



Moral Pluralism and Political Disagreement

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Declaration of Authorship

I, Nathaniel Rutherford, declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others it is clearly stated.

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Abstract

This thesis addresses two crucial questions of contemporary political theory: why do we disagree about value and how should we respond politically to that disagreement? I make three major arguments that correspond to each of the three sections. I outline and analyse two theories of moral pluralism in Section I, value pluralism and epistemic pluralism, which offer explanations of disagreement about value. Value pluralism is a widely held metaphysical doctrine that makes a claim about the plural nature of value. Epistemic pluralism is a less widely known theory that makes a claim about the difficulty of reasoning about value. I argue that epistemic pluralism is the appropriate form of moral pluralism for political theory because, unlike value pluralism, it does not rely on controversial metaphysical ideas. In Section II I analyse two theories of public reason liberalism, John Rawls's political liberalism and Gerald Gaus's justificatory liberalism, both of which develop an account of political legitimacy in light of epistemic pluralism. I reject both theories on the basis that they are incompatible with a commitment to epistemic pluralism. In Section III I develop a political theory of *modus vivendi* which accords with my account of epistemic pluralism. Building on the work of other *modus vivendi* theorists I outline a theory of legitimacy that depends on two political conditions, peace and acceptance. In the final chapter I defend my conception of *modus vivendi* from various criticisms in order to show that a theory of *modus vivendi* is not a counsel of despair.

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Strange to know nothing, never to be sure
Of what is true or right or real,
But forced to qualify *or so I feel*,
Or *Well, it does seem so*:
Someone must know.

- Philip Larkin, 'Ignorance'

Chapter 1: Introduction - Pluralism and Politics in Political Theory

In *Political Liberalism* Rawls asks, how ‘is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?’¹ This is Rawls’s adaptation of the enduring question of political theory: how, and on what terms, can we live together in political society?² Rawls’s question entails many further questions. How do we test whether a political arrangement is ‘possible’? Is this possibility a practical possibility or merely a theoretical possibility? What idealisations, if any, are needed to meet the test of possibility? What does it mean for a society to be stable and over what length of time must that stability exist? Who gets to judge whether a society is stable? How is society defined? Who comprises it and who, if anyone, is excluded? In what sense are citizens ‘free and equal’? On which conception of freedom and equality should we judge them? What makes a doctrine reasonable? Why does reasonable incompatibility include religious, philosophical, and moral doctrines, but exclude political doctrines? How are the profound divisions manifested, and how deep do these divisions run? Most significantly, what is a just society? Who gets to decide on the conception of justice, and is that conception of justice subject to reasonable disagreement? Each of these questions is then potentially subjected to epistemological questions of whether, and if so how, we can know their answers. Perhaps the most important aspect that the initial question conceals is *whether* we can in fact live together in political society at all. The achievement of a working political society, however defined, is never guaranteed and so the question must admit the possibility of failure: we may be unable to find terms on which to live together.

Those questions and their variations have yielded a profusion of answers in contemporary political theory, of which I touch on only a few of the most important in this thesis. I point to these questions partly to put the limits of my own investigation into perspective, but more importantly to show the ways in which conceptual,

¹ John Rawls, *Political Liberalism* (New York: Columbia, 2005), p.xviii. Henceforth, Rawls, *PL*.

² Rawls claims that the problem of stability ‘has played very little role in the history of moral philosophy’ (*PL*, p.xvii). As Brian Barry notes, however, we only have to ‘rechristen the problem of stability as the problem of order and we can immediately recognize it as a central focus of political philosophy in all periods’. Brian Barry, ‘John Rawls and the Search for Stability’, *Ethics*, Vol.105, No.4 (1995), p.880. Even Barry’s ‘order’ might be too specific for what might instead simply be called ‘the problem of politics’.

philosophical, and political disagreements multiply. It is the disagreements that these questions engender, specifically disagreements about value, that this thesis addresses. Disagreement is an inescapable feature of human life in general, and the fact of disagreement is one of the few constants of politics. As Bernard Williams writes, ‘political difference is of the essence of politics’.³ It is unclear that disagreement-free politics would be recognisable as politics at all.

Identifying and justifying which disputes are relevant and which can be put to one side, is the first task for a political theorist. The subjects which this thesis addresses, and therefore the ones that I take to be pertinent, are moral pluralism and political disagreement. As Jeremy Waldron writes, the ‘vocation of the *political* philosopher is to examine philosophically, not just the metaphysics, but the morals and politics of disagreement – the implications for social life, social organization, and social action of the fact that even among those who accept the proposition that some views about justice are true and others false, disagreement will persist as to which is which’.⁴ Value disagreement fundamentally alters the nature of what I called ‘the enduring question of political theory’. In light of endemic disagreement about value, the question becomes how, and on what terms, we can live together *despite* profound disagreement on those terms? In this thesis, I answer two questions. Firstly, why do people arguing in good faith disagree about value? Secondly, what is to be done politically about that disagreement? In some ways, the first explanatory question might seem redundant. It is clear that we do in fact disagree about matters of value, at least to some degree, and so we should simply begin from that starting point. The brute fact of disagreement does not, however, tell us whether disagreements are justified. One of the reasons that disagreements are often so intractable might be that many people are simply too obstinate or foolish to recognise genuine values. Even disagreements motivated by foolishness ought to prompt philosophical reflection on what can and should be done in response to people whose value judgments are based on self or group interest, founded on limited or false evidence, or are products of wilful ignorance, pride, or malice. But disagreements based on error or iniquity should not lead us to conclude that both sides in that disagreement have equal weight. The more pressing question is why

³ Bernard Williams, ‘From Freedom to Liberty: The Construction of a Political Value’ in *In the Beginning was the Deed: Realism and Moralism in Political Argument* (Oxford: Princeton University Press, 2005), p.78.

⁴ Jeremy Waldron, *Law and Disagreement* (Oxford: OUP, 1999), p.3. Italics in original.

people, reasoning to the best of their abilities in good faith, still disagree. To answer that, I turn to moral pluralism, which not only attempts to explain value disagreements, but also brings into doubt the idea of a single truth about value altogether.

In its most general form, moral pluralism is the idea that normative questions sometimes yield contradictory but non-erroneous answers. Pluralism suggests that people disagree on matters of value and that sometimes no rational resolution can be found to that disagreement. Pluralism is an unsettling idea in many ways, particularly for moral philosophers, because it undermines the hope of a clear, accessible, intelligible, rational, and common moral universe. For Rawls, moral pluralism renders the goal of liberal philosophy since Locke, obsolete: ‘the question the dominant tradition has tried to answer has no answer’.⁵ No answers to questions of value provided by any one conception of the good can give us answers to questions of social and political organisation.

The dominant form of moral pluralism in contemporary political theory is value pluralism. Value pluralism comes in many varieties, although all its varieties derive from Isaiah Berlin’s insights, made famously in his 1958 inaugural lecture at Oxford, *Two Concepts of Liberty*. At its most basic level, value pluralism is the metaphysical claim that the nature of value is plural and that those plural values are sometimes incommensurable.⁶ On this account, there is not one harmonious whole of value, but rather a multitude of dissonant and conflicting values. This idea is expressed in one of Berlin’s most frequently quoted lines: ‘everything is what it is: liberty is liberty, not equality or fairness or justice or culture, or human happiness, or a quiet conscience’.⁷ For value pluralists, values are by their very nature distinct, in that they cannot be reduced to a *summum bonum* or into one another. Those who think that all values can be reduced to a *summum bonum*, such as utility or pleasure, are described by value pluralists as monists, who believe that value is single and therefore commensurable. For monists, all disagreements about value must be a result of error on one side or the

⁵ John Rawls, *Collected Papers*, (ed.) Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), p.412.

⁶ I discuss the variety of ways in which values can be understood to be incommensurable in Chapter 2.

⁷ Isaiah Berlin, ‘Two Concepts of Liberty’ in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), p.125.

other. But for value pluralists, many value disagreements stem from the plural and incommensurable nature of value.

The second form of moral pluralism, and the one that I endorse, is epistemic pluralism. This form of pluralism has far fewer adherents in political theory than value pluralism, although it has one notable adherent in John Rawls, whose ‘fact of reasonable pluralism’ put forward in *Political Liberalism* is, I argue, a prominent type of epistemic pluralism. Section I defends an expanded version of Rawlsian pluralism against value pluralism and defends Rawls’s idea of freestanding theory against comprehensive theorising. In Sections II and III, however, I reject Rawls’s method of public justification and his conception of reasonableness before embracing a theory of *modus vivendi* which Rawls wholeheartedly rejected. My aim here is not to defend or rehabilitate Rawls (to the extent that he needs rehabilitating at all), but rather to take his crucial insight about disagreement to a conclusion beyond political liberalism.

Unlike value pluralism, epistemic pluralism makes no metaphysical claims about the nature of value. In fact, epistemic pluralism is agnostic about the debate between value pluralists and monists about the nature of value. Instead, epistemic pluralism claims that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value among well-intentioned, sincere, and conscientious people. This means that on normative questions of social organisation people will reach incompatible but non-erroneous conclusions. I count Rawls as an epistemic pluralist because his ‘burdens of judgment’ explain what the epistemic obstacles to reasoned agreement are. We disagree because there is conflicting evidence on both sides, it is difficult to weight the various considerations, the concepts are themselves vague, each reasoner has different experiences, there are conflicting normative considerations, and there is limited social space in which to meet the demands of any value. Epistemic pluralism identifies plurality in the lines of reasoning that lead people to incompatible and non-erroneous conclusions about value. Those lines of reasoning are littered with the epistemic obstacles of the burdens of judgment and so the divergence of value judgments is to be expected. I take Rawls’s explanation of value disagreement to its logical conclusion, by expanding the scope of epistemic pluralism from comprehensive doctrines to political conceptions, and in so doing, take his insight to a conclusion contrary to his own political liberalism.

I argue in favour of this form of pluralism over value pluralism on the basis that the metaphysical claims that value pluralists rely on are too controversial to ground political principles. This argument follows a modified version of Rawls's idea of freestanding theory, which holds that we should refrain from invoking controversial philosophical premises when arguing for political arrangements or principles. I do not follow Rawls in thinking that citizens should refrain from invoking these premises in political contexts, but rather take his distinction as a restriction on theorising itself. Rawls's 'political not metaphysical' approach, in which political principles can only be justified by appeal to shared premises, imposes restrictions both on theorists and on citizens. While I accept the restriction on theorists, I do not endorse his restriction on citizens because of the wider conception of epistemic pluralism that I argue for here. Epistemic pluralism allows us to explain value disagreements without appeal to a controversial metaphysical idea which is itself the subject of disagreement. The most significant difficulty of value pluralism that epistemic pluralism avoids is that value pluralism is, as Charles Larmore notes, an 'eminently controversial doctrine'.⁸ I argue that epistemic pluralism is not controversial by countering arguments that it collapses into value pluralism and second, by countering arguments that it collapses into scepticism. One of the aims of the thesis is to advance epistemic pluralism as a compelling theory of moral pluralism that avoids the difficulties faced by value pluralism. Explaining why many value disagreements are controversial by appeal to a theory that *is itself* highly controversial is unattractive as a foundation for first-order theory. My conception of epistemic pluralism, however, is not controversial in this way, and the modesty or what I term the 'lightness' of its central claim is a major part of its appeal.

Epistemic pluralism, then, is the unifying idea of the thesis. It is what best explains the persistence of value disagreements and it provides a starting point for first-order political theory. If epistemic pluralism provides an answer to the first question of why people disagree in good faith about value, it does not furnish us with any answer to the second question of what to do about it. If there are various non-erroneous answers to questions of value then how can we justify the adoption of certain political principles to the exclusion of others?

⁸ Charles Larmore, *The Morals of Modernity* (Cambridge: CUP, 1996), p.154.

To answer that, I turn to two adherents of varieties of epistemic pluralism, Rawls and Gerald Gaus, who defend a public reason justification for liberal principles despite non-erroneous disagreement about value. In *Political Liberalism*, Rawls attempts to defend liberal principles despite pluralism, by cordoning off pluralism about morality from pluralism about political principles. For Rawls, there are a variety of ‘reasonable though incompatible religious, philosophical, and moral doctrines’ but the variety of reasonable political principles is limited to liberal principles. Rawls tries to salvage political agreement from endemic disagreement about value by appeal to an ‘overlapping consensus’ in which citizens find justifications for liberal principles from within their own ‘reasonable though incompatible’ doctrines. As Steven Wall puts it, Rawls’s citizens ‘must bracket their differences and search for common ground’.⁹ Once citizens agree to do this, on Rawls’s account, they will be able to reach reasoned agreement on liberal political principles.

Gaus goes further than Rawls in his recognition of epistemic pluralism by conceding that it describes not only our moral disagreements, but also our political disagreements. Gaus sees the problem primarily in epistemic terms. If there are epistemic obstacles to reasoned agreement then the way to foster agreement is to philosophically remove as many of those obstacles as possible. Gaus argues, against Rawls, that what is needed is a tighter epistemic justificatory standard that allows us to weed out those conclusions about value that are poorly justified.

Both Rawls and Gaus try to demarcate certain types of value judgments from other types of value judgments in order to limit the scope of pluralism. For Rawls, this demarcation rests on the reasonable, and for Gaus it rests on epistemic justification. Both hope to identify the form and the content of a political arrangement that is compatible with their understandings of pluralism. On Rawls’s view, we can agree on a liberal political conception by excluding unreasonable views. On Gaus’s account we can reach some thin liberal principles, such as a commitment to freedom of speech, by excluding epistemically unsound judgments. By curtailing the indeterminacy of reason that epistemic pluralism suggests, Gaus and Rawls arrive at liberal conclusions (although to differing degrees of strength). Both routes, however, rely on limiting epistemic pluralism by appeal to some normative standard. For Rawls, this standard is

⁹ Steven Wall, *Liberalism, Perfectionism and Restraint* (Cambridge: CUP, 1998), p.44.

the moral standard of reasonableness, and for Gaus it is a normative understanding of what it means for something to be epistemically justified. If epistemic pluralism is right, however, these standards *are themselves subject to non-erroneous disagreement*. As soon as they invoke an idea of what counts as ‘reasonable’ or ‘epistemically justified’ they must draw on normative claims which epistemic pluralism tells us are rationally contestable. Not only are these standards subject to non-erroneous disagreement, but so too are *any* standards that make normative stipulations. Every attempt to reach any sort of moral consensus on liberal principles in the light of epistemic pluralism will be incompatible with the recognition of epistemic pluralism that motivated the search in the first place.

If a moral consensus is made impossible by epistemic pluralism, then how can political authority ever be justified without appeal to normative ideas that are subject to epistemic pluralism? I argue that once the depth of epistemic pluralism is recognised, a political theory of *modus vivendi* is the only game in town. *Modus vivendi*, which is the only theory that remains once the depth of pluralism is recognised, has generally stayed on the fringes of contemporary political theory, although I argue that it is at the centre of a political reality characterised by value disagreement. *Modus vivendi*, which for now can be understood as an agreement to disagree for reasons that include non-moral reasons, has had a quiet revival over the last twenty years, beginning with John Gray’s *Two Faces of Liberalism*.¹⁰ John Horton and, more recently, Fabian Wendt have made significant contributions by outlining in greater detail the aims and nature of a *modus vivendi* and by divorcing it from the value pluralism that inspired Gray’s conception.¹¹ I argue for a conception of *modus vivendi* defined by its ability to secure the acceptance of those subject to its power and the degree of peace necessary to secure that acceptance. These are decidedly humble aims. Although a *modus vivendi* should be understood as necessary for legitimacy, it does not preclude more ambitious political arrangements so long as the conditions of acceptance and peace are met. *Modus vivendi*, like politics, is never completed and exists in a perpetual state of passage. We find ourselves in that constant present, borne back ceaselessly into politics. *Modus*

¹⁰ John Gray, *Two Faces of Liberalism* (Oxford: Polity, 2000).

¹¹ See John Horton, ‘Realism, liberal moralism and a political theory of *modus vivendi*’, *European Journal of Political Theory*, Vol.9, No.4 (2010), pp.431-448; Fabian Wendt, *Compromise, Peace, and Public Justification: Political Morality Beyond Justice* (London: Palgrave Macmillan, 2016).

vivendi outlines a framework for what that politics looks like in a world of enduring non-erroneous disagreement about how we ought to live together.

My focus on pluralism and my advocacy of *modus vivendi* might suggest that this thesis is a part of the current of ‘political realism’ that has developed over the last fifteen years. The pluralist grounding to first-order political theory, the abandonment of an aspiration to moral consensus, the inevitability of political compromise, the emphasis on political rather than moral resolutions to problems of social organisation, and the Hobbesian answer I give to the question of political justification, all strike a realist chord. Crucially, however, I do not take an explicit view on whether or not political theory should be ‘applied ethics’ — I neither reject nor endorse the essential realist claim that political theorists ‘should not reduce political philosophy (or politics) to moral philosophy (or morality)’.¹² Although an affirmation of that claim is necessary for any theory to count as realist, my argument that politics is characterised by pluralism and that the only way respond to that pluralism is through politics, certainly chimes with much realist thought. If there is perceived to be a realist bent to this thesis, it is a product of pluralism and not a product of any methodological claim about the priority of politics to morality. As Jonathan Floyd and Marc Stears claim, we must identify ‘the ineluctable necessities of political life, and then work out just what those necessities entail for the kinds of political prescriptions issued by political philosophers’.¹³ Pluralism is simply one such necessity. Nevertheless, the conception of epistemic pluralism that I put forward might give us one good reason to see the political as a normatively distinctive sphere of human activity. Although I am agnostic about realism’s methodological claim, this thesis certainly does aspire to be realistic. In a review of Lorna Finlayson’s *The Political is Political*, Koshka Duff writes that ‘in order for the instruction ‘Be realistic!’ to offer any guidance, it needs to be filled in with some views about what reality is like, including its causal relationships and possibilities for change’.¹⁴ This thesis attempts to ‘fill in’ a piece of what reality is like by arguing for epistemic pluralism as an explanation of moral and political disagreement. My aim is

¹² Edward Hall, ‘How to do realistic political theory (and why you might want to)’, *European Journal of Political Theory*, Vol.16, No.3 (2015), p.284.

¹³ Jonathan Floyd and Marc Stears (eds.), ‘Introduction’ in *Political Philosophy versus History? Contextualism and Real Politics in Contemporary Political Thought* (Cambridge: Cambridge University Press, 2011), p.4

¹⁴ Koshka Duff, ‘Review of Lorna Finlayson, *The Political is Political: Conformity and the illusion of dissent in contemporary political philosophy*’, *Contemporary Political Theory*, Vol.15, No.3 (2016), pp.50–53.

to answer the two questions that I posited. That does not necessarily mean that this thesis does not fall into a particular school or method, but rather that I set about ‘filling in’ a piece of what political reality is like, rather than repeat the demand to ‘be realistic’.

The two major original contributions of this thesis are its conceptualisation of pluralism, and the analysis of the profound and under-appreciated consequences that pluralism has for political theory. First, by taking Rawls’s insight about value disagreement to its logical conclusion, I argue that public reason liberalism, including Rawls’s political liberalism, cannot be sustained in conjunction with epistemic pluralism. Second, the conception of *modus vivendi* that I endorse as a political response to endemic value disagreement is both compatible with epistemic pluralism and more appealing than has been widely recognised. By taking epistemic pluralism through to its conclusion without shying away from its normatively unattractive consequences, I hope to have contributed to a better understanding of the limits of political theory and the central and inevitable role that value disagreement plays in politics. What remains when we accept pluralism in full is a political world of ineradicable and non-erroneous value disagreement. Despite that disagreement, we may sometimes find reasons to form a provisional arrangement that prevents some of the harms that result from the absence of such an arrangement. In other words, what we are left with after epistemic pluralism is politics.

The argument of the thesis

In Section I, Varieties of Moral Pluralism, I answer the question, ‘why do people arguing in good faith still disagree about value?’, by analysing two theories of moral pluralism that can explain value disagreements. In Chapter 2 I offer a synopsis of value pluralism’s key features and survey some of the disputes among its adherents. I then outline what is appealing about value pluralism as a theory of value. In Chapter 3 I draw on Rawls’s ‘fact of reasonable pluralism’ to develop my conception of epistemic pluralism based on ‘the burdens of judgment’. I then outline the appeal of epistemic pluralism. In Chapter 4 I argue that it is epistemic pluralism and not value pluralism that offers the best explanation of disagreement for the purposes of political theory. My argument rests on a rejection of value pluralism as a metaphysical, and therefore inherently controversial, thesis about the nature of value. Drawing on a modified

version of Rawls's idea of freestanding theory, I argue that epistemic pluralism is not similarly controversial, and that this makes it the most appealing account of moral pluralism for political theory.

Section II, Epistemic Pluralism and Political Theory, examines and criticises two public reason theories of liberalism which are sympathetic to some form of epistemic pluralism. I assess Rawls's political liberalism and Gaus's justificatory liberalism, which attempt to show that some liberal principles can be justified despite widespread disagreement about value. In both chapters I analyse their theories in some detail before offering my critical responses. As David Enoch notes, there is a tendency among public reason liberals to respond to criticism by claiming that their critics '*just don't get it*'.¹⁵ By engaging with their ideas in depth, I hope to show that while I do, in some sense, 'get it', that their responses are nevertheless incompatible with epistemic pluralism. In Chapter 5 I criticise Rawls's political liberalism. I argue that Rawls treats disagreement about the good life and disagreement about political principles in an unjustifiably 'asymmetric' way. While Rawls acknowledges that pluralism applies to conceptions of the good he does not endorse the claim that pluralism applies to political principles. I argue that Rawls's notion of 'reasonableness' acts as a false restriction on epistemic pluralism that he stipulates only to ensure the possibility of an 'overlapping consensus'. Chapter 6 criticises the justificatory liberalism of Gaus, who recognises that epistemic pluralism also applies to political conceptions. I analyse Gaus's justificatory liberalism by examining his account of what sorts of reasons are 'normatively justificatory'. I argue that Gaus faces a similar problem to Rawls, and that his solution merely pushes the problem back a stage because *any* normative standards of justification will themselves be subject to epistemic pluralism. How Gaus defines what counts as a good justification must be defined in terms of some prior moral commitments which are themselves subject to epistemic pluralism.

Having found two major attempts to defend liberalism in the face of epistemic pluralism wanting, I turn in Section III, to a political theory of modus vivendi. Chapter 7 develops my conception of modus vivendi by analysing three conceptions of modus vivendi, by Gray, Wendt, and Horton. I then defend a conception of modus vivendi which is defined in terms of two conditions: acceptance and peace. I specify what these conditions entail,

¹⁵ David Enoch, 'Against Public Reason' in Sobel, Vallentyne, and Wall (eds.), *Oxford Studies in Political Philosophy Vol.1* (Oxford: Oxford University Press, 2015), p.112.

and draw on Bernard Williams's idea of 'standards internal to politics', to argue that these two conditions do not draw on moral ideas that are subject to epistemic pluralism. Modus vivendi offers a political response to epistemic pluralism without relying on moral ideas that are themselves subject to non-erroneous value disagreement. In Chapter 8 I further develop my conception of modus vivendi by responding to its three principal objections: that it is unstable, that it institutionalises injustice, and that it institutionalises the *status quo*. I concede the objection that a modus vivendi is unstable to counter the objections that it institutionalises injustice and the *status quo*. I argue that a modus vivendi is inherently unstable, but that this enables political action which can counter institutionalised injustice. I develop this argument to show that a modus vivendi need not be conceived of as an inherently conservative or pessimistic political theory, but rather as a theory in which political action is paramount. Even if we agree with Philip Larkin that it is 'Strange to know nothing, never to be sure/ Of what is true or right or real', we must still decide whether and how we choose to live together in political society. Whether, in fact, 'someone must know' is neither here nor there for political theory because we must get on with the task regardless.

Section I: Varieties of Moral Pluralism

Chapter 2: Value Pluralism

Value pluralism, despite its relative recency in political philosophy, has a great many adherents and, as a consequence of this, many varieties. Proponents of value pluralism or of value incommensurability include¹: Isaiah Berlin, Bernard Williams, David Wiggins, Charles Taylor, Steven Lukes, Martha Nussbaum, Thomas Nagel, John Kekes, John Gray, Joseph Raz, and Michael Stocker.² This chapter provides an overview of the different forms that value pluralism can take as a theory about value, divorced from the possible substantive political and moral implications such a theory might have. This survey first examines the claims that value pluralism makes about the nature of value, contrasting different value pluralist accounts with one another, before assessing the arguments made in favour of value pluralism as the most appealing account of the nature of value. What I present here is my own construction of the central tenets of value pluralism, drawing on the work of a variety of value pluralists. Although I indicate where value pluralists disagree with one another, what unites value pluralists is far greater than what divides them. The most significant schisms among value pluralists occur when value pluralism is tied to a political project, such as justifying liberalism. This chapter does not address the political consequences of value pluralism, and therefore dodges the most contentious value pluralist disagreements.

The chapter begins by introducing the idea of value pluralism (1) before offering a synopsis of its central tenets as explicated by its major proponents (2), and surveying the disagreements between value pluralists. This is followed by a brief discussion (3)

¹ These two categories, value pluralists and value incommensurabilists, are not necessarily coterminous. Moral relativists might subscribe to some form of strong incommensurability without subscribing to other features of value pluralism. None of the philosophers named here fall into that category though, and I take their endorsement of incommensurability to be an implicit endorsement of some form of value pluralism. This point is made clearer in the section on incommensurability.

² Isaiah Berlin, *Liberty*, (ed.) Henry Hardy (Oxford: OUP, 2002), Bernard Williams, 'Conflicts of Value' in *Moral Luck* (Cambridge: CUP, 1981), pp.71-82; David Wiggins, 'Incommensurability: Four Proposals' in Ruth Chang (ed.) *Incommensurability, Incomparability, and Practical Reason* (Cambridge: Harvard University Press, 1997), pp.52-66; Charles Taylor, 'The Diversity of Goods' in Amartya Sen and Bernard Williams (eds.), *Utilitarianism and Beyond* (Cambridge: CUP, 1982), pp.129-144; Steven Lukes, 'Making Sense of Moral Conflict' in *Moral Conflict and Politics* (Oxford: Clarendon, 1991), pp. 3-20; Martha Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: CUP, 1986); Thomas Nagel, 'The Fragmentation of Value' in *Mortal Questions* (Cambridge: CUP, 1979), pp.128-141; John Kekes, *The Morality of Pluralism* (Princeton: Princeton University Press, 1993); John Gray, *Two Faces of Liberalism*; Joseph Raz, *The Morality of Freedom* (Oxford: OUP, 1986); Michael Stocker, *Plural and Conflicting Values* (Oxford: Clarendon Press, 1990).

on the appeal of value pluralism as a theory of value, looking at the defences given by value pluralists against their critics. I address the appeal of value pluralism more fully in Chapter 4. First, I outline value pluralism to place it within a broader philosophical and historical framework.

1. A Sketch of Value Pluralism

Value pluralism is most easily described as a theory of value that rejects monistic theories about value. But a negative definition leaves almost all the important questions unanswered. Beyond this simple rejection on which all value pluralists agree, the main tenets of value pluralism are harder to pin-down.³ This is, in part, because value pluralism represents a set of claims and the relation of one claim to another is often unclear (though it must be assumed that all forms of value pluralism aim to be at least coherent between these claims). My aim here is to provide a synopsis of these claims as they appear in major value pluralists' work. My own view on pluralism will not become clear until Chapter 4, in which I critically assess the relevance of value pluralism to political theory. Both value pluralism and epistemic pluralism, as theories about value, need not elicit any implications for substantive normative political theorising, although value pluralists almost always derive some normative entailments. What matters here, is the nature of and justifications for value pluralism, separate from those normative implications. As Robert Talisse argues, the 'question of whether value pluralism is correct [as a philosophical account of value] turns on the philosophical considerations that can be marshalled in support of its distinctive claims about the nature of value and the relations among values'.⁴ What I present here are first the 'distinctive claims' and then the 'philosophical considerations' that can be marshalled in their support.

Value pluralism is not a value theory, instead it is a theory of value. It does not prescribe what things we ought to do or describe what things we value. It is not a prescriptive theory, though it may have various far-reaching consequences for both moral and

³ Value pluralists also give universal assent to the claim that values are plural, but as a definition of value pluralism this begs the question of what value pluralism *is* until the idea of 'plural' is unpacked.

⁴ Robert Talisse, *Pluralism and Liberal Politics* (London: Routledge, 2012), p.85.

political theorising. Value pluralism is a meta-ethical theory about value. More specifically, it is an ontological theory which claims to describe the nature of value.⁵

In its contemporary form, value pluralism begins with Isaiah Berlin's section 'The One and the Many' in his essay 'Two Concepts of Liberty'.⁶ The theorists that make up this synopsis are all philosophical descendants of Berlin, but their differences lie in the debates over their ancestry. Some, such as George Crowder, John Gray, and William Galston, see themselves as Berlinians, interpreting and defending Berlin's value pluralism. Others, such as Joseph Raz, do not draw on Berlin directly, but arrive at similar conclusions.

As Crowder understands Berlin, monism is the belief that 'all ethical questions have a single correct answer and that these answers dovetail within a single, coherent moral system'.⁷ Berlin claims that there are three claims that monists make:

In the first place that, as in the sciences, all genuine questions must have one true answer and one only, all the rest being necessarily errors; in the second place that there must be a dependable path towards the discovery of these truths; in the third place that the true answers, when found, must necessarily be compatible with one another and form a single whole, for one truth cannot be incompatible with another — that we knew a priori.⁸

In negating these claims, Berlin advances the view that questions of value need not necessarily have one true answer, that there may not exist a path towards the discovery of these truths, and that true answers to questions of value may not be compatible with one another. This leads him to the view that 'the world that we encounter in ordinary experience is one in which we are faced with ends equally ultimate, and claims equally absolute, the realization of some which must inevitably involve the sacrifice of others'.⁹

For monists, all answers to ethical questions can be rationally derived from a *summum bonum* which precludes the possibility of non-erroneous conflict between values. It is

⁵ I describe value pluralism as both an 'ontological theory' and a 'metaphysical theory' throughout the thesis. I take ontology to be a sub-field of metaphysics and so it is both ontological and metaphysical.

⁶ Berlin, 'Two Concepts of Liberty'. Berlin saw his own value pluralism as derived from the counter-Enlightenment thought of Vico and Herder. This genealogy of value pluralism is contested and does not greatly elucidate contemporary discussions so I do not engage with it. See Isaiah Berlin, *Three Critics of the Enlightenment*, ed. Henry Hardy (London: Pimlico, 2003).

⁷ George Crowder, *Pluralism, Relativism and Liberalism in Isaiah Berlin* (2003). Paper presented to the Australasian Political Studies Association Conference, University of Tasmania (29 September – 1 October 2003).

⁸ Isaiah Berlin, 'The Pursuit of the Ideal', ed. Henry Hardy, *The Crooked Timber of Humanity: Chapters in the History of Ideas* (London: Princeton, 1990), p.6.

⁹ Berlin, *Liberty*, pp.213-14.

useful at this point to cite Robert Talisse's 'pluralism test'. To determine whether a view is value pluralist it must meet the pluralism test: 'whatever pluralism is, it had better be something that utilitarians reject'.¹⁰ The pluralism test is a useful heuristic for value pluralists because utilitarianism is quintessentially monist, as all normative judgments must be made with reference to the *summum bonum* of utility. Although utilitarianism is a *bête noire* for value pluralists, their opposition to monism is wider than a rejection of utilitarianism.

One of the reasons Berlin opposed monism was what he considered to be the political implications of such theories of value. Berlin drew a connection between monist theories of value, including utilitarianism, Kant's categorical imperative, and Platonic idealism, and the totalitarianism of the twentieth century. For Berlin, the political consequences of monism should lead us to oppose it as a theory of value. It is an argument from consequences that takes a similar form to his argument against his notion of positive liberty. This may be one reason for thinking value pluralism preferable to monism, but it is not one I entertain here as it is not concerned with the appeal of value pluralism as a theory about value. Instead, I assess value pluralism on its own terms, cordoning it off for the time being from its possible political consequences. Although John Gray is probably the best-known advocate of value pluralism, his use of the idea is woven into his broader critiques of humanism and Enlightenment liberalism. This dual purpose obscures his conception of value pluralism divorced from its political consequences, and so I do not draw heavily on Gray's work here, despite its importance in revivifying value pluralism as a topic for political theorists.

In addition to thinking that monism has dangerous political consequences, Berlin also believed that it provides a false account of the nature of value. Value pluralism as a theory about value cannot be judged on its consequences. Whether all goods are parts of a unified (or potentially unifiable) whole or whether they are plural and distinct is not a moral question, although it may have normative consequences. In other words, value pluralists must claim that value pluralism accurately describes the nature of value, or at least that it describes it more accurately than competing ontological theories of value, notably value monism and value relativism. To dismiss any of these theories

¹⁰ Talisse, *Pluralism and Liberal Politics*, p.10.

based on their possible moral and political extrapolations would be akin to dismissing evolution as a theory of biological diversity on the basis that natural selection has been used to justify eugenics. Instead, the truth of value pluralism rests on its claims about the nature of value. I now turn to those claims.

2. The Features of Value Pluralism

George Crowder argues that value pluralism comprises four ‘chief claims’. These are that ‘there are certain universal values, values (both universal and local) are plural, that values may be incommensurable with one another, and that they may come into conflict’.¹¹ Separately, the four elements are not special to value pluralism but together they make up what is distinctive about the value pluralist position. In conjunction, these claims provide sufficient grounds for considering value pluralism as a theory of value distinct from either monism or relativism. The four chief claims are value universality and objectivity, value plurality, value incommensurability, and value conflict. I structure my discussion of what value pluralism is around these four claims, though these may prove insufficient categories through which to capture some of the disagreements between value pluralists. Each claim serves to distinguish the value pluralist position distinct either from value monism or from value relativism and I attempt to show in what ways each of these claims is necessary to carve out a space for value pluralism as a third theory of value.

Universality and objectivity of values

The first feature of value pluralism is the claim that ‘there are certain values that are universal and objective’.¹² This claim is different from the claim that monists wish to make that *all* values are universal and objective. Value pluralists are not necessarily committed to the claim that all values are universal and objective. There are also two separate claims being made here. First, that certain values are universal and second that certain values are objective. Neither of these claims entails the other. We could imagine that there are objective values within particular societies in particular times but that these are not universal.¹³ Similarly, we might claim that there are universal values

¹¹ George Crowder, *Liberalism and Value Pluralism* (London: Continuum, 2002), p.45.

¹² *Ibid.*

¹³ We might employ a localised notion of ‘objective’ meaning objective within a particular society on a particular matter, although this perhaps stretches the idea of objectivity too far.

(values that apply at all times and in all places), but that such values are not objective in that they should not be understood as ‘facts’. Although these are logically possible views, they are not ones that value pluralists hold.

The universality and objectivity of value is a necessary claim for value pluralists, if value pluralism is to count as a theory of value distinct from relativism. William Galston puts the point more bluntly: ‘Value pluralism is not relativism. The distinction between good and bad, between good and evil, is objective and rationally defensible’.¹⁴ The distinction between value pluralism and relativism is an important one for value pluralists because they position themselves between monism at one end of the spectrum and relativism at the other. I use the term ‘relativism’ here in a non-precise way as a placeholder for the view that value is subjective and more like a matter of taste or preference than anything else. Not only does value pluralism need to deny the central claim of monism, it must also not deny these to the point that it becomes indistinguishable from relativism. Were value judgments truly subjective then there would be no possibility of rational reflection or deliberation on values. As I have rarely encountered an analytical theorist who signs-up to such a view, a detailed analysis of this view would be an unnecessary addition here. It is enough then to use relativism as a placeholder for a view that value pluralists generally reject. Having said that, Crowder is more willing to accept some overlap between relativism and value pluralism than Galston. Crowder claims that universal values are ‘transhistorical and cross-cultural’ only at a ‘high level of generality’ in that they are ‘valuable for all human beings at all times and in all cultures’.¹⁵ By ‘a high level of generality’ Crowder means that highly abstracted and non-contextualised values are universal and objective in this way, but that value pluralism can concede that this may not be the case in certain contexts when these principles are applied. On his account, a ‘high level of generality’ allows value pluralism to be compatible with a moderate form of relativism in which ‘some values are particular, varying along with cultural practices, while others are universal or generic’.¹⁶

All value pluralists follow Berlin in his commitment to the existence of objective values. Berlin, in ‘The Pursuit of the Ideal’, is categorical: ‘there is a world of objective

¹⁴ William Galston, *Liberal Pluralism: the implications of value pluralism for political theory and practice* (Cambridge: CUP, 2002), p.5.

