn, explain the political relevance of societal cultures. A claim to a certain territory by content shepherds, for instance, is politically relevant because (i) the territory is part of, and important for, their societal culture. It is also important because (ii) a claim to territory, or a certain degree of territorial autonomy, is unavoidable for upholding their own functioning, self-determined nation-state-like polity. In short, Kymlicka seems to be right that if there is a way to promote a “sense of solidarity and common purpose in a multination state, it will involve accommodating, rather than subordinating” (Kymlicka 2001b, 57) the membership in different societal cultures. Members of different societal cultures will arguably only “share an allegiance to the larger polity” (Kymlicka 2001b, 57) if their views are recognized and represented in the polity, rather than subordinated or marginalized.

A main point of this Section is to indicate that taking ethnocultural issues such as language, territory, history, institutional practices into account in political liberal theorizing is part of taking crucial aspects of the world we live in seriously. Taking issues of societal culture into account is to make relevant concessions to facts about the world we live in.<sup>510</sup> Note, however, that the claim here is not that we should accept the world of nation states as it is, with all its established borders and nation-building policies etc. It is merely to hold that we should take the phenomena of societal cultures seriously as a political issue. A main reason is that, by doing so, we can make good (liberal) sense of political claims by indigenous and national minorities.

To conclude, arguably all elements of a societal culture—i.e. language, territory, history and institutional practices—are crucial, or even unavoidable, for a functioning constitutional democracy in the world we live in. Establishing a societal culture seems to be an important ingredient for a functioning, nation-state-like polity. Such establishment allows for social, economic, and political interaction and it is crucial for civic friendship and the establishment of ties that bind amongst citizens. It therefore touches on issues of ethnocultural and social justice, such as equality of opportunity.

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<sup>510</sup>See Section 4.4.2 for a discussion of aspirations and concessions in political liberal theorizing.

## The Disanalogy Between Religion and Culture

A main corollary of the cultural establishment view is the disanalogy between the relevance of religion and culture for politics. Thus, a main difference or disanalogy between religion and culture in politics is that a functioning democratic polity can abstain from establishing a religion, as well as religious marks and symbols. Indeed, a basic tenet of the political liberal approach, favoring neutral political institutions and justifications, is that legitimate pluralist polities should abstain from establishing a religion, and that public justifications should not be based merely on religious reasons (see Chapter 5).

However, according to the cultural establishment view, a polity necessarily bears certain socio-cultural marks. For example, constitutional essentials will have to be elaborated in a certain language.<sup>511</sup> It thus matters politically what this language is, who is able to speak it and who is not. Also, at least in the world we live in, a polity most commonly covers a certain territory. A polity also inevitably has a certain history, and the views on the history of the polity amongst citizens are relevant and important when it comes to informed political decision-making, but also regarding the issue of fostering civic friendship and thus establishing civic ties that bind. Polities also usually have a more or less complete set of traditional institutional practices that cover private and public matters, such as family laws or a certain property regime. How these practices affect the basic social structure is crucial for political questions of justice and legitimacy.<sup>512</sup>

In short, the main disanalogy between religion and culture in politics is based on the view that a (nation-state-like) polity unavoidably establishes certain cultural features if it is to be functional. However, it can—and given the liberal principle of legitimacy also should—abstain from establishing a religion. Cultural establishment can happen explicitly, as in most current Western democracies establishing official languages, school curricula, public holidays etc. Or it can happen implicitly, as in the case of the USA with no officially established language, but where all aspects of public life are *de facto*

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<sup>511</sup>As Eerik Lagerspetz claims, “the analogy between religions and ‘ethnic’ identities [in Lagerspetz’s argument restricted to language issues] does not work, for the simple reason that the state is bound to recognize some languages, but not all, as official languages” (Lagerspetz 1998, 198). This arguably also holds for other ethnocultural features of a polity, as covered by the cultural establishment view.

<sup>512</sup>Brian Barry challenges, at least implicitly, the disanalogy between religion and cultural issues such as language. He holds that “the ancestral culture of ethnic French Quebecois could with equal authenticity have been defined in terms of adherence to the Roman Catholic Church [instead of sharing a common language and other cultural features]” (Barry 2001, 66). However, the cultural establishment view and the functionality thesis indicate that this is not the case. Cultural establishment is different from religious establishment, and raises issues of ethnocultural justice.

managed in English.<sup>513</sup> Another example of *de facto* cultural establishment is customary law, where certain practices gain legal force simply through being in place already.

## 6.2 Public Cultural Reasons, Self-Respect and The Case for Differential Treatment of Indigenous and National Minorities

Let us now turn to a crucial consequence of the cultural establishment view for a political liberal conception of ethnocultural justice, one that has been hinted at throughout the last Section. In this Section, I indicate how the cultural establishment view makes certain cultural issues concerns of social—or, more precisely, ethnocultural—justice. I will try to show this, first, by arguing that the cultural establishment view turns certain cultural reasons into public cultural reasons. Second, I argue that issues of cultural establishment are linked to the important political value of self-respect of citizens.

In a nutshell, the argument runs as follows. According to the cultural establishment view, societal cultural marks need to be established in a functioning, nation-state-like polity. Given that a polity covers different societal cultures, as in our example with content shepherds, these established societal cultural marks need to be publicly justified in order to treat all citizens as equals. In other words, established ethnocultural marks of a polity—such as official languages, official borders and subunits, views on history as purported in school curricula etc. and established traditional institutions—touch on issues of ethnocultural justice. Citizens have, furthermore, a right to their societal culture because it touches on an important social condition of self-respect of citizens. Let us now flesh out the argument in some more detail.

### 6.2.1 Public Cultural Reasons

Cultural reasons that are based on a rather generic view on culture are analogous to religious reasons. Religious reasons are based on religious views or claims. The religious view or claims are usually found in religious scriptures, such as the Bible, or conveyed by religious authorities. For example, the religious view that God should be worshiped on a certain week day gives us a religious reason why to worship God on a particular

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<sup>513</sup>There have, however, been recent efforts to establish English as the official language of the USA, see e.g. Zentella 1999, 158-159 and Hulse 2006. Some states of the US have more or less recently established English as their official language, for instance Arizona (see Combs 1999, 152 and Crawford 1990, 9).

week day. Similarly, cultural reasons based on a generic view on culture are based on cultural views or claims. The cultural views or claims are e.g. found in traditional cultural practices or expressed and explained by authorities of a cultural community. For example, the traditional cultural practice of going to the sauna on a certain evening during the week gives us a cultural reason why to go to the sauna on a particular week day and not another.

As indicated earlier, such religious and cultural reasons are not public. However, there arguably are certain cultural reasons that are public reasons. Why are, then, certain cultural reasons also public reasons? Reasons that are based on essential socio-cultural marks of a functioning liberal constitutional democracy—such as official language, territory, history, and traditional institutional practices as made out by the cultural establishment view—are, at least *prima facie*, public reasons because they are essential to a conception of ethnocultural justice. The necessary or unavoidable cultural features of a functioning democratic polity matter politically. These political features need to be taken into account, and publicly justified, in political argument on weighty political matters such as constitutional essential or the basic social structure. This is required in order to treat all citizens of different ethnocultural background respectfully, as free and equal.<sup>514</sup> As Eerik Lagerspetz rightly observes regarding language:

*“There is no policy of equal treatment of all linguistic groups (except, of course, when the society just happens to be linguistically homogenous). In times of mass immigration, there is no policy alternative which would treat all linguistic minorities equally (. . .)”* (Lagerspetz 1998, 194, emphasis in the original).