¹⁵ Crowder, *Liberalism and Value Pluralism*, p.45.

¹⁶ Ibid.

values'.¹⁷ By this, Berlin means 'those ends that men pursue for their own sakes, to which other things are means'.¹⁸ These ends are tantamount to moral facts in that they exist regardless of whether they are subscribed to. In this, value pluralism shares with monism a feature that is absent from any form of relativism. As Glen Newey notes, both monism and value pluralism make a 'realist claim about the metaphysical structure of value'.¹⁹ That is to say, value pluralism subscribes to and relies on the claim that values exist in the world independent from our perception of them. Talisse offers a nice analogy to describe the realist status of Berlin's value pluralism:

In referring to monism as the view that conceives of the world of value as a "cosmic jigsaw puzzle", Berlin was not objecting to the ontology that this image suggests. Berlin, too, holds that values are like pieces of a jigsaw puzzle. Berlin insists, however, that there are more pieces than can be fit together in a single good picture.²⁰

Berlin's objection to monism is not that values do not exist as abstract entities in the world, but that those abstract entities do not form the coherent abstract whole that monists believe they do. To put it another way, values are objective but dissonant. It seems that such a view is required by value pluralism's other chief claims. If value pluralists claim that values are plural, incommensurable, and conflictual then it follows that they must be objective. Value pluralism's ontological ambition to describe the nature of value requires that it is true not only for some individuals, but true for all individuals. If value is subjective then this cannot hold as it only describes a subjective nature of value, rather than the nature of value itself.

Value pluralism, then, is a species of moral realism.²¹ This does not however, tell us what sort of approach value pluralists take towards value. Value pluralism is agnostic about which of deontology, virtue ethics, and consequentialism is best. Although value pluralism is incompatible with consequentialism in its utilitarian form, it need not be opposed to consequentialist reasoning stripped of its monistic utilitarian claims. In

¹⁷ Isaiah Berlin, 'The Pursuit of the Ideal', p.11.

¹⁸ Ibid., pp.11-12.

¹⁹ Glen Newey, 'Value-Pluralism in Contemporary Liberalism', *Dialogue*, Vol.37, No.3 (1998), p.499.

²⁰ Talisse, *Pluralism and Liberal Politics*, p.32.

²¹ John Gray might be the one value pluralist dissenter on this point. Although he endorses moral realism in his work on Berlin (John Gray, *Isaiah Berlin* (London: Harper Collins, 1995, pp.46-47), he identifies his value pluralism with a form of irrealism tied to human experience in more recent writings (John Gray, *Two Faces of Liberalism*, p.64). I will not dwell on Gray's deviation from value pluralist orthodoxy, not least because it seems that the other key claims of value pluralism require moral realism to succeed.

other words, value pluralists can happily accept the importance of consequences in moral reasoning even if value pluralists cannot be full-blown utilitarians.

It might seem that the failure to take a position on which of these approaches to value is best is problematic for value pluralism in that it seeks to describe values as plural without ever defining how it approaches 'value'. Critics might object that deontological ethics fundamentally differs from both virtue ethics and consequentialist ethics in that it sees rules and principles rather than goods in the world as the proper subject of ethical study and evaluation. Value pluralists can sidestep this problem, however, by claiming that all three approaches are concerned with goods in the world. Even deontological ethics derives its principles from some good in the world. Deontological principles only have moral force insofar as they appeal to some good or other, otherwise the rules would be rendered either arbitrary or non-moral. The essential commonality between these three approaches allows value pluralists to take no particular stance on which approach is best, and allows them to claim that value pluralism can tell us something about each one without ever choosing sides. Value pluralists claim that there are objective values in the world and that these values are universal. The task then, for value pluralists, is to specify which values or which sorts of values are universal.

Value pluralists generally defend the existence of universal values with reference to an account of human nature. Regardless of what people value in particular instances, or from within particular conceptions of the good, or as a part of a particular society, some goods are valuable for humans just because they are human. John Gray is the clearest advocate of this naturalist grounding of value pluralism, arguing for a 'universal minimum content of morality' based on the avoidance of 'generically human evils'.²² Crowder similarly claims that values are universal in the sense that 'they make any human life better than it would be otherwise' regardless of the society or culture.²³ The existence of universal values does not, however, tell us which values are, in fact, universal.

Several value pluralists have argued for a set of generic values that are both universal and plural. Berlin thought that equality, courage, social justice, loyalty, and the 'demands of genius' were examples of universal values, but made no attempt to

²² Gray, *Two Faces of Liberalism*, p.66.

²³ Crowder, *Liberalism and Value Pluralism*, p.46.

systematise these values.²⁴ Thomas Nagel offers five fundamental types of universal values: obligations, rights, utility, perfectionist ends, and commitment to one's own projects.²⁵ Martha Nussbaum provides a list of essential 'capabilities' that allow a life to be good, including health, bodily integrity, emotional bonds, property holding and many others.²⁶ John Kekes has devised a complex taxonomy of value, divided into primary values, that have to do with the 'benefits and harms that count as such for all conceptions of a good life', and secondary values, that concern the 'benefits and harms that vary with conceptions of a good life'.²⁷ These two categories are divided into 'goods' and 'evils': those things that are universally beneficial ('primary goods'), universally harmful ('primary evils'), dependently beneficial ('secondary goods'), and dependently evil ('secondary evils').²⁸ Kekes, like Gray, grounds his theory in human nature. Certain things are good for all humans, he claims, because they are human, and certain things are bad for humans, again because they are human. Kekes divides the primary goods into 'the goods of self', those things that allow us to satisfy our 'physiological and psychological' desires, 'the goods of intimacy', which allow us to have close personal relationships with others, and 'the goods of social order', which are the public goods that allow us to enjoy the first two sets of goods.²⁹

These theorists agree with Crowder's claim that values are universal only 'at a high level of generality' and that these can be 'interpreted and applied in different ways in different contexts, both historical and cultural'.³⁰ In arguing for the existence of universal and objective values value pluralists must be careful not to slip into monistic patterns of thought. To retain the distinctiveness of value pluralism, universality only applies at a high level of abstraction. Kekes gives a useful example that highlights the importance of insisting on universality only at a high level of abstraction. According to Kekes, the now outlawed practice of live burial by the Dinka, a tribe in Southern Sudan, shows the danger of universalising value in specific contexts. The Dinka would bury their most respected 'spear-masters' in cow dung when those spear-masters thought

²⁴ Berlin, *Four Essays on Liberty*, p.167.

²⁵ Thomas Nagel, 'The Fragmentation of Value' in *Mortal Questions* (Cambridge: CUP, 1979), pp.128-141.

²⁶ Martha Nussbaum, *Women and Human Development: the Capabilities Approach* (Cambridge: CUP, 2000), pp.78-81.

²⁷ Kekes, *The Morality of Pluralism*, p.38.

²⁸ *Ibid.*, pp.38-39.

²⁹ *Ibid.*, p.41.

³⁰ Crowder, *Liberalism and Value Pluralism*, p.45.

themselves ready, until the victim ‘slowly suffocates in the excrement piled on him’. As Kekes rightly points out, this ‘will strike us as a gruesome form of murder involving the illegitimate violation of a deep convention’.³¹ He goes on to argue, though, that in the cultural context, a context in which cattle dung is valuable and not repulsive, in which the ritual signifies a high honour because spear-masters are afforded a death not afforded to lesser members, the buried give their willing consent, and in which the tribe value communal death, all give this practice a sort of moral justifiability which is absent for those outside the tribe.³² Kekes acknowledges that while this still constitutes ‘a violation of one minimum requirement of good lives’ (i.e. not suffering an unpleasant death) we can offer a ‘more sophisticated response’ that takes into account relevant cultural considerations.³³ Such examples are rife with difficulty for value pluralists who navigate a route between the Scylla and Charybdis of monism and relativism. Even if we don’t accept Keke’s conclusion, we can still think that his argument is forceful in demonstrating the difficulty of identifying universal values at anything other than a high level of generality.

Value pluralists therefore have a more complicated relationship with the idea of universal and objective values than monists. Whereas monists are happy to say that universality and objectivity applies all the way down, at both high and low levels of abstraction, value pluralists must reject this thoroughgoing attitude in favour of a universality that is limited to highly abstract and consequently non-specific values. With this conception of universal values in mind, value pluralists must then defend their second claim that these values are plural.

Plurality of values

One of the key questions for value pluralists is what ‘the thing’ is that is plural. What does it mean to say that values (both universal and local) are plural? Berlin talked of plural purposes, ends, values, and goals interchangeably.³⁴ Whether these refer to distinct things or are synonyms for the same thing is never made clear and if they are distinct things then the relationship between them is not made clear by Berlin. Further,

³¹ Kekes, *The Morality of Pluralism*, p.125.

³² *Ibid.*, p.126.

³³ *Ibid.*, pp.126-7.

³⁴ Berlin, *Liberty*, passim. Gregory Johnson has criticised Gray on this point for applying incommensurability to a wide range of subjects without clarifying ‘how all of these fit together’. The same criticism could be made of Berlin. See Gregory Johnson, ‘The Non-Sequitur of Value-Relativism: A Critique of John Gray’s ‘Post-Liberalism’’, *Reason Papers*, Vol.19 (1994), pp.102-103.

if they are distinct then plurality may exist in one sphere but not in another. For example, we might think that our ends may be plural but that the values that inform those ends are not. The monist can accept that ends, purposes, and goals are plural but deny that value is similarly plural. Value pluralists hold that both substantive values and types of value are plural.³⁵ Not only do value pluralists say that equality and justice are substantive plural values, but also that obligation-based values may form a discrete set of value from the value attached to achieving certain desirable consequences. In other words, value is not ‘one big thing’ as Ronald Dworkin claims, rather it is many irreducibly disparate little things.³⁶

We might look at the instantiation of value to better understand plurality of value. For Joseph Raz, value pluralism entails ‘the belief that there are several maximal forms of life’. By this, Raz is invoking and expanding upon the common value pluralist claim that one cannot, for example, ‘possess all the virtues of a nun and of a mother’ simultaneously.³⁷ He claims that ‘forms or styles of life are incompatible if, given reasonable assumptions about human nature, they cannot normally be exemplified in the same life’.³⁸ This is a much more radical claim than the quotidian liberal claim that there are many forms of life that are morally acceptable. For Raz, the focus of plurality is on the forms of life limited both by the human condition of mortality, limited time and opportunity, requisite but mutually exclusive life choices, and also the incompatibility of value itself: the chastity required of nuns cannot be compatible with the act necessary to become a mother.

Plurality of value is a necessary but tempered version of incommensurability of value. Crowder explains that plurality of value does not alone distinguish the value pluralist position from the monist position. He argues that it is consistent for monists to hold that ‘there is only one intrinsic value, that is, one thing that is valuable for its own sake’ and allowing that ‘there are many other genuine values’ which ‘must be instrumental or subordinate to the super-value’.³⁹ Whether monists truly can claim to subscribe to plural values, given their commitment to the existence of one overriding value is doubtful. If monists see equality and justice, for example, not as distinct values but as parts of a

³⁵ Crowder, *Liberalism and Value Pluralism*, p.46.

³⁶ Ronald Dworkin, *Justice for Hedgehogs* (London: Harvard University Press, 2011), p.1.

³⁷ Raz, *The Morality of Freedom*, p.395.

³⁸ *Ibid.*

³⁹ Crowder, *Liberalism and Value Pluralism*, p.48.

larger coherent whole, then the sense in which they are really separate or plural is no longer clear. They are plural in that they are distinguishable, but not separable. We can use the analogy of a sliced cake to clarify this thought: if we imagine value as a cake that is divided into slices, where each slice represents a particular value (equality, courage, justice, impartiality, and so on), the value monist believes that there is only one cake even though there are distinct slices, and the slices can be put back together to make the cake whole again. Value pluralists, however, believe that there are multiple cakes (cheesecake, Battenberg, Victoria sponge, and so on), the slices of which can never be combined to form a perfectly amalgamated super-cake because the slices cannot fit together to make a nice round whole. If we follow this analogy, then plurality of value actually means two very different things for monists and value pluralists and so Crowder's claim that plurality of value is not distinctive to value pluralism is undermined. The idea that goods are fundamentally many and not one is a distinctive claim that I cannot imagine monists accepting. This is not particularly problematic though, either for Crowder or for value pluralism, because the plurality of value is only a conceptual stepping-stone in establishing the more distinctive feature of value pluralism: value incommensurability.

Incommensurability of values

It is easiest, if a little tautological, to start with what incommensurability is not: commensurability. As Talisse writes, 'commensurability follows from monism: if value is one big thing, then differences among good things are always differences of degree and never of kind'.⁴⁰ As we will see, though, defining commensurability in these terms is not unproblematic, as there are a variety of ways in which both commensurability and, correspondingly, incommensurability can be understood. In addition to being value pluralism's essential claim, incommensurability has also engendered the most disagreement between value pluralists. Incommensurability is the essential claim because it allows that values sometimes conflict without the possibility of rational resolution. Not only is it essential to value pluralism (and possibly the claim that makes value pluralism distinctive as a theory of value) it is also contested. What follows is an

⁴⁰ Scott F Aikin and Robert Talisse, 'Pragmatism and Pluralism Revisited' in *Political Studies Review*, Vol.14, No.1 (2016), p.20.

attempt to track some of the disagreements around incommensurability and to review their outcomes.

Monists cannot hold that values are incommensurable, as to do so would be to deny the unity of value. Although there might *appear* to be incommensurable values, this can only ever be an appearance and not a reality for monists. Incommensurability was at the heart of Berlin's pluralism, specifically in the denial of the monist claim that 'it must be possible for all these values to live together, for unless this is so, the universe is not a cosmos, not a harmony; unless this is so, conflicts of values may be an intrinsic, irremovable element in human life'.⁴¹ The value pluralist must deny that the universe is 'a harmony', at least in value terms, if value pluralism is to be distinct from monism as a theory of value. So, while universality, objectivity, and arguably plurality, are common to monists and value pluralists, incommensurability is not.

There are two ways in which the idea of incommensurability needs to be clarified. Firstly, what is incommensurability? What does it mean for two things to be incommensurable with one another? Secondly, to what does incommensurability refer? What is the 'subject' of incommensurability for value pluralists? It is not completely obvious that these two sets of questions are distinct, in that both are concerned with the conceptualisation of incommensurability, but I think it must be possible in principle to distinguish the idea of incommensurability from its application, or what I have called its subject. For this first section I use the terms 'values' or more colloquially 'things' as a placeholder for the subject of incommensurability, because whatever is the subject it must be an instantiation of some value, or a thing of some sort. First though, the idea of incommensurability itself.

Crowder outlines three ways in which value incommensurability can be understood: firstly, values could be said to be incomparable, secondly, they can be immeasurable, and thirdly they can be unrankable.⁴² If incommensurability is thought to be the essential feature of value pluralism then we must choose in which of these senses incommensurability is best understood. Crowder does not argue that each of these offers an entirely distinct understanding, but instead that these understandings represent

⁴¹ Berlin, 'Two Concepts of Liberty', p167.

⁴² Crowder, *Liberalism and Value Pluralism*, p.49.

varying strengths of incommensurability, with incomparability the strongest, immeasurability the weakest, and unrankability somewhere in between.

Let us start with the strongest claim. If values are said to be incomparable then the claim is that values are so distinct in nature that there is no way of comparing them. By way of illustration Kekes lists ‘square roots and insults, smells and canasta, migrating birds and X ray’ as stark examples of incomparability.⁴³ Gray takes a similar tack when he claims that ‘Aeschylus and Shakespeare are each great tragic dramatists, but their dramatic art is incommensurable: it is false to say that the one is a greater dramatist than the other’. He expands that ‘it may well be true that Euripides is a greater tragic dramatist than Aeschylus, without it following that Euripides is a greater dramatist than Shakespeare’.⁴⁴ What Kekes and Gray both try to show with these comparisons is that such questions and such dissimilarities seem to rely on a mistaken premise: they compare apples and oranges.

According to Crowder, the appeal of the incomparability in these examples is their undoing. If values are as wholly incomparable as ‘migrating birds and X ray’ then we abandon any hope of rationally choosing between them, and yet, we do have, Crowder claims, good reasons for choosing between competing values at least in particular contexts.⁴⁵ Although this might seem like a retreat from value pluralism, this appearance is misleading because it derives from a false dichotomy between monism and value pluralism. Not only is value pluralism not monism, it is also not relativism. Although value pluralists must reject the monist position that those things or goods can be compared (at least in principle) in relation to some *summum bonum*, value pluralists need not say that *no* things or values can be rationally compared. To make this claim would lead value pluralism to unravel into strong relativism: there are no rational standards by which we can assess incompatible value claims. Just because there is no way to compare the value of a poem with the value of a friendship does not entail that there could be no way of comparing the value of personal autonomy to the value of social order. Although such a judgment may be difficult in any particular circumstance, even intractably so, that is not to say that it is impossible. Crowder gives the example of ‘even-handed fairness and personal loyalty’ to illustrate this.⁴⁶ Although ‘there is no

⁴³ John Kekes, *The Morality of Pluralism* (Princeton: Princeton University Press, 1993), p.21.

⁴⁴ Gray, *Isaiah Berlin*, p.51.

⁴⁵ Crowder, *Liberalism and Value Pluralism*, p.49.

⁴⁶ *Ibid.*

good reason to rate one as superior to the other absolutely...there is good reason to focus on justice and to put personal connections aside for the judge presiding at a trial'.⁴⁷ Under certain circumstances, then, it seems we can rationally compare competing values even if choosing is difficult. Crowder believes that this argument serves to undermine the incomparability reading of incommensurability.

Crowder does not, however, dismiss incommensurability as incomparability in its entirety. Other value pluralists, notably Joseph Raz, understand incommensurability in roughly these terms. John Gray also endorsed this reading of incommensurability in both *Isaiah Berlin* and *Enlightenment's Wake*, but in the fullest account of his own view of value pluralism in *Two Faces of Liberalism*, Gray instead endorses the unrankability understanding of incommensurability. He writes that values 'can be compared endlessly — but they cannot be compared with one another in overall value'.⁴⁸ Gray does not justify this change of thought, although it brings him in-line with other contemporary value pluralists. We might well think that we can achieve 'reasoned choice among plural values' as Crowder claims, but that such choice is not always available. When the grounds for making a reasoned choice are unavailable the space for an understanding of incommensurability as incomparability reopens.

Such is Raz's conviction that this is the best way to understand incommensurability that he uses the terms interchangeably. He offers a 'simple definition' for incommensurability: 'A and B are incommensurate if it is neither true that one is better than the other nor true that they are of equal value'.⁴⁹ If both conditions hold then A and B are incommensurate. Raz devotes a complex and detailed chapter to incommensurability and I cannot engage with all of his arguments here. He does however give us reason to doubt Crowder's rejection of the understanding of incommensurability as incomparability. Raz offers another, what he terms 'insignificant' example of incommensurability:

Here are two cups, one of coffee and one of tea. As it happens (a) neither is of greater value to me than the other; (b) warming this cup of tea a little will improve its value; and (c) the improved cup of tea will be neither better nor

⁴⁷ *Ibid.*, p.50.

⁴⁸ Gray, *Two Faces of Liberalism*, pp.41-42.

⁴⁹ Joseph Raz, *The Morality of Freedom*, p.322.

worse than the cup of coffee. Hence the two cups are incommensurate in value.⁵⁰

Such 'trivial' incommensurabilities, Raz claims, are commonplace. The examples that Kekes and Gray offer seem to be insignificant in this way: nothing hinges on the incommensurability of 'square roots and insults' nor on the answer to whether Aeschylus or Shakespeare is the greater dramatist. By 'significant' Raz means the choices about which we are not indifferent.⁵¹ We are largely indifferent to the trivial incommensurability of tea and coffee, but we would be heedful of significant incommensurabilities. Raz offers the significant example of a person who must choose between the irrevocable options of committing herself to a career in law or a career as a clarinettist, both careers to which she is equally suited and in which she stands an equal chance of success.⁵² Such a choice is 'a choice that one ought not to be indifferent to, or unconcerned about'. Raz believes that this example provides us with a case to think of incommensurability as incomparability: the two options cannot be compared. It is not that these are equal options. For them to be equal they would need to be comparable and in order for them to be comparable they would need to have shared features. Certainly, these two career paths do have some shared values. Both would entail successful fulfilment of projects through cooperation with others, the solicitor with her colleagues and the clarinettist with her fellow musicians. They would also share the instrumental value of providing financial gain, although the solicitor would likely earn more than the clarinettist. More fundamentally, they both share the value of being a career, to the extent that we think that fulfilling a career path is desirable in terms of self-fulfilment, self-respect, and as a demonstration of exercised autonomy. Incommensurability is not, therefore, complete: the two options share some common values. It is the values that they do not share, Raz claims, that makes them incomparable and thus incommensurable. A choice can be made between them, but that choice cannot be a rational choice as Crowder argues. Rather than assess incommensurability as incomparability in isolation, let us turn to Crowder's second and weaker understanding of incommensurability: immeasurability.

Incommensurability as immeasurability is perhaps the most intuitively appealing reading on offer, perhaps because of its weakness. According to Crowder this is the

⁵⁰ Ibid., pp.328-9.

⁵¹ Ibid., p.333.

⁵² Ibid., p.332.

claim that ‘plural values, although in some sense comparable for the purpose of decision making, cannot in any very precise manner be weighed or measured against one another, because they cannot be represented in terms of a common denominator of measurement’.⁵³ It is useful at this point to recall Talisse’s ‘pluralism test’. In order to determine whether a view is to be considered as value pluralist it must meet the pluralism test: ‘whatever pluralism is, it had better be something that utilitarians reject’.⁵⁴ Utilitarians, at least in their unreconstructed Benthamite form, take all values to relate to a common denominator such as pleasure or utility. All values, then, are as Kekes describes them, ‘fungible’.⁵⁵ The value of any one thing in some sphere can be understood and weighed against the value on any other thing in another sphere, and these spheres are themselves only subdivisions of some larger sphere. The utilitarian must think that seemingly peculiar questions, such as comparing Beethoven’s ninth with *Hamlet*, can in principle be answered in terms of the pleasure and pain or in terms of the utility that each produces. In accordance with Talisse’s test, immeasurability rejects the claim that such a common denominator exists for all values.

This understanding, however, is not as uncontentious as it might first appear. It is sometimes claimed that if we subscribe to the idea that incommensurable values cannot be measured by a single scale (incommensurability as immeasurability) then incomparability is entailed (incommensurability as incomparability).⁵⁶ If there is no common unit of measurement between two values then that requires that they are incomparable. This line of argument has been rejected by theorists, such as Ruth Chang, who claim that ‘the lack of a single scale of units of value does not entail incomparability’.⁵⁷ This rejection derives from the distinction between ordinal ranking — things ranked in order in a list — and cardinal ranking — things precisely ranked in terms of some specified value. Incommensurability as immeasurability allows us to say that things cannot be cardinally ranked in the sense of Bentham’s felicific calculus, but that they can be ordinally ranked as in Rawls’s lexical ordering of the principles of justice. The logic of this argument has led some, including the contributors of a

⁵³ Crowder, *Liberalism and Value Pluralism*, p.50.

⁵⁴ Talisse, *Pluralism and Liberal Politics*, p.10.

⁵⁵ Kekes, *The Morality of Pluralism*, p.67.

⁵⁶ This argument is laid out in full (and rejected) in Williams, ‘Conflicts of Values’ in *Moral Luck*, pp.76-77.

⁵⁷ Ruth Chang, ‘Introduction’ in *Incommensurability, Incomparability, and Practical Reason*, ed. Ruth Chang (Cambridge: Harvard University Press, 1997), p.1.

significant volume on incommensurability, to adopt a distinction between incommensurability, meaning that ‘two items that cannot be precisely measured by some common scale of units in value’ and incomparability, meaning those ‘items that cannot be compared’.⁵⁸ Raz, a contributor to the volume, abandons his view of incommensurability as incomparability that he endorsed in *The Morality of Freedom* (and that I presented above) in favour of incommensurability as ‘the absence of a common measure’.⁵⁹ And in the specific case of value: ‘the possibility that the value of two items, or that the goodness of two options is incommensurate, in that neither of them is better than the other nor are they of equal value’.⁶⁰ Although Raz commits himself to incommensurability as immeasurability, his retention of ‘neither of them is better than the other nor are they of equal value’ implies that incomparability has not been completely forsaken. Raz advocates a sort of incomparability through immeasurability: two things cannot be measured against one another *because* they cannot be compared. The ordering of this logic, however, does not seem especially significant here.

The difficulty for value pluralists is that immeasurability denies the possibility of cardinal ranking, but still permits ordinal ranking. Even if we cannot say with any degree of accuracy why certain things are ranked above other things in order of value we might still say that there is a non-specific rank. As a result, Crowder sees both cardinal and ordinal ranking as problematic for value pluralists, at least at a sufficiently general or abstract level.⁶¹ Instead, he proposes unrankability as the best understanding of incommensurability. Unrankability questions ‘the extent to which we can rank values for good reason in the abstract or in general’.⁶² Crowder is deliberately careful here because he wishes to avoid the claim that unrankability ‘rules out all ranking of values’.⁶³ Instead, unrankability rules out ranking ‘for a decisive reason’. Both incommensurability as incomparability and incommensurability as immeasurability still permit ranking ‘in the sense that we could simply decide to plump for one rather than the other without reference to any determinate reason for doing so’.⁶⁴ Such

⁵⁸ Chang, ‘Introduction’, in ed. *Incommensurability, Incomparability, and Practical Reason*, p.2.

⁵⁹ Joseph Raz, ‘Incommensurability and Agency’ in ed. Chang *Incommensurability, Incomparability, and Practical Reason*, p.110.

⁶⁰ *Ibid.*

⁶¹ Crowder, *Liberalism and Value Pluralism*, p.52.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*, pp.52-53.

‘plumping’, however, has no place in political theory, Crowder argues, because ‘we are concerned with the rational ranking of values and systems of values’.⁶⁵

Bernard Williams writes of four, what he calls, ‘denials’ about value of increasing strength that might be proposed by a subscriber to incommensurability that can help to clarify the thought behind Crowder’s preference for unrankability⁶⁶:

1. There is no one currency in terms of which each conflict can be resolved.
2. It is not true that for each conflict of values there is some value, independent of any of the conflicting values, which can be appealed to in order to resolve that conflict.
3. It is not true that for each conflict of values there is some value which can be appealed to (independent or not) in order to rationally resolve that conflict.
4. No conflict of values can ever be rationally resolved.⁶⁷

Williams claims that a proponent of incommensurability will endorse the first three claims, but not the fourth.⁶⁸ What value pluralists wish to retain is the ability to make rational decisions between values in some cases, while also accepting the hard truth that incommensurability precludes rational decision-making in all cases. Crowder’s preference for incommensurability as unrankability is reflected in Williams’s denial of 4., which is equivalent to incommensurability as incomparability, and the weakness of 1., which is equivalent to incommensurability as immeasurability. By endorsing unrankability as the best understanding, Crowder is most strongly in agreement with points 2. and 3. of Williams’s denials. This leads Crowder to the following definition: ‘values are incommensurable, on the value-pluralist view, when they raise radically distinct considerations such that there seems, *prima facie*, to be no reason to rank one ahead of the other in all or most cases’.⁶⁹ Crowder qualifies this definition by stating that only abstract ranking is rendered difficult by incommensurability. This has the significant implication that if we subscribe to incommensurability ‘we shall have no good reason to construct hierarchies of values in the abstract — hierarchies abstracted, that is, from particular cases and contexts’.⁷⁰ For now, it is enough to say that I take

⁶⁵ *Ibid.*, p.53.

⁶⁶ Williams uses the term ‘conflict of values’, which I take to be synonymous with incommensurability.

⁶⁷ Williams, ‘Conflicts of Values’, p.77.

⁶⁸ *Ibid.*, p.80. Williams also notes that Berlin is resistant to 3. because of his commitment to the radical distinctness of value.

⁶⁹ Crowder, *Liberalism and Value Pluralism*, p.53.

⁷⁰ *Ibid.*

Crowder's presentation of the various understandings of incommensurability and his choice of incommensurability as unrankability to be convincing, despite some disagreement among value pluralists. If we believe that rational choices can sometimes be made between competing values at a contextualised level and that immeasurability entails too great a degree of hierarchy then unrankability seems the most intuitively appealing understanding.

At this point in the discussion, what incommensurability is gives way to what incommensurability applies to. To go back to Raz's case of the incommensurable career paths, we might think that we are no longer discussing what incommensurability actually is, but rather what subject it can be suitably applied to, to what degree, and to what depth. Crowder has given us one sort of answer here, namely abstract values, but that does not seem specific enough once we start to look at possible instances of incommensurability.

Implicit in much of the previous discussion of what it means for two (or more) things to be incommensurable is the question of what those 'things' actually are: incommensurability of what? I hinted in the section on plurality of values that this is a problematic issue for value pluralists. I now expand on what that problem is.

An understanding of what the concept of incommensurability is cannot be complete until we know what subject incommensurability applies to. As I claimed earlier, the conceptual difficulty of defining what incommensurability *is* should not, as far as I can see, be complicated by the question of what incommensurability *applies to*, or in other words, what its subject is. We must be able, in a first step, to describe what incommensurability is, and then in a second step, apply that conception to some suitable subject. Incommensurability poses a particular difficulty in this respect because it requires a variety of subjects for there to be incommensurability between those two subjects. As value pluralism's most distinctive claim, I take the subject of incommensurability to also mean the subject of value pluralism. The other features of value pluralism that I have already discussed, including plurality of values and universality of values, also require an answer to the question of application: what sorts of thing are plural? What sorts of thing are universal? The following discussion, then, not only surveys the subject of incommensurability, but also the subject of value pluralism.

The initial simplicity of applying incommensurability or of finding its subject quickly becomes complex. Typically, however, value pluralists limit the scope of incommensurability somewhat by talking about value incommensurability. We might imagine incommensurability in other non-value spheres, or in spheres of value that aren't moral in nature. Aesthetic incommensurability might be once such area, as Keke's and Gray's examples suggest. A Rothko painting and a Sibelius concerto might be thought to be aesthetically incommensurable in the sense of unrankability, without the need for any judgment about their moral worth (though they may have moral worth). This does not, however, limit the scope of incommensurability very significantly.

For example, if we take incommensurability to mean incomparability as Raz does in *The Morality of Freedom*, then we need to know what things or what sorts of value are incommensurable. We might believe that different sorts of goods or values are not comparable with one another because they fall into incomparable categories of assessment. This would be to endorse the too-strong reading of incommensurability as incomparability, or to mistake incommensurability with category error. We might also, however, think that given a range of options that draw on the same value for their appeal that these too are incommensurable. John Finnis offers the following example: 'what makes vacationing at the beach appealing and what makes vacationing in the mountains appealing — such alternatives are incommensurable in the sense that each possibility has some intelligible appeal not found in what makes the other appealing'.⁷¹ I take this to mean that the values tied to going on holiday at the beach, such as the pleasure of swimming in the sea, are not comparable with the values tied to going on holiday in the mountains, such as the pleasing vistas seen from their peak. Even within values then, in this case the value of going on holiday, we might think that incommensurability applies. More pertinently, for political theorists, if a value such as equality is incommensurable in this way, then attempts to theorise about equality will likely involve a sort of tragedy: political choices that promote equality may be incomparable (and possibly incompatible) with one another.

Rather than talking of 'subjects' we can instead distinguish between three different 'levels' at which incommensurability applies. The first is at the level of values: different values are incommensurable with one another at some degree of suitable abstraction.⁷²

⁷¹ John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), p.423.

⁷² Crowder, *Liberalism and Value Pluralism*, p.54.

The second level is ‘internal’: certain values may be internally incommensurable in that they contain differing elements the value of which cannot be ranked ‘one ahead of another in all or most cases’.⁷³ This is the sense in which the two sorts of holiday are incommensurable in Finnis’s example. The third level of application is of value systems or ‘moralities’, a level that Crowder ascribes to John Gray and subsequently rejects.⁷⁴ The first two of these are uncontroversial, but still require some further explanation.

There are at least five plausible candidates in response to the question of application: options, values, obligations, conceptions of the good, and cultures. I have so far described these as the ‘subjects’ of incommensurability. It is worth noting that they could also be described, as Ruth Chang does, as the ‘bearers of value’ that provide alternatives for choice.⁷⁵ These seem to be interchangeable terms for the same thing: the application of incommensurability to some actual ‘thing’. These five candidates are not necessarily mutually exclusive, but they do differ in terms of their specificity. ‘Options’ seems to be a much broader notion than ‘conceptions of the good’ so ‘conceptions of the good’ could be contained within ‘options’. If one takes ‘options’ to be the suitable subject of incommensurability then conceptions of the good are likely to be included within that insofar as we take conceptions of the good to be properly optional. Similarly, one might reject ‘options’ as too broad a subject, as it might be thought to include non-moral values, and instead endorse ‘values’. This would likely also include conceptions of the good, insofar as we consider conceptions of the good to be instantiations of values.

As far as I can see, the first four of these candidates (options, values, obligations, and conceptions of the good) are widely accepted by value pluralists as legitimate subjects to which incommensurability applies. While some theorists, such as Williams or David Wiggins, focus on the incommensurability of abstract values, others, such as Raz or John Broome, prefer to focus on incommensurability of specified instances of value, such as obligations or conceptions of the good.⁷⁶ I make no judgment here about which

⁷³ Ibid., p.53.

⁷⁴ See Crowder, *Pluralism, Relativism and Liberalism in Isaiah Berlin*.

⁷⁵ Chang, ‘Introduction’ in *Incommensurability, Incomparability, and Practical Reason*, p.1.

⁷⁶ Williams, ‘Conflicts of Value’ in *Moral Luck*, p.73; David Wiggins, ‘Incommensurability: Four Proposals’ in *Incommensurability, Incomparability, and Practical Reason*, (ed.) Ruth Chang (Cambridge: Harvard University Press., 1997), pp.52-66; Raz, *Morality of Freedom*, pp.321-366.; John Broome, ‘Is Incommensurability Vagueness?’ in *Incommensurability, Incomparability, and Practical Reason*, (ed.) Ruth Chang (Cambridge: Harvard University Press., 1997), pp.67-89.

of these approaches is preferable, nor can I see why one should exclude the other, although devotees of Berlin might wish to follow his guidance that the ‘concrete situation is everything’ and therefore consider real rather than abstract approaches.⁷⁷ The contentious issue among value pluralists, though, is with incommensurability of cultures.

There is a significant divide between Crowder and Gray, both explicit followers of Berlin’s value pluralism, on the subject of incommensurability. Crowder contends that we can think that values are incommensurable without then thinking that the cultures that instantiate those goods are similarly incommensurable. The importance of this disagreement does not really become apparent until we start to discuss the political implications of value pluralism, which I do in Chapter 4, but it also signifies a difference at the level of value pluralism itself. Crowder believes that Gray’s error lies in the equation of ‘the incommensurability of goods with the incommensurability of cultures’, which leads Gray into a form of cultural relativism that Crowder rejects.⁷⁸ Cultures in this context are thought of as a hierarchically organised set of socially shared values that differs from some other similarly organised set of socially shared values. It is worth quoting Berlin on this point, as there is some disagreement about where Berlin stood on this question:

What is clear is that values can clash — that is why civilizations are incompatible. They can be incompatible between cultures, or groups in the same culture, or between you and me. You believe in always telling the truth, no matter what: I do not, because I believe that it can sometimes be too painful and too destructive. We can discuss each other’s point of view, we can try to reach common ground, but in the end what you pursue may not be reconcilable with the ends to which I find that I have dedicated my life.⁷⁹

While Berlin seems unequivocal here, Crowder could respond that civilisations are not the same as cultures and that Berlin’s position on the incommensurability of cultures is inconsistent in his work, as he often claims that value pluralism implies liberalism, thereby excluding non-liberal cultures.⁸⁰ More persuasively, Crowder can argue that incommensurability as unrankability means that for civilizations or cultures to be properly considered as incommensurable would mean that they are unrankable and that

⁷⁷ Berlin, ‘The Pursuit of the Ideal’, p.19.

⁷⁸ Crowder, *Pluralism, Relativism and Liberalism in Isaiah Berlin*, p.2.

⁷⁹ Berlin, ‘The Pursuit of the Ideal’, p.12. I take Berlin’s use of ‘incompatible’ to roughly mean ‘incommensurable’ here, although not in an analytically rigorous way.

⁸⁰ Berlin, *Liberty*, p.216.

this judgment, at least in the abstract, seems to conflict with our intuitions about comparisons between certain forms of government and between historical and contemporary societies.

These arguments begin to encroach on the political implications of value pluralism, which I have tried to cordon off from value pluralism as a theory of value. Gray's view, however, that 'cultures differ not only in how they interpret virtues they have in common but in the virtues they recognise. What some praise as virtuous others may condemn as vice' seems *prima facie* more plausible than Crowder's.⁸¹ If cultures are particular bearers of abstract values, as they seem to be, then incommensurability of abstract values implies incommensurability of cultures. This stakes no position in the debate about the relationship between value pluralism and liberalism, but rather, asserts that incommensurability of value will apply all the way up and down Crowder's 'levels' or my 'subjects', and to pick and choose is to dilute the truth about the nature of value that value pluralists argue for.

Conflict of values

The final claim of value pluralism, conflict of values, derives its force from incommensurability. It is also the claim that ties together the distinctive family of value pluralist claims. Value pluralists hold that values, including options, obligations, conceptions of the good, and possibly cultures, are not only plural and incommensurable, but also sometimes conflicting. This means that the demands they make or the ends they promote are not just mutually exclusive, but that the promotion of some will lead to the irrevocable loss to others. Williams phrases the position as the claim that 'we cannot conceive of a situation in which it was true both that all value-conflict had been eliminated, and that there had been no loss of value on the way'.⁸²

Berlin makes the same point more poetically:

The world in which what we see as incompatible values are not in conflict is a world altogether beyond our ken; Principles which are harmonised in this other world are not the principles with which, in our daily lives, we are acquainted; if they are transformed it is into conceptions not known to us on earth.⁸³

⁸¹ Gray, *Two Faces of Liberalism*, p.35.

⁸² Williams, 'Conflict of Values', p.71.

⁸³ Berlin, 'The Pursuit of the Ideal', p.14.

The conflict of values is most readily apparent in conflicts of obligation. Sartre's famous case of the student who asked whether he ought to fight in the Resistance against the Nazis or care for his ill mother provides such an example.⁸⁴ The obligation to care for his sick mother and his obligation to fight against an invading army that had killed his brother cannot both be fulfilled. He must, as Sartre responds, choose. Similarly, Crowder mentions the conflict between the 'principle of impartiality and the ties of friendship'.⁸⁵ In both cases gaining the value of one requires the loss of the other. Choosing to be impartial in a way that disadvantages one's friend might sour the friendship, just as choosing to care for one's mother would forgo the value of fighting injustice. In the case of Sartre's student, the obligations conflict because the student cannot be in two places or do two things simultaneously. He is, as Crowder says, constrained by the 'laws of physics'. Conflicts are caused in these types of cases by 'empirical circumstances which impose limitations of various kinds and degrees of strength'.⁸⁶ The other cause of conflicts arise 'from the very nature of the values concerned'.⁸⁷ The case of friendship and impartiality is one such case. We might also think back to Raz's case of the solicitor and the clarinettist. The values of one cannot coexist with the values of the other, and in fact, choosing one (which one must) entails some loss of the other. Sometimes these losses will be relatively small. We might be willing, for example, to trade a modicum of liberty for a large gain in equality. In other words, the losses engendered by value conflict need not equalise or be absolute.

Monists are capable of accepting value conflict as a feature of our moral and social worlds, but they cannot see it as inescapable or as intractable as value pluralists do. Conflict between values for monists may be caused by error or insufficient evidence, but not by the nature of value itself. As Berlin writes, 'if, as I believe, the ends of men are many, and not all of them are in principle compatible with each other, then the possibility of conflict — and tragedy — can never be wholly eliminated from human life...choosing between absolute claims is then an inescapable characteristic of the human condition'.⁸⁸ For value pluralists, value conflict is ineluctable because of the

⁸⁴ Jean-Paul Sartre, *Existentialism and Humanism*, trans. Philip Mairet (London: Methuen, 1948), pp.35-36.

⁸⁵ Crowder, *Liberalism and Value Pluralism*, p.54.

⁸⁶ *Ibid.*, p.55.

⁸⁷ *Ibid.*

⁸⁸ Berlin, 'Two Concepts of Liberty', p.169.

nature of value. Monists might identify quasi-conflicts, but these conflicts are merely temporary or illusory pending some future resolution.

With the main features of value pluralism set out, and some of the disputes and difficulties tracked, I now assess the appeal of value pluralism as a theory of value.

3. The Appeal of Value Pluralism

The appeal of value pluralism as a theory of value receives less attention in contemporary debates than what value pluralism is, and what the political implications of value pluralism might be. This might seem odd, given that these two expansions rely on the belief that value pluralism is appealing as a theory of value. Berlin thought that value pluralism was desirable for two main reasons. Firstly, it provides an alternative to the monist doctrines of philosophers such as Rousseau, Hegel, and Marx, who he considered the philosophical progenitors of twentieth century totalitarianism. Secondly, he thought that monism was false as a theory of value, and consequently, that value pluralism is true. I follow Iain Mackenzie in thinking that both the argument from ‘historical and cultural difference’, which I described as the argument from consequences, and the argument from ‘semantics of ordinary language’ are both weak arguments for value pluralism.⁸⁹ As Gray writes, ‘value-pluralism is a truth about human beings, not a construction the theorist adopts in order to secure pre-determined results’.⁹⁰ Value pluralism must hold regardless of its extrapolations. Instead, the appeal of value pluralism must be found in its demonstration of the falsity of both monism and relativism and an argument in favour of its own correspondence to truth.

Before judging the truth of value pluralism, there is another way that value pluralism might be thought to be appealing. This appeal is to be found in the combined distinctiveness of the above claims. If each claim — the universality, objectivity, plurality, incommensurability, and conflict of values — is right then value pluralism is also right. If value pluralism is defined in terms of a set of claims, then subscribing to each of those claims must mean that value pluralism is an attractive proposition. The monist is incapable of accepting incommensurability and conflict, while the strong

⁸⁹ Iain Mackenzie, ‘Berlin’s Defence of Value-Pluralism’, *Contemporary Politics*, Vol.5, No.4 (1999), pp.325-337.

⁹⁰ John Gray, ‘Reply to Critics’ in John Horton and Glen Newey (eds), *The Political Theory of John Gray* (Oxford: Routledge, 2007), p.232.

relativist cannot accept universal and objective values. If every claim is endorsed the only theory of value that one is left with is value pluralism. This might be described as the constitutive argument. If you sign up to each of those claims on their own merits then the position you ought to endorse is value pluralism. Although I think this argument does work on some level, it relies on the possibly false belief that each of those four claims are, in fact, appealing on their own merits. This has not yet been shown, and can only be shown by reference to the truth of those claims. To put it another way, the truth of value pluralism needs to be shown by the truth of its distinctive claims.

One other argument that is sometimes put forward in support of value pluralism is its ability to describe the reality of our moral universe. Berlin held that value pluralism best described ‘the world that we encounter in everyday experience’. As Talisse shows, the ‘neo-Berlinians’ ‘follow suit in holding that value pluralism is ‘the best account of the moral universe we inhabit’ (Galston) because it best captures moral experience (Crowder) and most fully comports with ‘ethical life as we find it’ (Gray)’.⁹¹ Talisse takes it as a ‘mark in favour of a theory’ that it preserves ‘our most fundamental sense of how things stand within the moral sphere’.⁹² It is unclear, however, that this argument can offer value pluralism any real support. Monistic theories of value, which hold that value is single, commensurable, and non-conflicting, have dominated philosophical, religious, and political thought for almost all of human history. Value pluralism certainly does not reflect the ethical lives of the many people who subscribe to monistic theories of value, who see even their own internal conflicts as erroneous rather than inevitable and for whom value is indeed ‘one big thing’ rather than many little things. Similarly, value pluralism does not comport with the ethical life of value pluralism’s most prominent critic, Ronald Dworkin, nor does it reflect the moral universe of any utilitarian philosopher.⁹³ That it offers the most intuitively appealing account of value for a particular set of people at a particular time, does not tell us anything much about its truth content. If those arguments are all unpersuasive, what philosophical considerations can be marshalled in support of value pluralism?

⁹¹ Galston, *Liberal Pluralism*, p.30; Crowder, *Liberalism and Value Pluralism*, p.5; Gray, *Two Faces of Liberalism*, p.35. Quoted in Talisse, *Pluralism and Liberal Politics*, p.85.

⁹² Talisse, *Pluralism and Liberal Politics*, p.86.

⁹³ Dworkin, *Justice for Hedgehogs*, p.1.

Berlin's value pluralism, and those who follow its contours, makes a particular truth claim about the world of value. In Berlin's formulation, value pluralism does not rely on contingent factors in the world. It is not, for example, a product of liberal democracy or of modernity, although value pluralists can accept that these have exacerbated the strife inherent to value pluralism. Instead, Berlin held that value pluralism reflected necessary truths about the nature of value. Significantly, value pluralism does not lead us to believe that truth is plural, even if value is. This might seem to run counter to the spirit of value pluralism because of the fuzzy use of 'truth' to describe various ethical positions, especially in Berlin's work, but this is a minor semantic matter. Value pluralism can be consistent in its claim that it is the sole version of truth about value in the world and that values are plural, incommensurable, and conflictual. There are not a great many attempts to establish the truth of value pluralism, and even those attempts are, as Chang states, 'surprisingly inconclusive'.⁹⁴ Nevertheless, I try to present the strongest cases available in favour of value pluralism as the most accurate theory of value.

Crowder, despite refusing to 'attempt a conclusive demonstration of pluralism', offers a sketch to defend the truth of pluralism by means of the constitutive argument. He takes the claims that values are plural and potentially conflicting to be uncontroversial and therefore unproblematic.⁹⁵ His focus is firstly on the relativist challenge to the existence of universal values and secondly on the monist challenge to the incommensurability of values. Crowder argues that the claim that 'some things are valuable for any good life for human beings is controversial' but has a 'respectable philosophical pedigree' and is 'backed by a good deal of empirical evidence from social anthropology that there are least some things that are in fact valued across all human cultures'.⁹⁶ These 'human universals', as Crowder recognises, have little justificatory value, as all those societies that have valued similar things could well have been wrong to value them.

Crowder's next move is to follow Nussbaum in claiming that the theory of universal values that value pluralists rely on is not 'in the sense that worries liberals, a

⁹⁴ Ruth Chang, 'Value Pluralism', in Smelser and Bates (eds.), *International Encyclopedia of the Social and Behavioral Sciences* (London: Pergamon Press, 2012) pp.16139-16145. That the case for value pluralism is inconclusive is not actually surprising at all, for reasons that I discuss in Chapter 4.

⁹⁵ Crowder, *Liberalism and Value Pluralism*, p.65.

⁹⁶ *Ibid.*, p.66.

metaphysical theory' because 'it is not a theory that is arrived at in detachment from the actual self-understandings and evaluations of human beings in society; nor is it a theory peculiar to a single metaphysical or religious tradition'.⁹⁷ Relativists and political liberals are unlikely to be persuaded by this argument. The strong relativist will counter with examples, such as that given by Kekes, of types of life that are not benefited by the universal goods that value pluralists claim to exist. Lives of communal suffering, lives dedicated to the rapture, lives invested in the pursuit of pain all seem to run contrary to the values that Nussbaum and Crowder rely on. Political liberals, with their wariness towards any particular conception of the good, will sympathise with the relativist's counter and add that any conception of the good, regardless of how thin it is, must be metaphysical in nature. A conception of the good must tell us that some things are worth pursuing while others are not, and political liberals are not in the business of making those sorts of decision.

More promisingly, Crowder goes on the attack against 'extreme' relativism, citing its imperviousness to reason, its inability to negatively judge Nazi Germany or the Stalinist Soviet Union, and its self-defeating logic.⁹⁸ He also restates his position that value pluralism is compatible with a moderate form of relativism in that it concedes that values are only universal at a high level of generality, not all the way down, and therefore that value pluralism is only really in conflict with strong relativism, which can be discredited for all the usual reasons.⁹⁹ Again, however, Crowder's argument underdetermines his support for value pluralism. As he acknowledges, the debate between universalist and relativist theories of value is 'as old and as complex as Western philosophy'.¹⁰⁰ Although Crowder is likely to find many supporters for his argument, he is unlikely to persuade any who were not already believers. Although Crowder tries to disarm value pluralism's critics by limiting his aim to establishing 'the claims of value pluralism to be plausible and worth taking seriously', this is too weak a justification for the strong claim of value pluralism, which needs to demonstrate its truth, not its plausibility, to prove persuasive as a theory of value. Many things are plausible, but very few are true.

⁹⁷ Martha Nussbaum, 'Aristotelian Social Democracy' in eds., Douglass, Mara and Richardson, *Liberalism and the Good* (New York: Routledge, 1990), p.217.

⁹⁸ Crowder, *Liberalism and Value Pluralism*, pp.67-68.

⁹⁹ *Ibid.*, p.68.

¹⁰⁰ *Ibid.*, p.65.

In another tack, Crowder deploys an array of arguments in defence of incommensurability. First, he argues that it tallies with lived experience, an argument I have already rejected.¹⁰¹ Second, he follows Kekes in arguing that subscribers to monism have tried and failed repeatedly to provide a theory that establishes the commensurability of values.¹⁰² This, however, is unconvincing. Until Darwin's breakthrough, humanity had failed to come up with a theory of biological diversity, and even now physics has yet to unite quantum field theory with general relativity. Leaving aside the thorny issue of progress in science versus progress in philosophy, the failure of the past tells us nothing, in theoretical terms at least, about the possibilities of the future. Finally, Crowder offers the most convincing argument in favour of incommensurability, and perhaps in favour of value pluralism: the argument of rational regret. Following both Michael Stocker and Bernard Williams, Crowder argues that if it can be rational to regret the result of a correct moral choice then incommensurability is implied.¹⁰³ As Crowder claims, there exist inexorable choices 'among conflicting values such that gains in one value will result in losses in the other.' These losses are absolute: 'they are not compensated by the gains, even when we are sure we have made the best choice possible under the circumstances'.¹⁰⁴ This experience of loss, which is the tragedy of incommensurability, is incompatible with monism which must hold that the right decision contributes more to the *summum bonum* than the wrong decision, and therefore that we can feel no rational regret about correct decisions. The sense of regret from making the right decision between two options can only come about if there are plural, and even radically plural, values. Were Sartre's student to somehow correctly choose to fight instead of care for his mother, the regret he might feel at missing the opportunity to do something morally admirable would be irrational on the monist account but rational on the value pluralist account. This offers a reason to think that incommensurability, the essential claim of value pluralism, is true and therefore that monism is false.

¹⁰¹ Ibid., p.69.

¹⁰² Kekes, *The Morality of Pluralism*, p.58.

¹⁰³ Stocker, *Plural and Conflicting Values*; Williams, *Moral Luck*.

¹⁰⁴ Crowder, *Liberalism and Value Pluralism*, p.71.

There are, however, alternative ways of understanding regret that might point to different conclusions about incommensurability.¹⁰⁵ Regret might be understood not as the loss of value through incommensurability but rather as regret about being forced to make a choice in the first place. This sort of regret would not stem from the nature of value but rather from the imposition of choice. For Sartre's student, what might elicit regret is not that he made the right decision but incurred some loss of value in doing so, but rather that he was put in a position in which he had to choose. In making the choice the student must accept the burden of culpability even though he believes that he chose correctly. Similarly, the monist could claim that even though a moral choice was difficult that they still made the right rational choice. If a utilitarian rationally chooses option a), which produces sixty units of utility, over option b), which produces only 40 units of utility, she has made the right choice by maximising the *summum bonum* of utility. She might nevertheless regret that she was unable to choose *both* a) and b) to produce one hundred units of utility. Her regret is not caused by the incommensurability of the two options, but by the possibility that things might have been otherwise. Further, the argument from rational regret seems to hinge on an account of psychology of moral choice that only indicates incommensurability if one's psychological reaction is one that accords with value pluralism. This then becomes a version of the previously rejected argument that value pluralism reflects our moral experience. At best, this argument is inconclusive, and cannot seem to bear the weight of value pluralism's metaphysical claims. As Crowder notes, neither this argument nor any of the others is decisive in demonstrating the truth of value pluralism. He goes on to concede that the case for value pluralism is not 'logically watertight' but that 'few if any interesting claims about the nature of morality are wholly impregnable in that sense'.¹⁰⁶ While this is right, it is not exculpatory. As I argue in Chapter 4, the appeal of value pluralism hinges on its truth, a truth which cannot be adequately well established. Instead, we should look to a theory of pluralism that does not hinge on metaphysical truth about the nature of value, but rather sees pluralism as the outcome of the difficulties of reasoning about value.

¹⁰⁵ For other arguments against the 'rational regret' justification see Glen Newey, 'Value Pluralism and Contemporary Liberalism', pp.500-501; Thomas Hurka, 'Monism, Pluralism, and Rational Regret', *Ethics*, Vol.106 (1996), pp.555-575.

¹⁰⁶ *Ibid.*, p.72.

4. Conclusion

This chapter has surveyed the key features of value pluralism as it exists in contemporary political theory and attempted to give an even-handed summary of its appeal without imposing too strongly my own view about its relative merits. Although there is little here in the way of positive arguments, my aim in this section is to offer up two theories of moral pluralism before evaluating and comparing them in detail. It is worth saying here that value pluralism, as I have described it, seems to me like an appealing theory of value in that it accords more closely with my own experience of the world than any monistic theory. Chapter 4 argues that one can be sympathetic to value pluralism without thinking that sympathy should motivate theorists to apply value pluralism to political theory, but before beginning that task I turn now to the second theory of moral pluralism: epistemic pluralism.

Section I: Varieties of Moral Pluralism

Chapter 3: Epistemic Pluralism

In contrast to value pluralism, to which many theorists subscribe, epistemic pluralism has far fewer adherents, although it has one notable supporter in John Rawls. The term ‘epistemic pluralism’, at least in moral and political philosophy, has only recently been coined by Robert Talisse to describe his alternative to value pluralist approaches to liberal justification. Because epistemic pluralism is less mature than value pluralism, this chapter is less exegetical than the previous chapter. There is, therefore, more of my own theorising here, although I see my own conception of epistemic pluralism as a development of Rawls’s crucial insights about the character and causes of value disagreement.

Put in its simplest terms, epistemic pluralism is the idea that reasoning about value is fraught with difficulty. The reason we disagree on matters of value, on an epistemic pluralist account, is that it is hard to know what to conclude in many cases of value judgment. Talisse summarises Rawls’s pluralism as the view that, ‘there are enduring and seemingly insurmountable epistemic obstacles to reasoned agreement about fundamental moral and religious matters’ among reasonable people.¹ I use a very similar, but broader definition of epistemic pluralism here. Epistemic pluralism, as I understand it, is the claim that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value among well-intentioned, sincere, and conscientious people. What this means is that the path to conclusions about value is littered with epistemic obstacles which hinder our ability to reach agreement, even under ideal epistemic circumstances and with ideal disputants. These epistemic obstacles are given by Rawls’s ‘burdens of judgment’, which offer a compelling explanation of why epistemic pluralism obtains.² The upshot of this is that reflective, non-dogmatic people who are reasoning to the best of their abilities will often be unable to reach an agreement on matters of value. This describes the state of play of normal moral disagreements, but epistemic pluralism goes further by claiming that such disagreements do not imply that either party in a dispute is wrong. This is the sense in which epistemic pluralism is pluralist. Because reasoning about value is so difficult we

¹ Talisse, *Pluralism and Liberal Politics*, p.26.

² Rawls, *PL*, pp.56-57.

must, in some cases, conclude that even though two parties have incompatible beliefs about value that neither party is necessarily wrong to hold the beliefs that they do.

My definition departs from Rawls's in two ways. Firstly, it is not restricted to 'moral and religious matters', but refers instead to the wider category of 'matters of value'. Secondly, I do not use Rawls's idea of 'reasonable people' and instead specify that those people are 'well-intentioned, sincere, and conscientious'. The reasons for these differences will become clearer throughout the thesis, but for now it suffices to say that Rawls's narrower definition results from his desire to exclude political disagreement from the scope of pluralism and not from any reasons that can be found within the idea of epistemic pluralism itself. As David Enoch notes, reasonableness 'may bear some resemblance to how we use the term in natural language, but the characterizations of reasonableness...are a matter of stipulation, not of conceptual analysis'.³ My alterations to Rawls's conception might seem minor, but the ramifications of these slight differences can be seen clearly once the political consequences of epistemic pluralism are spelled out. Because these are differences of stipulation rather than of conceptual analysis, I take my idea of epistemic pluralism and Rawls's idea to be deeply similar, but my conception is stripped of Rawls's stipulations.

I begin by outlining the idea of epistemic pluralism and pointing to some of the relevant considerations on how it is conceived (1). I then develop a conception of epistemic pluralism, drawing on Rawls's 'fact of reasonable pluralism' (2). First I clarify in what sense it is a 'fact', before analysing what is 'reasonable' about it, how reasonableness does not play a role in my own conception, and finally, how the burdens of judgment explain *why* there are epistemic obstacle to reasoned agreement about value. I then assess the appeal of epistemic pluralism (3).

1. A Sketch of Epistemic Pluralism

Although epistemic pluralism has only been identifiable as a theory fairly recently, some of its underpinning ideas can be found further back in political and moral thought in the empiricism of Hume's *Enquiry Concerning Human Understanding*, in which he argues that 'a wise man, therefore, proportions his belief to the evidence'.⁴ Although

³ David Enoch, 'Against Public Reason', p.121.

⁴ David Hume, *An Enquiry Concerning Human Understanding* (Oxford: OUP, 1999), p.170.

an analytically-inclined theorist would want to expand on what Hume means by ‘belief’, ‘evidence’, ‘proportions’, and also perhaps ‘wise’, it is this insistence on the limits of moral knowledge that is the driving force behind epistemic pluralism. Although there may be a richer history of the idea of epistemic pluralism, the fact that Rawls, who is scrupulous in crediting his ideas to other thinkers, only acknowledges one article by Joshua Cohen in influencing his thought, suggests that epistemic pluralism is a recent development in political theory.⁵

Rawls’s ‘fact of reasonable pluralism’ is the original and most prominent species of epistemic pluralism despite Rawls never identifying it as such. More importantly, Rawls’s burdens of judgment provide the clearest explanation as to why reasoning about value does not produce consensus among people arguing in good faith. If epistemic pluralism’s explanation of value disagreement is that there are many epistemic obstacles to reasoned agreement about value, then the burdens of judgment explain what those obstacles are. Although Rawls’s theory of political liberalism has been subjected to extensive criticism and analysis, the pluralism that informs it has generally only received attention as part of the wider theory. That is not to deny that the fact of reasonable pluralism has received significant analysis, but rather that almost all the analysis has focused on the role that pluralism plays in political liberalism, and not exclusively on its pluralist foundations.⁶ My focus here, however, is entirely on those foundations.

Unlike value pluralism, epistemic pluralism is not a thesis about the nature of value, rather it is a thesis about reasoning about value. This exposes me to the criticism that the two theories of moral pluralism are not sufficiently alike to warrant a comparison. What links these two theories, however, is their capacity to explain disagreement without resorting to error-based explanations. Recall that the question I am trying to

⁵ Joshua Cohen, ‘Moral Pluralism and Political Consensus’ in Copp, Hampton, Roemer (eds.), *The Idea of Democracy* (Cambridge: CUP, 1993), cited in Rawls, *PL*, p.36, fn.37. The novelty of epistemic pluralism might be explained (at least by Rawls) by the fact that pluralism arises from the conditions of liberal democracy in which people are free to reason and reflect; conditions that have only existed since liberal democracy’s ascendancy in the nineteenth and twentieth centuries.

⁶ For some of the wider responses to Rawls’s political liberalism and the fact of reasonable pluralism see, William Galston, ‘Pluralism and Social Unity’, *Ethics*, Vol.99 (1989), pp.711-726; Joshua Cohen, ‘Pluralism and Proceduralism’, *Chicago-Kent Law Review*, Vol.69 (1994), pp.589-618; David Reidy, ‘Reciprocity and Reasonable Disagreement: From Liberal to Democratic Legitimacy’, *Philosophical Studies*, Vol.132 (2007), pp.243-291; Jonathan Quong, ‘Disagreement, Asymmetry, and Liberal Legitimacy’, *Politics, Philosophy, Economics*, Vol.4 (2005), pp.301-330; Leif Wenar, ‘Political Liberalism: An Internal Critique’, *Ethics*, Vol.106, No.1 (1995), pp.32-62.

answer here is why people reasoning in good faith disagree about value. Disagreement about value, on both theories of moral pluralism, need not be explained away by some position or other being wrong. Value pluralism has the broader ambition of telling us about the nature of value, but it also offers a crucial insight (at least for its proponents) as to why people disagree about fundamental matters of value. Epistemic pluralism's ambition is limited to explaining disagreement about value, and does not attempt to tell us anything about the nature of value, but rather about the limits of our reasoning about value. While the two theories' scope differs, they both perform a similar function: explaining why people disagree about value.

My comparison might also face criticism from the opposite direction: epistemic pluralism and value pluralism are complementary or overlapping theses and it is therefore mistaken to understand them as alternatives. For example, it might seem that like value pluralism, epistemic pluralism runs contrary to monism. The monist must claim that all disagreements about value stem from erroneous reasoning about value. In other words, for the monist, the idea of incompatible but reasonable comprehensive doctrines (an idea endorsed by epistemic pluralists) cannot hold. Either two comprehensive doctrines are reasonable (and in accordance with one another) or they are incompatible (and at least one is wrong), for the monist they can never be both. If epistemic pluralism opposes monism in this way, then it becomes less theoretically distinct from value pluralism. This, however, is based on the conflation of two different types of monism. Whereas value pluralism is incompatible with metaphysical or ontological monism *and* epistemological monism, epistemic pluralism is at odds only with epistemological monism. If the epistemic pluralist claim is that there are significant and insurmountable epistemic obstacles to reasoned agreement about questions of value then the epistemic monist must either deny that such obstacles exist or argue that they can be overcome.

Some value pluralists, such as Crowder, have claimed that reasonable pluralism 'presupposes the truth of value pluralism'.⁷ As the structure of Section I suggests, I do not share this view. Charles Larmore is right to note that what 'Rawls *calls* pluralism is the expectable inability of reasonable people to agree upon a comprehensive conception of the good' compared with Berlin's pluralism, which is 'a deep and

⁷ Crowder, *Liberalism and Value Pluralism*, p.169.

certainly controversial account of the nature of the good, according to which objective value is ultimately not of a single kind but of many kinds'. To those who think that Rawls is himself a value pluralist, Larmore rightly replies that 'doctrine and reasonable disagreement about doctrine can hardly be the same thing'.⁸ At this point it is sufficient to say that I think that Crowder is mistaken in seeing epistemic pluralism as reliant on value pluralism, but I argue that case in full in Chapter 4.

Although Robert Talisse describes himself as an epistemic pluralist I do not focus on his account. Instead I take Rawls to be the foremost proponent of epistemic pluralism, despite his preference for the term 'reasonable pluralism' rather than epistemic pluralism. This is because Rawls provides a richer account of epistemic pluralism, even without naming it, than Talisse. Although Talisse is a fine interpreter of epistemic pluralism through the pragmatist tradition, Rawls is both the original and fullest exponent of epistemic pluralism even though my own account of epistemic pluralism diverges from his in significant ways. As Rawls is not explicit in his embrace of an epistemic form of pluralism, I repurpose his arguments for the fact of reasonable pluralism in order to outline a conception of epistemic pluralism. That Rawls is an epistemic pluralist should become clear, but my argument here is in favour of epistemic pluralism and not Rawls's fact of reasonable pluralism.

Focusing on Rawls's account is not without its difficulties. The two major difficulties are that my conception of epistemic pluralism is not defined in terms of reasonableness and it is not limited to moral, philosophical, and religious disagreements. Although I develop Rawls's insight here, the fact of reasonable pluralism and epistemic pluralism are not one and the same. For example, the burdens of judgment, which on my account simply explain why epistemic pluralism obtains, are for Rawls, a requirement that citizens in a 'well-ordered society' must accept if they are to count as reasonable. More generally, Rawls's use of reasonableness as a means of limiting pluralism is problematic because any conception of reasonableness will entail some normative judgments which will themselves be subject to epistemic pluralism. This difference forms the basis of my critique of Rawls in Chapter 5.

Further, teasing apart epistemic pluralism from the broader project of political liberalism is artificial because of Rawls's jigsaw-like approach to political theory: each

⁸ Charles Larmore, *The Morals of Modernity*, p.154.

part of the theory addresses some other part of the theory and its coherence is drawn from this interdependence.⁹ Rawls's project of political liberalism arises out of his desire to 'resolve a serious problem internal to justice as fairness, namely from the fact that the account of stability in Part III of *Theory* is not consistent with the view as a whole'.¹⁰ This technical problem is part of the puzzle of political liberalism with which I began the thesis: 'How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?'.¹¹ Rawls's answer to that question is the project of political liberalism that I turn to in Chapter 5, but in this chapter I aim only to clarify what Rawls calls the 'serious problem' that gives rise to that question: epistemic pluralism.

2. A Conception of Epistemic Pluralism

Rawls takes the 'serious problem' posed to justice as fairness as presented in *A Theory of Justice*, to be that 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'.¹² That there can be religious, philosophical and moral doctrines that are both incompatible *and* reasonable is the condition that Rawls refers to as the 'fact of reasonable pluralism'. It is important to see how Rawls understands epistemic pluralism in order to clarify the idea and to distinguish my own conception from his narrower conception.

The idea of reasonable pluralism is a fact about the world. It is not, however, a metaphysical truth, but rather a social fact about the conditions that inevitably arise in the 'political culture of a democratic society'.¹³ Rawls's theory is explicitly non-universal. Although he rejects the view that reasonable pluralism is just an aberration of modern democratic societies, he claims that 'it is a permanent feature of the public culture of democracy'.¹⁴ So long as societies are democratic the fact of reasonable

⁹ It is harder to separate epistemic pluralism from its political consequences than it was to separate value pluralism from its political consequences because epistemic pluralism refers to people's actual use of reason and not to abstract values.

¹⁰ Rawls, *PL*, pp.xv-xvi.

¹¹ *Ibid.*, p.xviii.

¹² *Ibid.*, p.xvi.

¹³ *Ibid.*, p.36.

¹⁴ *Ibid.*

pluralism will obtain. As William Galston has pointed out, Rawls begins to theorise with a culture of liberal constitutional democracy already in place.¹⁵ *Political Liberalism* is unusual because it presupposes a democratic and liberal background. From this starting point, his theory then addresses a society ‘in which there is a diversity of comprehensive doctrines, all perfectly reasonable’. According to Rawls this is ‘the fact of reasonable pluralism, as opposed to the fact of pluralism as such’.¹⁶ Rawls understands pluralism to be a natural and non-regrettable feature of the exercise of reason within free institutions.¹⁷ He claims that,

free institutions tend to generate not simply a variety of doctrines and views, as one might expect from peoples’ various interests and their tendency to focus on narrow points of view. Rather, it is the fact that among the views that develop are a diversity of reasonable comprehensive doctrines. These are the doctrines that reasonable citizens affirm and that political liberalism must address.¹⁸

These doctrines are not merely the ‘upshot of self- and class interests’, they are ‘the work of free practical reason within the framework of free institutions’. Political liberalism, then, is not ‘adjusting that conception [the political conception of justice] to brute forces of the world but to the inevitable outcome of free human reason’.¹⁹

Rawls’s theory addresses an idealised society that is made up of citizens who are broadly committed to democratic and liberal values. It is the commitment to these values that produce the fact of reasonable pluralism. Reasonable pluralism is a secondary fact. By this I mean that it is a fact derived from a prior fact about the nature of society that it addresses. In *Theory*, justice as fairness applied to a society in which people conceive of themselves as both free and equal as features of their moral nature.²⁰ In *Political Liberalism*, however, the idea of free and equal citizens is supplemented by the idea of reasonableness, as a political ideal that is ‘implicit in the public political culture of a democratic society’.²¹ This is the primary fact that precedes the fact of reasonable pluralism that follows. It is due to the free exercise of human reason that the fact of reasonable pluralism obtains. This contrasts with the metaphysical claim to truth made by value pluralists. Whereas value pluralists are making a claim about the nature

¹⁵ William Galston, *Liberal Pluralism* (Cambridge: CUP, 2002), p.43.

¹⁶ Rawls, *PL*, p.24, fn..27.

¹⁷ *Ibid.*, p.36.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, p.37.

²⁰ Samuel Freeman, *Rawls* (Oxford: Routledge, 2007), p.331.

²¹ Rawls, *PL*, p.223.

of value, Rawls is making a more limited claim about human reason in modernity. On my conception of epistemic pluralism, even highly idealised people under perfect epistemic conditions will be unable to reach reasoned agreement on matters of value. This is important because it means that there will always be non-erroneous disagreement regardless of how idealised the citizens or the deliberative procedure are. Epistemic pluralism is a pertinent fact for political theory because the disagreement it engenders will be present at every level of idealisation.

With the ‘fact’ aspect of reasonable pluralism clarified, what Rawls means by ‘reasonable’ needs to be explained. Here there are two questions. Firstly, how does Rawls define reasonable and, secondly, how does my conception of epistemic pluralism differ on this point?

‘Reasonable’ in *Political Liberalism* refers both to the set of what Rawls calls ‘comprehensive doctrines’, or the moral, philosophical, and religious doctrines that relate to the good, and also to the various conceptions of political justice that are held in democratic societies. This is in spite of his claim that *Political Liberalism*, unlike *Theory*, strives to distinguish ‘a strictly political conception of justice’ from ‘a moral doctrine of justice general in scope’.²² Rawls suggests that these doctrines are those that are compatible with reason, despite the tendency of (both people in general, and philosophers in particular) to ‘see reason as leading to the truth and to think of the truth as one’.²³ The main task in *Political Liberalism* is to establish the political conception of justice that a democratic society may (both normatively and realistically) endorse. Comprehensive doctrines then re-enter the framework at a later stage by providing support to the political conception of justice.²⁴ Both types of doctrine are subject to a test of reasonableness, and the distinction between the two only becomes significant when considering the stability of the political agreement.²⁵

Comprehensive doctrines are those value systems that ‘cover all values and virtues’, and provide general accounts of value which explain conceptions of the good.²⁶ These systems are ‘precisely articulated’ to the extent that they can offer answers to all

²² Ibid., p.xv.

²³ Ibid., p.64.

²⁴ Ibid., p.145.

²⁵ Paul Brink, *The Idea of Pluralistic Politics: Pluralism and Consensus in John Rawls’s Political Liberalism* (PhD thesis, submitted to University of Notre Dame, 2005), p.18.

²⁶ Rawls, *PL*, p.13.

questions of morality, both personal and political.²⁷ Rawls gives three features of reasonable comprehensive doctrines. The first is that ‘a reasonable doctrine is an exercise of theoretical reason: it covers the major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner’. The second is that ‘each doctrine will do this in ways that distinguish it from other doctrines, for example, by giving certain values a particular primacy and weight’. This second feature, the requirement of value weighting and commensurating Rawls calls ‘an exercise of practical reason’. The third feature is that a reasonable comprehensive doctrine ‘belongs to, or draws upon, a tradition of thought and doctrine’. While ‘stable over time’ it ‘tends to evolve slowly in the light of what...it sees as good and sufficient reasons.’²⁸ Not only must comprehensive doctrines be theoretically coherent, they must also provide a source for practical reasoning in particular circumstances. Paradigmatic cases of comprehensive doctrines include certain religious beliefs (a general commitment to ‘the spiritual’ would not fulfil Rawls’s requirements) and moral doctrines such as utilitarianism, both of which can provide clear answers to all moral questions.

In *Political Liberalism* there is no clear distinction between reasonable persons and reasonable beliefs, although Rawls sometimes describe reasonable beliefs and doctrines without explicit reference to those who hold those beliefs. This signifies a major difference between epistemic pluralism and value pluralism. Value pluralism applies to values themselves, though this pluralism may then manifest itself in various bearers of value. Rawls, however, takes it for granted that reasonable persons are those who hold reasonable beliefs.²⁹ For Rawls, reasonable people who hold unreasonable views could not retain their status as reasonable. The holding of unreasonable beliefs provides sufficient grounds to disbar someone from the group of ‘the reasonable’. Distinguishing between what constitutes reasonable and unreasonable beliefs would therefore be a pointless exercise, as these views cannot exist separately from the person or persons that hold them. Reasonable pluralism does not refer to the plurality of reasonable views, but rather to the plurality of reasonable persons who hold such views, as the condition

²⁷ Ibid.

²⁸ Ibid., p.59.

²⁹ Ibid.

of the former depends on the existence of the latter. Rawls dedicates his efforts to defining the reasonable person whose beliefs, it must follow, are also reasonable.