This, then, raises issues of justice. In Lagerspetz’s terms, it raises issues of distributive justice regarding the “costs and benefits” (*ibid.*) that language establishment creates. Issues of territory, history, and institutional practices arguably also raise issues of justice due to their cultural establishment.

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<sup>514</sup>The view that issues of equality and justice are at stake is crucially linked to the fact that being member of a particular ethnocultural group is not chosen, but a matter of luck. The argument here thus relies on the view that socio-political inequalities are, roughly, fair or just if they are chosen, but not if they are the result of brute luck. The view here thus heavily relies on a luck egalitarian position or, for our context of ethnocultural justice, on a position that could be labeled “luck multiculturalism” (Quong 2006, 54-55).

Issues of cultural establishment are thus an aspect of the political world, as far as we know it, that is relevant for the issue of social justice, similar to other relevant facts about the world, such as scarcity of resources or the necessity and usefulness of social cooperation (to mention just two). In brief, cultural establishment is, in Rawls's terms, a "circumstance of justice" (Rawls 2005, 66, Rawls 2003, 84-85, 197).<sup>515</sup> Issues of ethnocultural justice arise, in the first place, because of the background condition of cultural establishment, just as other issues of social justice arise, in the first place, because of the background condition of scarce resources and the need for social cooperation etc.<sup>516</sup>

Our conception of ethnocultural justice is the basis to formulate reasons that attempt to be public. There are thus, arguably, something like public cultural reasons.<sup>517</sup> What are examples of such public cultural reasons, given the conception of societal cultures, the cultural establishment view, and reasonable pluralism? Cultural reasons are public reasons when they are based on necessarily established cultural marks of a democratic polity, as specified by the cultural establishment view. The following phrases (a)-(d) are thus paradigmatic examples of public cultural reasons. They are followed by an eliding possible conclusion of a justifying argument in political debates on weighty political matters:

(a) Laws and policies have to be drafted and passed in a certain language that citizens understand and appreciate. (This reason might be used to argue, with some further premises, for the view that the state should establish, or otherwise duly recognize, the main spoken languages in its territory.)

(b) Societal cultures such as indigenous and national minorities necessarily occupy and function within a given territory. (This reason might be used to

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<sup>515</sup>Rawls does not account for cultural establishment as a circumstance of justice to make it "suitably realistic" (ibid.). However, circumstances of justice are supposed to reflect "the historical conditions under which modern democratic societies exist" (Rawls 2003, 84). I thus take it that the cultural establishment view is a reasonable concession to the facts about the historical conditions under which we live.

<sup>516</sup>By proposing to take cultural issues into account as a circumstance of justice, I follow John Christman's strategy of enlarging the circumstances of justice to make them more suitably realistic. As Christman states: "I propose to add to the circumstances of justice the presence of measurable inequality of social power, the systematic exposure to unique forms of violence, and a pattern of past domination affecting identifiable groups in the society, conditions that all would be labeled as unjust by any plausible principles" (Christman 2009, 224). My ambition, focusing merely on cultural establishment, is more modest than Christman's and does not aim at covering all of the issues he cites.

<sup>517</sup>See also Section 3.3.2 for a brief discussion of this claim.

argue, with some further premises, for the view that subunits of the state should, whenever possible, be drawn along ethnocultural lines, i.e. societal cultures, in order to treat citizens with diverse ethnocultural backgrounds as equals.)

(c) Public institutions unavoidably promote views on different ethnocultural groups (their history, practices etc.). (This reason might be used to argue, with some further premises, for the view that teaching of history in school—as well as other nation-building measures, such as national exhibitions, street names and memorial days—should adequately represent different ethnocultural communities and their histories.)

(d) Societal cultures have a rich background of institutional-political practices. These practices have evolved historically. They bear on the citizens' views on a wide range of particular political matters, as well as their views on the necessity and shape of political institutions as such. (These reasons might be used to argue, with some further premises, for the view that ethnocultural groups and minorities should be allowed to live as far as possible according to their traditional institutional settings.)<sup>518</sup>

All the reasons are grounded on a crucial element of societal cultures, and are underpinned by the cultural establishment view. What makes these reasons public is the cultural establishment view. Given that a government of a polity needs to be organized around an official language, subunits or borders, a view on history and other nation-building measures as well as common institutional practices etc., these cultural elements of a polity have to be taken into account in the drawing up of constitutional essentials and the basic social structure.

Public cultural reasons as conceived of here are thus public reasons mainly because of the cultural establishment view and related considerations of ethnocultural justice. They are public reasons concerned with issues of cultural establishment in a functioning, nation-state-like and liberal constitutional democracy. In what follows, I shall refer only

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<sup>518</sup>The reasons could be further developed, specified, and enriched with clauses that make further references to the cultural establishment view and to shared moral-political values, such as respect for citizens as free and equal. Further reasons are, obviously, needed to develop more convincing and complete arguments for possible conclusions that are merely hinted at in the brackets. As stated here, the reasons are very rough and ready. They should, however, give a sense of what public cultural reasons might be and encompass. This is all I aim at with these examples.

to cultural reasons of this kind, i.e. those underpinned by the cultural establishment view, as public cultural reasons.

### 6.2.2 Self-Respect

Let me briefly restate the argument as it goes so far. I held that the cultural establishment view determines what elements of a culture are relevant for considerations of ethnocultural justice. Since an ethnoculturally pluralist state (i) cannot abstain from establishing elements of a societal culture so that constitutional essentials and the basic social structure are affected by cultural establishment, (ii) is required to treat all citizens with different ethnocultural backgrounds as free and equals, and (iii) the basic outline of a legitimate social-political order is in need of public justification, the nature of the cultural establishment of the state becomes an issue of ethnocultural justice. This involves claims and rights to adequate recognition in terms of language, territory, official views on history, and traditional institutional practices for members of societal cultures.<sup>519</sup>

At this point, we face the following problem. Instead of establishing or otherwise duly accommodating all involved societal cultures within a polity, the best way to take the cultural establishment view into account might be to establish no one's societal culture, instead of trying to accommodate everyone's societal culture. Regarding language, this could be done by establishing an artificial language (such as Esperanto), or a language that is a common reference point for all languages involved (such as Latin for Roman languages in Europe etc.).

In short, we are in need of a story why the following claim, as formulated by Will Kymlicka, holds:

“I believe that in developing a theory of justice, we should treat access to one's culture as something that people can be expected to want, whatever

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<sup>519</sup>As indicated above, and underlined by Will Kymlicka, the argument is thus restricted to cases where reasonably complete societal cultures are involved, as in the case of indigenous or national minorities. Cases of refugees and voluntary immigrants are not concerned with the argument mostly because these groups are not societal cultures, but also because their immigration into an already existing societal culture raises fundamentally different issues of multiculturalism. Thus, it seems that immigration into a societal culture undermines a claim to one's own societal culture. Given the particular context of immigrants—who left their homelands voluntarily to settle in a new polity or who do not represent a reasonably complete societal culture as in the case of refugees—it seems that we can reasonably expect from immigrants to integrate into a societal culture. For more full-blown arguments regarding “fair integration” and “fair nation-building” when it comes to immigrants, see e.g. Kymlicka 2001h and Kymlicka 1995, 13-17, 62-63.

their particular conception of the good. Leaving one's culture, while possible, is best seen as renouncing something to which one is reasonably entitled." (Kymlicka 1995, 86)

Why, then, are citizens entitled to *their* societal culture when it comes to cultural establishment, and not just *any* societal culture? A common and most straightforward response is linked to the identity of citizens. Thus, one might hold that citizens are entitled to their societal culture simply because it is theirs—because it is crucial for their sense of who they are, for their social and personal identity. Together with a reference to the comprehensive value of individual autonomy, this seems to be the answer given by Will Kymlicka.<sup>520</sup> As we have seen, arguments based on individual autonomy as well as identity claims alone do not seem compatible with a political liberalism that aspires to be agnostic and neutral regarding diverse conceptions of the good and comprehensive doctrines.