The conceptual framework of what constitutes a reasonable and rational citizen in *Theory* is rebuilt here with new ballast. The idea of ‘the two moral powers’, which comprises ‘the capacity for a sense of justice and the capacity for a conception of the good’ is retained, and with them the ‘intellectual powers of judgment, thought, and inference’, ‘a determinate conception of the good’, and ‘the requisite capacities and abilities to be normal and cooperating members of society over a complete life’ that allow the two moral powers to be exercised.³⁰ This is all familiar from *Theory*, and I do not examine this aspect in detail. How, then, does Rawls define ‘reasonable’?

No easily quotable definition of what counts as reasonable is given in *Political Liberalism*. Instead, ‘the reasonable’ is defined in relation to and by comparison with ‘the rational’, a distinction that Rawls traces back to Kant.³¹ The closest that Rawls gets to a reliably concise definition is given through a description of two aspects of reasonableness as ‘virtues of persons’:³²

Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. These norms they view as reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose.³³

This example of the reasonable person is contrasted with the unreasonable person who is ‘unwilling to honor, or even to propose...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’.³⁴ The idea of reasonableness, then, centres on reciprocal good-faith intent and both a willingness and an ability to fulfil the terms of an agreement that is made under such circumstances. Rawls wishes to distinguish between comprehensive doctrines that meet this descriptive standard and those ‘unreasonable and irrational, and even mad, comprehensive doctrines’ that fall short.³⁵

³⁰ *Ibid.*, p.81.

³¹ *Ibid.*, p.48, fn.1.

³² *Ibid.*, p.48.

³³ *Ibid.*, p.49.

³⁴ *Ibid.*, p.50.

³⁵ *Ibid.*, pp.xvi-xvii.

The willingness to cooperate, one feature of reasonableness, is supplemented by another: the acceptance of ‘the burdens of judgment’, which I turn to shortly.

Rawls’s two virtues of persons, the willingness to propose and abide by fair terms of cooperation under circumstances of reciprocity and a recognition of the burdens of judgment, characterise what Rawls means when he describes a reasonable person.³⁶ This reasonableness is a fundamentally social ideal, which is to say that it entails not only internal processes of both morality and reason, but also a social attitude towards others’ internal processes. This distinction refers us back to the second question that I set out above, namely, why is reasonableness the chosen criterion as opposed to rationality? Rawls claims that ‘the reasonable is public in a way the rational is not’.³⁷ Reasonableness is a virtue of the social world. It is an ability of being able to ‘enter as equals the public world of others and stand ready to propose, or to accept...fair terms of cooperation with them’.³⁸ Reasonableness is dependent on the idea of reciprocity that is required by the two virtues of persons. The two virtues of persons and reasonableness itself are also therefore in a conceptually reciprocal relationship, with the virtues providing the definition for a concept that then enables them to be recognised as virtues. Reasonableness only applies under circumstances where the other parties in any agreement are also reasonable. If those people cannot be trusted to be reasonable, then it would be ‘irrational or self-sacrificial to act from those principles’.³⁹ The rational, however, is not public in this way. It does not depend on the compliance of others to the same standard. Rationality is thus free-floating with regard to the public or political world. While it may be rational to pursue one’s own self-interest to the maximum degree possible, regardless of the expense that may incur others, it cannot be reasonable. Reasonableness is imbued with moral characteristics that rationality lacks, and it is these characteristics that make it the appropriate consideration for the form of pluralism that is permitted by political liberalism.

That reasonableness trumps rationality in the public sphere is part of Rawls’s method of political constructivism that requires the right to be prior to the good.⁴⁰ What is meant by this priority is that ‘admissible ideas of the good must respect the limits of, and serve

³⁷ Rawls, *PL*, p.53.

³⁸ *Ibid.*

³⁹ *Ibid.*, p.54.

⁴⁰ See Freeman, *Rawls*, pp.351-357 for a discussion of the differences between ethical constructivism and political constructivism.

a role within, the political conception of justice'.⁴¹ The good is not to be thought of as a subset of the right because the two are distinct. Instead conceptions of the good are only permitted to the extent that they are compatible with and do not violate the principle of justice set out by the right.⁴² In this way the two concepts are in a relation of priority, as the good is always subject to the limits of the right, but the right is explicitly not subject to the limits of the good.

Rawls's preference for the reasonable over the rational as the criterion that limits pluralism, is explained by the ideas of the right and the good that are mirrored in the capacities of the reasonable and the rational. The right (which includes political justice) addresses the reasonable, whereas the good (which includes all moral, philosophical, and religious values and goods) addresses the rational. The good, counter-intuitively, is therefore a morally restricted idea in political liberalism. It concerns the maximisation of a person's 'rational plan of life...so as to pursue their conceptions of the good'.⁴³ But such a rational plan, because it is rational rather than reasonable, lacks 'the particular form of moral sensibility that underlies the desire to engage in fair cooperation as such, and to do so on terms that others as equals might reasonably be expected to endorse'.⁴⁴ While rational conceptions of the good may, and are in fact likely to, contain moral elements, the concept of the good is only permissible *politically* so long as it is in accordance with the right, and by extension, the reasonable. The content of those conceptions is irrelevant for Rawls insofar as it is incompatible with the right. The fact of reasonable pluralism aims to be descriptive of the moral world, rather than constructive. Political liberalism claims to respond to a descriptive fact about the nature of liberal democratic societies and the people who reason within them, rather than attempting to construct that society through philosophical means.⁴⁵

The complexity of Rawls's argument and language disguises the simplicity of the ideas. Rawls claims that *Political Liberalism* aspires to apply the 'principle of toleration to philosophy itself'.⁴⁶ It is this aspiration that he tries to meet through the idea of reasonable pluralism. The reasonableness criterion rests on an idea of reciprocal liberal

⁴¹ Rawls, *PL*, p.176.

⁴² *Ibid.*, p.176, fn.2.

⁴³ *Ibid.*, p.177.

⁴⁴ *Ibid.*, p.51.

⁴⁵ Galston identifies the descriptive/constructivist contrast in relation to value pluralism as a moral, rather than political, thesis. See Galston, *Liberal Pluralism*, p.47.

⁴⁶ Rawls, *PL*, p.10.

toleration. Only those persons that are willing to tolerate others and cooperate ought themselves to be tolerated, and intolerance cannot be permitted on the grounds of ignorance or misunderstanding. I do not follow Rawls in making this normative step in defining my own conception of epistemic pluralism for reasons that I outline shortly.

Although reasonableness applies to both comprehensive doctrines and to conceptions of political justice, *reasonable pluralism* only applies to comprehensive doctrines. Political conceptions of justice must be reasonable, but Rawls does not believe that pluralism applies to these conceptions. To put it another way, political conceptions of justice cannot be both reasonable and incompatible. On this distinction, Jeremy Waldron writes that, ‘nowhere, as far as I can tell’ does Rawls infer from the fact of reasonable pluralism that ‘reasonable people might be expected to disagree fundamentally about the basic terms and principles of their association’.⁴⁷ Waldron wrote this prior to the publication of the paperback edition of *Political Liberalism* in which Rawls acknowledged that ‘PL does recognise that in any actual political society a number of differing liberal political conceptions of justice compete with one another in society’s political debate’.⁴⁸ Even with this brief but important revision, Waldron is right to point out that ‘Rawls’s treatment of disagreements about justice is really quite insignificant’.⁴⁹ Waldron’s conclusion that the ‘idea of public reason is incompatible at most with the existence of reasonable disagreement about *the fundamentals* of justice’, even if it is not incompatible with reasonable disagreement about ‘the way the details are worked out’.⁵⁰ Rawls’s concession is small, in that it only admits pluralism among *liberal* political conceptions of justice, but it is also undeveloped.⁵¹ His revision does not prompt any reworking of the theory to respond to reasonable political pluralism and so the structure of his conception of pluralism remains largely unchanged. I do not follow Rawls in limiting pluralism to moral, religious, and philosophical doctrines, and instead use the looser notion of disagreement ‘on matters of value’. The reason for this difference will become clear as the thesis develops, as it concerns Rawls’s application

⁴⁷ Jeremy Waldron, ‘Disagreement About Justice’, *Pacific Philosophical Quarterly*, Vol.75 (1994), p.375.

⁴⁸ Rawls, *PL*, p.xlvi.

⁴⁹ *Ibid.*, p.374.

⁵⁰ *Ibid.*, p.376.

⁵¹ Samuel Freeman believes that Rawls neither recants nor ‘wavers in his conviction’ that justice as fairness is the most reasonable and philosophically justifiable comprehensive doctrine (Freeman, *Rawls*, p.325). If this is accurate, then it is unclear to what extent Rawls is really committed to the idea that the burdens of judgment produce various versions of truth, or just a multiplicity of erroneous views that cannot easily be shown to be wrong.

of epistemic pluralism to political theory rather than the idea of epistemic pluralism itself.

Why do I not share Rawls's use of 'reasonable' as a restriction on epistemic pluralism? Whereas Rawls's conception of epistemic pluralism is limited to reasonable people, my own conception is limited to well-intentioned, sincere, and conscientious people. This difference might seem negligible, but it is important in severing epistemic pluralism from political liberalism. The idea of the reasonable plays a technical and internally referential role in Rawls's theory. If epistemic pluralism is to break away from Rawls's larger theory then it must also break away from the technical and internal terminology of his thought. Although I have explained Rawls's conception of reasonableness, I do not think that epistemic pluralism needs to invoke reasonableness at all. In order to see why I reject the reasonableness restriction we need to understand why Rawls chose to endorse reasonable pluralism rather brute pluralism.

The fact of reasonable pluralism is only loosely related to the brute fact of pluralism as such, in that the brute fact of pluralism is a social fact within which the far more philosophically developed and constrained fact of *reasonable* pluralism exists. The idea that unreasonable views might or even ought to be permitted under political liberalism is not seriously considered by Rawls. Of the 'unreasonable and irrational, and even mad, comprehensive doctrines' that may exist in a society 'the problem is to contain them so that they do not undermine the unity and justice of society'.⁵² This containment is not through any form of inclusion. The people who hold such beliefs will be subject to the principles of justice decided on by reasonable people, but the unreasonable will have no say in them. Why is Rawls so stringent in excluding unreasonable views from his conception of pluralism?

The reason is to be found in Rawls's claim that reasonable pluralism is a non-regrettable feature of human life. According to Rawls, the fact of reasonable pluralism is not 'an unfortunate condition of human life, as we might say of pluralism as such, allowing for doctrines that are not only irrational but mad and aggressive'.⁵³ By endorsing a form of pluralism that is non-regrettable, Rawls sidesteps the objections that his political turn exposes his theory to. If political liberalism were a response to 'an unfortunate

⁵² *Ibid.*, p.xvii.

⁵³ Rawls, *PL*, p.144.

condition of human life' it would attract the criticism that that condition ought to be altered, or that if it is regrettable then it has no moral worth and any agreement produced by such views would be 'bending it [a political conception of justice] to existing unreason'.⁵⁴ The reasonableness criterion allows Rawls to nullify the criticism that he builds his theory on philosophically trivial or morally regrettable foundations.

The problem with Rawls's use of reasonableness as a restriction on pluralism is that it is normatively laden. As my analysis of reasonable pluralism sought to show, Rawls's conception of reasonableness is a moralised notion of what it means for idealised citizens to be reasonable, which is far removed from any ordinary understanding of 'reasonable'. To be reasonable, citizens must not only have the 'two moral powers', they must also be willing and able to propose and abide by terms of cooperation, and, as I show in a moment, accept the burdens of judgment. These normative requirements do not flow from conceptual considerations about epistemic pluralism itself, but instead serve to bolster Rawls's political project of salvaging political agreement from endemic disagreement about value. Reasonableness, for Rawls, carries a lot of normative baggage and serves a function distinct from explaining disagreement about value. In other words, reasonableness is unnecessary for a conception of epistemic pluralism.

Apart from being superfluous, there is another stronger reason to abandon reasonableness. The aim of epistemic pluralism is to explain disagreements about value among people arguing in good faith. By constraining pluralism in terms of the reasonable, Rawls builds contentious value claims into his definition of pluralism. For Rawls, people can be well-intentioned, sincere, and conscientious and nevertheless be unreasonable if they do not possess the two moral powers, demonstrate their willingness to propose and abide by terms of cooperation, and accept the burdens of judgment.⁵⁵ What Rawls ignores, however, is that these normative requirements are themselves subject to epistemic pluralism. The epistemic obstacles that any person faces when making a value judgment may lead them to refuse to propose terms of cooperation (with those who have previously oppressed them, perhaps), or may lead them to reject the burdens of judgment because they believe that religious scripture has a monopoly on truth. By restricting pluralism in terms of reasonableness, Rawls relies

⁵⁴ Ibid.

⁵⁵ Even more troublingly, Rawls equates reasonableness with an acceptance of political liberalism, but I will not level this criticism at this stage of the discussion.

on value commitments that may be unjustifiable given epistemic pluralism. This internal inconsistency and the superfluity of reasonableness lead me to reject it as a constraint on my conception of epistemic pluralism.

If Rawls's reasonableness restriction is too thick, why limit pluralism, as I do, to those disagreements between well-intentioned, sincere, and conscientious people? We could instead say that epistemic pluralism is the claim that there are enduring and currently insurmountable epistemic obstacles to reasoned disagreement among all people. While I can see the appeal of this move, it is important that epistemic pluralism refers to certain types of disagreement about value. Rank or ostentatious immoralism is not really of interest to the epistemic pluralist. It does not seem especially important that someone who holds morally repugnant views for the sake of being controversial, for example, disagrees with someone who is trying their best to reason about value. What is significant for the epistemic pluralist is that people who *are* trying their best to reason about value still reach incompatible non-erroneous conclusions. The limitation of 'well-intentioned, sincere, and conscientious people' is designed to exclude only those people who are not actually engaged in genuine moral reasoning at all. As T.S. Eliot wrote in 'East Coker', 'For us there is only the trying. The rest is not our business'. On my conception of epistemic pluralism what matters is the trying. If people are trying to reason about value then epistemic pluralism obtains. In practice, whether someone is actually trying to reason about value in a well-intentioned, sincere, and conscientious way, is a difficult judgment to make and so I do not think it does very much work in my conception except to indicate that epistemic pluralism cares only about those disagreements about value which are genuine rather than faux disagreements. Theories of moral pluralism attempt to explain genuine disagreements about value, not spurious disagreements, and so the point of limiting epistemic pluralism to well-intentioned, sincere and conscientious people is to distinguish authentic value disagreements from disingenuous disagreements. This weaker standard does not have the exclusionary force of Rawls's reasonableness limit, but instead merely shows that there is a real philosophical problem in value disagreement that demands attention. This is also important because it means that no matter the degree of idealisation that a theorist employs, epistemic pluralism will hold. Even the most sincere, conscientious, and well-intentioned reasoners will be unable to reach a reasoned agreement. No amount of idealization can magic away this fact, because epistemic pluralism describes the

inevitability of disagreement *even* among the most idealised disputants. The differences between my conception of epistemic pluralism and Rawls's fact of reasonable pluralism are therefore significant, and will become more so when I turn to first-order theory, but both accounts share the most important and appealing component of epistemic pluralism: the burdens of judgment.

For Rawls, the burdens of judgment constitute a feature of the reasonable. More importantly for my conception of epistemic pluralism, the burdens of judgment provide an explanation of *why* our best moral reasons underdetermine value conflicts. If epistemic pluralism is the claim that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value among well-intentioned, sincere, and conscientious people then the burdens of judgment offer an explanation as to why there are enduring obstacles to reasoned agreement. According to Rawls, the burdens of judgment cover 'only the most obvious sources' of value disagreement, leaving room for other potential sources, but I have yet to see any additions proposed to his six burdens, suggesting that this caveat is only a precaution on Rawls's part. Rawls's use of the burdens of judgment is not stable across *A Theory of Justice* and *Political Liberalism*. As Paul Weithman notes, the burdens of judgment are generally understood in the terms in which they are presented in *Political Liberalism*, which is to say 'as sources of reasonable disagreement that members of the WOS [well-ordered society] must acknowledge if they are themselves to be reasonable'.⁵⁶ In *Theory* though, the burdens of judgment were introduced 'to explain the fact of pluralism to Rawls's readers, and not as an explanation of pluralism that members of the WOS themselves must accept'.⁵⁷ In the former sense used in *Political Liberalism* the burdens of judgment are conditions of justified uncertainty that people in a well-ordered society must accept in order to count as reasonable. In this sense, the burdens of judgment are not only descriptive of the kinds of reasons that can lead reasonable people to disagree, but are also imbued with the moral requirement that those who are reasonable can only be so in virtue of their acceptance of the burdens of judgment. As I argued above, my conception of epistemic pluralism is not limited in this moral way.

⁵⁶ Paul Weithman, *Why Political Liberalism? On John Rawls's Political Turn* (Oxford: OUP, 2011), p.249.

⁵⁷ *Ibid.*

The first ‘virtues of persons’, the willingness to propose and abide by fair terms of cooperation under circumstances of reciprocity, is complemented by the second virtue of being willing to recognise the burdens of judgment and to ‘accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime’.⁵⁸ According to Rawls, reasonable pluralism results from the strain of the burdens of judgment.⁵⁹ These burdens are such that even with full impartiality and altruism (some of which is assumed in the original position), people would still disagree about moral, philosophical, and religious judgments. These burdens lead people to reach different conclusions about moral, religious, and philosophical issues, without impugning the reasonableness of those in disagreement.

For Rawls, the burdens of judgment offer ‘an account of the sources, or causes, of disagreement between reasonable persons’.⁶⁰ Like value pluralism, epistemic pluralism furnishes us with a theory of disagreement that does not rely on error. Crowder, in criticising the burdens of judgment, asks ‘could reasonable disagreement about the good be explained in some other way than value pluralism?’⁶¹ Rawls’s six burdens do just that:

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

⁵⁸ Rawls, *PL*, p.54.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, p.55.

⁶¹ Crowder, *Liberalism and Value Pluralism*, p.169.

cherished values...we face great difficulties in setting priorities and making adjustments. Many hard decisions may seem to have no clear answer.⁶²

The burdens of judgment provide an explanation of epistemic pluralism and, in a second step, why disagreement is an inevitable consequence of that pluralism. The burdens of judgment exclude the divergence of views caused by people's tendency to 'advance their own more narrow interests' and the views that result from people who are 'irrational and not very bright' and thus prone to the kind of 'logical errors' that are sources of disagreement both for reasonable and unreasonable people.⁶³ The burdens of judgment explain disagreement between reasonable people, and reasonable people are also those who recognise that they are themselves in thrall to these burdens. The views of reasonable people cannot be judged to be irrelevant on the grounds that they are insufficiently grounded in empirical evidence, or suffer from fallacious reasoning. Rawls observes that these sources are not special to reasoning about value, rather they apply to a wide range of disagreements including empirical and prudential disagreements that are not normative. Although they are not special to disagreements about value, my conception of epistemic pluralism, as a species of moral pluralism, is limited to those disagreements.

There has been some discussion about the relative weight of the burdens. I do not follow Charles Larmore in thinking that d) 'provides the key to explaining the phenomenon', but recognise that d) may be the most forceful of the six explanations.⁶⁴ As an example, it seems obvious that someone whose partner is an immigrant would have different attitudes towards the treatment of non-citizens and towards border control compared with someone who has no close relationships with immigrants. Their different life experiences yield different conclusions about value. Similarly, the person who has never suffered hardship is less likely to support redistributive economic measures than the person who has lived in poverty. Note that this does not imply any sort of relativism. It is not that these positions are entirely subjective and therefore that one person can have nothing to say to another from within their separate chrysalises of experience. It is just to acknowledge that experiences tend to affect reasoning about value without calling into question the conclusions that are reached through that reasoning. Although d) is perhaps the most forceful, it cannot operate alone as the other burdens of judgment

⁶² Rawls, *PL*, pp.56-57.

⁶³ *Ibid.*, p.55.

⁶⁴ Larmore, 'Pluralism and Reasonable Disagreement', p.76.

are required to preclude a relativism. It is unnecessary to identify or argue for any one of the burdens in particular because it is the idea of the burdens of judgment itself, not its constituent parts, which is relevant for epistemic pluralism.

Unlike my alterations to Rawls's conception of pluralism, I do not think that any changes need to be made to his account of why there are enduring and currently insurmountable epistemic obstacles to reasoned disagreement. Although criticisms have been made about Rawls's use of the burdens of judgment, there has been no criticism that I can see of the burdens themselves, except from the criticisms made by value pluralists. I mentioned these criticisms briefly above and I delve into that debate in Chapter 4, but otherwise the burdens of judgment seem to offer a compelling and uncontroversial account of why reasoned agreement eludes us. Having outlined a conception of epistemic pluralism and distinguishing my own conception from Rawls's, I now turn to the appeal of epistemic pluralism.

3. The Appeal of Epistemic Pluralism

In Chapter 2 I suggested that value pluralism's appeal, as an ontological theory about value, rests on its truth: it is only appealing insofar as it is true. Value pluralism as a theory that claims and requires its own truth, must do so based on the evidence, broadly conceived to include moral argument and reasoning. So too, however, must epistemic pluralism. The difference between the two is that as a metaphysical thesis value pluralism requires a far higher standard of supportive evidence than epistemic pluralism. As Crowder concedes, the arguments in favour of value pluralism are inconclusive, even if we feel the pull of some of its intuitions about value. Epistemic pluralism, the claim that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value among well-intentioned, sincere, and conscientious people, is comparatively uncontroversial. Its arguments *are* compelling enough for us to accept epistemic pluralism as an explanation of value disagreement. The burdens of judgment provide a particularly convincing and hard to dismiss list of reasons that explain why there are so many epistemic obstacles to reasoned agreement. If one accepts the burdens of judgment, then that gives good reason to accept epistemic pluralism. Epistemic pluralism is appealing, then, because it

does not rest on highly controversial claims about truth or the nature of value. Counterintuitively, epistemic pluralism is appealing not because of its grandeur, but rather because of its humility. Its essential claim, that reasoning about value is difficult, is apparent to anyone who has ever studied any moral philosophy or anyone who has ever had to make a moral decision. I divide the character of this appeal into two overlapping types: first, it is appealing as a neutral theory of pluralism, and second, it is appealing as a ‘light’ theory of pluralism.

The first argument in favour of epistemic pluralism might seem to draw on an argument external to the idea of epistemic pluralism itself, namely, Rawls’s idea that controversial moral and metaphysical debates should be removed, as far as possible, from the design of political institutions and their principles. As Fabian Freyenhagen notes, Rawls’s formulation of justice as fairness in *Political Liberalism* aims to be freestanding in two senses. First, ‘it is freestanding from moral and ethical values beyond the political sphere (for example, it is agnostic about whether surfing or monastic devotion leads to the good life)’ and second, ‘it is also freestanding from philosophically controversial questions (such as the nature of truth, or the sources of normativity)’.⁶⁵ Epistemic pluralism is appealing because of the combination of these two senses. The liberal principle of neutrality, the principle that tells us that the state is not in the business of endorsing comprehensive doctrines, is here applied to the foundations of liberalism itself. Whereas comprehensive liberalism is neutral in the first of Freyenhagen’s senses, it is not neutral in the second. Comprehensive liberalism relies on philosophically controversial questions, such as the supreme value of liberty or the value of autonomy. Epistemic pluralism frees us from these questions, thereby replicating a principle of neutrality at the very foundations of political theory. This is appealing because it points to the internal consistency of epistemic pluralism. If reasoning about value is littered with epistemic obstacles, then a theory which explains value disagreements without invoking normative ideas derived from that reasoning seems promising. One does not need to be a liberal to think that epistemic pluralism offers a good explanation of value disagreement.

Value pluralism, to recapitulate, asserts that it is *the* true ontological theory about value, to the exclusion of all other theories about value, such as monism and relativism. The

⁶⁵ Fabian Freyenhagen, ‘Taking reasonable pluralism seriously: an internal critique of political liberalism’, *Politics, Philosophy & Economics*, Vol.10, No.3, p.324.

claim to truth that value pluralism makes falls into the category, for Rawls, of the philosophically controversial. Arguments can be marshalled both for and against the truth of value pluralism, as they are, without yielding a certain conclusion about its truth. Here we see the mutually supportive nature of Rawls's theory between reasonable pluralism and political liberalism's commitment to freestanding political principles (in Freyenhagen's second sense). That two reasonable people, for example Isaiah Berlin and Ronald Dworkin, would disagree about the truth of value pluralism, gives us grounds to exclude value pluralism from the foundations of liberalism. In this way, Rawls's ambition for political liberalism to be 'political not metaphysical' is supported by the fact of reasonable pluralism, and by the recognition of the burdens of judgment that are conditions on counting as a reasonable member of the polis.⁶⁶ The support between these two ideas also works in the other direction by providing evidence in support of epistemic pluralism. That two *prima facie* well-intentioned, sincere, and conscientious interlocutors disagree fundamentally about the nature of value suggests that epistemic pluralism obtains in practice.

As I claimed earlier, epistemic pluralism is neutral (or agnostic) between conflicting metaphysical positions on value, but it is not neutral between conflicting epistemological positions on value. It is, most significantly, opposed to epistemological monism. I have not given the idea of epistemological monism much consideration here, but it is briefly worth mentioning that epistemic pluralism is not entirely philosophically neutral because it must deny epistemic monism. Epistemic monism can be understood as the negation of epistemic pluralism, which is to say, there are not epistemic obstacles to reasoned agreement on matters of value. Epistemic monism is not an uncommon view in moral or political life. For the epistemic monist (although I am unaware of anyone who identifies with this label), people disagree about value because they have reasoned incorrectly and because there is only one way in which to reason correctly. Interestingly, Rawls claims that political liberalism 'offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself'.⁶⁷ What this implies is that Rawls's response to the charge of philosophical sectarianism would be that epistemic monists are in fact unreasonable, as they fail to recognise the burdens of judgment. It is sufficient to say here that epistemic pluralism, even if not

⁶⁶ Rawls, *PL*, p.10.

⁶⁷ Rawls, *PL*, p.10.

wholly neutral, is far more neutral on philosophically controversial questions than value pluralism. The controversial status of epistemic pluralism is discussed in full in Chapter 4.

The second appealing feature of epistemic pluralism is what I call its ‘lightness’. Rawls claims that reasonable pluralism is a condition special to liberal democracies. Only in societies in which the free exercise of human reason is permitted will reasonable pluralism obtain. He also, however, denies that this is a contingent state of affairs, a ‘mere historical condition soon to pass away’.⁶⁸ As Thaddeus Kozinski puts it, reasonable pluralism is not a ‘historical phenomenon’, a ‘descriptive account of the present sociological situation of liberal democracy, that could be otherwise’.⁶⁹ These two claims seem to be in conflict: how can the fact of reasonable pluralism arise out of a set of particular set of social conditions but not be contingent? Rawls’s response to this would be that although we might consider the advent of democratic societies to be a desirable but contingent state of affairs, the reasonable pluralism that results from this state of affairs is not contingent. While the political circumstances from which epistemic pluralism arises are contingent, the pluralism is itself an inevitable result of those contingent circumstances. Once the genie is out of the bottle, it can’t be put back in. For Rawls, reasonable pluralism is a necessary feature of democratic societies. If there is not reasonable pluralism amongst its citizens then the society is not democratic. Reasonable pluralism is therefore a permanent condition of democratic societies, a condition which might only be undone by a process of rigorous and sustained de-democratisation. Once epistemic pluralism takes hold it cannot be reversed.

The neutrality of epistemic pluralism can be shown through its relationship to value pluralism. People might disagree for value pluralist reasons, most significantly because of incommensurability, but also for the epistemic pluralist reason that there are insurmountable epistemic obstacles to reasoned agreement. This overlap, however, I think is mistaken for the following reason: epistemic pluralism seems to have something to say about value pluralism where value pluralism has nothing to say about epistemic pluralism. Larmore writes that the acceptance of epistemic pluralism, ‘responds to the religious and metaphysical disenchantment of the world, not by

⁶⁸ Ibid., p.217.

⁶⁹ Thaddeus Kozinski, *The Political Problem of Religious Pluralism: and why philosophers can’t solve it* (Lanham: Lexington Books, 2010), p.14.

affirming it, as [value] pluralism seems to do, but rather by recognising that like other deep conceptions of value this disenchantment is an idea about which reasonable people are likely to disagree'.⁷⁰ Epistemic pluralism is appealing because it is agnostic about all candidates for metaphysical truth. It is agnostic about what counts as a good life, as are many liberal theories, but it is also agnostic about the nature of value itself. When monists and value pluralists disagree about the nature of value they both must explain this disagreement in terms of error. This is consistent with both of their theories. Value pluralism does not claim that *all* disagreements about value are caused by incommensurability, some are simply caused by mistaken reasoning, and error is the monist's only explanation for disagreement. In other words, value pluralists and monists accuse one another of being mistaken about what is true. The epistemic pluralist, however, says that the disagreement between value pluralists and monists (and relativists too) is a consequence of the epistemic obstacle to reasoned agreement. Epistemic pluralism accepts that both Dworkin and Berlin hold their views non-erroneously, despite their views being incompatible. Value pluralism is itself subject to epistemic pluralism, but this relationship does not cut the other way. An ontological thesis can have nothing to say about an epistemological thesis, but an epistemological thesis may have plenty to say about an ontological thesis.

Although Rawls describes reasonable pluralism as a 'permanent feature', there is also a sense in which epistemic pluralism is a 'light' theory. I use 'light' here to contrast with the metaphysical heaviness of value pluralism. If value pluralism is true then it has always been true, as the metaphysics of value are constant across all times and in all societies. This is what I mean by 'heaviness': it is a theory that transcends all contingencies, all historical differences, and all cultural differences. Epistemic pluralism, though permanent in one sense, is light in that its cause can be found in recent developments in our social and political lives. Epistemic pluralism only arises in response to the free use of human reason, which in turn is enabled by the freedoms of a democratic society. If value pluralism is true, then it has always been true for everyone everywhere. Epistemic pluralism only explains the value disagreements of modernity, in which freedom of reasoning is possible. Rather than a mark in epistemic pluralism's favour, this lightness might instead be regarded as a flaw. Where value pluralism holds the possibility of universal prescription, epistemic pluralism must shun such grand

⁷⁰ Charles Larmore, 'Pluralism and Reasonable Disagreement', p.74.

ambitions. That epistemic pluralism is light in this way is, I believe, appealing, but this appeal can only be seen clearly in the political application of epistemic pluralism, not in the theory itself. Talisse makes the case, which I understand to be similar to mine here, that ‘epistemological pluralism is a decidedly modest view; it holds simply that our moral lives are rife with indeterminacy and that we must nonetheless sally forth’.⁷¹ Whether we must or even can ‘sally forth’ in the face of such indeterminacy is addressed in Section III, but the idea of modesty that Talisse puts forward in favour of his view mirrors the idea of lightness that I suggest here. If we commit ourselves to epistemic pluralism then it seems to follow that light rather than heavy theories should be preferred. Given the indeterminacy of reason in cases of value disagreement, the lighter the foundations of theory are, the better.

4. Conclusion

This chapter has outlined a conception of epistemic pluralism, defined as the claim that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value among well-intentioned, sincere, and conscientious people by analysing Rawls’s ‘fact of reasonable pluralism’. I have justified the differences between my conception and Rawls’s conception and suggested some of the ways in which epistemic pluralism is appealing. The real appeal of epistemic pluralism, though, rests on its superiority to value pluralism as a way of explaining value disagreement for political theory. If we want to explain value disagreements without resorting to error-based explanations, then value pluralism and epistemic pluralism are the only games in town. What I argue in the next chapter is that epistemic pluralism is the better of the two as a basis for first-order political theory.

⁷¹ Talisse, *Pluralism and Liberal Politics*, p.108.

Section I: Varieties of Moral Pluralism

Chapter 4: In Defence of Epistemic Pluralism

In the previous chapters I described two versions of moral pluralism that offer competing explanations of disagreement about value. On one hand, value pluralists argue that we disagree because of the nature of value. If values are plural and incommensurable then it is inevitable that the bearers of value will disagree in a way that is not rationally resolvable. Epistemic pluralists instead argue that we disagree because there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value among well-intentioned, sincere, and conscientious people. This chapter examines which of those two explanations provides an appropriate foundation for political theory. Although I have hinted at my preference for epistemic pluralism over value pluralism, I have not offered a justification for this choice. I attempt to provide such a justification here. The comparison between these two explanations is not primarily concerned with which theory is philosophically superior. Comparison of this sort would be difficult because one is a metaphysical theory, while the other is an epistemological theory. Instead my argument here is about which theory, as an explanation of value disagreement, can provide a foundation for first-order political theory. I argue that it is the epistemic obstacles to reasoned agreement on value, and not the nature of value itself, that provides a fitting explanation of disagreement for political theory. What counts as ‘relevant’ or ‘suitable’ or ‘appropriate’ for political theory draws on Rawls’s idea of freestanding theory, which in turn draws on epistemic pluralism. I argue that value pluralism, as a metaphysical thesis, is too controversial to provide a foundation for first-order theorising. We know this because epistemic pluralism tells us so. By contrast, epistemic pluralism is a philosophically light theory which provides a suitable foundation for first-order political theory.

The argument is structured as follows. Firstly, I defend Rawls’s position that political theorising should be independent of controversial moral and philosophical theses, in particular metaphysical theses. I review Rawls’s argument for freestanding theory (1) and critique William Galston’s argument in support of comprehensive theorising. Secondly, I argue that value pluralism is prohibited from grounding first-order theory because it is too controversial. Here, I follow Charles Larmore in arguing that epistemic pluralism should be preferred to value pluralism because controversial metaphysical

beliefs should not inform political principles.¹ I then challenge George Crowder's claim that epistemic pluralism collapses into value pluralism in order to show that value pluralism is controversial (2). Thirdly, I argue that epistemic pluralism is not controversial in the same way as value pluralism by rejecting critiques of Rawls's 'method of avoidance' by Brian Barry and Joseph Raz (3). First, I must defend the idea of freestanding political theory.

1. The Idea of Freestanding Political Theory

Having drawn on Rawls's fact of reasonable pluralism in Chapter 3 to develop a conception of epistemic pluralism I now defend a commitment to freestanding theory. These two ideas go together in that Rawls sees his commitment to a freestanding conception of justice as a result of the fact of reasonable pluralism. Because people will inevitably and non-erroneously disagree about comprehensive doctrines, all such doctrines must be excluded from public reason to allow an overlapping-consensus on political principles to form. My argument in this thesis is not, however, a defence of Rawls's political liberalism, even though I draw on his ideas. Nevertheless, Rawls's argument for freestanding political theory also supplies the tools to defend epistemic over value pluralism.

There is an important distinction to be made between two possible interpretations of the freestanding approach, only one of which I endorse here. Rawls is right about freestanding theory on a theoretical level (i.e. political theorists should abstain from invoking controversial philosophical premises), but as Chapter 5 argues, he is not right about freestanding theory from the perspective of political agents due to the difference between his conception of epistemic pluralism and my own. Whereas Rawls thinks that the fact of reasonable pluralism precludes both theorists *and* citizens from invoking metaphysical premises, I am only interested in how epistemic pluralism precludes theorists from invoking metaphysical premises. There are therefore two ways in which the idea of freestanding political theory can be understood, which I call the *theoretical constraint understanding* and the *agent constraint understanding*. The theoretical constraint understanding of freestanding theory precludes theorists from invoking controversial metaphysical doctrines, whereas the agent constraint understanding

¹ Larmore, *The Morals of Modernity*, p.154.

precludes citizens from invoking metaphysical doctrines when engaged in public reasoning. Rawls endorses both conceptions of freestanding theory, but I only endorse the former theoretical constraint understanding. Given that the debate here is between freestanding and comprehensive approaches that distinction is less important than demonstrating the validity of freestanding theory in the light of epistemic pluralism. The point for now is the argument in favour of epistemic pluralism over value pluralism, and to that end Rawls's arguments again prove useful.

There are three possible ways to justify a choice between these two alternative forms of moral pluralism. The first would be to argue for one over the other on a purely normative basis. In other words, to argue that a recognition of either value pluralism or epistemic pluralism better adheres to our pre-existing moral and political intuitions. The form that this argument tends to take, in accounts that favour value pluralism, is to draw mutually supportive connections or even entailments between value pluralism and liberalism.² On this view, value pluralism is the best theory of pluralism because endorsing value pluralism is congruous with an endorsement of liberal principles. This argument, however, is flawed from the outset. If the aim of theorising is to justify which values we ought to pursue, or which principles ought to govern us, then assessing the extent to which a theory of moral pluralism accords with *liberal* values misses the point of the exercise. It cannot be a valid justificatory strategy to start with liberalism and then work back from there to see which version of pluralism fits best. A theory of moral pluralism must stand alone in terms of justification, regardless of whether that theory bodes well or ill for liberal values.

The second way to justify a choice is to claim that one theory is true and one theory is false. Or, in other words, to assert that the philosophical justification for subscribing to one form of moral pluralism over the other is superior. As I have already noted, comparison of this sort is far from straightforward, as it is plausible that both theories could be true. One might think that value pluralism offers a better metaphysical account of value than monism, but also that there are many epistemic obstacles to reasoned agreement. Because the two theories do not necessarily conflict in this way such arguments will likely prove inconclusive.

² See Crowder, *Liberalism and Value Pluralism* and Galston, *Liberal Pluralism* for examples of this type of argument.

The third way to justify the preference is by appeal to a methodological framework. This is the route that I follow Rawls in pursuing here. The first stage of my defence of epistemic pluralism is to justify why a political theory ought to be freestanding rather than comprehensive. William Galston, who argues in favour of comprehensive theorising, summarises freestanding theorising as the claim that ‘it is theoretically improper and practically imprudent to link political principles to other parts of philosophy’.³ More accurately, freestanding political theory does not invoke controversial moral, religious, or philosophical premises. The reason that it is both improper and imprudent is given by epistemic pluralism. If one accepts epistemic pluralism then grounding a political conception on a philosophically controversial doctrine fails to recognise that people can disagree about the doctrine itself and therefore about the moral authority of that doctrine without any of the disputants necessarily being wrong. When people freely exercise their reason, they will come to different conclusions about value and so to demand acquiescence to someone else’s judgment about value is to ignore the reality of epistemic pluralism. Before analysing the details of the argument in favour of freestanding theory, a better understanding of the distinction between freestanding and comprehensive theorising is needed.

The radicalness of Rawls’s change of method in *Political Liberalism* is sometimes underappreciated. In rejecting the possibility of a deep philosophical justification for liberalism (or any other political theory), Rawls’s political liberalism signifies a sharp departure from the historical approaches of liberal political theory. He goes so far as to say that ‘the question the dominant tradition has tried to answer has no practicable answer’, by which he means ‘no answer suitable for a political conception of justice for a democratic society’.⁴ By the ‘dominant tradition’ Rawls means Kant’s autonomy view of liberalism, Mill’s utilitarian liberalism, or Locke’s theory of natural rights liberalism, all of which offer comprehensive justifications of liberalism that are incompatible with the pluralism that characterises modernity.

After the fact of reasonable pluralism, freestanding political theory is the second cornerstone that gives Rawls’s political liberalism its foundations. Just as value pluralism was defined in opposition to monism, so too can freestanding political theory be defined in terms of its opposition to comprehensive political theory. The terms ‘non-

³ Galston, *Liberal Pluralism*, p.8.

⁴ Rawls, *Collected Papers*, p.412.

comprehensive' and 'freestanding' are sometimes used interchangeably, as a freestanding theory is necessarily non-comprehensive. In Rawls's usage, the idea of freestanding political theory has two components: one negative and one positive. The negative component as I have suggested is a rejection of comprehensive liberalism, an idea that I turn to shortly. The positive component involves cashing out what a 'political conception of justice' entails. On this second element, Rawls writes that if we are to take 'the political as a special domain' then a freestanding conception must formulate 'its values independent of non-political values and of any specific relationship to them'.⁵

In 'Justice as Fairness: political not metaphysical', written before the publication of *Political Liberalism*, Rawls argues that 'the aim of justice as fairness as a political conception is practical, and not metaphysical'.⁶ His theory, then, 'presents itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons'. Ignoring for the moment the role of 'agreement', the idea of 'political not metaphysical' tracks his distinction between freestanding and comprehensive theorising. The reason that Rawls endorses freestanding theory is that metaphysical beliefs, which are fundamental to comprehensive doctrines, are too controversial to form the basis of reasoning about political principles. The idea of truth therefore plays no explicit role in his theory, although I address whether this is the case later in the chapter. To the extent that a theory is political and not metaphysical it will also be freestanding and not comprehensive. The justification for presenting the theory in this way is that questions of truth are 'too important' and so we must 'recognize that there is no way to resolve them politically'.⁷ Rawls might have also added that their importance does not depend on them being resolved politically. The truth is the truth regardless of politics and politics is politics regardless of the truth. This is the sense in which I described epistemic pluralism as 'light' in Chapter 3. Rawls uses a similar metaphor to describe justice as fairness, claiming that it 'deliberately stays on the surface, philosophically speaking'.⁸ Epistemic pluralism is a theory that implies justified collective uncertainty, but not scepticism. Epistemic pluralism does not endorse the belief that moral

⁵ Rawls, *Collected Papers*, pp.382-383.

⁶ *Ibid.*, p.394.

⁷ *Ibid.*

⁸ *Ibid.*, p.395.

knowledge is impossible or that human reason is too imperfect to reach *any* sort of judgment, but instead claims that the reasons that we currently have, to believe certain things in the realms of philosophy and morality, are insufficient to conclusively rule in or out competing beliefs, especially when doing so would justify the use of coercive force by the state. If you intend to use your beliefs as justifications for my coercion, then those beliefs had better be very well founded. To know that something is true, it is necessary to rationally rule out the alternative claims to truth. Ruling out of this sort is exactly what epistemic pluralism precludes.

Freestanding political theory is for Rawls ‘a method of avoidance’, or agnosticism, which encourages us to ‘try, so far as we can, neither to assert nor to deny any religious, philosophical, or moral views, or their associated philosophical accounts of truth and the status of values’.⁹ Agnosticism is not the same as evasion. There are three ‘facts’ which lead Rawls to this conclusion. The first is the fact of reasonable pluralism, which I described in detail in Chapter 3. The second is what Rawls calls the ‘fact of oppression’.¹⁰ This is the claim that ‘a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power’.¹¹ Rawls gives the Spanish Inquisition as an example of the oppression required by states in the Middle Ages to enforce Catholic orthodoxy, but makes clear that the ‘liberalisms of Kant or Mill would likewise require the sanctions of state power’.¹² He notes that readers might think that the exclusion of unreasonable comprehensive doctrines and ‘religions that emphasize the idea of institutional authority’ is justified, but that ‘there are exceptions for other comprehensive views’ (such as Mill’s or Kant’s). The point here, however, is that ‘there are no exceptions’.¹³ This does not mean that all reasonable doctrines ‘are equally reasonable for other purposes’ and citizens will therefore ‘have different opinions about these further matters’.¹⁴ The upshot is that all comprehensive doctrines must be excluded at a theoretical level, even if the appeal of some doctrines is greater than the appeal of others.

⁹ Rawls, *PL*, p.434.

¹⁰ *Ibid.*, p.37.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*, p.38, fn.39.

¹⁴ *Ibid.*, p.37, fn.38.

Rawls adds a final ‘fact’ about the political culture of a democratic society that a democratic regime must be ‘willingly and freely supported by at least a substantial majority of its politically active citizens’.¹⁵ This means that ‘a political conception of justice must be one that can be endorsed by widely different and opposing though reasonable comprehensive doctrines’.¹⁶ This is to avoid the unrealistic ‘indeed, the utopian’ aspiration that all ‘citizens affirm the same comprehensive doctrine’.¹⁷ In conjunction, these three ‘facts’ give rise to the ‘liberal principle of legitimacy’: ‘our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason’.¹⁸ If we accept the fact of reasonable pluralism, the fact of oppression, and the requirement of broad support then we are bound to accept the liberal principle of legitimacy, or so Rawls argues, and in turn acceptance of all four leads us to accept the theoretical constraint understanding of freestanding theory. While these elements may seem uncontroversial to those who are sympathetic to political liberalism, this argument has been strongly criticised by comprehensive theorists, especially value pluralist comprehensive theorists, who reject this pronounced change in approach.

The case against freestanding political theory

Galston has offered two criteria for describing types of political theory.¹⁹ The first criterion is about the nature of value: a theory can be either a) monist or b) pluralist. In Galston’s use of ‘pluralist’ he means value pluralist as he does not recognise epistemic pluralism as a distinctive form of moral pluralism. The second criterion is about whether the theory is reliant on other areas of philosophy beyond political theory: a theory can either be a) comprehensive (i.e. reliant on ideas outside some loosely defined sphere of politics or b) freestanding (i.e. solely reliant on values and ideas that exist within a political culture). Galston argues in favour of comprehensive value pluralism

¹⁵ Ibid., p.38

¹⁶ Ibid.

¹⁷ Ibid., p.39.

¹⁸ Ibid., p.137.

¹⁹ Galston, *Liberal Pluralism*, p.8.

and so offers an approach that is opposed to Rawls's approach in *Political Liberalism* on both counts.²⁰

Galston makes two arguments against freestanding theory. The first is an argument internal to political liberalism, variations of which constitute the most commonly levelled criticism against both freestanding theorising and political liberalism more generally. This is the claim that it is 'doubtful that the constitutional values Rawls presents as freestanding public reasons can be adequately understood as detached from comprehensive views'.²¹ Galston believes that it is implausible that we, as either theorists or as citizens, can formulate a thin political conception without reference to a thick comprehensive conception. It therefore addresses both the theoretical constraint and agent constraint understandings of freestanding theory. This argument is a direct refutation of *Political Liberalism*'s central argument that such a feat is both possible and desirable. For Galston, it is not possible for 'political speech among citizens to remain within public reason' and so freestanding theory denies citizens the justificatory resources they need in order to state their case publicly.²² Galston cites the case of consensual religious sacrifice as an example of when the state would need to transgress the limits of public reason in order to justify its policy against religious sacrifice.²³ He argues that citizens who wish to forbid this practice 'are forced either to deny the truth of this claim', the claim being that sacrifice will ensure salvation after death, or 'affirm the priority of certain public goods (for example, preserving life) over the religious values the group seeks to pursue'. In both cases, those arguing against religious sacrifice 'are compelled to take a position on the truth or weight of a comprehensive conception'.²⁴

This argument seems to make two errors. Firstly, Galston misunderstands Rawls's conception of the relationship between comprehensive doctrines and the political conception of justice. Comprehensive doctrines are not 'detached' from the political conception, instead they are necessary to underpinning Rawls's overlapping consensus. Rawls conceives of the political conception of justice as a 'module, an essential

²⁰ Galston describes *Political Liberalism* as both freestanding and monist. This description reflects Galston's view that non-value pluralist theories must be monist: a dichotomy that epistemic pluralism undermines.

²¹ Galston, *Liberal Pluralism*, p.40.

²² Ibid.

²³ Ibid., pp.41-42.

²⁴ Ibid., p.42.

constituent part, that in different ways fits into and can be supported by various reasonable comprehensive doctrines'.²⁵ These two conceptions (comprehensive and political) co-exist harmoniously for Rawls and the success of the political conception of justice is reliant on support from a variety of incompatible comprehensive doctrines. This misreading leads Galston to his second mistake, namely that he fails to recognise Rawls's distinction between the 'basic structure' and the interpretation of political principles for the purpose of policy-making. Political liberalism specifically addresses the basic structure of society, by which Rawls means 'a society's main political, social, and economic institutions, and how they fit into one unified system of social cooperation from one generation to the next'.²⁶ In practice, this limits the theory to the 'principles, standards, and precepts' that apply to the society.²⁷ That the interpretation of these principles will be difficult is unsurprising: political liberalism does not provide a solution to the difficulties of interpretation. That the interpretation of these principles in cases such as consensual religious sacrifice may not be immediately clear does nothing to repudiate the claim of freestanding theorising, in particular the theoretical constraint understanding of freestanding theory that I endorse here. In Rawls's scheme, the basic principles would already have been laid out and justified by appeal to the political conception of justice before the challenge of sacrificial religious groups is mounted. Further, the basic structure would also ensure that publicly justified procedures, such as legal procedures, would already be established to allow policy decisions like this to be adjudicated. The true, but commonplace, claim that the relationship between abstract principles and actual policies is often messy has no special relevance to either political liberalism or to freestanding theorising and fails as a critique on this basis. Although I think Galston's first argument misses its mark, I do not want to give the impression that I am defending the agent constraint understanding of freestanding theory. To repeat my earlier point, my aim is to defend epistemic pluralism by appeal to freestanding theorising as an approach to political theory, rather than as a substantive ideal for citizens. Although I think Galston mischaracterises Rawls's position I do not want to endorse Rawls's freestanding argument as it applies to political agents, but only to defend freestanding theorising as an approach to political theory.

²⁵ Rawls, *PL*, p.145.

²⁶ *Ibid.*, p.11.

²⁷ *Ibid.*

Galston's second argument directly addresses that concern, with reference to the purpose and practice of political philosophy. Rawls, according to Galston, 'takes democracy — more precisely, liberal constitutional democracy — as his point of departure'.²⁸ Rather than arguing for liberal democracy, Rawls assumes that a liberal democratic political culture is already present. This starting point is, for Galston, suspect, because Rawls's commitment to freestanding theory short-circuits a defence of democracy which Galston claims both he and democratic citizens would require. By endorsing freestanding theory Rawls denies himself recourse to the comprehensive views that support liberal democracy. As a result, Rawls would be unable to persuade those who are not already inclined to 'conduct politics within a democratic frame'.²⁹ According to Galston those 'who invoke comprehensive doctrines against democratic governance and liberties must be met on their own ground'. The alternative is 'stubborn silence, a kind of democratic dogmatism that ill serves both theory and practice'.³⁰ Galston goes on to argue that the exclusion of controversial philosophical claims would 'eviscerate practical philosophy' because there would simply be nothing left for philosophers to argue for.³¹ Galston's point here amounts to a reassertion of his claim that 'political theory cannot be walled off from our general understanding of what is good and valuable for human beings'.³² I turn to that broader point shortly, but first I address the argument about democracy. For Galston, liberal democracy cannot simply be assumed and theorists must therefore turn to comprehensive justifications of liberal democracy to justify their political principles.

The internal Rawlsian response to this critique is that justice as fairness simply does not address non-democratic citizens and that non-democratic citizens need not be 'met' at all. This is unpersuasive, however, for those who do not share Rawls's starting point. A more practical but equally unpersuasive response is that a theory must start somewhere, and that a liberal democratic starting point is as good as any, given where we are now. There are two further external responses that better meet Galston's challenge. The first is to say that although Rawls does not offer a defence of democracy, epistemic pluralism (and the freestanding theory that flows from it) is particularly well

²⁸ Galston, *Liberal Pluralism*, p.43.

²⁹ *Ibid.*

³⁰ *Ibid.*, p.44.

³¹ *Ibid.*, p.45.

³² *Ibid.*, p.8.

suited to provide such a defence. Varieties of comprehensive liberalism, which assume that their philosophical and moral foundations are universal and true, could (although it might be unlikely in reality) abandon democratic political procedures that would endanger the adoption and institutionalisation of those moral foundations. If non-democratic means better promote those comprehensive views then the comprehensive theorist has good reason, *ceteris paribus*, to endorse those means. Although there may be other reasons for comprehensive liberals to endorse democracy, there is no special entailment between a comprehensive method and democracy. Epistemic pluralism, however, is devoid of such a comprehensive commitment and is therefore reliant on the liberal democratic culture to express itself in the form of democratic principles. If the range of comprehensive doctrines is reasonable and competing, and we accept the fact of oppression, then democracy provides some sort of solution to a situation of moral pluralism in which no one comprehensive doctrine has unique justifiability. Whether epistemic pluralism actually entails democracy need not be established here to show that Galston's argument that democracy requires comprehensive justification is not particularly problematic for freestanding theorising.

The second response is to the underlying method of philosophy that Galston advocates. His critique is motivated by the belief that 'thought crosses boundaries', in that theories 'in any given domain of inquiry typically point to propositions whose validity is explored in other domains'.³³ For Galston, this crossover is particularly relevant to value pluralism, despite 'the considerations adduced in favour of value pluralism' not being 'definitive'.³⁴ This is because 'there are domains of inquiry in which it is unreasonable to reject less than conclusive propositions. The exclusion of valid but reasonably rejectable claims would eviscerate practical philosophy'.³⁵ From Rawls's perspective though, this exclusion, far from eviscerating practical philosophy, instead liberates 'practical' philosophy from the disagreements that epistemic pluralism tells us may well be irresolvable. Galston's argument amounts to nothing more than a reassertion of the comprehensive view rather than an argument against freestanding theory. Galston does nothing to show that freestanding theory 'eviscerates' philosophy in the way he suggests, and the existence of a wide variety of freestanding political theories gives us good reason to think that he is wrong that there is no philosophy left

³³ Ibid., p.8.

³⁴ Ibid., p.45.

³⁵ Ibid.

to do once we abandon comprehensive theory. Galston's contention does not argue against the theoretical constraint understanding of freestanding theory on this point, but merely rejects it without further argument. A reassertion of the central claim of comprehensive theory does not count as a legitimate argument against freestanding theory. If the question that Galston is trying to answer is 'what's wrong with freestanding theory?' then his answer of 'it's not comprehensive theory' does not need to be taken seriously.

Having analysed Galston's case against freestanding theory, I conclude that his objections miss their mark and that the argument in favour of freestanding theory holds. It is worth saying again that I am only interested in defending freestanding theory insofar as it offers a way of choosing between value pluralism and epistemic pluralism. While I think Galston is mistaken in his rejection of freestanding theory it is specifically the rejection of the theoretical constraint understanding that I am interested in. Whether Rawls is right about the agent constraint understanding and the limits of public reason is discussed in Chapters 5 and 6.

Is the argument for epistemic pluralism circular?

Before moving on to the second and third stages of this argument, there is an issue that needs to be briefly addressed. I have presented the structure of Rawls's argument for political liberalism as underpinned by two mutually supportive ideas: reasonable pluralism and freestanding political theory. These are not the two ideas that I fully want to endorse. My conception of epistemic pluralism is broader than Rawls's fact of reasonable pluralism and my commitment to the theoretical constraint understanding of freestanding theory is narrower than Rawls's commitment to freestanding theory. Nevertheless, the contours of Rawls's argument and my own share enough for them to have a common problem. Rawls understands the theoretical constraint as follows: if we accept the fact of reasonable pluralism then we, as political theorists, must forgo any hope of reaching agreement on comprehensive doctrines because the fact of reasonable pluralism implies that any such principles will be subject to reasonable disagreement. Similarly, if we accept a commitment to freestanding political theory we must abandon the project of making whole our comprehensive doctrines and our political principles. There might seem to be a form of circular argument occurring here. In my own terms, the argument for the theoretical constrain understanding of freestanding theory relies

on the argument for epistemic pluralism and the choice of epistemic pluralism over value pluralism flows from the argument for the theoretical constraint understanding of freestanding theory. This apparent circularity, however, is not genuine.

The starting point of my argument is epistemic pluralism. In the previous chapter I outlined the idea of epistemic pluralism and its appeal. My case for epistemic pluralism over value pluralism inevitably rests on the appeal of epistemic pluralism, although it does not rely on the lack of appeal of value pluralism. This is because value pluralists can also accept epistemic pluralism: at one level it is possible to be both a value pluralist and an epistemic pluralist. The question that I try to answer in this chapter, however, is, which form of moral pluralism is relevant to political theory? Value pluralists who accept epistemic pluralism have good reason to think that epistemic pluralism precludes them from invoking value pluralism when it comes to justifying political principles of justice or legitimacy. I might well think that value pluralism captures the world of value more accurately than monistic theories, but also believe that epistemic pluralism gives me a good reason not to invoke value pluralism when trying to justify a particular political arrangement or principle. Because of these obstacles, we are left in a situation in which our best moral reasons are insufficient for the purposes of conclusively making certain normative choices. If we take this description to be accurate, then this gives us good cause to endorse the theoretical constraint understanding of freestanding theory. Epistemic pluralism implies that we, as theorists, must accept that our own comprehensive views cannot play a special theoretical role because we are incapable of rationally demonstrating the justifiability of our own views to those with competing comprehensive views. Epistemic pluralism tells us that that we lack the justificatory resources to conclusively argue against some other competing comprehensive views because of the epistemic obstacles presented by the burdens of judgment. This is a periphrastic way of saying that my argument here is not circular. If epistemic pluralism is right then a commitment to the theoretical constraint understanding of freestanding theory follows on from this. Epistemic pluralism leads us to the theoretical constraint and this leads us to a rejection of value pluralism as a foundation for political theory. There is no circularity here since value pluralism and epistemic pluralism are not in direct conflict with one another, except as theories that explain disagreement. In other words, one can say that both value pluralism and epistemic pluralism are justified, but that only epistemic pluralism is relevant to political theory. That is the limit of my

argument here. To make this case more forcefully I must show that value pluralism counts as a comprehensive doctrine and that epistemic pluralism does not. I turn now to the first of these two tasks.

2. Why is Value Pluralism Controversial?

Having argued that freestanding theory is the only approach compatible with epistemic pluralism I now need to show that epistemic pluralism does not violate the constraints of freestanding theory and that value pluralism does violate these constraints. As I have stated, the relevance of both forms of moral pluralism to political theory is their attempt to explain the deep value disagreements that characterise modernity.³⁶ Where value pluralism founders, however, is that it too is the subject of the disagreement born of epistemic pluralism. This criticism rests on the claim that value pluralism, a thesis about the nature of value, counts as a comprehensive doctrine. I follow Charles Larmore in arguing that value pluralism is a comprehensive doctrine and that it is therefore too controversial to be suitable as foundation for political theory. I then go on to address the counter arguments given by George Crowder against both Larmore and Rawls.

Rawls did not address the question of whether value pluralism counts as a comprehensive doctrine and so it is necessary to reconstruct the reasons why value pluralism ought to be excluded from political theorising. Charles Larmore, a political liberal although not fully Rawlsian, puts the argument against value pluralism as follows:

Whether true or false, pluralism is an eminently controversial doctrine. It has been, as Berlin has emphasized, a peripheral view in the history of Western thought. It is incompatible with the religious orthodoxies that have sought in God the single, ultimately harmonious origin of good. If political liberalism rested essentially on the acceptance of pluralism, it would itself amount to a very controversial doctrine.³⁷

For Larmore, ‘from the standpoint of political liberalism’ the most significant fact about value pluralism is that it ‘is a doctrine, opposed to monism, about the ultimate nature of value’.³⁸ Larmore here follows Rawls in taking ‘doctrine’ to mean ‘comprehensive

³⁶ See Bernard Williams’s slogan of liberalism as ‘Legitimacy + Modernity’ as a pithy summary of the relationship between these ideas, in Williams, ‘Realism and Moralism in Political Theory’ in *In the Beginning was the Deed: Realism and Moralism in Political Argument* (Oxford: Princeton University Press, 2005), p.9.

³⁷ Larmore, *The Morals of Modernity*, p.154.

³⁸ *Ibid.*, p.155

views of all kinds'.³⁹ For political liberals its status as a doctrine is enough to discredit the relevance of value pluralism, but such a response is inadequate for those not already sympathetic to Rawls's view.

The problem for value pluralism can be shown through a comparison with religious doctrines. Rawls describes the political goal of religious fundamentalists as the 'struggle to win the world for the whole truth'.⁴⁰ Such a goal is incompatible with democracy and so political liberalism 'does not engage those who think this way'. The pursuit of the 'whole truth' as a political end requires adherents of whichever 'whole truth' to reject the possibility that any other account of truth could be non-erroneous. Those committed to the 'whole truth' as a political ambition must be opposed to epistemic pluralism. This idea is reflected in Rawls's ambition to find common political ground between people of different religious faiths, including those with no faith. Rawls argues that those unwilling to relinquish the priority of their faith in the public sphere have no business in the public sphere at all. How can it be possible for citizens with such radically different worldviews to reach agreement on political principles? Rawls's answer, in part, is that citizens cannot appeal to principles that are not shared by other citizens to justify constitutional essentials. This is what I have described as the agent constraint understanding of freestanding theory. To invoke unshared premises in support of a particular principle is, according to political liberalism, unreasonable. If, for example, a Catholic citizen subscribes to the doctrine of *extra ecclesiam nulla salus* and wishes to make Catholicism the state religion out of a desire to save other citizens, her appeals to Papal pronouncements or to scripture have no place in public discourse. It is unreasonable because 'it proposes to use the public's political power... to enforce a view affecting constitutional essentials about which citizens as reasonable persons, given the burdens of reason, are bound to differ uncompromisingly in judgment'.⁴¹ To appeal to metaphysical premises about what is of value in life and to use the state's power to enforce the adoption of these premises would, in Rawls's view, be oppressive. Although religious belief provides an easy example, Rawls also excludes all controversial moral and philosophical views, religious or not.

³⁹ Rawls, *PL*, p.441, fn.2.

⁴⁰ *Ibid.*, p.442.

⁴¹ Rawls, *Collected Papers*, p.483.

Comprehensive doctrines are, for Rawls, those which include ‘conceptions of what is of value in life and gives life its meaning’.⁴² While religions clearly fall into this category, so too do all metaphysical doctrines. Samuel Freeman gives Hume’s account of personal identity, which ‘says that persons are simply continuous and interconnected bundles of experiences’ as an example of such a metaphysical doctrine.⁴³ While Hume’s account does not seem to tell us much about what is valuable in life or what gives life its meaning, it is nevertheless comprehensive. For Rawls, all comprehensive doctrines are controversial by definition because they are subject to the burdens of judgment. Similarly, on my account, comprehensive doctrines are controversial because they are subject to epistemic pluralism. There can be no reasoned agreement on comprehensive doctrines, even among well-intentioned, sincere, and conscientious people, because the route to that consensus is littered with epistemic obstacles. That is not, of course, to say that they are wrong, or that some comprehensive doctrines are not better than others, but merely to claim that reasonable people can legitimately hold incompatible comprehensive doctrines. On this point Galston suggests that ‘it is far from clear that it makes sense to assimilate moral doctrines and religion’ because ‘secular moral doctrines rest their claims on shared experience and uncontroversial canons of reasoning’.⁴⁴ This leads Galston to think that debates among ‘utilitarians, Kantians, perfectionists, particularists, and pluralists are conducted on common ground and are potentially resolvable in a way that disagreements between Christians and Jews are not’.⁴⁵ The epistemic pluralist response to this is simply to say that such debates are indeed *potentially* resolvable, but at the current moment remain unresolved because we lack sufficient moral reasons to conclusively decide. The persistence of such debates among philosophers provides clear evidence that these issues are not yet resolved and to base a theory on one of these (to the exclusion of the rest) would be to undermine the aim of finding common ground between proponents of competing doctrines.

My argument against the relevance of value pluralism to political theory rests on the claim that value pluralism is itself a metaphysical and controversial doctrine that must be excluded from political theorising. Although value pluralism does not, directly at least, tell us about what is valuable in life or what gives life its meaning, it does make

⁴² Freeman, *Rawls*, p.332.

⁴³ *Ibid.*, p.333.

⁴⁴ Galston, *Liberal Pluralism*, p.45.

⁴⁵ *Ibid.*

a metaphysical or ontological claim about the nature of value. Further, it makes the claim that it is the one true theory of value and that theories that contradict it are false. Theories of this sort brook no compromise: according to the comprehensive value pluralist the truth of its claims warrants its relevance or appropriateness to political theory. Why, according to the value pluralist, should political theorists care that the nature of value is like this and not like that? Because it *is* like this and *not* like that is their answer. Even though value pluralism is not prescriptive in the way that utilitarianism or Catholicism are, a commitment to value pluralism must exclude all doctrines which reject value pluralism. This means that while value pluralism does not tell its adherents what to do, it does tell them what they can and cannot believe. Specifically, value pluralism disallows all monistic theories of value, including secular moral doctrines such as utilitarianism, and monistic religious doctrines. This is not incidental as it shows that a commitment to value pluralism has some pretty serious implications for what kinds of views are compatible with a value pluralist worldview. If value pluralists wish to see their comprehensive doctrine play a role in politics then it is likely that they will want to exclude those monistic doctrines that contradict value pluralism. Their reason for this is that value pluralism is true and all varieties of value monism are false. Damningly, value pluralism, in this sense, is equivalent to religious belief. Rawls writes that:

those who believe that fundamental political questions should be decided by what they regard as the best reasons according to their own idea of the whole truth — including their religious or secular comprehensive doctrine — and not by reasons that might be shared by all citizens as free and equal, will of course reject the idea of public reason [and with it, political liberalism]⁴⁶

Part of Rawls's motivation for altering justice as fairness in *Political Liberalism* was a recognition of the fact of reasonable pluralism amongst comprehensive doctrines. The problem this gives rise to is that 'no one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, by all, or nearly all, citizens'.⁴⁷ Value pluralism fails to give an adequate response to this problem by offering yet another reasonable but, in Larmore's words, 'eminently controversial' doctrine.⁴⁸ The point of excluding value pluralism in this way is not to make a strong case against value pluralism *qua* value

⁴⁶ Rawls, *PL*, p.447.

⁴⁷ Rawls, *PL*, p.xvi.

⁴⁸ Larmore, *The Morals of Modernity*, p.154.

pluralism, rather it is to make a case against all such doctrines that could preclude the creation of a common political ground that all citizens might be able to endorse. As I am not endorsing the full Rawlsian account of freestanding theory I do not want to argue in favour of the possibility of an overlapping consensus, for reasons that will become clear in Chapter 5. My defence of Rawls here serves to defend the theoretical constraint understanding of freestanding theory. The reasons that lead Rawls to think that citizens should not invoke comprehensive doctrines also hold as reasons for theorists not to invoke comprehensive doctrines.

The argument against the relevance of value pluralism points to the idea, popularised by Carl Sagan, that extraordinary claims require extraordinary evidence.⁴⁹ Not only is the evidence in support of value pluralism limited, it seems that an epistemic pluralist political theorist might be sceptical about the kinds of evidence that might be adduced either way in support of value pluralism. This hints at Burton Dreben's thought, as recounted by Rawls, that metaphysical disagreements are by nature irresolvable because there is not enough 'data' to make a decision.⁵⁰ Dreben was using 'data' here in its Latin sense of 'what is given', rather than in a scientific sense. Debates in philosophy are to a significant degree about which premises are or can be shared. Two disputants can only engage with one another meaningfully if there are least some shared premises. According to Rawls, Dreben 'thinks that at bottom there are no arguments one philosopher can use to convince another of a metaphysical point. At the basic level, philosophers simply rely on and appeal to different "data". It is a standoff with no resolution by *argument*.'⁵¹ Dreben believed that because disputes between metaphysicians are disputes about what is given, i.e. disputes only about premises, that there can be no rational resolution. I do not want to fully endorse Dreben's full-blown scepticism about metaphysics, but rather to argue that epistemic pluralism offers a premise which is widely acceptable at a theoretical level. It also seems that Dreben's critique of metaphysics speaks to the problem at the heart of value pluralism. What 'data' could a value pluralist use to persuade a monist that they are wrong? This is not the commonplace difficulty of persuading the intransigent, but the more pressing

⁴⁹ Carl Sagan, *Broca's Brain, Reflections on the Romance of Science* (New York: Random House, 1975), p.73.

⁵⁰ John Rawls, 'Afterword' in Floyd and Shieh (eds.) *Future Pasts: The Analytic Tradition in Twentieth-Century Philosophy* (Oxford: Oxford University Press, 2001), p.421.

⁵¹ *Ibid.*, pp.421-422.

problem that even those monists who are open to persuasion simply could not accept the premise of value pluralism *because* it amounts to nothing more than a premise: there is no extraordinary evidence to support value pluralism's extraordinary claim. Epistemic pluralism is an eminently ordinary idea and the evidence that can be found to support comes from the ordinary source of our everyday difficulties in reasoning about value. The idea of value pluralism was for Berlin *erschreckend*, or 'too frightening', because what it told us was so startlingly destructive of our moral universe as we thought we knew it.⁵² There is nothing *erschreckend* about epistemic pluralism because its claim is so run-of-the-mill and its evidence so widely accessible to anyone who cares to look for it.

Following this line of thought, if value pluralists argue for the relevance of value pluralism based on its truth, then they also must permit religious reasoning at the level of political theorising. If the reason for basing first-order prescriptions on value pluralism is that it is true, then what reason could there be for excluding religious justifications if their claim is similarly about truth? The answer to that question cannot, as a result of epistemic pluralism, be that religious justifications are not true while value pluralism is true. This is shown in Rawls's account of secularism. Secularism is not a starting assumption for Rawls, rather secularism arises through an abstention from all comprehensive doctrines. This leads Rawls to claim that political liberalism is not reliant on an idea of 'secular values'.⁵³ Although political liberalism models secularism in its exclusion of unshared religious appeals, it is not designed to pursue secular ends in itself. Just as political liberalism abstains from arguments between competing faiths, so too does it abstain from the argument between monism and value pluralism. By excluding value pluralism Rawls bolsters the non-secularist credentials of political liberalism. It is not that religious beliefs are excluded because they are false, but rather because they are too controversial to permit an overlapping consensus. In excluding value pluralism for the same reason, Rawls underscores his agnosticism towards believers and non-believers alike. Having stated the initial case that value pluralism counts as a comprehensive doctrine and is therefore controversial, I turn to George

⁵² Isaiah Berlin, 'The Originality of Machiavelli', in *Against the Current. Essays in the History of Ideas* (The Hogarth Press: London, 1980), p.57.

⁵³ Rawls, *PL*, p.452.

Crowder's defence of the relevance of value pluralism to political theory and his critique of epistemic pluralism.

The case against epistemic pluralism

Crowder, arguing against Rawls's reasonable pluralism (and by extension epistemic pluralism), contradicts Larmore's view that value pluralism counts as a comprehensive doctrine by claiming that controversy is an irrelevant criterion of judgment because epistemic pluralism is just as controversial as value pluralism.⁵⁴ I argue against Crowder's objections to show that epistemic pluralism is not controversial.

Crowder first suggests that even if we accept that value pluralism is controversial in the relevant sense, in that it is one reasonable comprehensive moral doctrine among many, it may still support liberalism as a comprehensive view that provides support to an overlapping consensus.⁵⁵ Value pluralism, then, 'is not the only route to liberalism, or even the best, but it is one route among others'.⁵⁶ This weak claim for the relevance of value pluralism misses the mark because neither the theoretical constraint nor the agent constraint understanding of freestanding theory rejects value pluralism at this level. Of course, for the political liberal, value pluralism is a legitimate comprehensive doctrine to hold as an individual in a free society, just as Catholicism or utilitarianism are legitimate doctrines to hold. The argument for the epistemic pluralist is that value pluralism, just like Catholicism and utilitarianism, has no special justificatory value. Showing that value pluralism, *as a comprehensive doctrine*, is not incompatible with liberalism does not show that value pluralism has any particular relevance to the theoretical project of setting up institutions that embody political principles. Compatibility does not entail special relevance and the first of Crowder's arguments can be dismissed.

Secondly, Crowder claims that if the burdens of judgment apply to comprehensive doctrines and are 'not peculiar' to 'moral and practical' questions but rather 'apply mainly to the theoretical uses of our reason', then abstaining from all comprehensive doctrines is a political choice that is itself subject to reasonable disagreement. To put

⁵⁴ Crowder, *Liberalism and Value Pluralism*, pp.165-171. Galston makes a similar argument to Crowder, but Crowder's is more fully developed and so I address his critique here (Galston, *Liberal Pluralism*, pp.46-7).

⁵⁵ Crowder, *Liberalism and Value Pluralism*, p.164.

⁵⁶ Ibid.

it in Rawlsian terms, the burdens of judgment apply not only to questions of the good but also to questions of the right.⁵⁷ Crowder is, I think correct on this point. As I argued in Chapter 3 and as I go on to argue in Chapter 5, epistemic pluralism, as opposed to the fact of reasonable pluralism, does indeed explain disagreements about the right. In a major divergence from Rawls, I argue that both comprehensive doctrines *and* political conceptions are subject to epistemic pluralism. I am therefore in agreement with Crowder that the ‘Rawlsian notion of the right would be controversial too’.⁵⁸ But my argument here is not in favour of Rawls’s political conception of justice, but is instead in favour of epistemic pluralism and the theoretical constraint understanding of freestanding theory that follows on from this. Crowder’s second objection, which I accept, addresses the agent constraint understanding of freestanding theory and is therefore not one that is particularly worrying for my own argument. The distinction between the theoretical constraint understanding of freestanding theory and the agent constraint understanding of freestanding theory makes the defence of the former slightly messy because Crowder’s criticisms of freestanding theory conflate these two conceptions of freestanding theory. His third criticism, which I turn to now, has serious implications for the understanding of freestanding theory that I endorse and therefore demands the strongest rebuttal.