Now, in order to sidestep identity claims but holding on to the importance of socio-cultural membership for citizens, political liberalism can still focus on considerations of *self-respect*. It is thus self-respect that becomes crucial at this point of the argument. Respect for, and self-respect of, citizens are fundamental to the political liberal enterprise.<sup>521</sup> Self-respect of citizens is a crucial political concern and a primary good, i.e. it is a good that "citizens need as free and equal persons" (Rawls 2005, 180). It is the kind of good that is needed for any kind of project that citizens want to pursue. In other words, whatever citizens might want (pleasure, individual autonomy etc.), they will in any case also want primary goods, and amongst them self-respect.

It is claims to primary goods that are, in politics, "counted as appropriate claims" (ibid.). Primary goods are, thus, a crucial ingredient to develop conceptions of justice, and to formulate reasonable political views and claims. Primary goods are just one way to conceptualize what is politically relevant or what is needed from a point of view of justice. Another well-known approach to "citizens' needs" (Rawls 2005, 187) or "the materials of justice" (Sen 2010, 223) is, for instance, the capability approach<sup>522</sup>.

What are primary goods? In general terms, primary goods are specified by the needs of free and equal persons as citizens (Rawls 2003, 60).<sup>523</sup> Now, Kymlicka famously

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<sup>520</sup>See e.g. Kymlicka 1995, 88-90

<sup>521</sup>On respect, see Section 3.1.3 above.

<sup>522</sup>See e.g. Sen 1980, Section 4; Nussbaum 2000; Sen 2010, Chapters 11-13 and Robeyns 2011 for an overview and discussion of the capability approach.

<sup>523</sup>As Rawls holds: "Conceptions of the good, however distinct their content and their related religious

presents “culture as a primary good” (Quong 2006, 53, 54).<sup>524</sup> Belonging to a culture is, on Kymlicka’s view, a primary good because cultures are essential contexts of choice that enable individual autonomy. Cultures enable the ability to make choices, and to revise them, since cultures are the necessary social context in which choices are made and through which they gain meaning.

On an alternative view, cultural matters as confined by the cultural establishment view are taken to be crucial regarding a citizen’s self-respect. On that view, self-respect is a main primary good involved when it comes to ethnocultural justice, and not cultural membership itself.<sup>525</sup> The primary good of self-respect allows to link the general cultural features relevant for ethnocultural justice to the citizens’ particular languages, territories, views on history, and traditional institutional practices. To be able to conduce politics and political argument in one’s own language, and within one’s societal culture more generally, is relevant for a sense of political self-respect of citizens as members of societal cultures.<sup>526</sup>

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and philosophical doctrines, require for their advancement roughly the same primary goods, that is, the same basic rights, liberties, and opportunities, and the same all-purpose means such as income and wealth, with all of these supported by the same social bases of self-respect” (Rawls 2005, 180).

<sup>524</sup>See Kymlicka 1989, 177-178, 199.

<sup>525</sup>Note that Kymlicka discusses the primary good of self-respect as well within his approach to minority rights, e.g. at Kymlicka 1989, 61-62, 192-193. I do not, however, engage with his discussion here.

<sup>526</sup>As Eirik Lagerspetz holds regarding language, “in all societies some languages are predominant, and in all societies the speakers of those languages see this as important (although they normally take it as self evident). In all societies, people would forcefully resist an attempt to force them all to speak a foreign language” (Lagerspetz 1998, 194).

A problem that arises at this point is that the value of self-respect might be seen to justify too much regarding language establishment (thanks to Sune Laegaard for pointing this out). Thus, it might be held that self-respect regarding the use of one’s own language might support the use of *any* language in politics, not only dominant languages of societal cultures (say, foreign languages or coding languages that might be linked to the self-respect of certain citizens). Arguably, self-respect regarding the use of one’s own language might indeed be used to justify access to one’s language also outside of one’s societal culture, at least to some degree. Thus, it is not uncommon to provide, in some Western democracies, education for immigrant children in their mother-tongue, or to provide certain public services also in the languages of the largest immigrant communities, or to provide translation services for immigrants when dealing with state institutions. Even though there might be many pragmatic reasons for these practices, arguments based on the self-respect of immigrants might well be relevant as well. Here, however, I do not consider these cases. Rather, I focus on self-respect only insofar as it touches on issues of ethnocultural justice, dealing with the cultural establishment of societal cultures. Considerations of self-respect are thus only introduced in a second step in arguments of ethnocultural justice. They are introduced with the aim of specifying which societal cultures should be established more precisely. In this, the introduction of considerations of self-respect in the argument for ethnocultural justice resembles the introduction of identity considerations by Will Kymlicka in his theory of minority rights. In Kymlicka’s arguments, identity considerations are also introduced only in a second step in order to specify certain requirements raised by the more

Why is that so? Let us briefly have a closer look at self-respect, what it is and what it involves. Political self-respect seems to involve (i) a “lively sense of [citizens’] worth as persons” and (ii) the ability to advance their ends “with self-confidence” (Rawls 2003, 59). Note that the focus here lies on *political* self-respect, and not self-respect more broadly conceived. On a broader and more comprehensive view of self-respect the value might encompass various features such as the capacity of persons to put “other people ahead of themselves”, to refuse “to submit passively to victimization” (Meyers 1989, 211) or to renounce “convention simply because it is what is socially expected” (Meyers 1989, 247). These are not the features of a political conception of self-respect that uses the ideal to formulate constitutional essentials or a just basic social structure.<sup>527</sup>

Note also that it is not the aspects (i) and (ii) of self-respect themselves that are politically important, but rather the social-institutional background that underpins them. As Rawls points out, there is a difference between self-respect as an attitude and the social bases of self-respect. According to Rawls, only the latter count as primary goods. Social bases of self-respect are “things like the institutional fact that citizens have equal basic rights” (Rawls 2003, 60) and other social-institutional marks of the basic structure. As the cultural establishment view indicates, certain cultural issues are crucial for the basic structure of a polity, and thus for the social bases of self-respect.

Both aspects of self-respect (i) and (ii) allow us to measure the impact of the social-institutional framework on the primary good of self-respect. The sense of worth as a person in a political community, as well as self-confidence when engaging in political argument and pursuing one’s good, affect the ability to engage in politics within one’s polity. To be able to pursue political debate, for instance, in a language that is familiar and mastered seems crucial for engaging in politics “with self-confidence”. The claim that societal cultures are crucial for citizens’ self-respect is arguably supported by many actual political claims and struggles of indigenous and national minorities for varying

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fundamental value of individual autonomy. Restricting self-respect considerations to this second step, and thus linking self-respect considerations thoroughly to the sphere of societal cultures, allows us to restrict justifications for language establishment to languages found on the level of societal cultures.

<sup>527</sup>Note that Diana Meyers, from whom the quotation regarding a more comprehensive view on self-respect is taken, argues that her conception of autonomy is “necessary for self-respect” as a primary good, and that “compromising people’s self-respect by depriving them of autonomy is unjust” (Meyers 1989, 270, fn. 1; see also Meyers 1986). This approach to link autonomy and self-respect arguably yields a political view that establishes autonomy (or Meyer’s understanding thereof) amongst the “cardinal political values” (Meyers 1989, 249). Even though this is an interesting approach to link autonomy, self-respect and justice, I will have to skip a more thorough discussion of the issue.

degrees of self-determination.<sup>528</sup> Self-respect is thus a main reason why “in developing a theory of justice, we should treat access to one’s [societal] culture as something that people can be expected to want, whatever their particular conception of the good” (Kymlicka 1995, 86). Access to one’s own societal culture is crucial for a citizen’s sense of self-worth or self-respect in a liberal constitutional democracy, and thus for a basic primary good that all citizens can be expected to want. Self-respect, as a crucial primary good, is therefore relevant in a political liberal argument why citizens have a right to *their* societal culture, and not just any established societal culture.

Let us pause a moment at this point. The argument so far looks as follows. Ethnocultural belonging is an element of social justice, and relevant in public justification, for two reasons. First, because a functioning democratic polity necessarily establishes elements of a societal culture. Belonging to a societal culture is therefore crucial regarding the aim of a polity to treat all citizens as free and equal, and thus for a theory of ethnocultural justice. Second, membership in one’s societal cultures affects the basic primary good of self-respect that all citizens can be expected to want. Access to one’s societal culture, and not just anyone’s, thus becomes crucial to the primary good of political self-respect. For instance, for members of a more or less complete societal culture, it affects the citizens’ political sense of self-respect to be able to engage in politics in the language of their societal culture, and not just any language. It seems that something crucial would be missing for the citizens’ sense of self-worth, and thus also for their motivation to engagement in politics, if a citizens’ societal culture is ignored. This ignorance might, in turn, negatively affect the sense of civic friendship and trust among citizens. That much, so it seems, is also suggested by many political claims to various degrees of self-determination by indigenous and national minorities around the globe.

Ignoring the citizens’ membership in a societal culture, and the sense of self-respect that goes with it, thus seems likely to provoke an alienation of citizens from their polity. Forcing the content shepherds, for instance, to pursue their projects and political aims in the context of the societal culture of the majority, with its language and traditional institutional practices etc., puts unequal burdens on content shepherds when compared to members of the majority culture. Citizens and members of a societal culture might reasonably ask: “Why not pursue my projects, and organize our polity, in our own vernacular?” Under these conditions, content shepherds might reasonably claim the

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<sup>528</sup>For an overview, see Section 2.1.2.

establishment of their language, as well as other relevant elements of their societal culture more generally, to secure a relevant social basis of self-respect.

A concern that might arise here is this. Does a focus on self-respect bring identity-related considerations back to political argument on weighty political matters? After all, many issues that are important for someone's personal identity might be claimed to be relevant for a citizen's self-respect, for instance her religious views. Are these identity related issues not linked to self-respect as well? As indicated above, claims and beliefs based solely on the identity of citizens—i.e. on their religion, preferences, world-views etc.—do not live up to the requirements of neutral political justification of weighty political matters, as spelled out in the liberal principle of legitimacy. Does this change by invoking the primary good of self-respect?

A reference to self-respect does not necessarily introduce identity issues through the back door. As conceived of here, issues of self-respect regarding the citizens' membership in a societal culture are restricted and specifically linked to political issues of ethnocultural justice as confined by the cultural establishment view. Ethnocultural justice is concerned with the societal cultural basis of self-respect only, not with the personal identity of citizens. Issues of identity are more sweeping and arguably also more comprehensive; they are not linked to matters of self-respect and ethnocultural justice as spelled out here.

As conceived of here, considerations of self-respect work in tandem with the cultural establishment view. Considerations of self-respect establish why it is the content shepherds' own societal culture they should have access to, and not just any societal culture. This touches on the issue of the social basis of self-respect for content shepherds living in a polity with socio-cultural marks, and not an issue of personal or cultural identity.<sup>529</sup>

### **6.3 The (Last) Case of Content Shepherds: Measles Valuing Content Shepherds**

Let us now turn to an application of the findings in the essay to a last case of content shepherds. In this case, content shepherds value measles (*rubeola*) in a polity where a

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<sup>529</sup>Will Kymlicka, in his theory of minority rights, relies directly on the cultural identity of indigenous and national minorities to justify a right to be governed in one's own societal culture (see Kymlicka 1995, 86-90 and Forst 1997, 66). I try to avoid this step by relying merely on the social basis of the primary good of self-respect.

policy to impose vaccination against measles is otherwise widely shared. Measles valuing content shepherds thus oppose a certain otherwise widely accepted, and politically weighty, policy on vaccination of measles.

I will try to spell out the case in terms of the political liberal framework as developed so far, with a main focus on the role of public cultural reasons in justifications of an exemption from the measles-vaccination-policy for the content shepherds. I thus outline a possible argument against the imposition of the policy on the content shepherds based on considerations of ethnocultural justice and public cultural reasons. The view presented against the coercion of content shepherds to vaccinate against measles strongly relies on the capacity to conjecture.<sup>530</sup>

Three preliminary remarks are in order before we dwell on the case. First, the way I frame the case for an exemption of measles valuing content shepherds from the imposition of a measles-vaccination-policy is admittedly just one avenue to discuss the issue. It is a way that tries to deal with the matter in terms of ethnocultural justice and public cultural reasons. There are, to be sure, many other ways to argue for this concrete issue. For many of these ways, assumptions about political liberalism as well as many arguments presented in the essays above will be unnecessary. These ways might not, for instance, be interested in a somewhat well-ordered constitutional democracy. It is quite clear, then, that we can say interesting and convincing things about the issue at hand without any reference to political liberalism, public cultural reasons, or ethnocultural justice.

However, the point here is that we can *also* deal with the issue from a political liberal point of view, and conceive of the issue of imposing a measles-vaccination-policy on measles valuing content shepherds in terms of social and, more particularly, ethnocultural justice. I thus aim at an argument based on considerations of justice and public reason within a political liberal framework regarding the weighty political matter at hand, even if we can, admittedly, engage with the matter without that particular theoretical background proposed here.

Second, there arguably is a difference between imposing weighty political decisions and being exempt from them. This, at least, is the case if we follow the asymmetry thesis

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<sup>530</sup>For an alternative political liberal approach to issues at hand, see Quong 2006. Jonathan Quong builds a case for “polyethnic rights”, and particularly cultural and religious exemptions from laws, on the basis of the political value of fair equality of opportunity.

regarding (positive) justification and (negative) objection.<sup>531</sup> According to this asymmetry thesis, all kinds of comprehensive cultural and other reasons (religious reasons, identity-related views etc.) are good reasons in justifications of exemptions. In short, the public reason requirement does not hold when we are concerned with justifications of *exemptions*, but only when it comes to justifications of *impositions* of weighty political decisions. Now, for the sake of argument, I take it that a justice-based argument for exemptions is still interesting and worth to be considered. Even if the asymmetry thesis holds, justice-based arguments still give stronger justificatory grounds for an exemption than comprehensive reasons. Furthermore, justice-based arguments should also appeal to those who do not accept the asymmetry thesis.

Third, it is important to be modest about the scope of the argument ahead. Thus, it might well be, as I hope to indicate, that as a matter of ethnocultural justice our polity under scrutiny should not impose the measles vaccination on content shepherds. However, it might still be that it is, all things considered, morally wrong *not* to impose the measles vaccination on content shepherds. This is so because justice considerations are only one kind of consideration to be taken into account in an all-things-considered moral assessment. In an all-things-considered moral assessment other moral considerations apart from justice considerations will be crucial as well. Such an all-things-considered moral view is, then, different from an argument that justifies exemptions from vaccination on the basis of justice considerations. In an all-things-considered assessment, pragmatic considerations (such as costs), the concrete social-political context, and possible consequences of such an exemption etc. will have to be scrutinized and taken into account.<sup>532</sup> In what follows, I am not interested in such an all-things-considered moral assessment. Here, I restrict my investigation to the smaller scope of justice considerations regarding the imposition of measles vaccinations on content shepherds. Such considerations are nor irrelevant since they too will have to be taken into account in a broader assessment of the exemption in question. They are, however, not the whole story either. This issue of the scope of the argument ahead should thus be kept in mind.<sup>533</sup> With these preliminaries in place, let us now turn to the case of measles valuing content shepherds.