Crowder’s final argument is that Rawls’s burdens of judgment, on inspection, collapse into value pluralism.⁵⁹ If, as Crowder argues, the burdens do indeed presuppose value pluralism, then the case for epistemic pluralism cannot hold, as my distinction between the two sorts of moral pluralism is, in fact, misjudged. The question, for Crowder, is by what degree, if any, Rawlsian pluralism is less controversial than value pluralism. He answers this question by claiming that it is ‘no less controversial’ because the two relevant burdens of judgment are ‘in effect formulations of value pluralism’.⁶⁰ The relevant burdens are burdens e) and f), which state:

⁵⁷ Ibid., p.167.

⁵⁸ Crowder concedes that Rawls and Larmore can contend that controversy about the right is shallower than controversy about the good, but that then forces political liberals to accept that ‘theories of the right are less controversial than conceptions of good only as a matter of degree’, implying that ‘matters of degree’ are not sufficient to warrant the rejection of value pluralism (Crowder, *Liberalism and Value Pluralism*, p.167). I discuss this in detail in Chapter 5, but my conception of epistemic pluralism is not restricted to disagreements about the good.

⁵⁹ Ibid., p.165.

⁶⁰ Ibid.

e) Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an overall assessment.

f) Finally, as we note in referring to Berlin's view, any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral political values that might be realized. This is because any system of institutions has, as it were, a limited social space. In being forced to select among cherished values, or when we hold to several and must restrict each in view of the requirements of the others, we face great difficulties in setting priorities and making adjustments. Many hard decisions may seem to have no clear answer.⁶¹

Crowder claims that burden e) is incompatible with monism, as it presupposes the conflict of values, a presupposition that the monist cannot tolerate, as these normative considerations could not be 'subject to a principled ranking or trade-off in terms of the relevant super-value or common denominator'.⁶² It seems, however, that such a position is not at all hard for the monist to hold. That I might think that there are 'different kinds of normative considerations of different force' on both sides of the abortion debate does not mean that I do not think that a rational answer can be found. Similarly, the monist does not think that normative assessments are easy, they only think that they are possible. Monism, as a meta-ethical approach, is not committed to the claim that all moral questions yield clear and immediate answers, but rather that all moral questions *could* yield some answer with sufficient evidence, deliberation, and interpretation. Crowder therefore interprets both monism and burden e) too strongly and mischaracterises the abstaining quality of epistemic pluralism. It is not that the variety of normative considerations makes an overall assessment *impossible*, merely that they make it 'difficult'. In light of this difficulty (note that the difficulty is neither necessarily intractable nor necessarily solvable) epistemic pluralism recommends that the only political course to take is to abstain from judgment. It is important for the epistemic pluralist that the burdens of judgment are acceptable to varieties of monists and to value pluralists. Burden e), as Rawls formulates it, is acceptable to both groups and avoids Crowder's two charges of being reliant on value pluralism and of being controversial.

Crowder goes on to argue that for the same reasons that burden e) implies value pluralism, burden f) also entails value pluralism.⁶³ He argues that Rawls's claim that we are 'forced to select among cherished values' would be 'hard to square with a monist

⁶¹ Rawls, *PL*, pp.56-7.

⁶² Crowder, *Liberalism and Value Pluralism*, p.168.

⁶³ *Ibid.*

view'. Crowder quotes Rawls favourably citing Berlin to support his case: 'as Berlin has long maintained...there is no social world without loss: that is, no social world that does exclude some ways of life that realize in special ways certain fundamental values'.⁶⁴ In a footnote to this section, Rawls writes: 'A just liberal society may have far more space than other social worlds but it can never be without loss. The basic error is to think that because values are objective and hence truly values, they must be compatible. In the realm of values, as opposed to the world of fact, not all truths can fit into one social world'.⁶⁵ It is unclear in this footnote whether Rawls is attributing this view to Berlin or whether he is himself endorsing Berlin's view. It is conceivable though that Rawls is only describing Berlin's view, although the wording does seem to suggest some sympathy beyond the courtesy of noting the origins of the idea. Even if this footnote does suggest that Rawls is sympathetic to the value pluralist case, such exegesis is unconvincing in collapsing the distinction between epistemic and value pluralism, as there are alternative interpretations which are at least as plausible.

One such alternative interpretation is given by Jonathan Quong, who argues against Crowder that 'Rawls can be understood as taking the uncontroversial view that there are different political values...and that each of these values cannot always be fully incorporated within a single institution due to the fact that social institutions are limited by scarce resources, competing social institutions, as well as the laws of nature including human nature'.⁶⁶ This leads Quong to the conclusion that both burdens also permit monism, as 'it would remain the case that there are multiple *political* values, and even if these political values are derivative of a single master moral value, the different political values may not always be fully incorporated within a single social institution'.⁶⁷ In other words, all political institutions have limited resources and space and that in the process of directing those resources and portioning out that space some values may be lost or forgotten. Although this offers some defence of burden f), I think a more robust defence can be mounted when Rawls's favourable quotation of Berlin is contextualised.

The footnote that Crowder uses as evidence appears in a section in which Rawls is considering the possibility that political liberalism would allow certain conceptions of

⁶⁴ Ibid., pp.168-169, quoting Rawls, *PL*, p.197.

⁶⁵ Rawls, *PL*, p.197, fn.32.

⁶⁶ Jonathan Quong, *Liberalism Without Perfection* (New York: OUP, 2011), p.194, fn.6.

⁶⁷ Ibid.

the good life to perish and whether this would mean that political liberalism commits an injustice against these threatened ways of life. He cites Berlin in the context of asking ‘if some conceptions will die out and others survive only barely in a just constitutional regime, does this by itself imply that its political conception of justice [justice as fairness] is not fair to them?’.⁶⁸ Rawls’s point here seems to be that there can be no political conception of justice that does not favour some conceptions of the good and disadvantage others. In particular, he is considering ‘a conception of the good requiring the repression or degradation of certain persons on say, racial, or ethnic, or perfectionist grounds’, for example slavery.⁶⁹ If conceptions of the good such as these are reliant on the ‘machinery of the state’ and the state is unwilling to act in support of these conceptions then they will perish. In quoting Berlin, Rawls speaks to the idea that favouring a liberal conception of justice must sacrifice non-liberal conceptions, and that the value of respecting other citizens’ conceptions of the good will be lost if a just society is to be successfully established. This is a logical rather than a metaphysical idea and Rawls need not rely on Berlin’s metaphysical idea of value conflict to defend this position. As an analogy, we can revisit Raz’s idea of the apparent incommensurability of being both a nun and a mother to show the difference between the logical and the metaphysical. Being a nun and mother are logically incompatible because mothering a child excludes one from becoming a nun under religious laws. These two options are certainly incompatible, but it does not entail that we need to subscribe to the deeper thesis that these two options are also incommensurable at the level of value. Burden f) can be taken here to advance a thin conception of incompatibility without committing to a thicker conception of value incommensurability. As I previously argued, one might hold that it is the choice between being a mother and a nun that is important, and therefore that no value is lost by choosing one or the other because the choice itself is where the value lies. Difficulty in choosing is not the same as irrevocable loss after one has chosen.

Crowder could respond that although the context does not directly suggest that the burdens of judgment should be interpreted as value pluralist, that Rawls’s agreement that it is a ‘basic error to think that because values are objective and hence truly values, they must be compatible’ commits him to value pluralism. However, I suggest this

⁶⁸ Rawls, *PL*, p.197.

⁶⁹ *Ibid.*, p.196.

demonstrates less than Crowder believes it does. The point of epistemic pluralism is that it is agnostic in cases of controversial philosophical disagreement. That does not mean that adherents of epistemic pluralism do not feel the pull of value pluralism as part of their comprehensive doctrine. It may well be that Rawls was personally sympathetic to value pluralism as a doctrine that gave his life meaning, but it does not follow that he thought that it had any special relevance to his theory of justice. Just as Rawls's religious faith, or lack of faith, has no bearing on his theory of justice, so too does his attitude to value pluralism have no bearing. Expressions of sympathy for the value pluralist position does nothing to undermine a commitment to epistemic pluralism. While value pluralism has nothing to say about epistemic pluralism, epistemic pluralism has a great deal to say about the relevance of value pluralism to politics. Both burdens e) and f), in which Crowder sees a latent value pluralism, merely conform to the non-metaphysical thesis that reasoning about value is littered with epistemic obstacles. To repeat my earlier argument, difficulty does not imply impossibility. In a dispute about value, I can think both that my disputant is wrong and also see why they hold their view. This is the simple idea of epistemic pluralism as expressed in both burdens e) and f): reasoning about value is difficult, but this does not mean that epistemic pluralism either accepts or denies the value pluralist claim that choosing between values will sometimes be impossible.

The modesty of epistemic pluralism, as I suggested in the previous chapter, is part of what makes it an attractive proposition: it recognises the frailty and imperfection of human reason and abstains from making ambitious claims which would ignore that frailty. In contrast, value pluralism celebrates the alleged discovery of a moral truth through human reason, despite the inconclusive evidence. Talisse describes his own 'weak epistemological pluralist' position) as the rejection of both the monist claim that 'value integration and unity is *necessary* [in the sense of being unavoidable]' and the value pluralist claim that 'value integration is *impossible*'.⁷⁰ This is a technical way of saying that epistemic pluralism abstains from making a judgment about whether value is one big thing with monists or that it is plural with the value pluralists. This agnostic move of epistemic pluralism cuts a distinctive path between monism and value pluralism. Like Rawls, however, it should be emphasised that Talisse's rejection of the necessity of value integration and the impossibility of value integration also avoids the

⁷⁰ Talisse, *Pluralism and Liberal Politics*, p.106.

mirror error of endorsing the claims that value integration is either possible or avoidable. In the best way, epistemic pluralism is a doctrine of fence-sitting. When Crowder claims that either burden e) or f) ‘rules out monism’ and therefore ‘implies pluralism’, he is wrong on both counts, as both burdens e) and f) merely assert the difficulty of assessment without commenting on either the possibility or the necessity of assessment. Crowder’s conclusion, then, that ‘a case for liberalism based on pluralism is at least no more controversial than one based on reasonable disagreement’ can be rejected, as the burdens of judgment do not imply value pluralism in the way that Crowder suggests. His second conclusion, that the burdens of judgment apply to both the right and the good, however, is one that I return to in Chapter 5.

3. Is Epistemic Pluralism Uncontroversial?

Having disposed with the value pluralist claim that epistemic pluralism requires value pluralism, and having argued that value pluralism is a controversial doctrine, I need to now show that epistemic pluralism is not controversial for other reasons. My argument against Crowder focused on the idea that abstaining from taking a metaphysical position allows epistemic pluralists to carve out a pluralist niche which is distinct from value pluralism. The question I turn to now, is whether epistemic pluralism and the theoretical constraint understanding of freestanding theory are themselves comprehensive, and hence controversial, doctrines. If they are, then the theoretical constraint understanding requires them to be excluded, and my argument for epistemic pluralism collapses in on itself. If the theoretical constraint is impermissible by its own standards then my choice of epistemic pluralism over value pluralism lacks justification. My task in defending epistemic pluralism is to show that it does not count as a comprehensive doctrine and that it is therefore not controversial.

How can epistemic pluralism not count as a controversial doctrine? This question turns on whether the central thesis of epistemic pluralism, that reasoning about value is fraught with enduring and currently insurmountable epistemic obstacles, is in fact a substantive view. To see why epistemic pluralism is not a doctrine of this sort I return to a different dispute between Rawls and his critics. Brian Barry and Joseph Raz have both argued in different ways that Rawls’s method is one of ‘epistemological

abstinence'.⁷¹ Barry describes this as the idea that 'it is perfectly consistent to be convinced of the truth of some religious or other doctrine while acknowledging as a matter of principle that it would be wrong to make it the basis of public policy in a society some of whose members reject it'.⁷² This is, in a slightly different key, the central idea of freestanding theory. The question then is whether epistemological abstinence is itself a philosophically controversial position to which the burdens of judgment apply. This poses a challenging internal problem to epistemic pluralism. If epistemological abstinence does count as a controversial philosophical position then epistemic pluralism is incompatible with the commitment to freestanding theory that flows from it. Both Barry and Raz argue that Rawls's method of avoidance is reliant on truth claims of the sort prohibited by freestanding theorising. Rawls anticipated this critique, writing that 'it would be fatal to the idea of a political conception to see it as sceptical about, or indifferent to, truth, much less as in conflict with it. Such scepticism or indifference would put political philosophy in opposition to numerous comprehensive doctrines, and thus defeat from the outset its aim of achieving an overlapping consensus'.⁷³ Although I am not concerned for the moment with the possibility of an overlapping consensus, my own conception of epistemic pluralism cannot turn out to be a form of scepticism without jeopardising its status as uncontroversial. If Barry and Raz are right then the argument for epistemic pluralism is cut short. It is these two critiques that I turn to now.⁷⁴ The debates between Barry and Rawls and Raz and Rawls are both lengthy and broad. My aim here is not to cover these disagreements in full or to defend Rawls's political liberalism from two of its major critics, but only to defend epistemic pluralism as outlined in Chapter 3. Again, I am required to defend Rawls from his critics, but this is only with the larger aim of defending epistemic pluralism. If Barry and Raz are right that 'epistemological abstinence' is controversial then the appeal of epistemic pluralism and the theoretical constraint understanding of freestanding theory is lost. I concern myself only with the parts of their critique that pertain to my defence.

⁷¹ Brian Barry, *Justice as Impartiality* (Oxford: OUP, 1995), pp.168-88; Joseph Raz, 'Facing Diversity: The Case of Epistemic Abstinence', *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford: OUP, 1994), pp.60-96.

⁷² Barry, *Justice as Impartiality*, p.177.

⁷³ Rawls, *PL*, p.150.

⁷⁴ Susan Mendus, *Impartiality in Political Philosophy* (Oxford: OUP, 1999), pp.18-37.

Brian Barry has argued that Rawls's method of epistemological abstinence collapses into scepticism, and that Rawls's ambition to avoid appeals to *any* controversial doctrine is chimerical. Instead, Barry maintains, Rawls should accept scepticism as the only justificatory strategy for liberal principles. Barry's broader aim is to defend his theory of justice as impartiality, to which end scepticism can play an important role. Barry's use of the term scepticism is intended to imply 'doubt rather than denial' and he supports a form of liberalism grounded on the 'argument from scepticism' that 'no conception of the good can justifiably be held with a degree of certainty that warrants its imposition on those who reject it'.⁷⁵ Despite this, he goes on to claim that the 'sheer weight of the evidence in favour of scepticism seems overwhelming', suggesting that his 'moderate' scepticism itself can be held with such a degree of certainty that it would be perverse not to endorse it.⁷⁶ The coexistence of these two statements, which might appear contradictory, is explained by Barry's contention that despite scepticism constituting a controversial doctrine, it is not a comprehensive doctrine of the sort that is impermissible because it is 'not a view of human flourishing', rather it is 'an epistemological doctrine about the status of conceptions of what constitutes human flourishing'.⁷⁷ Barry admits that his own line of argument is 'very similar' to what he follows Thomas Nagel in calling 'epistemological restraint'.⁷⁸ Barry ultimately ends up in the same place as Rawls by disallowing comprehensive doctrines from being imposed on those who do not share them. The difference between the two lies in Barry's commitment to scepticism. Barry argues against Rawls that scepticism about conceptions of the good can act as a theoretical constraint on theorising, just as Rawls's fact of reasonable pluralism informs his commitment to freestanding theory. This slightly obscure dispute matters for my argument because if Barry is right that 'epistemological restraint' is synonymous with scepticism, then the freestanding argument is itself controversial in a way that undermines my defence of epistemic pluralism.

Barry's key argument is that Rawls's acceptance of pluralism but refusal to endorse scepticism implies that one could reasonably hold a belief with certainty (i.e. absent

⁷⁵ Barry, *Justice as Impartiality*, p.169.

⁷⁶ *Ibid.*, p.171.

⁷⁷ *Ibid.*, p.174

⁷⁸ *Ibid.*, p.183, quoting Thomas Nagel, 'Moral Conflict and Political Legitimacy', *Philosophy and Public Affairs*, Vol.16, No.3 (1987), p.228.

from doubt about the belief) while also being unable to convince others of the truth of this belief. Barry takes this to be incoherent: ‘If I concede that I have no way of convincing others, should that not also lead to a dent in my own certainty?’⁷⁹ For Barry, then, the fact of reasonable pluralism implies scepticism and this means that epistemic pluralism is not the philosophically uncontroversial doctrine that it needs to be. Susan Mendus offers a strong counter-argument to Barry that I follow here.⁸⁰ She argues that Barry’s position ‘misidentifies the problem, which is not to adjudicate on whether people are or are not entitled to retain certainty despite their inability to persuade others’, but rather to ‘render certainty irrelevant to questions of political imposition’.⁸¹ Further, Barry’s argument misses the point of epistemological abstinence by bringing it into conflict with epistemic pluralism. If epistemic pluralism holds, then it is justified for people to continue to be convinced of the truth of their beliefs despite their inability to persuade others of the truth of those beliefs. Barry’s conception of scepticism as doubt requires all citizens (and philosophers) to hold their conceptions of the good and their convictions provisionally. While this might be a philosophically noble aim, it is not a demand that is compatible with epistemic pluralism. If epistemic pluralism accurately explains disagreements about value, then Barry ought to accept that people will be unable to persuade one another without undermining their own value commitments.

Barry might respond that we need not hold our beliefs provisionally in order to be sceptics, but I cannot see what it would mean for someone to hold a conception dented by doubt unless it means that they hold the conception provisionally. The important point here is that epistemic pluralism does not imply scepticism because epistemic pluralism is agnostic about whether scepticism, as a claim to truth, is true or not. One cannot, for example, be a sceptic and a convinced religious believer. Barry himself recognises this when he writes that what we ‘really have is scepticism on one side and a host of conflicting dogmatisms on the other’.⁸² Barry seems to think that this places scepticism in a position above all those other competing dogmas. A sceptic disagrees with a dogmatist ‘only at the point where he maintains that his own beliefs provide the

⁷⁹ Ibid., p.179.

⁸⁰ Mendus, *Impartiality in Political Philosophy*, pp.20-25.

⁸¹ Ibid., p.24.

⁸² Barry, *Justice as Impartiality*, p.172.

unique exception to what he claims to be the case for everybody else's'.⁸³ To repeat Rawls, 'there are no exceptions' and that is the whole point.⁸⁴ Barry's argument here mirrors the flaw of the value pluralists' argument, by suggesting that the only justifiable position to take is one of scepticism about one's own beliefs, just as value pluralism demands acceptance of value pluralism as the best theory of value. Neither value pluralism nor Barry's moderate scepticism stand above the fray, but the agnosticism of epistemic pluralism does. Barry's argument is related to his own broader theory and he shows little interest in the idea of pluralism itself, which is my focus here. The point of discussing his scepticism is to show that epistemic pluralism is not a form of scepticism, nor is scepticism implied by epistemic pluralism. Because it stands above the fray, epistemic pluralism and the theoretical constraint understanding of freestanding theory are not controversial in the way that scepticism clearly is.

Joseph Raz, a value pluralist, has offered a similar but more serious criticism of epistemological abstinence. Raz argues that epistemological abstinence implies certain claims to truth, as all theories of justice must appeal to truth or else become mere theories of stability. Raz summarises his view that there 'can be no justice without truth'.⁸⁵ Raz attacks Rawls's contention that the appeal of justice as fairness is not that it is true, but rather that it can attain an overlapping consensus.⁸⁶ Raz's critique is a rejection of the 'political not metaphysical' approach that characterises freestanding theory. Raz makes two connected criticisms from this starting point. The first is that epistemological abstinence implies that government officials should be indifferent to the truth of the policies they implement or the institutional principles they support: 'never before has it been suggested that governments should be unconcerned with the truth of the very views...which inform their policies and actions'.⁸⁷ The second criticism is that epistemological abstinence wrongly disqualifies 'true beliefs from providing justification from governmental action without showing that the beliefs are suspect and unreliable'.⁸⁸ What response can be given to these charges?

⁸³ Ibid.

⁸⁴ Rawls, *PL*, p.38, fn.39.

⁸⁵ Raz, 'Facing Diversity: The Case of Epistemic Abstinence', p.70.

⁸⁶ Ibid., p.61.

⁸⁷ Ibid.

⁸⁸ Ibid., p.61 fn.3.

Raz's first criticism, that a government would be indifferent to the truth of its own policies, begs the question. According to Mendus, Rawls claims that 'policies should not be commended to those who live under them *on the grounds* that they are true', but this commits neither Rawls nor his hypothetical government officials to indifference towards truth.⁸⁹ Raz 'in asserting that justice as fairness is unconcerned about truth...is assuming exactly what is at stake, namely whether refraining from commending something on the grounds that it is true implies indifference to truth'.⁹⁰ In other words, 'truth may be a necessary condition of commending something, but not thereby the reason for commending it'.⁹¹ Raz is likely to ask in response: what *are* the grounds on which policies should be commended? If the grounds were utility or justice, Raz would respond by saying that those grounds are bound up with truth (i.e. it is true that the state should maximise utility or secure justice). That is a legitimate question to which I turn in Section III, but the persistence of that difficulty does not undermine the method of epistemic abstinence that is Raz's target.

Raz's second criticism is that the method of epistemic abstinence wrongly disqualifies justifiable beliefs from informing public action despite these beliefs not having been shown to be unreliable. Mendus argues that Raz, like Barry, seems to miss the point of epistemic abstinence. His criticism 'carries as its corollary the claim that governments *are* entitled to use their coercive power in cases where a belief has not been shown to be suspect or unreliable'.⁹² The implication of this is that 'the convinced religious believer will characteristically insist that his or her belief has not been shown to be suspect or unreliable and, for that very reason, go on to insist that that the state use its coercive power to enforce the belief'.⁹³ In other words, the religious believer will claim that his or her belief is true and that its truth justifies its public relevance. The claim, however, 'that one has truth on one's side is inadequate precisely because each side in the dispute will lay claim to truth'.⁹⁴ It is more troublingly inadequate because 'there is no agreement between the parties as to who in fact is possessed of the truth, no convergence on what counts as an objective test, and certainly no convergence

⁸⁹ Mendus, *Impartiality in Political Philosophy*, p.26.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, p.28.

⁹² *Ibid.*, p.33.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

on whether the test has been passed'.⁹⁵ Even if Raz appeals to 'impartial and impersonal standards of correctness' in order to adjudicate, such standards will be useless in the difficult cases 'where the standards of correctness are themselves disputed'.⁹⁶ Both of Raz's criticisms therefore beg the question of the freestanding approach by merely repeating that the truth of some position justifies its political relevance.

Although Mendus's rebuttals offer a strong response to Raz, I think that an even more robust response is available to defenders of the freestanding approach. This is the response that, *contra* Raz, truth with a capital-T (to borrow Richard Rorty's phrase) is irrelevant to political theory precisely because of epistemic pluralism. The various truth with a capital-T doctrines (i.e. those doctrines that pursue or claim to achieve a universal truth outside and beyond human practices) that citizens might hold are relevant at the agential level, but not at the theoretical level. Endorsing the theoretical constraint understanding of freestanding theory does not imply that value pluralism is true or untrue. The freestanding approach stands above the philosophical fracas between monism and value pluralism, and above all other similar philosophical disputes. The freestanding approach abstains from taking a side in such debates, not because these debates are not worth having or because they fail to yield definitive answers (though it seems many philosophical debates fail in this way), but because the side on which one stands in such debates is deemed irrelevant to the development of political principles once epistemic pluralism is accepted.

To summarise, why is epistemic pluralism not controversial? Epistemic pluralism is not the same as general epistemological scepticism. Abstaining from epistemological questions is not itself a particular position, and instead is merely the absence of any position. The absence of a position cannot in itself count as controversial. Barry's and Raz's attempts to show that epistemological abstinence amounts to more than an absence of a position fail, and so too does the challenge that epistemic pluralism is comparably controversial to value pluralism. The argument for a theoretical constraint understanding of freestanding theory therefore holds and, by adopting that approach, my defence of epistemic pluralism over value pluralism is justified.

⁹⁵ *Ibid.*, p.34.

⁹⁶ *Ibid.*

4. Conclusion

I have argued in defence of epistemic pluralism as the suitable form of moral pluralism for political theory by endorsing the theoretical constraint understanding of freestanding theory. This approach, which is motivated by epistemic pluralism, prohibits the use of value pluralism as a suitable explanation for value disagreement for political theory because it is too controversial. I have argued that epistemic pluralism is not similarly controversial by rejecting the claim that it is reliant on value pluralism and rebutting the claim that freestanding theory is controversial because it amounts to scepticism. Epistemic pluralism is agnostic about our most controversial disagreements and this its strength. By a process of elimination, epistemic pluralism is the best theory of moral pluralism for first-order political theory. Although I have drawn extensively on Rawls's ideas, it is only in the service of defending pluralism as the basis for political theory. It is the differences between my conception of epistemic pluralism and Rawls's conception that I turn to now, by critiquing the first-order theory that flows from his limited conception of epistemic pluralism.

Section II: Epistemic Pluralism and Political Theory

Chapter 5: Rawls's Political Liberalism

Having examined two theories of moral pluralism and offered a defence of epistemic pluralism as the relevant explanation of value disagreement to political theory, I now turn to the first-order implications of epistemic pluralism for political theory. Up to this point I have tried as far as possible to divorce theories of pluralism from both their normative consequences and from the substantive and prescriptive theories in which they are couched. If we take the claim that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value, then what does this mean for political theory? More specifically, what does it mean for the possibility of agreeing on action-guiding and binding political principles in the light of widespread disagreement? Given the indeterminacy of reason, how can we practically reach an agreement on which political principles to endorse? In this chapter and the next I assess two forms of public reason liberalism, Rawls's political liberalism and Gerald Gaus's justificatory liberalism, which respond to epistemic pluralism and try to answer those questions. As I have suggested previously, it may seem that my argument is merely a reconstruction and restatement of Rawls's political liberalism. At this point, however, the thesis sheds its Rawlsian skin by following the claim of epistemic pluralism to a conclusion contrary to and beyond Rawls.

Although I outlined my conception of epistemic pluralism in Chapter 3 and defended it against value pluralism in Chapter 4, Section II continues to develop that conception with reference to the differing responses to epistemic pluralism of Rawls and Gaus. This is not simply a matter of applying a conception of pluralism to politics, although that is certainly part of my task here, but also exploring how that application will elucidate the conception itself. Rawls and Gaus both recognise epistemic pluralism (although to differing degrees) and attempt to defend liberalism by appeal to their accounts of public reason. The turn to public reason liberalism is motivated by the conviction that those epistemic obstacles can be overcome under certain circumstances to reach a reasoned agreement on political principles. The task for public reason liberals is to stipulate which circumstances enable agreement and to justify those stipulations without falling foul of epistemic pluralism. Public reason accounts identify the political problem as meeting what David Enoch calls a 'justification-to' condition. Enoch means

by this that a state's 'authority must be justifiable to each of those subject to it'.¹ As Kevin Vallier notes, public reason liberalism is 'public' in the sense that 'only public reasons can justify coercion'.² Rawls's approach limits *who* the justification should apply to whereas Gaus's approach defines public reasons in an epistemically rigorous way. My arguments in this Section attempt to show that both public reason approaches make stipulations based on normative claims which are themselves subject to the non-erroneous disagreement engendered by epistemic pluralism. As a result, Rawls's and Gaus's attempts to salvage liberal principles from epistemic pluralism are incompatible with the recognition of epistemic pluralism that motivated the search in the first place.

I begin by briefly introducing Rawls's political liberalism and the role that pluralism plays in his project (1). I then introduce the asymmetry objection, which argues that Rawls is inconsistent in his application of pluralism, in broad terms (2), before examining and criticising Jonathan Quong's defence of asymmetry from within a political liberal framework. I then develop a critique of asymmetry beyond a Rawlsian framework (3) by demonstrating that the burdens of judgment apply to political disagreements, and then by criticising Rawls's conception of the reasonable. This chapter primarily aims to be critical of political liberalism, rather than to advance my own substantive responses to epistemic pluralism, which are developed in Section III.

1. Political Liberalism and Pluralism

It is useful to briefly contextualise the role that the fact of reasonable pluralism plays in *Political Liberalism*. As Chapter 3 showed, the fact of reasonable pluralism entails that comprehensive doctrines can be both reasonable and incompatible. This has significant implications for how we reason about basic political principles, or what Rawls calls 'constitutional essentials'.³ If reason does not produce consensus, then a procedure needs to be established that allows incompatible reasonable doctrines to reach a settlement on what to do politically. Rawls provides this procedure with reference to the idea of public reason.

¹ David Enoch, 'Against Public Reason', p.115.

² Kevin Vallier, 'Against Public Reason Liberalism's Accessibility Requirement', *Journal of Moral Philosophy*, Vol.8 (2011), p.367.

³ Rawls, *PL*, p.214.

Both Rawls and Gaus pursue an approach of public justification.⁴ As Christopher Eberle notes, ‘the clarion call of justificatory liberalism is the public justification of coercion’.⁵ Public justification, for Rawls, requires that citizens justify their political decisions and preferences by reference to public values and standards accessible to all those citizens who partake in deliberation. Steven Wall, who describes this approach as a ‘bracketing strategy’, offers the following description of Rawls’s use of public reason:

The bracketing strategy starts with a simple idea: to justify a conclusion to a person we need to start with premises he or she can accept. It then extends this simple idea to public justification: to justify a political conclusion to all citizens we need to start from premises all of them can accept. If the citizens in a political community hold a multitude of incompatible moral, philosophical and religious views, we are led naturally to the demand that political justification proceed from a set of shared beliefs, ideals and values. To meet this demand citizens must bracket their differences and search for common ground.⁶

The questions then arise, ‘where is the common ground?’ and more seriously, ‘is there any common ground?’. In both Rawls and Gaus, the common ground is found in the idea of public reason. In general terms, public reason refers to the kinds of reasons that can be permitted in the public or political sphere. More precisely, it dictates that citizens have a ‘duty of civility’ when engaged in political activities to justify their views and decisions by reference only to public values and standards that can be understood by all other citizens.⁷ Unsurprisingly, each element of this doctrine has a technical definition. Citizens are considered to be engaged in political activities when voting, as judges, and as advocates for a political cause.⁸ Public values and standards are those that appeal to the political conception of justice, the bounds of which are defined by the duty of civility which obliges citizens ‘to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason’.⁹ Reasons that appeal to religious texts, for example citing a passage from the Bible or the Quran in a court case, are impermissible as they appeal to a standard that is not shared by all reasonable citizens.

⁴ For other versions of public reason liberalism see e.g. Charles Larmore, *The Autonomy of Morality* (New York: Cambridge University Press, 2008); Stephen Macedo, *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990); Quong, *Liberalism Without Perfection*.

⁵ Christopher Eberle, *Religious Conviction in Liberal Politics* (New York: CUP, 2002), p.54.

⁶ Wall, *Liberalism, Perfectionism and Restraint*, p.44.

⁷ Leif Wenar, Stanford Encyclopaedia of Philosophy entry for ‘John Rawls’.

⁸ Rawls, *PL*, pp.219-220.

⁹ *Ibid.*, p.217.

One of the many given aims of political liberalism is to ‘uncover the conditions of the possibility of a reasonable public basis of justification on fundamental political questions’.¹⁰ The idea of public reason outlines these conditions. It is a moral conception of the parameters of what are permitted to count as justifications under political liberalism. Rawls defines these as ‘guidelines of inquiry that specify ways of reasoning and criteria for the kinds of information relevant for political questions’.¹¹ More specifically, though, Rawls’s demand for public justification is the most significant political result of the fact of reasonable pluralism. The idea of public justification stems from the problem of legitimacy engendered by pluralism, namely, ‘how is it possible to justify political institutions and the decisions made within them to free and equal citizens that are divided by reasonable yet incompatible comprehensive doctrines?’¹² Epistemic pluralism not only describes modernity, it also tells us that that our modern condition behoves us to acknowledge the limited scope of practical reason and adjust the limits of the state accordingly.

As I argued in Chapter 4, epistemic pluralism provides an explanation of why we disagree about value. An endorsement of epistemic pluralism does not, however, lead to an endorsement of political liberalism. The idea that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value, is wider and vaguer than Rawls’s fact of reasonable pluralism. For Rawls, the burdens of judgment apply only to conceptions of the good. Reasonable pluralism allows that reasonable citizens can disagree about what is of ultimate value in life without requiring that at least one of those who disagree is unreasonable. Rawls does not, however, believe that pluralism applies at the level of disagreements about justice; these disagreements are rationally resolvable amongst reasonable people. Rawls subscribes to the belief that a recognition of pluralism about conceptions of the good precludes the possibility of a ‘most reasonable’ conception of the good and in so doing precludes the state from endorsing any particular conception of the good as the official conception. For the state to act on the basis of a particular conception of the good that was not endorsed by all citizens, would be to oppress those citizens who did not endorse that particular conception. A theocratic state that legislated on the basis of scripture, for example, would oppress all those citizens who did not subscribe to the religious

¹⁰ Ibid., p.xix.

¹¹ Ibid., p.223.

¹² John Rawls, *Justice as Fairness: A Restatement* (London: Harvard University Press, 2001), p.40.

doctrine derived from the scripture. In other words, comprehensive liberalism is incompatible with liberal neutrality. As pluralism does not extend to the realm of justice, however, a ‘most reasonable’ political conception is in fact possible, and the state is free to endorse that conception regardless of the disagreements such a conception may be subject to. In short, the enforcement of a conception of the good by the state would be oppressive, but the enforcement of a (liberal) conception of justice would not be oppressive. This distinction is the one that I focus on here by asking whether Rawls is right to accept epistemic pluralism about conceptions of the good, but to reject epistemic pluralism about political conceptions.

The reason we should care about this question is that Rawls’s project of public justification hinges on his limited account of pluralism. Although people reasonably disagree about conceptions of the good Rawls nevertheless believes that those same people can reach reasoned agreement on a conception of justice because epistemic pluralism does not apply to conceptions of the right. To put Rawls’s distinction into my own terms, there are significant and currently insurmountable epistemic obstacles to reasoned agreement about conceptions of the good, but there are not those same obstacles to reasoned agreement about a conception of justice. Even though people reasonably disagree about what is of ultimate importance in their lives they can still reach an ‘overlapping consensus’ on a political conception of justice. In other words, while disagreement about conceptions of the good is inevitable, a political theory can still aspire to achieve a consensus of sorts on a political conception. Disagreements between a Buddhist and a Catholic are in some instances irresolvable for Rawls, but disagreements between a Marxist and a libertarian are not. The way in which Rawls’s limited conception of pluralism aims to achieve this consensus is by excluding unreasonable views from the overlapping consensus. Either the Marxist and the libertarian can put aside their substantial disagreements and reach an agreement on basic liberal principles, or they are deemed unreasonable.

The critical literature in response to *Political Liberalism* is vast and I make no attempt to summarise these responses. Even if one were to narrow the literature down to that concerned with pluralism the task would still be overwhelming, as pluralism provides political liberalism’s animating idea. Instead, my coverage of the criticism of Rawls is limited to the ‘asymmetry objection’ and his use of reasonableness as a limit on his conception of epistemic pluralism. I am not interested in Rawls’s or Gaus’s public

reason accounts *qua* public reason accounts, but rather as first-order responses to epistemic pluralism. That I focus only on a tiny portion of the debate on Rawls's work reflects this narrow concern.

My argument against Rawls comprises two related strands. The first strand is internal in that it attempts to show that Rawls's limit on pluralism is inconsistent with his own account of pluralism as explained by the burdens of judgment (2). The second strand is external in that it criticises his conception from beyond the scope of political liberalism (3). One might wonder here why a debate between public reason liberals matters if my ambition is to move epistemic pluralism beyond Rawls. Although I think that the external argument is the more compelling of the two, it is worth engaging in the internal argument because it shows that political liberals ought to endorse the wider conception of epistemic pluralism that I developed in previous chapters. Endorsing this wider conception of epistemic pluralism undermines the projects of public justification that Rawls and, in the next chapter, Gerald Gaus undertake. If I am right about epistemic pluralism then the consequences for public reason liberalism are serious. To the extent that political theory is persuasive (or at least aims to be), political liberals are a large constituency to whom my arguments might appeal. The outcome of both lines of argument here is the same: Rawls is wrong to exclude political disagreements from his conception of pluralism and his attempt to meet the 'justification-to' condition fails as a result.

2. The Asymmetry of Rawls's Pluralism

For Rawls, the burdens of judgment apply to conceptions of the good held by reasonable people. Pluralism of conceptions of the good is, as Albert Weale puts it, 'inevitable as a consequence of the normal operation of human reason'.¹³ For Rawls, epistemic pluralism only has explanatory force and attendant normative consequences in the sphere of conceptions of the good. Epistemic pluralism does not apply at the level of disagreements about justice, or in his term, 'the right'. Contra Rawls, I challenge this limit on epistemic pluralism. My contention is that epistemic pluralism holds for political values just as it does for comprehensive doctrines: there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on a political

¹³ Albert Weale, *Democracy* (Basingstoke: Palgrave Macmillan, 1999), p.67.

conception. This section defends the disintegration of Rawls's sharp distinction between the right and the good with regard to epistemic pluralism.