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<sup>531</sup>See Section 5.2.1 above.

<sup>532</sup>For an overview and discussion of some difficulties involved in adequate evaluations of public policies, see e.g. Hausman 2012.

<sup>533</sup>Thanks to Juha Rääkkä for stressing this point.

### 6.3.1 Measles Valuing Content Shepherds

Suppose that we face, for a last time, the by now well-known polity made up, roughly, of a majority that shares a common societal culture with its main ethnocultural traits of language, territory, history and common institutional practices and of a main minority culture, the content shepherds, that shares in a different societal culture. The two are distinguished by different ways of life and historical-linguistic backgrounds, but share territory close to each other that is now, due to certain historical reasons, integrated into one polity.<sup>534</sup> As we have seen before, the polity in question aspires to be legitimate and just, given its inextricably diverse constituent citizenry.

Suppose that this polity, through constitutional democratic governing and legislating bodies, plans to pass a policy according to which vaccination against measles becomes compulsory. This is a weighty political matter regarding the polity's general approach to public health. The case came on the political agenda because there have been several measles epidemics recently. On some occasions the epidemics even cost human lives.<sup>535</sup>

However, the content shepherds oppose any policy promoting or imposing the vaccination against measles. Content shepherds form an ethnocultural community that lives according to old customs, traditions and institutional practices, mainly organized around every day herding and agriculture. Another relevant aspect of their way of life regarding the policy in question is that they highly value measles. In their view, natural measles infection is an ingredient for children gaining in physical and mental robustness (when

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<sup>534</sup>We can leave aside, for the purpose at hand, the precise nature of this integration, e.g. the question whether it is a federal or unitary one. However, given the setting of two societal cultures living closely together and engaging in a common political project, a federation, with certain political matters managed together and certain other matters managed on the level of each societal culture (as e.g. in Canada, Belgium or Switzerland), seems to be the most tempting and accommodating way to engage in a common polity. For a discussion of a federation as a possible silver bullet to political issues arising in multination states, and problems arising for such a state model, see e.g. Kymlicka 2001e.

<sup>535</sup>Measles (*rubeola*) is a respiratory disease caused by a virus. It causes fever, runny nose, coughs and a rash all over the body. Once exposed to the disease, a human organism is usually immune to the virus. About one or two out of 1000 children with measles die. (See Centers for Disease Control and Prevention 2015)

The World Health Organization (WHO) adds that the disease is highly contagious, and serious. In 1980, before widespread vaccination, 2.6 million people worldwide died because of the virus. Today, it remains one of the leading causes of death among young children globally, despite the availability of a safe and effective vaccine. It is still common in many developing countries. Groups most at risk are unvaccinated young children and pregnant women. In the case of pregnant women, it can cause premature birth or miscarriage. (See World Health Organization 2015).

supported by appropriate nursing care).<sup>536</sup> Their valuing measles is also embedded in a wider mystic and religious world view, where vaccination is thought to interfere with certain natural and spiritual forces. Due to this, and even though they would not oppose vaccinations in general, or vaccinations against other diseases, they do strongly oppose vaccination against measles in their community.

The measles-vaccination policy is taken to be a weighty political matter where issues of constitutional essentials and social justice are at stake. The main reason that the policy touches on weighty political matters is that it would interfere gravely with traditional institutional practices (mainly medical and pedagogical) embedded in the societal culture of content shepherds. Thus, the belief that measles is valuable for the development of children is an old and venerable one, held and praised by medical shamans of the community for a very long time. It also plays a central role in the medical and pedagogical practices and beliefs of content shepherds. Thus, children might be congratulated when they received measles, or they might even be infected on purpose if they reach a critical age without having had measles yet.

Is a weighty policy imposing measles vaccination on the population of the polity, including the content shepherds, legitimate and just under these conditions?

### **6.3.2 Measles Valuing Content Shepherds in a Political Liberal Polity**

As argued above, the following types of reasons are public cultural reasons given the cultural establishment view and a view on ethnocultural justice that goes with it:

- (a) Laws and policies have to be drafted and passed in a certain language that citizens understand and appreciate.
- (b) Societal cultures such as indigenous and national minorities necessarily occupy and function within a given territory.
- (c) Public institutions unavoidably promote views on different ethnocultural groups (their history, practices etc.). Teaching of history in school (and other nation-building measures, such as national exhibitions, street names,

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<sup>536</sup>The case of the content shepherds valuing measles is not absurd or overstated. Such views on measles are not uncommon in some European countries, mostly within anthroposophic communities. Also ultra-orthodox and traveling communities might have particular views against vaccination. See e.g. Schmid, D./Holzmann, H. et al. 2008 and further references there.

memorial days etc.) should thus adequately represent different ethnocultural communities and their history.

(d) Societal cultures have a rich background of institutional-political practices. These practices bear on the citizens' views on a wide range of particular political matters, as well as their views on the necessity and shape of political institutions as such.

In a political liberal polity content shepherds, as reasonable citizens<sup>537</sup>, have a right to live their life according to their ways, as stated in the fundamental liberal principle and the liberal principle of legitimacy. The principle establishes that the burden of proof is on those who want to impose the policy on measles vaccination, i.e. the majority that is unanimously in favour of such a policy, and that it has to be warranted by public justification that is acceptable to (say, at least the majority of) content shepherds.

Let us thus consider a few reasons that aspire to be public, targeted both at the content shepherds and the majority, and that might help to justify the imposition of a measles vaccination policy on the content shepherds:

(i) Measles are dangerous (it recently caused death of children), and protection is very easy and safe (through vaccination). This view is supported by all serious medical experts consulted amongst the majority of the polity, and the international medical scene.

(ii) Vaccinations are effective. Once vaccinated, there is no danger of getting the measles.

(iii) Vaccination is the best way to protect the whole population. If there is no widespread vaccination, the disease will continue to spread. This weighs on the whole population. The disease could be completely eradicated through widespread vaccination.

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<sup>537</sup>Some might question whether measles valuing content shepherds are reasonable, maybe due to the fact that they value measles. As argued in Section 4.4.3 I think we should keep the reasonableness standard as formal and inclusive as possible, requiring merely the abiding to fair terms of cooperation (given that others do the same), respect of others as free and equal, and the endorsement of the criterion of reciprocity. Thus, at least *prima facie*, measles valuing content shepherds seem reasonable. *Prima facie*, because this might be questioned regarding the endangerment of fellow citizens, most of all pregnant women and children, through opposition to measles vaccination; or in cases of especially pressing circumstances for a vaccinations, such as working in a hospital.

- (iv) Through vaccination of measles, health care costs can be reduced and economic productivity increased (e.g. because there are fewer people absent from work due to measles).
- (v) There is no scientific evidence that measles has any influence on character formation, or any other beneficial physical, mental, or spiritual influence.

Given that content shepherds value measles very highly, i.e. given that there is considerable moral cost involved for the content shepherds when vaccinated, these reasons are unlikely to be accepted by the content shepherds. The presented reasons will convince those who do not have a particular view on measles, i.e. those who are indifferent towards a vaccination. But it is unlikely that these reasons, as they stand, would be accepted within the existing world-view of the content shepherds. In their world-view, measles is highly valued and has an important, institutionally anchored standing in medicine and pedagogy.

Let us, then, have a closer look at some aspects of these reasons and why they might fail to convince the measles valuing content shepherds. A first thing to stress is the reasons' reference to scientific findings. All of the reasons are based, explicitly or implicitly, on science. Do shepherds act irrationally or unreasonably if they ignore these scientific findings? The question is interesting since science seems to be a paradigmatic and reliable domain of where public inquiry and justification is upheld.<sup>538</sup> This is, arguably, also a main reason why scientific findings are widely used in political argument. It provides facts and reasons that are generally accessible and acceptable. As indicated above, Rawls explicitly mentions scientific methods and conclusions as a guideline of inquiry in public justifications, given that it is not controversial (Rawls 2005, 224). This seems sensible. We will need standards of evidence and guidelines of inquiry to establish which justifications are public, and science seems the obvious place to look for these standards and guidelines (ibid.). However, it should be remembered that we cannot simply reduce political justifications to scientific ones. Thus it is questionable whether scientific rules of evidence as used in the scientific community can be transferred in any straightforward way to issues of political concern.

More promising elements in a public justification of the imposition of measles vaccination might be those referring to basic value commitments that the content shepherds might share. These values could be a right to life of children who cannot yet judge

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<sup>538</sup>See Section 5.2.3 for further discussion.

themselves whether they value measles or not (i), or responsibility towards the rest of the population (iii).

Consider the responsibility towards the rest of the population. A first problem is that the shepherds might not think that they have any responsibility towards the rest of the population to spare them measles, since they think it is a very valuable thing to get.<sup>539</sup> Second, since the shepherds live on their own territory, appeals to dangers to the wider population do seem rather weak. Given the territorial isolation of the shepherds, measles also will arguably be isolated in the territory of the shepherds. Even if we grant that there is considerable danger for the wider population, despite territorial isolation, one might still argue that there is an easy and secure vaccination available for all those who do not value, but rather fear, measles. Those who want to be protected from measles can easily get such protection.

Still, the question of free-riding content shepherds remains. If most citizens of the population are vaccinated, aren't the shepherds benefiting from these vaccinations without contributing to the public good, namely a healthier polity and a lower child mortality rate because of reduced measles epidemics? This consideration might raise the suspicion that the shepherds are possibly acting unreasonably, since they are not cooperating on fair terms, nor respecting the criterion of reciprocity.<sup>540</sup>

Consider one way to approach reasonableness or rationality issues of measles valuing among the content shepherds. The shepherds seem happy to get measles, but they might not be happy with the side-effects of the disease, such as child mortality.<sup>541</sup> However, if they are happy to get the disease, they seem to be committed to wanting the latter, i.e. child mortality, as well. To want child mortality is a very strange thing to say about reasonable citizens.

However, the fact that the shepherds value measles does not imply that they also value child mortality. Child mortality can be seen as a bad, and possible, but not very probable side-effect of measles that, alas, sometimes occurs. Accepting such bad consequences is similar to accepting possibly mortal accidents when driving a car, or doing adventurous

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<sup>539</sup>They will, by the way, continue to think this, even if doctors say otherwise, as stated in reason (v).

There is no standing obligation for the shepherds to accept the authority of the medical community of the majority over the shamanic doctrines of their cultural community, or so it seems. Given their evidential sets, this is not irrational. Nor is it, so it seems, unreasonable given the thin view on reasonableness adopted here.

<sup>540</sup>A similar point can be made regarding the costs of treatments for measles epidemics amongst content shepherds that might be paid for by the vaccinated part of the population.

<sup>541</sup>Thanks to Juha Räikkä for pointing this out.

sports such as alpinism. Valuing mobility and car driving, or doing alpinism, does not commit one to valuing the possibly bad consequences of these activities, such as dying in a car accident or in an avalanche. This, then, might well be the case with the shepherds as well. Their valuing measles does not imply that they also value the bad side-effects (even though they do, of course, accept that they might occur). In the case of mobility or alpinism, the good that one gets from these activities (such as mobility, pleasure, exercise) outweighs the possible bad side-effects (such as car accidents or avalanches) of these activities for many people. Similarly, the value of measles outweighs the possible bad side-effects of measles for the shepherds. There is, therefore, nothing irrational or unreasonable about the shepherds' valuing measles but not the possibly mortal side-effects.

Let us briefly get back to the free-riding issue. Do the shepherds free-ride on the vaccinations of the rest of the population? Arguably not, since they do not value, and thus not benefit, from the population's vaccination. If there is no recognized personal gain or benefit, it seems strange to speak of free-riding.

The costs incurred that are imposed on the whole population, e.g. for treatment of dangerous cases of measles amongst the shepherd population, could be distributed in a way that the shepherds bear them alone. This could be done, for instance, through a special clause in insurance policies, or through administrative autonomy over health care issues in the shepherds' region. Once the burden is distributed fairly, there is no reason for complaint on the side of the majority population. In any case, however, all the issues considered regarding free-riding do not seem weighty enough to warrant an overruling of the liberty of the shepherds to live their lives according to their ways.

Now, suppose that the majority decides to impose the law, e.g. through a majority vote.<sup>542</sup> In such a case, the cultural establishment view and the liberal principle of legitimacy with its underlying fundamental liberty principle might help to put the content

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<sup>542</sup>Arguably, a majority voting system would be chosen as a crucial constitutional essential. Here, I suppose this for the sake of argument. An alternative possibility to majority rule on the issue of public health care might be, as already indicated, a more federal arrangement that would give complete and separate jurisdiction on health issues to the shepherds and the majority on their respective territories. On such a view, the shepherds would be fully autonomous and responsible for their health policies, and decisions on these issues would be separated from decisions of the majority on these issues. In this case the *demos*, i.e. the public to whom public justification is owed, would be coextensive with an *ethnos* (here understood as a societal culture). Arguably, this is an appealing way to deal with multicultural politics for indigenous peoples and minority nations. For now, however, I assume common jurisdiction on the issue of public health in order to discuss justice-based arguments for an exemption of content shepherds from measles vaccination.

shepherds in a position to claim an exemption from the law. Consider the following possible public cultural reasons proposed by the content shepherds to be exempted from the law:

(y) Measles are of immense importance to the history of the content shepherds and the development of many of its institutions, such as family and the medical (shamanic) profession.

(z) Having measles is at the heart of the shepherds' view of social esteem of young adults. Measles is supposed to be the passage of a child into the world of adults, and an important spiritual ritual passage as well. It is thus a crucial social basis of self-respect, enshrined in pedagogical practices and the shamanic religion of content shepherds.

The first cultural reason (y) makes reference to the history and institutional development of the content shepherds, an aspect of their culture that is covered by the cultural establishment view. We might thus label it a public cultural reason, or aspiring public cultural reason, that can, based on the commonly accepted cultural establishment view, help to exempt the shepherds from the vaccination law. The reason is that measles is seen as having considerable historical and institutional weight for the content shepherds, similar to historical and institutional aspects of the majority culture that are established.

Similarly the reference to the primary good of self-respect in (z), working in tandem with the cultural establishment view, establishes measles as a weighty political issue that ethnoculturally fair policy making has to take into account. This is another public cultural reason that helps in public justifications for the exemption of the content shepherds from the vaccination policy.