Relatively recently, in the timescale of political theory, a debate has resurfaced about an apparent difficulty faced by Rawls's use of reasonable pluralism. The outcome of this debate, centred on a criticism termed the 'asymmetry objection', potentially has serious implications for Rawls's theory of political liberalism, and also for any account of epistemic pluralism of the sort that I advocate here.¹⁴ Versions of the asymmetry objection were originally put forward following the publication of *Political Liberalism*. Although the objection takes slightly different forms in each account, the central point remains the same. Michael Sandel takes the problem of political liberalism to be that Rawls 'must assume not only that the exercise of human reason under conditions of freedom will produce disagreements about the good life but also that the exercise of human reason under conditions of freedom will *not* produce disagreements about justice'.¹⁵ The thrust of the objection is that this assumption is arbitrary and incompatible with the pluralism that motivates Rawls's political turn.

If the asymmetry objection holds, then we are left with two starkly different options: a retreat to the comprehensive liberalism of *A Theory of Justice* or an expansion of epistemic pluralism from the realm of conceptions of the good to the realm of conceptions of the right. If correct, the asymmetry objection undermines Rawls's aspiration for political liberalism that it meets what he calls the 'principle of liberal legitimacy', which claims that the 'exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason'.¹⁶ If it can be shown that the asymmetric application of epistemic pluralism is unjustified then the overlapping consensus that aims to fulfil the principle of liberal legitimacy cannot be established.

¹⁴ The asymmetry objection has been put forward in different ways since the publication of *Political Liberalism*. See Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: CUP, 1998); Gerald Gaus, 'Reasonable Pluralism and the Domain of the Political: How the Weaknesses of John Rawls's Political Liberalism can be Overcome by a Justificatory Liberalism', *Inquiry*, Vol.42 (1999), pp.266-72; Jeremy Waldron, *Law and Disagreement*, Chapter 7.

¹⁵ Sandel, *Liberalism and the Limits of Justice*, p.203.

¹⁶ Rawls, *PL*, p.137.

To reach a verdict on the validity of the asymmetry objection it is necessary to delve into its details.

Jonathan Quong has offered the most rigorous internal defence of Rawls's distinction between the good and the right, and in so doing attempts to rebut the asymmetry objection. Quong takes the challenge for political liberals to be as follows:

The fact of reasonable pluralism plays a large role in explaining why claims about the good life are held to be illegitimate reasons for state action. Political liberalism seems to imply that disagreements about justice are not reasonable in the same way, and so it is legitimate for the state to act on reasons of justice even if many people do not accept those reasons. Political liberalism therefore seems to rely very heavily on an asymmetric view of disagreements about the good and disagreements about justice, so much so that if the asymmetry proved untenable the political liberal project might collapse.¹⁷

How can asymmetry be justified? Rawls does not give a clear answer to this question but Quong has, and so it is his defence of asymmetry that I address. It might seem odd to focus on Quong's defence of Rawls, but this internal debate to political liberalism is essential to the argument of this thesis. If Quong (and therefore Rawls) is right, then political liberalism *does* successfully provide a political response to epistemic pluralism. If Quong's argument succeeds, then political liberalism is the answer to the question of what to do politically about non-erroneous value disagreement. However, I argue that Quong's defence of asymmetry fails and, consequently, that the political liberal project does indeed collapse.

Quong's defence of asymmetry

Quong's rebuttal of the asymmetry objection rests on a distinction between what he terms '*foundational disagreement*' and '*justificatory disagreement*'. This distinction justifies the asymmetric treatment of disagreements about the good and disagreements about the right. Quong does not deny that these two spheres are treated differently by political liberalism, rather, he argues that it is justified that these two spheres are treated differently. Like Rawls, he admits that he does not 'claim that people cannot reasonably disagree about many aspects of justice', but that such disagreements do not affect the overlapping consensus.¹⁸ Quong's interpretation of the asymmetry objection does not suggest that there is no reasonable disagreement whatsoever about justice, but rather that state coercion is permissible despite disagreements about justice. Quong needs to

¹⁷ Jonathan Quong, *Liberalism Without Perfection* (New York: OUP, 2011), p.192.

¹⁸ Quong, *Liberalism Without Perfection*, p.199.

demonstrate that the distinction between these two spheres is not, as proponents of the objection claim, arbitrary. He must show that it is justified that the state can act in the face of disagreements about justice even though it would not be justified to act in the face of disagreements about the good.

Quong claims that foundational disagreement is disagreement among reasonable citizens that is ‘characterized by the fact that participants do not share any premises which can serve as a mutually acceptable standard of justification [for state action]’.¹⁹ Justificatory disagreement, by comparison, ‘occurs when participants do share premises that serve as mutually acceptable standard[s] of justification, but they nevertheless disagree about certain substantive conclusions’.²⁰ From this distinction, Quong then outlines a four-stage argument that attempts to show that the asymmetry objection is flawed:

1. Reasonable disagreements about the good life are not necessarily justificatory and will almost certainly be foundational.
2. Reasonable disagreements about justice are necessarily justificatory and not foundational.
3. The liberal principle of legitimacy is not violated when the state imposes a view that arises out of a justificatory disagreement...
4. Claims of justice over which there is reasonable disagreement, if imposed by the state, do not violate the liberal principle of legitimacy²¹

Each of these steps requires justification and it is not sufficient to merely present Quong’s conclusion as a compelling argument against the asymmetry objection. Each step relies on Quong’s distinction between foundational disagreements and justificatory disagreements, which also needs to be made clear.

Quong illustrates his distinction by way of two imagined dialogues between three characters, Sara, Mike, and Tony. The first discussion between Mike and Sara is about the morality of recreational drug use. During one discussion, Mike claims that recreational drug use is immoral because ‘it involves seeking pleasure for pleasure’s sake’, a position that Mike takes to be a ‘hedonistic view of what makes a good human life’. Mike believes this view of the good life to be mistaken, as Mike subscribes to the belief that because life is created by God ‘the proper function of every human life is not

¹⁹ Ibid., p.204.

²⁰ Ibid.

²¹ Ibid.

the pursuit of pleasure, but devoted service to God's commandments'.²² According to Mike, the failure to live one's life in such a way is immoral. In response, Sara argues that recreational drug use is morally permissible 'because she rejects the idea that God's commandments can serve as a legitimate source of moral authority as she does not believe in the existence of God'. Further, Sara claims that 'concepts of right and wrong do not apply to purely private acts: they only apply to the category of what we owe to other persons'. Sara categorises drug use as a private act and concludes that it cannot be 'subject to moral evaluation'.²³ This disagreement, according to Quong, is foundational because 'they disagree at the level of ultimate convictions or principles'. In other words, 'there is not deeper standard of justification that both Mike and Sara accept that could serve as the basis of adjudicating their dispute'. Further, it is this very lack of a shared standard of justification that explains their disagreement.²⁴ To put this in epistemic pluralist terms: there are enduring and currently insurmountable obstacles to reasoned agreement between Mike and Sara.

Quong then sets up another dialogue, this time between Sara and Tony, about 'the (in)justice of allowing the Catholic Church to discriminate on the basis of gender when employing priests'. Tony argues that the Church is 'perfectly entitled to hire only male priests if it so chooses because it is a private association, not a public company or institution'. Secondly, Tony argues that 'the right of religious liberty is at stake in this case' and that the stringency of this right means that 'it cannot be infringed in cases of this kind'.²⁵ Sara again disagrees. She argues that 'just as private associations are not exempt from laws against rape, theft, and murder, the Catholic Church should not be exempt from laws which prohibit gender discrimination in employment'. In response to Tony's appeal to religious liberty, Sara argues that the right to religious liberty 'is not meant to insulate religious groups against all interference, and certainly not when the state has a compelling egalitarian reason to interfere'.²⁶ This disagreement, according to Quong, is justificatory because both Sara and Tony, as reasonable citizens, 'accept the idea that society should be a fair system of social cooperation between free and equal citizens, and they also each accept the existence of the burdens of judgment

²² *Ibid.*, pp.204-205.

²³ *Ibid.*, p.205.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

and consequent fact of reasonable disagreement'. Their shared acceptance of these three claims leads them to accept the further claim that 'principles of justice should be free standing and abstain from relying on sectarian doctrines'. This, in turn, leads them to 'share a commitment to finding a political solution to the problem posed by the Catholic Church in a way that will be consistent with this ideal'.²⁷ Both believe that their positions are consistent with the standard of justification required by being reasonable, and both believe that their position is the 'most reasonable interpretation'. For Quong though, 'the key...is that they share the same fundamental normative framework despite the disagreement'. To put it another way, Quong claims that they 'share the same broad view of what counts as a good reason when debating about the principles of justice'.²⁸ In contrast with the first disagreement, then, epistemic pluralism seems to have no relevance here, as the shared standard of justification means that both positions can be judged in relation to this standard, and so the epistemic obstacles can be overcome. The shared justificatory standard provides a basis for settling disputes that was absent in the first disagreement.

Using these examples Quong expands on his definitions of foundational and justificatory disagreement by vigorously restating Rawls's position. Disagreements about the good life, 'about the ultimate purpose of human existence, or what virtues add value to a life well lived' lack a 'common standard by which the various answers to such questions can be assessed' because 'the standard of evaluation itself is under dispute'.²⁹ According to Quong, disagreements about the good are foundational because 'the burdens of judgment produce disagreement about the very standard of justification that is appropriate for the topic under discussion'.³⁰ In contrast, disagreements about justice 'presuppose a common standard'. This standard, according to Quong, is the ideal of public reason to which all reasonable people are committed. All disagreements about justice must only be those that 'can be seen as a reasonable instance of public justification'. Quong follows Rawls in thinking that public justification demands that arguments are freestanding, that the proponent is sincere, and that 'the conflicting arguments must represent a plausible balance of political values'.³¹

²⁷ Ibid.

²⁸ Ibid., p.206.

²⁹ Ibid.

³⁰ Ibid., p.207.

³¹ Ibid.

By this last feature of reasonable disagreements about justice Quong means that the full variety of political values at stake in any given disagreement have been considered. Failure to recognise certain valid public values in arguing for a position would signify unreasonableness. These necessary features of reasonable disagreement about justice, Quong claims, mean that all reasonable disagreements about justice are justificatory disagreements, as all parties share a standard of justification despite their disagreement. Quong acknowledges that although arguments of this sort will be in principle ‘mutually acceptable’, it does not ‘guarantee that all the participants will agree on the exact weight or ranking of those values or principles’.³² In short, Quong’s distinction between foundational and justificatory disagreement provides a fuller account of Rawls’s distinction between the right and the good as applied to public reason. While reasonable disagreement is permitted in both spheres, what is meant by reasonable disagreement is different. Whereas reasonable disagreements about the good life are those disagreements that ‘result from the sincere exercise of human reason under the burdens of judgment’, reasonable disagreements about justice are limited to those disagreements that are not only sincere and accepting of the burdens of judgment but also occur between citizens who share a common standard of justification.³³

Quong’s distinction between justificatory and foundational disagreements explains the first two steps of his argument in response to the asymmetry objection: ‘1. Reasonable disagreements about the good life are not necessarily justificatory and will almost certainly be foundational’ and ‘2. Reasonable disagreements about justice are necessarily justificatory and not foundational’.³⁴ If Quong’s distinction holds then he adequately rebuts the asymmetry objection by demonstrating that asymmetry is not arbitrary in the way that its proponents suggest. Before presenting my criticism of Quong’s position, I will briefly finish examining his argument.

The third step in Quong’s argument states that the ‘liberal principle of legitimacy is not violated when the state imposes a view that arises out of a justificatory disagreement’.³⁵ To recall, Rawls’s liberal principle of legitimacy states 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

³² Ibid.

³³ Ibid., pp.205-208.

³⁴ Ibid., p.204.

³⁵ Ibid.

in the light of principles and ideals acceptable to their common human reason'.³⁶ This principle, which is central to Rawls's account of political liberalism, would be violated if the state were to impose a view on its citizens that was subject to reasonable disagreement. If, for example, the state imposed a principle of justice that did not receive the assent of all reasonable citizens, then such a principle would violate the liberal principle of legitimacy, rendering the principle of justice illegitimate. A state guided by illegitimate principles is morally impermissible for liberals and so the asymmetry objection's implication that reasonable pluralism applies to disagreements about justice would prove highly problematic for the moral permissibility of political liberalism. To avoid this conclusion, Quong returns to his imagined interlocutors to demonstrate that 'there is nothing inconsistent about the political liberal position once we recognize that the burdens of judgment do not apply in the same way to justificatory disagreements and foundational disagreements'.³⁷ Quong alters the conditions of the argument between Mike and Sara about recreational drug use so that the argument is about whether the use of drugs is unjust rather than immoral. Were Mike to advance the same argument about living one's life in the service of God, Quong claims that Mike would be 'unreasonable in the political liberal sense', as he appeals to reasons that cannot be shared by all as a result of the burdens of judgment.³⁸ In the debate between Sara and Tony, however, regarding male only hiring in the Catholic Church, Quong argues that both Tony's and Sara's arguments meet a common standard of justification and therefore that neither can 'be seen as sectarian and thus they can serve as the basis of reasonable political claims'.³⁹ The disagreement between them is 'thus an example where multiple or conflicting solutions appear consistent with a commitment to public justification or public reason', or, to reframe it in my own terms, an example of epistemic pluralism.⁴⁰ That Sara and Tony reasonably disagree on a matter of justice presents a problem for political liberalism, as the state cannot endorse both Sara's and Tony's positions simultaneously, despite both of their positions meeting the standard of reasonableness. The state must either permit the Catholic Church to continue hiring male priests only, or it must force the Church to comply with existing equality of opportunity legislation. More seriously, if the state were to adopt

³⁶ Rawls, *PL*, p.137.

³⁷ *Ibid.*, p. 208.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*, p.209.

one of these policies, would the adherent of the unadopted policy be able to claim that the state was in violation of the liberal principle of legitimacy? Quong's response is to argue that although 'public reason is inconclusive in this instance' as 'the political values of the overlapping consensus support competing reasonable conclusions' this does not entail that state action to support one of two competing reasonable alternatives would be illegitimate.⁴¹ Quong claims that the standard of liberal legitimacy is not 'reasonable rejection'.⁴² For Quong, 'an argument can be reasonably rejected if it is reasonable to hold any other conflicting position', but the liberal standard of legitimacy requires only that the state should not act on positions that citizens cannot 'reasonably be expected to endorse'. If the state were to act to legislate in favour of either Sara's or Tony's position it would still be able to offer the losing party an explanation for the choice that the losing party could reasonably be expected to endorse, even if the losing party does not believe that the adopted position is 'the best argument' or even if she believes it to be incorrect.⁴³ Even though either Sara or Tony will not *in fact* hold the view that the state adopts, they can still be reasonably expected to endorse that position in the light of their shared commitment to a normative framework that allows disputes about justice to be settled. This move, according to Quong, allows political liberalism to meet the liberal principle of legitimacy while permitting non-erroneous disagreement about justice.

For Quong, the lack of a shared normative commitment in the sphere of foundational disagreement means that the state is incapable of explaining to reasonable adversaries why their position has been ignored and the opposing view endorsed. Were the state to take sides in a case of foundational disagreement it would violate the liberal principle of legitimacy. Justificatory disagreements, however, are characterised by a shared normative commitment that enables the state to offer a reasonable explanation to the defeated adversary as to why her position has been disavowed and the opposing position endorsed, by appeal to a shared standard. Having laid out Quong's defence of asymmetry I now turn to the criticisms of his defence. It might seem that I have gone into excessive detail in outlining Quong's defence of asymmetry, given that I argue

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

against it, but as this debate is central to the limits of Rawls's pluralism the defence of asymmetry needed a fair hearing, even if I do not think that it ultimately succeeds.

The asymmetry objection redux

Quong's defence of asymmetry is a defence internal to political liberalism: the argument could only be persuasive to those who already subscribe to the essential features of Rawls's theory, such his conception of society, the burdens of judgment, the liberal principle of legitimacy, the idea of public reason, and so on. Criticisms levelled at any of these essential features may well prove successful, but these external criticisms would not address the coherence of Quong's argument within a Rawlsian framework. Rather they would challenge that framework as a whole. I turn to these external criticisms shortly. Before assessing these wider criticisms however, there is an internal criticism that suggests that *even within* a Rawlsian framework, Quong's defence of asymmetry does not succeed. If this criticism holds then it provides good reason for political liberals, and not just its critics, to reconsider their position on the limits of pluralism.

What work does Quong's distinction between types of disagreement actually do? According to Timothy Fowler and Zofia Stemplowska, Quong's distinction does not 'offer Quong the resources he needs to explain why it is always reasonable to expect endorsement from the losers of a vote in cases of justificatory disagreement but not foundational disagreement'.⁴⁴ According to them, it is because 'justificatory and foundational disagreement map, respectively, onto reasonable disagreement about justice and about flourishing, that [Quong believes] we can expect reasonable endorsement of (procedurally fairly selected) policies on justice but not on flourishing'.⁴⁵ Their criticism aims to break down the accuracy of this 'mapping', and thereby break down the sharp distinction Quong makes between justificatory and foundational disagreement.

Fowler and Stemplowska suggest two possible interpretations of justificatory disagreement: 'coarse-grained' and 'fine-grained'. On the coarse-grained view, the disputing parties loosely agree on some significant principles, such as the value of

⁴⁴ Timothy Fowler and Zofia Stemplowska, 'The Asymmetry Objection Rides Again: On the Nature and Significance of Justificatory Disagreement', *Journal of Applied Philosophy*, Vol.32, No.2 (2015), p.137.

⁴⁵ *Ibid.*, p.136.

freedom and equality broadly conceived, but disagree about other important values. Once these ‘basic values’ have been established ‘citizens might then disagree on whether any further, specific political value is indeed a value but their disagreement will remain justificatory in virtue of their acceptance of the basic values’.⁴⁶ On the fine-grained view, however, the disputing parties ‘must accept as values all the values offered by fellow citizens with whom they disagree over a given policy; it is not enough if they merely agree on the basic values’.⁴⁷ It is unclear which of these readings Quong himself endorses. Choosing between them poses a dilemma for Quong. If he adopts the fine-grained reading of justificatory disagreement ‘then it is no longer clear that all disagreement about justice that appears reasonable is justificatory’. Rather, some of these disputes will likely be foundational, ‘as some parties to this dispute will likely assert specific values that go beyond the basic values that all citizens must accept’.⁴⁸ Adopting this reading would ‘reveal Quong to have offered a highly demanding account of reasonable citizenship’ which would prove problematic given ‘his own concerns about matching a conception of liberalism to our real world observations about political debates’.⁴⁹ Regardless of Quong’s own concerns, such a demanding conception of reasonable citizenship would likely serve to destabilise political liberalism by excluding many citizens from political engagement. On the coarse reading, ‘it is not clear that we are in the presence of a disagreement in which all parties really do share a common framework sufficient to generate the need to endorse whichever policy is selected in a procedurally fair way’. In other words, it is unclear that the losers of a justificatory disagreement ‘really have a reason to endorse the winning policy’ as they can no longer be told that the policy is justified with reference to values to which they are already committed. Further, the coarse reading opens up the possibility that foundational disagreement should be treated in the same way as justificatory disagreement. If disputants in both spheres share basic values of freedom and equality but disagree about some other important values, why then does a fair decision procedure meet the liberal principle of legitimacy for justificatory disagreements but not for foundational disagreements? On the coarse reading Quong lacks an adequate response

⁴⁶ Ibid.

⁴⁷ Ibid., p.138.

⁴⁸ Ibid.

⁴⁹ Ibid.

to this question and the force of his distinction between foundational and justificatory disagreements is lost, prompting the re-emergence of the asymmetry objection.

Quong might reply to this critique that the distinction between foundational and justificatory disagreement is not about ‘the amount of agreement on various points’, but rather about ‘the character of the agreement’.⁵⁰ Quong could argue that foundational disagreements are ‘over brute facts and/or values’ while justificatory disagreements concern ‘interpretations of a shared (basic) principle or value’.⁵¹ Non-erroneous disagreement about justice, then, would involve ‘cashing out these core liberal commitments’ rather than disputing the weighting and ordering of the relevant values. Departing from Rawls, Quong argues that the overlapping consensus is not derived from various agreements between comprehensive doctrines, but instead that the overlapping consensus ‘occurs over basic liberal principles’. The overlapping consensus then provides citizens with the basic values of society as a fair system of cooperation, freedom and equality, and an acceptance of the burdens of judgment, all of which they then must interpret.⁵² Understood in this way, disagreements about justice are merely interpretive disagreements, and as such, the state can reasonably expect citizens to endorse the policy it chooses, even if their interpretation of the basic values led to a different conclusion. As Stemplowska and Fowler point out, however, this response would rely on a normative case that the losing party would be less aggrieved by losing on a matter of interpretation than they would had they lost on a dispute over ‘brute values’.⁵³ There seems to be little reason to think that this would be the case, as disagreements on interpretation (for example, what freedom of speech entails) do not seem to be any less thorny than disagreements about the weighting of values. A general commitment to the basic value of freedom of speech is so vague as to be useless in terms of justifying the actual policy with reference to that commitment. For example, debates over the interpretation of ‘constitutional phrases seem to possess the essential qualities that Quong singles out as crucial in a justificatory disagreement’, most notably a shared framework.⁵⁴ But, as Fowler and Stemplowska argue, it is ‘unclear that debates over the correct interpretation of the constitution...really differ in a morally salient way

⁵⁰ *Ibid.*, pp.141-142.

⁵¹ *Ibid.*, p.142.

⁵² *Ibid.*

⁵³ *Ibid.*, p.143.

⁵⁴ *Ibid.*, p.143.

from foundational debates'. In such debates the disputants cannot 'see the force (and relevance) of the different arguments' and instead the disputants see that various sides 'take positions that are predicated on the falsity of rival views'.⁵⁵ If constitutional disagreements, which seem to be a paradigmatic case of Quong's conception of justificatory disagreements, are subject to foundational rather than merely interpretive disagreements, then it is unclear under what circumstances Quong's justificatory (hence non-foundational) disagreements can actually occur. If there are no clear examples of justificatory disagreements that do not threaten to become foundational disagreements then Quong's defence of asymmetry fails. This slightly obscure debate between Quong and his critics might seem to be something of a tangent from my own argument about the consequences of epistemic pluralism. If my argument holds, political liberalism fails on its own standards. The point of this argument was to see whether Rawls's asymmetric treatment of disagreement about the good and disagreement about the right could be justified. As Rawls did not offer a strong defence of this distinction I turned to Quong's defence to see whether it could be justified. It seems, however, that Quong's defence merely repackages Rawls's distinction between the right and the good. Given that the question is *whether* Rawls is justified in distinguishing so sharply between the right and the good regarding epistemic pluralism, Quong's defence begs all the important questions. There are other ways to judge political liberalism than by its own standards and there is more at stake here than whether political liberalism is internally coherent. In the next section, I argue that epistemic pluralism, defined as the claim that there are significant and currently insurmountable epistemic obstacles to reasoned agreement on matters of value, does include disagreements about justice and that political liberalism's failure to recognise this undermines its ability to meet its own liberal principle of legitimacy.

3. Asymmetry Beyond a Rawlsian Framework

Moving beyond a Rawlsian framework means moving beyond the shared assumptions of public reason liberals. This might seem superfluous after already dismissing the internal defence of asymmetry, but the previous debate did not get to the heart of the matter. The previous section took Rawls's framework as assumed, but now I assess the asymmetry objection without suspending any broader concerns about Rawls's

⁵⁵ Ibid.

framework itself. We need not travel so far down the road with Quong and Rawls to find asymmetry troubling. The external criticism of asymmetry takes two forms. I begin by assessing the plausibility that epistemic pluralism applies only to disagreements about the good by seeing whether the burdens of judgment apply to various political disagreements. I then expand on my criticism of Rawls's use of reasonableness that I outlined in Chapter 3. Both parts of this argument point to the same conclusion as the previous section: epistemic pluralism is not limited to disagreements about the good, but also explains non-erroneous disagreements about justice.

To restate the asymmetry objection in its simplest form: why should we think that epistemic pluralism accurately explains disagreements about conceptions of the good, but does not accurately explain disagreements about justice? How could there be significant and currently insurmountable epistemic obstacles to reasoned agreement about conceptions of the good, but not about conceptions of justice? Divorced from a commitment to political liberalism, the question can be put more simply: does epistemic pluralism accurately describe all types of disagreement about value? As I indicated in Chapters 3 and 4, I think it does.

Rawls's own view on this question is not as clear as I have made it seem up to this point. Sometimes, Rawls's version of epistemic pluralism, the fact of reasonable pluralism, seems inherently limited to conceptions of the good and not applicable to justice. At other points, he seems to concede that reasonable pluralism applies to justice too. Certainly, however, the fundamental features of justice are off the table as far as epistemic pluralism is concerned, though the 'last details of the principles' may still be subject to non-erroneous disagreement.⁵⁶ Rawls, when describing the burdens of judgment, speaks of the 'many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life'.⁵⁷ Insofar as we take our 'political life' to be concerned with justice we would expect the burdens to apply both to our comprehensive doctrines and to our political conceptions of justice. This broader interpretation of the burdens of judgment is supported by the burdens themselves, none of which are peculiar to reasoning about the good. Rather, all the burdens of judgment (conflicting evidence, difficulty of weighting considerations, conceptual vagueness, differences in experience, conflicting normative

⁵⁶ Rawls, *PL*, p.226.

⁵⁷ *Ibid.*, p.56.

considerations, limited social space) seem to apply to all reasoning about value. Jeremy Waldron expresses similar surprise at Rawls's 'uncongenial conclusion' that 'there is no such thing as reasonable disagreement in politics'.⁵⁸ If, as I argued in Chapter 3, we take the burdens of judgment as an explanation of *why* there are significant epistemic obstacles to reasoned agreement then there seems to be *prima facie* symmetry between disagreements about the good and disagreements about the right. I now argue that the initial appearance of symmetry is, in fact, right by applying the burdens of judgment to examples of political disagreement.

If we take a prominent subject of political disagreement, such as abortion, which we might assume to be a proper subject of justice, all the burdens of judgment seem to apply. There is some conflicting empirical evidence about the plausibility of a foetus surviving at certain periods of gestation (burden a); the value of a possible life may be weighted in different degrees to the value of the quality of life of the mother (b); what we mean by a 'person' is subject to a degree of vagueness (c); those who have experienced abortion first hand may well hold different views to those who have not (d); the normative considerations in favour of the possible life of the foetus may conflict with the normative considerations of the quality of that life (see Derek Parfit's 'repugnant conclusion' for a non-religious argument for an extreme version of the first of these considerations⁵⁹ – e); and the state is limited to either permitting abortions in some situations or not permitting abortions in those same situations (f). Each of these burdens reveal the epistemic obstacles to citizens reaching a reasoned agreement on what the state's abortion policy ought to be.

In response to this application of the burdens of judgment Rawls might claim that abortion is not a matter of justice properly defined, and that reasonable citizens only need to agree on the principles of justice and the basic structure. We can instead look at the difference principle as a potential subject of non-erroneous disagreement.⁶⁰ Briefly, Rawls's difference principle states that inequalities are permitted only to the

⁵⁸ Jeremy Waldron, *Law and Disagreement*, p.153.

⁵⁹ Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984), Chapter 16.

⁶⁰ Rawls claims that the difference principle is not a 'constitutional essential', unlike freedom of association, liberty of conscience, freedom of speech, voting etc. Rather, the difference principle is a matter of 'basic justice'. Matters of basic justice are 'to be decided by the political values of public reason' within a framework in which the constitutional essentials have already been established (Rawls, *PL*, pp.228-229). Nevertheless, the difference principle seems a significant enough aspect of 'basic justice' to warrant its discussion as a possible subject of reasonable disagreement.

extent that they are of the greatest benefit to the worst-off people in society. Is it conceivable that citizens could non-erroneously disagree with this political principle? To return again to the burdens of judgment, the answer seems to be yes. There is conflicting empirical evidence about levels of inequality and the health of societies, in particular the effect of inequality on the worst-off (burden a); weighting the cost-benefit of helping the worst-off is difficult (b); what we mean by the ‘least-advantaged’ or ‘worst-off’ is subject to vagueness, as is the idea of social and economic equality itself (c); those who have never been part of the worst-off group will likely have a different response to the difference principle to those who have been part of it (d); apparent conflicts between liberty and equality may yield different principles and consequentialist reasoning may produce different principles to Kantian reasoning (e); and the state can only either endorse the priority of the worst-off or reject it as a foundational principle (f). One may be unpersuaded by the particulars of these qualms, particularly if one thinks that each can be rebutted with forceful normative arguments and overwhelming empirical evidence. This, however, is to miss the point that these are indeed significant epistemic obstacles to reasoned agreement. That disagreement about equality is not only endemic, but also non-erroneous, is supported by the plethora of competing conceptions of social and economic equality held by political theorists and philosophers. Although we know that libertarians such as Nozick would not endorse the difference principle, could we expect sufficientarians like Martha Nussbaum, relational egalitarians like Elizabeth Anderson, socialist liberals like G.A. Cohen, or even other liberal egalitarians like Ronald Dworkin, to endorse this principle? If we cannot, then we are forced to either consign these people to the realm of the unreasonable or to accept that epistemic pluralism *does* apply equally to disagreements about justice.

To avoid either of those two conclusions, Rawls might argue that while none of these theorists would consider the difference principle to be the ‘most reasonable’ principle to adopt, they could nevertheless endorse it as part of the overlapping consensus. The overlapping consensus, to recall, is Rawls’s answer to how there can be an agreement on liberal principles despite pluralism about conceptions of the good. For Rawls, each citizen has moral reasons to accept the legitimacy of the state because they can find moral reasons from within their own conception of the good to support the political conception of justice as fairness. What is supposed to be innovative about the

overlapping consensus is that it amalgamates disparate sources of support from incompatible conceptions of the good to reach an agreement on Rawls's principles. In other words, the state can offer every reasonable citizen an explanation as to why their favoured principle was not adopted and why the difference principle was, with reference to standards that they endorse (assuming that they would endorse those standards). A move like this would employ something akin to Quong's distinction between foundational and justificatory disagreements. This response, however, seems implausible both from an external perspective and from Rawls's own perspective.

Firstly, it seems implausible because it fails to reflect the reality of disagreements about justice. The idea of the overlapping consensus rests on a paradox: it expects citizens to offer moral endorsement of principles that they do not, in fact, morally endorse. Further, it requires the losing adversary to support a position that they may consider immoral. As Jeremy Waldron puts this concern, 'how can there be any political virtue or principle that requires one to support injustice simply on the ground that (for example) the other side won a vote in parliament, congress or court?'.⁶¹ If asked whether they supported the difference principle, each of the previously mentioned theorists would presumably reply that they did not: they did not think that it was the most reasonable principle to endorse. Recall that the liberal principle of legitimacy requires that the 'exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason'.⁶² If the difference principle is not in fact 'acceptable to their common human reason', as their refusal to endorse it as the most reasonable would suggest, then its imposition is not 'fully proper'. This conclusion comes easily if we assume that epistemic pluralism characterises disagreements about justice. The idea that there could be a 'most reasonable' principle of equality is contradicted by epistemic pluralism. This does not mean that these theorists would not have *any* reason to endorse the difference principle, but it does mean that none of these theorists would endorse that principle were they the sole decider of the principles of justice. What this might suggest is that the overlapping consensus does not tell us that the principles themselves are being endorsed, but rather that it grants legitimacy to the state to endorse *some principle* based

⁶¹ Jeremy Waldron, *Law and Disagreement*, p.160.

⁶² Rawls, *PL*, p.137.

on shared basic values, and for that legitimacy to be conferred by the consent of the governed, in spite of their disagreement. This is not, however, what Rawls claims the overlapping consensus manages to achieve. The liberal principle of legitimacy ties the legitimacy of the state to the principles it supports, and in a second step, to the endorsement of reasonable citizens of those principles. More concisely, states are legitimate if, and only if, the principles that the state supports are morally endorsed by its citizens. If the overlapping consensus is reinterpreted as a mechanism for garnering legitimacy without reference to the content of the principles of justice then it fails to meet the liberal principle of legitimacy.

The second implausible feature of Rawls's asymmetrical treatment addresses his refusal to allow political liberalism to be based on 'a compromise with a sufficient number of those doctrines actually existing in society'.⁶³ Rawls is at pains to ensure that the overlapping consensus is not to be interpreted as a *modus vivendi* agreement that makes compromises with illiberal views for the sake of a political settlement. Rather, the overlapping consensus is supposed to provide a moral basis on which citizens can endorse the political conception of justice 'for the right reasons'.⁶⁴ If, however we understand citizens to endorse the overlapping consensus as a 'second-best' policy, i.e. not the policy that they would choose to implement themselves, then the overlapping consensus approximates the kind of *modus vivendi* that Rawls explicitly rejects in *Political Liberalism*. To imagine that each disputant would endorse a principle that they do not themselves think the most reasonable and instead prefer a principle which can command consent, mirrors the idea of compromise that animates *modus vivendi*. Rawls would respond that unlike a *modus vivendi*, the overlapping consensus is moral in character, as those who contribute to the consensus do so for moral rather than prudential reasons. But as I suggest in the paragraph above, to endorse a principle that you do not in fact subscribe to does not seem to be moral in character at all. In fact, it seems contrary to the nature of moral reasoning that one would *morally* endorse a policy or a principle that one does not morally hold. It is either the case that one agrees with the policy and endorses it on a moral basis, or one does not agree with it and cannot endorse it on a moral basis. It is possible that one could endorse a principle that one does not in fact support for the *prudential* benefits that political agreement

⁶³ *Ibid.*, p.xlv.

⁶⁴ *Ibid.*

might yield, but such prudential reasons do not meet Rawls's expectations for the moral foundations of political liberalism.

Rawls might reply that he does not consider the difference principle to be a 'constitutional essential', and so it is not the proper subject of justice, despite its centrality to justice as fairness. From this, Rawls could argue that non-erroneous disagreement on the difference principle does not undermine the project of political liberalism. Let us then close the final route of escape for Rawls by considering one such instance of a 'constitutional essential'. One of the constitutional essentials listed by Rawls is 'freedom of thought'.⁶⁵ Under the 'basic liberty' of freedom of thought falls 'the freedom of political speech and press'.⁶⁶ It seems fair to infer from this that freedom of speech is a constitutional essential. It would be surprising if freedom of speech were not included as an essential feature of a liberal democratic society, given its central role in the canon of liberal political philosophy. If freedom of speech is not an essential then what is?

Is freedom of speech, the archetypal liberal principle, subject to non-erroneous disagreement? Put another way, do the burdens of judgment apply to the issue of freedom of speech? Again, I suggest that they do. There is conflicting evidence about the impact that speech has on those at the receiving end, and on whether free speech does in fact lead to the refutation of untruths as Mill claimed (a). The value of allowing self-expression must be weighted against the potential for disorder caused by revelations of political corruption (b). As the unending debates about freedom of speech demonstrate, what is meant by free speech is subject to significant conceptual vagueness (c). Minority groups that are particularly at risk of demagogic populism will likely feel differently about the limits of free speech than a member of the secure majority group (d). The value of privacy will often come into conflict with the value of people speaking publicly (e). Finally, the law must either permit certain kinds of speech or forbid them; it must choose where free speech ends and hate speech begins, or choose to make no distinction (f). As in the previous two cases, the burdens of judgment seem to apply here too. Now Rawls might reply that the burdens of judgment apply in the sense that reasonable people might disagree about the exact content of freedom of speech, but that all reasonable people would agree to a broad and unspecified

⁶⁵ *Ibid.*, p.227.