Now, there is arguably a deep gap between the story that the shepherds are telling about the importance of measles and the understanding of the importance of measles amongst the majority. This gap can be filled through attempts and efforts of conjecturing.<sup>543</sup> Conjecturing aims at showing how seemingly obscure views of other citizens can

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<sup>543</sup>Note that the gap is not particularly wide, since the reasons (y) and (z) already make reference to public cultural reasons such as the history and institutions of the shepherds' societal culture, as well as the primary good of self-respect. In the case of possible comprehensive reasons (such as religious beliefs or identity-based considerations) presented for an exemption from the vaccination policy, the effort of conjecturing would mean to establish or unveil possible shared grounds, such as (z) and (y), in the first place. Conjecturing regarding (y) and (z) as pursued here thus aims, rather, at a better common understanding of the already available shared ground rather than establishing these shared grounds in the first place.

be part of a shared understanding of basic political matters.

Thus, content shepherds could support their aspiring public cultural reason ( $y$ ) through supporting conjectures of the following sort<sup>544</sup>:

Conjecture 1: Measles and its historical and institutional influence are similarly important to the shepherds' societal culture—particularly their shamanic medicine and pedagogy—as are historical events E and F (say, the invention of pain killers, or the wide availability of medication) as well as institutional practices such as G (say, transitions from kindergarten to school) to the majority culture.

How about the aspiring public reason ( $z$ )? The cultural reason ( $z$ ) establishes measles as an important element of the institutional bases of self-respect for the shepherds. Measles is crucial for the traditional, institutional passage from childhood to adulthood and a crucial element in institutional pedagogical views and practices of the shepherds. A possible conjecture to foster an understanding of the public value that measles has for content shepherds could thus be this:

Conjecture 2: Measles has a similar social status as ritual passage G (say, end of kindergarten) or P (say, confirmation in Protestant church, or communion in Catholic church) in the majority culture.

Such efforts of conjecturing help to establish an exemption from the measles vaccination policy. The grounds on which measles-valuing shepherds claim such an exemption is arguably public. Conjectures 1 and 2 are supposed to unveil the shared political values, relating to societal cultures and cultural establishment, of content shepherds and the majority.

The reference to the historical and institutional importance of measles for content shepherds, supported through efforts of conjecturing in the form of conjecture 1, establishes a publicly acceptable case for the exemption based on shared views on the importance of institutional practices and the history of the societal culture, as specified by the cultural establishment view.

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<sup>544</sup>For more on conjecturing and its link to public justification, see Section 5.3.4. Of course, conjecturing could also happen the other way around, i.e. through an engagement of conjecturing from the point of view of the majority.

The reference to the primary good of self-respect regarding certain cultural practices, supported by conjecture 2, establishes a publicly acceptable case for the exemption based on shared views on the importance of certain socio-cultural conditions of self-respect.

Both conjectures thus help to establish a case for the exemption of the shepherds from the vaccination policy based on considerations of ethnocultural justice. To treat them as free and equal seems to require respect for their historical and institutional practices regarding measles. Thus, measles vaccination should, as a general rule of ethnocultural fairness, not be imposed on them.<sup>545</sup> One way to accommodate this claim is through an exemption from the vaccinations for measles-valuing shepherds. Another would be to concede authority over public health issues to the shepherds in a federal manner.

I take it that the story about the exemption of content shepherds from measles vaccination, based on public cultural reasons and conjecturing to foster common understanding, establishes a *prima facie* case for the exemption of the shepherds from the measles vaccination policy. However, the story might, in fact, remain contested among the majority, say, because some members of the majority do not buy the conjectures. The view established here is, thus, just one attempt to present a reasonable view based on considerations of ethnocultural justice that aspires to be public. At the very least, however, the story helps to foster common understanding amongst the majority for an exemption of the shepherds from the vaccination policy. By supporting such common grounds through deliberation and conjecturing, and thus the attempt to publicly justify an exemption of the shepherds from the policy in question, both sides get to know each other better through these efforts. This, at least, can further civic friendship and trust. This, so it seems, can be counted as an achievement in itself in a polity that aspires to be based on an overlapping consensus on weighty political matters.

## 6.4 Conclusion

In this last essay, I formulated the main claim of this thesis, namely that there are public reasons based on cultural considerations, i.e. public cultural reasons. Public cultural reasons can underpin public justifications of group-specific rights of indigenous and national minorities within a political liberal polity.

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<sup>545</sup>Note that this is only a general, *prima facie* rule because it might be overruled in particular cases by other relevant considerations, for instance when the shepherds work in public hospitals etc.

To show this I started, in the first Section, by investigating what cultural reasons are. Our understanding of cultural reasons greatly depends on our underlying understanding of culture. Instead of a generic and rather comprehensive view on culture, I propose to settle on a view on culture as societal culture, as proposed by Will Kymlicka.

Based on this rather technical understanding of culture, I investigate the political relevance of societal cultures for a somehow well-ordered constitutional democracy. A first major finding is that societal cultures are, in the world we live in, crucial for the functioning of a modern democracies. According to this functionality thesis, a cultural establishment is first of all necessary for the social, economic, and political functionality of a democracy. It is, secondly, crucial for the fostering of civic friendship and trust among citizens.

A second major finding is a corollary of the functionality thesis. If we accept that societal cultures are necessary for a functioning constitutional democracy, then a polity arguably cannot help but to, at least partly, establish a societal culture or several societal cultures. The functionality thesis thus underpins the cultural establishment view. According to this view, modern constitutional democracies, as we more or less know them, necessarily bear cultural marks such as being administered in a certain language, as establishing boundaries and administrative subunits, favouring certain history syllabi in schools, and being based on traditional institutional practices.

The functionality thesis and cultural establishment view indicate a crucial difference between religions and societal cultures. Whereas states can abstain from establishing a religion, modern democratic states as we more or less know them arguably cannot abstain from establishing, explicitly or implicitly, features of a societal culture. There is thus a politically relevant disanalogy between religion and societal cultures. This indicates a difference between religious reasons and cultural reasons in political argument on weighty political matters.

In the second Section, I argued how the cultural establishment view helps to spell out a conception of ethnocultural justice that can underpin justice-based arguments for the differential treatment of indigenous and national minorities.

The view on ethnocultural justice presented here consists of two parts. The first part crucially builds on the cultural establishment view. The necessary or unavoidable cultural features of a functioning democratic polity matter politically. They are part of the relevant circumstances of justice. These socio-cultural features of the polity are a weighty political matter that need to be taken into account in public justifications of

constitutional essentials or the basic social structure. This is required in order to treat all citizens of different ethnocultural background respectfully, as free and equal.

This conception of ethnocultural justice is the basis for formulating public reasons regarding the socio-cultural features of a polity. In a nutshell, cultural reasons are public reasons when they are based on necessarily established cultural marks of a polity, as specified by the cultural establishment view. Public cultural reasons are therefore reasons concerned with issues of cultural establishment in a functioning, nation-state-like constitutional democracy—such as language, drawing of borders, official views on the collective history, and traditional institutional practices.

This has the following consequence for a pluralist democracy. Since an ethnoculturally pluralist state (i) cannot abstain from establishing elements of a societal culture, and (ii) is required to treat all citizens with different ethnocultural backgrounds as free and equals, the nature of the cultural establishment of the state becomes an issue of ethnocultural justice, involving rights for adequate recognition in terms of language, territory, history, and institutional practices for members of different societal cultures.

The second part of the view on ethnocultural justice presented here is about the primary good of self-respect. It is because of the primary good of self-respect that an ethnocultural minority has a right to its *own* societal culture, and not just any established societal culture, that is necessary for a functioning constitutional democracy. The establishment of one's own societal culture, when reasonably complete, is a relevant social basis for political self-respect. Thus, being able to pursue projects or conceptions of the good, and to engage in democratic politics, in one's own societal culture affects (i) a citizen's sense of worth as a person and citizen, as well as (ii) the ability to advance his and her ends and political aspirations with self-confidence. The establishment of a societal culture is thus a crucial social basis of the primary good of self-respect of citizens, and thus matters politically.

In the last Section of the essay, I consider a last case of content shepherds. This case is about the imposition of a measles vaccination policy on the ethnocultural minority of measles-valuing shepherds. I claim that there are no sufficient public reasons to impose the policy on the shepherds, either because the scientific evidence in support of the policy can reasonably be set aside by the shepherds, or because the values proposed to convince them of the policy fail to appeal to them.

Even if the policy were to pass, for instance due to majority rule that is chosen as a constitutional essential, I hold that the shepherds would be in a position to claim an

exemption from the policy based on considerations of ethnocultural justice. Crucial in a justification of such an exemption are public cultural reasons that, firstly, are based on the historical and institutional importance of measles for the societal culture of the shepherds. Measles can also be seen, secondly, as an important social basis of self-respect for the shepherds.

Both views on the public value of measles and its importance for the societal culture of the shepherds are supported by conjectures. The conjectures are proposed as a means to indicate that the cultural reasons justifying an exemption from measles vaccination as public cultural reasons, and to foster understanding and civic friendship among the shepherds and members of the majority culture.

## 7 Conclusion

The main claim of this thesis is that there are public reasons based on cultural considerations, i.e. public cultural reasons. Public cultural reasons can underpin public justifications of group-specific rights of indigenous and national minorities within a somewhat well-ordered constitutional democracy.

In the first essay I criticize an influential comprehensive liberal approach to multiculturalism, namely Will Kymlicka's theory of minority rights. I claim that the controversial liberal value of individual autonomy is a problematic and unconvincing ground for liberal accounts of political authority and minority rights. The main reason is that the value of individual autonomy, as well as the views on political authority and minority that build on it, fail to take diversity seriously. They fail to take diversity seriously because they do not sufficiently account for crucial political liberal principles, such as the presumption of liberty and the liberal principle of legitimacy.

In the second essay, I spell out what I take to be basic elements of a political liberalism. The main elements are the liberty principle, the public justification principle spelled out as the liberal principle of legitimacy, and respect for persons and fellow citizens.

As a contrast to the kind of political liberalism elaborated here, I consider Chandran Kukathas's version of political liberalism. I maintain that Kukathas takes diversity too seriously. His political liberalism is based merely on the acquiescence of citizens to political rule, and the basic rights of association and exit. In Kukathas's view, there is no adequate place for political liberal ideals such as justice or equality. A political liberal polity based merely on the rights to association and exit, and no proper concern for justice or equality, is liable to allow for ways of life and practices that are in conflict with basic elements of political liberalism as understood here. Kukathas's version of political liberalism thus takes diversity too seriously. It will have to allow for all kinds of illiberal practices that are in conflict of basic principles of a well-ordered constitutional democracy.

In the third essay, I investigate some methodological problems involved in political liberal theorizing. Following Jonathan Quong, I investigate two main ways to spell out a

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political liberal theory, namely internal conceptions and external conceptions of political liberalism. I hold that an internal conception, concerned with reasonable pluralism in a well-ordered society, is overly aspirational and not concessive enough regarding certain facts about the world we live in. It should thus be modeled closer to an external conception, concerned with real citizens in the real world, in order to become relevant for our moral-political investigation of rights of national and indigenous minorities. However, the resulting conception of political liberalism should avoid as many pitfalls of an external conception as possible, such as utopophobia, an overly inclusive standard of reasonableness, and being complacently realist.

I thus propose a middle-ground conception of political liberalism that integrates most of the virtues, and avoids most of the problems, of internal and external conception of political liberalism. I then attempt to spell a standard of reasonableness that is in tune with aspirations and concessions of a middle-ground conception of political liberalism.

I propose a standard of reasonableness that takes the acceptance of certain basic political liberal ideals to be a sufficient condition to count as reasonable. Reasonable persons thus crucially (i) respect fellow citizens and aim at social cooperation between free and equal citizens, (ii) cooperate with others on terms all can accept (given that others do the same), and (iii) uphold political reciprocity within a (somewhat) well-ordered society so that each benefits along with others.

These prominent parts of reasonableness are, however, not the whole story about what reasonableness involves. No necessary conditions for reasonableness are introduced. The adopted standard of reasonableness thus remains sensitive to yet unknown views, or only barely reasonable views that turn out to be reasonable after closer inspection. The main general political liberal desideratum regarding such views is that they enable communicative cooperation and moral-political agreement to found a common polity. Such a view on reasonableness arguably makes it aspirational enough, but not too harsh. It is arguably also concessive enough, but not complacently realist.

In the fourth essay, I further elaborate on the version of political liberalism adopted here and focus on the ethic of citizenship it involves. I thus engage with the duty of civility. There are two main desiderata regarding a citizen's moral duty of civility. First, citizens are required to justify political claims about the basic outline of their polity through public reasons. Second, the duty of civility should avoid the alienation of religious, as well as all other, citizens. It should instead aim at trust and civic friendship in order to secure a stable political order. I propose to balance these two desiderata

through a strongly inclusionist interpretation of the duty of civility.

On such an interpretation, religious reasons can be introduced at all times in political argument on weighty political matters, given that sooner or later there will also be sufficient public reasons for the political claim in question. Public reasons can thus be introduced late in the debate. Still, reasons should be presented so that an assessment of the reasons is possible by others before the decision on a weighty political matter is taken.

In the discussion of an adequate interpretation of the duty of civility, I also investigate the nature of religious, nonpublic reasons as well as of public reasons. This prepares the grounds to introduce and discuss the idea of cultural reasons.

In the last essay, I argue for my main claim by drawing on insights from the previous essays. The argument for my main claim—that there are public cultural reasons that can underpin public justifications of group-specific rights of indigenous and national minorities within a somewhat well-ordered constitutional democracy—runs as follows.

The establishment of certain features of societal cultures such as language, territory, official views on collective history and traditional institutional practices are necessary for a functioning and stable democratic polity as we more or less know it. The establishment thesis is the first rationale for a conception of ethnocultural justice. The socio-cultural features of the polity are a weighty political matter that need to be taken into account in public justifications of constitutional essentials or the basic social structure. This is required in order to treat all citizens of different ethnocultural background respectfully, as free and equal.

Based on such a political conception of ethnocultural justice we can formulate public reasons relating to the establishment of societal cultures in liberal constitutional democracies. In a nutshell, cultural reasons are public reasons when they are based on necessarily established cultural marks of a democratic polity, as specified by the cultural establishment view. Public cultural reasons are therefore reasons concerned with issues of cultural establishment in a functioning, nation-state-like constitutional democracy—such as language, drawing of borders, official views on collective history and traditional institutional practices.

The conception of ethnocultural justice presented here has another aspect, namely one linked to the primary good of self-respect. It is because of the primary good of self-respect that an ethnocultural minority has a right to its *own* societal culture, and not just any established societal culture that is necessary for a functioning constitutional

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democracy. The establishment of one's own societal culture, when reasonably complete, is a relevant social basis for political self-respect.

There are, therefore, public cultural reasons to argue for the self-determination of societal cultures, and for differential treatment of national and indigenous minorities when they share a polity with other societal cultures. These public cultural reasons are crucially based on the cultural establishment view and the primary good of self-respect. Claims about the rights of national and indigenous minorities presented in Will Kymlicka's comprehensive liberal framework can thus also be placed within a political liberal framework with a Rawlsian face. This supports moral-political rights of national and indigenous peoples as put forward in international legal documents such as those of United Nations 1966, United Nations 1992 and United Nations 2007.

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