⁶⁶ *Ibid.*, p.340.

commitment to freedom of speech, as none of the burdens of judgment offer reasonable citizens any reason to think that a society without freedom of speech would be better than one with it. In a next step, Rawls can suggest that this unspecified commitment is all that he requires for an overlapping consensus to fulfil the liberal principle of legitimacy. This claim, however, stretches political liberalism beyond its breaking point. An unspecified commitment to ‘freedom of speech’ is virtually void of content. The range of interpretations available to those who Rawls wishes to see as ‘committed’ to this ideal would mean that they were all committed to a different version of that ideal, and would certainly reject many of the other versions that their fellow citizens endorse. Freedom of speech in the unspecified form that Rawls requires is merely a vessel for citizens to fill with their own competing and incompatible conceptions. As Lorna Finlayson rightly points out, if ‘reasonableness is to be a pot from which we can draw reasons sufficient to enable us to accept the same conception of justice, there will have to be more in this pot than the bare commitment to proposing some conception of justice that ‘we all can accept’.⁶⁷ An agreement to reach an agreement without any specified content on the agreement or on a procedure to reach an agreement is practically useless. If I (foolishly) think that freedom of speech entails a right to say anything to anyone at any time, but you (sensibly) think that freedom of speech means the right to say certain things to certain people at certain times then it is going to be impossible for us to reach an agreement on a mutually acceptable definition of freedom of speech. Even if we agree that state censorship is wrong, there will inevitably be incompatible and non-erroneous views on what counts as state censorship. As I have tried to show, the burdens of judgment apply to this disagreement just as they apply to disagreements about conceptions of the good. The epistemic obstacles will be insurmountable in allowing two disputants to reach a reasoned agreement. The nub here is that the burdens of judgment explain why there are significant and enduring epistemic obstacles to reasoned agreement *even* regarding disputes at the highest level of abstraction. Epistemic pluralism runs deep and abstraction and generality cannot save the overlapping consensus from its rational indeterminacy.

There are therefore good reasons to think that the burdens of judgment apply to political disagreements just as they do to disagreements about conceptions of the good. This has serious implications for Rawls’s aim of achieving an overlapping consensus. Even on

⁶⁷ Finlayson, *The Political is Political*, p.49.

the least determinate reading of Rawls's overlapping consensus it seems that epistemic pluralism precludes the possibility of rational agreement. The putative agreement on a constitutional essential is no such thing, as an agreement on an empty placeholder is no agreement at all. Implicit in my argument is the claim that if the burdens of judgment are accurate then Rawls cannot invoke reasonableness to exclude those views which prevent an agreement from being reached. That argument has not yet been made clear, although I have hinted at it in previous chapters. In the case of the disagreement about freedom of speech, Rawls could respond that the view that freedom of speech means the right to say anything to anyone at any time is simply unreasonable. Because it is unreasonable it is not of any concern for political liberals. Although this argument seems to me to be precluded by an acceptance of the burdens of judgment, that argument will not be persuasive to the committed political liberal. Is Rawls justified in invoking reasonableness to constrain his conception of epistemic pluralism?

The trouble with reasonableness

Rawls's understanding of reasonableness was covered in detail in Chapter 3 and I will not repeat that analysis here, apart from to recall that for Rawls, 'the reasonable' relates to the disposition to co-operate and accept the burdens of judgment, rather than being defined by the content of beliefs. Instead, I turn now to whether the idea of reasonableness, which plays such a significant role in Rawls's conception of pluralism and in the project of political liberalism, can justifiably be used to limit a conception of epistemic pluralism for the purposes of reaching a reasoned agreement about political principles.

The difficulty that Rawls's asymmetry faces is thrown into stark relief by Lorna Finlayson's critique of Rawlsian reasonableness. Finlayson claims that what political liberals need is 'an account reasonableness that identifies a feature or features of people *in general*, which gives them relatively 'internal' reasons for accepting one and the same conception of justice'.⁶⁸ Finlayson splits this requirement into two constraints: the constraint on scope and the constraint on reasons. The constraint on scope means that reasonableness includes the 'typical, normally functioning, mature inhabitants of a liberal democratic society' and not 'some clique' nor even 'half the population'. In other words, reasonableness must apply to enough people that the agreement reached

⁶⁸ Ibid., p.47.

by those people will be able to command widespread support. The constraint on reasons means that citizens will have ‘the right kind of reasons’ for accepting political authority which are both consistent with their own comprehensive doctrine and which are capable of motivating support for the conception of justice. As a description of what Rawls is searching for, this seems right: a wide but thin, morally motivated near-consensus on a single conception of justice. As Finlayson says, however, these two aspects of the political liberal’s requirement cannot be ‘jointly satisfied’. The reason, according to Finlayson, is ‘the simple fact of political disagreement’. There are two options for political liberals here. First, political liberals can define reasonableness in a loose way so that it includes almost all citizens, thereby meeting the constraint on scope. But in defining reasonableness this way, we will find that people are incapable of agreeing on a conception of justice for the right reasons and so the constraint on reasons is violated. Alternatively, we can define reasonableness in a restrictive way so that all those caught by the definition of reasonableness will be able to agree on a political conception for the right reasons, thereby meeting the constraint on reasons. To do this, however, we would need to exclude so many people from the agreement that it would not command widespread support and would therefore violate the constraint on scope.⁶⁹ This is a neat way to put Rawlsian reasonableness in a double bind: you can have one or the other but you can’t have both. Finlayson’s argument is right, but there is a Rawlsian counter-argument (and a counter-argument to that counter-argument) that gets us even closer to the heart of the problem with reasonableness and Rawls’s asymmetrical pluralism.

The obvious rejoinder to Finlayson’s bind is that it misunderstands political liberalism’s main ambition. The ‘constraint on scope’, as Finlayson describes it, is not what political liberalism is aiming at. Quong is explicit on this point when he writes:

Many philosophers (both proponents and critics of political liberalism) have supposed that the aim of public justification is to show that a liberal conception of justice can be justified to all (or most) actual citizens in liberal democracies, even those people who do not accept certain basic liberal norms. These philosophers appear to believe that we cannot know whether any liberal conception of justice is justified or valid until we can be sure that liberal values and principles are acceptable to the diverse constituency of persons we find in modern societies. I argue that the goal of public justification is necessarily more modest. The aim is rather to understand what kind of arguments, if any, citizens *already committed* to certain basic liberal norms can legitimately offer to one another...Political liberalism, on my account, is thus a theory that explains how public justification of political power is

⁶⁹ Finlayson, *The Political is Political*, p.51.

possible amongst an *idealized* constituency of persons who are committed to certain fundamental, but fairly abstract, liberal values.⁷⁰

What Quong concedes here is that political liberalism, on his view at least, is *not even interested* in theorising principles for a society characterised by disagreements about justice. The challenge for political liberals, although it does not seem like much of a challenge at all, is to work out the principles that citizens who are ‘already committed to certain basic liberal norms’ would agree to. This is not the challenge elicited by epistemic pluralism as I have described it and so it is unsurprising that the political liberal’s solution is found wanting. This frank admission of the ambition of political liberalism reveals that the problem that Quong (and Rawls) actually try to answer, is a far less serious problem than the problem implied by epistemic pluralism. If there are significant and currently insurmountable epistemic obstacles to reasoned agreement on matters of value (including political disagreements), then the challenge is to find a way to reach some sort of political arrangement *in spite of* those disagreements, not to simply cordon those disagreements off from politics as Quong does. In response to this argument, political liberals might say, ‘Well, it’s not our fault that you misunderstood what we were trying to do’. If theorists like Quong really think that one of the key challenges of political theory is to find out which liberal principles liberals can agree to, then so be it: we are simply trying to solve different puzzles. What matters for my purposes is whether Rawls’s conception of reasonableness ought to constrain epistemic pluralism. I turn now to the claim that reasonableness, as understood by Rawls, is in fact, empty because it relies on a form of circular argumentation.

Chantal Mouffe has accused Rawls of circularity when she writes that ‘political liberalism can provide a consensus among reasonable persons who *by definition* are persons who accept the principles of political liberalism’.⁷¹ The thought here is that Rawls wishes to contain the disagreements elicited by epistemic pluralism by appeal to a notion of reasonableness, so that a liberal overlapping consensus can be agreed upon. The problem, however, is that to do this Rawls defines reasonableness in relation to an acceptance of liberalism. Unfortunately, Mouffe does not expand on her accusation of circularity in much detail, and her broader critique of Rawls goes beyond the scope of

⁷⁰ Quong, *Liberalism Without Perfection*, p.5.

⁷¹ Chantal Mouffe, ‘The Limits of John Rawls’s Pluralism’, *Politics, Philosophy & Economics*, Vol.4, No.2 (2005), p.224.

this chapter. It is possible, however, to sketch the way in which such a circularity can be seen to operate in Rawls's thought.

Mouffe argues that by limiting pluralism to conceptions of the good, Rawls intends to exclude political 'conceptions which refuse the principles of liberalism', i.e. non-liberal conceptions of justice.⁷² When I mention 'non-liberal theories of justice' I suspect that what comes to mind are neo-Nazism and religious fundamentalism, both of which are clearly non-liberal.⁷³ There are, however, other non-liberal political affiliations that are less repugnant, such as anarchism, communism, certain types of socialism, libertarianism, and perhaps certain sorts of communitarianism, all of which would be likely to be excluded from Rawls's category of the reasonable. As Enoch amusingly notes, 'the ones excluded as unreasonable — that is, the ones justification to whom is not necessary for legitimacy — arguably include also such people as John Stuart Mill, Karl Marx, Joseph Raz, Jean Hampton... probably most of those offering a rival public-reason account, presumably the early Rawls — oh, and me'.⁷⁴ Mouffe's challenge, if sustained, pushes political liberalism in one of the two directions suggested by Finlayson. Either, the question political liberalism asks ('how can liberal citizens agree on liberal principles?') is so obvious as to be not worth asking (answer: 'with ease'), or political liberalism cannot possibly achieve the breadth of consensus that it aspires to, thus stripping it of its special claim to legitimacy. As John Horton puts a similar thought, public reason is 'either too empty or illicitly partisan to do the work Rawls wants it to do'.⁷⁵

Rawls certainly thought of political liberalism as pursuing an overlapping consensus that included non-liberals. The aim of moving away from comprehensive liberalism was to avoid 'confronting religious and nonliberal doctrines with a comprehensive liberal philosophical doctrine' and instead to 'formulate a liberal political conception that those nonliberal doctrines might be able to endorse'.⁷⁶ Rawls might respond that the question of political liberalism that he poses is addressed to a society with the public

⁷² Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000), p.26.

⁷³ As a matter of academic enquiry, it seems that the relative lack of criticism of Rawls's exclusion of non-liberals from political liberalism derives in part from the difficulty of placing the critic in the unfortunate position of defending unsavoury political viewpoints, which they are unlikely to personally hold.

⁷⁴ David Enoch, 'Against Public Reason', pp.121-122.

⁷⁵ John Horton, 'Rawls, Public Reason, and the Limits of Public Justification', *Contemporary Political Theory*, Vol.2 (2003), p.21.

⁷⁶ Rawls, *PL*, p.xlv.

political culture of a democratic society. Such a political culture, Rawls assumes, is characterised by broadly liberal commitments, and even those with non-liberal comprehensive doctrines would have access to liberal political conceptions they could draw on to contribute to the overlapping consensus. As I attempted to show in the previous section, however, a wide variety of liberals and non-liberals would struggle to endorse Rawls's programme of political liberalism. Even if we assume that non-liberals could in principle forgo their own preferred political conceptions to endorse his, it seems that those with non-liberal comprehensive doctrines would only be willing to cordon off these beliefs from their political conceptions of justice if they *already* had the liberal inclination to do so. This gets to the heart of Mouffe's criticism: Rawls's definition of reasonableness is an inherently liberal definition. He defines reasonable people as those who understand society as a scheme of fair co-operation, who wish to find fair terms of agreement, and who accept the burdens of judgment. Mouffe is wrong in her phrasing of the circularity, as reasonable people are not '*by definition*' citizens who 'accept the principles of political liberalism', as Rawls's definition of the reasonable is dispositional rather than doxastic.⁷⁷ Mouffe's charge can be rephrased, however: 'political liberalism can provide a consensus among reasonable persons who by definition are persons *who are already disposed* to accept the principles of political liberalism'. The circularity here might seem less severe, but it is no less damning. It would be a strange sort of 'nonliberal' who is also disposed to engage in a liberal procedure to decide on a liberal conception of justice, and one would anticipate the overlap between the group of citizens who are disposed to accept liberal principles and the group of citizens who hold liberal comprehensive doctrines, to be almost complete. Reasonableness is a particularly liberal value. When we describe someone as being reasonable in normal usage we might mean that they see both sides of an argument, that they hold their beliefs lightly, that they are never intransigent or bloody minded, and that they are not domineering in their argument. Rawls's notion of reasonableness mirrors this ordinary understanding of reasonableness. We might well think that those characteristics and the more formalised traits that Rawls uses to define reasonableness are appealing. Who, after all, would want a myopic, fanatical, intransigent, and over-assertive friend? I certainly wouldn't, but that is because I am already liberally inclined. I recognise Rawls's traits as desirable *because* I am a liberal. That I dislike people who

⁷⁷ Mouffe, 'The Limits of John Rawls's Pluralism', p.224.

lack those traits, though, does not mean that their political views can be discounted. Nor is my predilection for liberal modes of political engagement over more uncompromising or bellicose forms of engagement supremely reasonable. That the anti-fascist campaigner refuses to discuss, compromise, or appease does not disbar them from the group of the reasonable. Because these modes of engagement are themselves normatively laden, epistemic pluralism has something to say about them. There is no non-normative standard of political dispositions, as all such judgments are arrived at through reasoning about value, which is littered with epistemic obstacles. Rawls's idea of the reasonable is a normative standard which can only be reached by traversing the epistemic minefield of value judgments. Any standards will therefore be subject to epistemic pluralism and the imposition of those standards will require a rejection and suppression of other incompatible but non-erroneous standards.

The effect of this circularity is to limit political liberalism to a group of pre-existent liberals, which suggests that the project of reaching an agreement between citizens with incompatible (and non-liberal) views has failed. As Stanley Fish puts it, 'if the absence of common ground...initiates a search for a form of government that will accommodate diversity, you cannot begin the search by identifying a common ground the absence of which motivates the search in the first place'.⁷⁸ Reasonableness identifies that common ground without searching for it. The question of whether a group of people predisposed to both come to the table and to reach an agreement can, in fact, reach an agreement is not the question that Rawls set out to answer and the solution he offers is not one that satisfies my conception of epistemic pluralism. The outcome of this analysis is that Rawls's conception of reasonableness can only be used if we take the question of legitimacy to be a question about the exercise of political power solely on liberal citizens. As I have said, this might be a genuine question that Quong and Rawls provide an answer to, but it is not the question that arises out of epistemic pluralism as I understand it. That question, how political power can be exercised on citizens with a diversity of political conceptions, is the real challenge posed by epistemic pluralism. What my argument against Rawls's conception of both pluralism and reasonableness suggests is that Rawls cannot exclude political disagreements from his theory for the sake of consensus. Such an exclusion misses the point of epistemic pluralism. As Finalyson writes, asking 'people not to bring their politics into politics makes no more

⁷⁸ Stanley Fish, *The Trouble with Principle* (London: Harvard University Press, 1999), p.169.

sense than asking them to keep their Catholicism out of religion, their utilitarianism out of ethics'.⁷⁹ Rawls is wrong to exclude political conceptions from his understanding of pluralism because the burdens of judgment apply to political disagreements just as they apply to comprehensive disagreements. Further, Rawls's attempt to theorise an overlapping consensus despite pluralism about value fails, because it relies on a conception of reasonableness which is itself subject to epistemic pluralism.

4. Conclusion

I have argued that Rawls's project of justifying liberalism in the face of epistemic pluralism fails. This failure occurs on two related fronts. Firstly, Rawls does not justify his asymmetrical treatment of pluralism. His refusal to recognise that there is non-erroneous disagreement about justice is incompatible with an acceptance of the burdens of judgment. In response to Quong's defence of asymmetry, I argued that his distinction between two sorts of disagreement, justificatory and foundational, merely restates Rawls's distinction between the right and the good, which is the subject of the dispute. Absent a satisfactory justification of why pluralism pertains in one sphere and not the other, the possibility of an overlapping consensus on liberal principles of justice collapses. Rawls's solution to the puzzle of pluralism is reliant on limiting that pluralism to conceptions of the good. Once pluralism infiltrates the realm of the political (as it does), Rawls's solution becomes untenable. Secondly, Rawls's invocation of reasonableness to limit those views that can assent to his proposed principles descends into circularity. Reasonableness is defined in terms of acceptance of liberal principles and so the willingness of Rawls's reasonable citizens to agree to a liberal programme is both unsurprising and inadequate as a response to my wider conception of epistemic pluralism. If the challenge is to outline principles on which people who disagree about what is valuable can agree, then limiting the agreement to those who are broadly already in agreement fails to meet this challenge.

⁷⁹ Finlayson, *The Political is Political*, p.48.

Section II: Epistemic Pluralism and Political Theory
Chapter 6: Gaus's Justificatory Liberalism

Having found Rawls's response to epistemic pluralism wanting, I turn to the second of the two substantive political theories that respond to epistemic pluralism. Gerald Gaus's 'justificatory liberalism' offers a variation of the public reason strategy employed by Rawls which promises to correct political liberalism's failings.¹ Gaus, unlike Rawls, recognises that pluralism extends to conceptions of justice as well as to conceptions of the good.² He takes epistemic pluralism to mean that the 'free use of human reason leads to reasonable pluralism over most of what we call the political'.³ As a result, we 'cannot go very far by understanding the political as characterized by the absence of reasonable disagreement'.⁴ This difference between the two accounts of public reason liberalism makes Gaus's view worth exploring in light of my criticism of Rawls. By accepting epistemic pluralism about both conceptions of the good and about justice Gaus sidesteps the asymmetry objection. Gaus's theory holds the possibility of fulfilling Rawls's ambition of justifying liberalism in the face of epistemic pluralism.

Although Gaus recognises the challenge of pluralism in much the same way as I do, I argue that Gaus's attempt to introduce a normative standard of justification merely pushes the problem back a step. Not only does epistemic pluralism preclude a consensus on political principles, it also precludes a consensus on a standard of justification. Epistemic pluralism tells us that there will be non-erroneous but incompatible standards of justification, and so Gaus's public reason liberalism is unable to offer an account of public reason that does not violate epistemic pluralism.

The chapter is divided into an outline of Gaus's justificatory liberalism and his critique of political liberalism (1), Gaus's own justificatory liberalism as a response to that critique (2), and my own critique of Gaus's justificatory liberalism (3). I aim to show that while Gaus's critique of political liberalism is broadly in line with my own, his

¹ Gerald Gaus, *Justificatory Liberalism* (Oxford: OUP, 1996).

² It should be noted that Gaus does not use the term 'epistemic pluralism' to describe the sort of pluralism he endorses, preferring instead Rawls's 'reasonable pluralism'. It is clear, however, that the pluralism Gaus has in mind is epistemic rather than value pluralism and results from the epistemic obstacles to reasoned agreement rather than from the nature of value.

³ Gaus, 'Reasonable Pluralism and the Domain of the Political', p.260.

⁴ *Ibid.*, p.274.

proposed solution relies on a contentious normative account of justification that is subject to the non-erroneous disagreement engendered by epistemic pluralism.

1. Justificatory Liberalism and the Problem with Political Liberalism

Gaus's justificatory liberalism⁵ centres on a 'Public Justification Principle' that is similar, though not identical, to Rawls's Principle of Liberal Legitimacy:

*The Public Justification Principle: 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.*⁶

From this starting point, Gaus attempts to find those principles or laws that could meet the Public Justification Principle. Unlike Rawls, Gaus concludes that there is very little that can be publicly justified. This leads Gaus to claim that 'our justified claims to such [political/moral] authority will be more limited than many of us would like' as justificatory liberals seek 'to ground their moral and political authority on the reason of all citizens, while simultaneously pursuing extensive state activities that are reasonably rejected by many'.⁷ Gaus's justificatory liberalism differs from Rawls's political liberalism in its rejection of reasonableness as a means of limiting pluralism. Gaus writes that political liberals 'proclaim that they respect the reasonable concerns of all, and then proceed to specify what these are in ways that allow them to justify precisely the range of government activities they privately endorse'.⁸ 'At best', Gaus remarks, 'this is remarkably fortuitous'. This critique of political liberalism is mirrored by my own critique of reasonableness which suggested that the idea of 'the reasonable', far from being independently or impartially defined by political liberals, is instead defined in terms of a commitment to liberal values. As I share a rejection of this use of reasonableness with Gaus, justificatory liberalism looks doubly promising as a corrective to Rawls.

There is one point I ought to make before beginning my analysis. Gaus's project of justificatory liberalism has been underway since the early 1990s and is still being

⁵ Gaus describes his own theory as a form of justificatory liberalism, but also considers public reason liberals and political liberals to be justificatory liberals. To distinguish between the various positions, I will use 'justificatory liberalism' to refer solely to Gaus's theory.

⁶ Gerald Gaus and Kevin Vallier, 'The Roles of Religious Conviction in a Publicly Justified Polity', *Philosophy and Social Criticism*, Vol.35 (2009), p.53.

⁷ Gerald Gaus, 'On two critics of justificatory liberalism: A response to Wall and Lister', *Politics, Philosophy & Economics*, Vol.9, No.2 (2010), p.208.

⁸ Ibid.

developed. Understandably, there are some inconsistencies, some expansions, and some refinements in this large body of work. Rather than tease out these gradual shifts, I focus instead on the central ideas that are consistent throughout his work, focusing on his book length treatment of the subject in *Justificatory Liberalism*. Although Gaus's more recent book, *The Order of Public Reason*, addresses some of the same issues, what he says there is an extension rather than a revision of the arguments of *Justificatory Liberalism*. In the year *The Order of Public Reason* was published, 2010, Gaus wrote a defence of justificatory liberalism against several of its critics, and so it seems fair to assume that although there are some differences between these two books, that they nevertheless form a coherent body of thought.⁹ Because the contours of his project remain consistent, my criticisms of Gaus made here can be applied to the whole his work because it is animated by the same questions and, broadly speaking, the same answers. One other reason for addressing his earlier work is that the focus in *The Order of Public Reason* is on what Gaus terms 'social morality'. Social morality is not limited to political justifications, but instead includes 'the set of social-moral rules that require or prohibit action, and so ground moral imperatives that we direct to each other to engage in, or refrain from, certain lines of conduct'.¹⁰ Although there is a 'continuity' between 'the problems of political philosophy and what I shall call "social morality"', this is 'not to say that the solutions to this problem are the same in these two spheres'.¹¹ I am only concerned with the political sphere, and so Gaus's wider ambit in *The Order of Public Reason* goes beyond my concern with political justification in the face of epistemic pluralism.

Gaus's critique of Rawls's political liberalism

Gaus's justificatory liberalism shares a common cause with Rawls's political liberalism: defending liberal principles in the face of epistemic pluralism. It goes about this task in a different way, however, and these differences are derived in part from the perceived failings of Rawls's project. To understand justificatory liberalism, we first need to understand on what grounds Gaus thinks political liberalism fails.

⁹ Ibid.

¹⁰ Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2011), p.2.

¹¹ Ibid.

Gaus writes that Rawls's move to public reason liberalism in *Political Liberalism* was not 'well worked out'. Gaus views his own public reason liberalism as an attempt to embrace 'some of Rawls's most radical ideas and press...even further along those lines'.¹² The general problem with Rawls's public reason liberalism, as Gaus identifies it, is that 'major changes [to political liberalism] became prominent only in sketchy presentations rather late in the day, and it is hard to conclude that their implications were fully worked out'.¹³ Specifically, Gaus identifies the difficulty that Rawls faces over whether reasonable pluralism applies to political conceptions, or whether it is limited to comprehensive doctrines. The idea that citizens who are in deep disagreement about religious, moral, and philosophical matters could nevertheless reach a moral agreement about political principles of the sort that Rawls advocates is, according to Gaus, deeply implausible.¹⁴ Gaus does not take this implausibility to suggest that liberal principles cannot be publicly justified. Instead, he moves in the opposite direction: the conditions of public reason must be more stringent in order that liberal principles can be more strongly justified from an epistemological point of view. Gaus claims that Rawls's theory 'is indicative of the problems of embracing the commitment to justify while at the same time forgoing epistemological commitments'. This is manifested in 'a sort of populist consensualism' in which political liberalism 'deprives itself of the resources on which to ground the claim that liberal principles are justified in the face of sustained disagreement by reasonable people'.¹⁵

Gaus advances three main critiques of Rawls's political liberalism. Firstly, he accepts that there is pluralism about political conceptions and argues that Rawls is wrong not to recognise the full extent of pluralism. Secondly, he argues that Rawls underestimates the significance of rationality in public justification and overplays the justificatory force of reasonableness. Finally, he argues that political liberalism succumbs to what he terms 'justificatory populism', a form of public justification which undermines 'political liberalism's liberalism'.¹⁶ By seeking a thin moral consensus of all reasonable people,

¹² Gerald Gaus, 'Public Reason Liberalism' in *The Cambridge Companion to Liberalism* (Cambridge: CUP, 2015), p.113.

¹³ *Ibid.*, p.16.

¹⁴ *Ibid.*, p.18.

¹⁵ Gaus, *Justificatory Liberalism*, p.293.

¹⁶ *Ibid.*, p.293.

political liberalism fails to meet even a modest standard of rational justification and as a result self-destructs. I will briefly outline these three arguments.

Gaus does away with the sharp line that Rawls draws between comprehensive doctrines and political conceptions. Not only is there overlap between these two spheres, but further, one's conception of where these spheres begin and end can be 'deeply influenced by one's moral, religious and philosophical beliefs and so are themselves open to dispute'.¹⁷ The conception of what counts as 'the political' is influenced by one's comprehensive doctrines. As these doctrines are subject to reasonable disagreement so too are the conceptions of the political that are informed by them. Rawls's view that the political 'is focused on the justice of the basic structure is a reasonable - perhaps correct - view, but it is by no means an uncontentious conception of the political endorsed by all reasonable citizens'.¹⁸ What Gaus calls the 'basic contrast' between comprehensive and political conceptions 'cannot be maintained' as there will inevitably be 'reasonable differences about what is properly political'.¹⁹ Gaus concedes that Rawls can sidestep this objection by abandoning the *a priori* 'basic contrast' and instead define the political as '*constructed out of* that which we share'.²⁰ In other words, the non-political is 'those matters on which our use of reason leads us to different, reasonable conclusions'. It is 'by its very nature, the realm of reasonable pluralism'. By contrast, the political is defined as 'those matters on which human reason converges'.²¹ The problem with this approach, for Gaus, is that 'since the use of human reason leads us to reasonable disagreement about conceptions of justice and constitutional essentials, the political *qua* shared is limited to the abstract concept of a liberal political order'.²² As soon as we begin to flesh out the political conception and begin to specify principles, as we eventually must, the idea of the 'political *qua* shared' collapses in the face of reasonable disagreement about where the political begins and ends, leading to the initial problem resurfacing. This is a version of the argument I levelled against Rawls's attempt to discount the burdens of judgment from general political principles in the previous chapter. There is much more that could be said about Gaus's interpretation of Rawls's conception of the political, but given the time spent in

¹⁷ Gaus, 'Reasonable Pluralism and the Domain of the Political', p.266.

¹⁸ Ibid.

¹⁹ Gaus, *Justificatory Liberalism*, p.72.

²⁰ Ibid., p.266, emphasis in the original.

²¹ Ibid., p.66.

²² Ibid., p.272.

the previous chapter arguing in favour of pluralism over the political it would be superfluous to engage too deeply on this point, as Gaus's conclusions are broadly in line with my own. Further, it is his other two criticisms of Rawls that suggest new avenues of criticism for this thesis.

Gaus's second and third critiques of Rawls are connected. These critiques are united by a rejection of what Gaus calls 'the reasonable people thesis'.²³ This thesis states that 'only the agreement of reasonable people is necessary' to meet the principle of liberal legitimacy. Firstly, Gaus suggests that rationality is far more central to public reason than Rawls's account admits, and that reasonableness 'is much more closely bound to the rational than Rawls and other political liberals would have us believe'.²⁴ Rawls's focus on reasonableness ignores problems of rationality that ought to be of concern for theories of public justification. The second critique suggests that Rawlsian reasonableness, because of the first critique, is inappropriate as a means of limiting public reason.

Rawls understands reasonableness to be a characteristic of persons. He therefore assumes a close connection between being a reasonable person and 'entertaining reasonable beliefs or doctrines'.²⁵ Gaus quotes Rawls to illustrate the reasonable people thesis: 'to say that a political conviction is objective is to say that there are reasons, specified by a reasonable and mutually recognizable political conception...sufficient to convince all reasonable persons that it is reasonable'.²⁶ Gaus takes Rawls's conception of the reasonable to have five key features, features which should be familiar from previous chapters on Rawls. On Gaus's view, Rawlsian reasonableness comprises: 1. A commitment to 'propose and abide by principles that can be publicly justified'; 2. An acceptance of the burdens of judgment; 3. A refusal to 'employ political power to repress reasonable doctrines'; 4. The absence of 'standard defects of reasoning'; 5. A reliance on methods of public justification that are accessible to others, 'in particular commonsense reasoning and the non-controversial conclusions of science', or what he terms 'the accessibility condition'.²⁷ The problem with this conception of

²³ Gaus, *Justificatory Liberalism*, pp.131-136.

²⁴ Gaus, 'The Rational, The Reasonable, and Justification', *The Journal of Political Philosophy*, Vol.3 (1995), p.235.

²⁵ Gaus, 'Reasonable Pluralism and the Domain of the Political', p.274.

²⁶ Rawls, *PL*, p.119 quoted in Gaus, *Justificatory Liberalism*, p.131.

²⁷ Gaus, *Justificatory Liberalism*, pp.131-132.

reasonableness, according to Gaus, is that the ‘reasonable is much more closely bound to the rational than Rawls and other political liberals would have us believe’.²⁸ Political liberalism’s ‘pragmatic understanding of justification’ is brought into doubt because the rational is ‘far more basic to political justification than political liberals suppose’.²⁹ The problem is that Rawls’s reasonableness constraint cannot be squared with the exercise of citizens’ rationality.

Reasonable citizens, in keeping with the first element of Rawls’s notion of the reasonable outlined by Gaus, are committed to proposing and abiding by principles that can be publicly justified, with the aim of finding fair terms of cooperation. A reasonable person, then, has a reason to accept some reasonable agreement even if that which is agreed upon is not her own preferred set of principles according to her comprehensive doctrine. For example, a reasonable person who is a Catholic would be required by the constraints of reasonableness to abandon her commitment to, for example, banning abortion in favour of supporting a reasonable political conception of justice that permitted abortion. If we abandon Rawls’s reasonableness constraints momentarily, the *rational* decision in this case would be to pursue her own preferred political conception and reject the conception that contradicts her comprehensive doctrine. What changes once she accepts the constraints of reasonableness? Does she have a good reason to forsake her optimal rational choice in favour of the demands of reasonableness? Enzo Rossi explains the problem in the following way:

If a citizen adheres to a comprehensive doctrine (i.e. *believes* in it), then *epistemic* rationality requires her to also believe that the political framework most in line with her comprehensive doctrine is the political framework that it is most rational to put into place (given a fair chance of success in doing so). However, given the fact of reasonable pluralism, it is unlikely that the rest of the (reasonable, let alone unreasonable) citizenry could be expected to endorse this rationally preferable (from her perspective) political framework.³⁰

Rossi continues: ‘the problem is that in order to endorse a different political framework, our citizens would need to form the *belief* that there is most reason to endorse that framework’. Rawls might reply that her reasonableness dictates that finding fair terms of cooperation morally supersedes her own comprehensive preference. If it does not supersede her comprehensive preference then she disqualifies herself as reasonable and

²⁸ Gaus, ‘The Rational, The Reasonable, and Justification’, p.235.

²⁹ *Ibid.*

³⁰ Enzo Rossi, ‘Legitimacy, Democracy and Public Justification: Rawls’s Political Liberalism Versus Gaus’ Justificatory Liberalism’, *Res Publica* Vol.20 (2014), p.15.

the problem is moot. Gaus responds that Rawls's practical aim of reaching an agreement 'cannot compensate for the failure of epistemic rationality required by the forsaking of the preferred political framework' because such a surrender requires citizens to act irrationally.³¹ This is problematic for a theory of public justification because it means that citizens do not *actually possess* good reasons to support an agreement as they do not rationally believe that the proposed agreement is the best available option. Without good reasons to support some agreement, the principles of the agreed institution have not been publicly justified. Put more succinctly, Rawls's demands of reasonableness require citizens to act contrary to their own rationality, and a theory that requires counter-rationality of its citizens cannot also be a theory of public justification.

Gaus's third argument provides his most distinctive and forceful critique of political liberalism. This critique suggests that Rawls (and other political liberals, such as Stephen Macedo) 'advance a populist theory of public reasoning'.³² By 'populist' Gaus means that Rawls endorses a form of public reason characterised by 'commonsense reasoning'. This, according to Gaus, is despite the fact that there are 'fundamental divergences between commonsense-sanctioned inferences and normatively appropriate inferences'.³³ According to Gaus, political liberals do not 'really abjure epistemic commitments' as Rawls's commitment to epistemic abstinence suggests. To be properly justified, public reason needs to be 'a little less populist and a little more elitist'.³⁴ The contrast that Gaus draws between 'populist' and 'elitist' theories of public reason reflects a further distinction between practical theories of public reason and normatively justified theories of public reason.

Gaus's critique here centres on two features of Rawls's account of public justification. The first, as already discussed, is the 'reasonable people thesis'. Rawls draws a close connection between being a reasonable person and holding reasonable beliefs. Rawls does not explicitly address the possibility that this link is tenuous, as it is not the beliefs *qua* beliefs that are of significance in terms of justification for Rawls, rather it is the bearers of these beliefs who have moral weight. Drawing this close connection might seem uncontroversial, but Gaus contends that one can be a reasonable person in

³¹ Ibid., pp.15-16.

³² Gaus, *Justificatory Liberalism*, p.136.

³³ Ibid.

³⁴ Ibid., p.131.

Rawlsian terms while also holding unreasonable and irrational beliefs. Gaus argues at length that there is overwhelming empirical evidence that ‘intelligent, normal reasoners who manifestly qualify as reasonable people’ hold unreasonable and irrational beliefs.³⁵ Gaus claims, with a little hyperbole, that ‘nothing is quite so common as reasonable people believing what is not well justified, or failing to believe what is well justified’.³⁶ I will not rehearse Gaus’s survey of the evidence here, especially as its central point should not be surprising. Rawls primarily understands reasonableness in a moral way, not in a rational or epistemological way. That people who are constrained and selected on a moral basis do not live up to some set of standards of rationality is to be expected, given that their moral commitments do not imply epistemological superiority. While this conclusion might be untroubling for political liberals, Gaus takes this problem to be central to the failings of Rawls’s project. Gaus argues that Rawls’s reliance on ‘commonsense reasoning’ allows unreasonable and irrational views into public justification. Gaus takes ‘commonsense reasoning’ to mean ‘methods of reasoning and inferences readily sanctioned by a large majority, even after significant reflection’.³⁷

The second feature of Rawls’s account of public justification that Gaus takes issue with, is what he calls ‘the accessibility condition’. This condition requires that ‘reasonable people rely only on methods of reasoning accessible to others, in particular commonsense reasoning and the non-controversial conclusions of science’.³⁸ Rawls’s motivation for endorsing this condition is that in order to justify certain principles of justice the justifications of those principles must be accessible to all reasonable people. Justifications that rely on special forms of reasoning, such as philosophical and mathematical logic, are impermissible because although they might be epistemically valid justifications, they are not justifications that all reasonable people can actually assent to. Gaus claims that this constraint indicates a ‘minimalist theory of public reason’ that ‘may exclude some sound but complex inferences, it only sanctions sound inferences’.³⁹ Acceptance of this constraint signifies justificatory populism. Although Rawls and other political liberals ‘partially idealize the subjects of justification, so that only the assent of reasonable people is required for a successful public justification, the

³⁵ Gaus, ‘Reasonable Pluralism and the Domain of the Political’, p.274. See also Gaus, ‘The Rational, the Reasonable and Justification’, pp.234-58.

³⁶ Gaus, *Justificatory Liberalism*, p.136.

³⁷ *Ibid.*, p.133.

³⁸ *Ibid.*, p.132.

³⁹ *Ibid.*

principles of reasoning appealed to must be those accessible to all and sanctioned by common sense'.⁴⁰ Rawls's accessibility condition reveals his conception of public justification to be practical rather than epistemically valid. Further, Rawls is wrong to think that the accessibility condition only permits 'sound inferences' while excluding 'sound but complex inferences'. Rather, according to Gaus, the accessibility condition sanctions unsound commonsense inferences. Gaus's argument here, is that Rawls's pragmatic desire to achieve actual assent of some principles, means that he must rely on the (flawed) reasoning capacities of reasonable people, as it is these people who decide whether an inference is reasonable or not. As Gaus argues that reasonable people are in fact frequently unreasonable and irrational in their beliefs, their belief that a justification is reasonable may not, from a more epistemically privileged position, be reasonable. As a result of this, the justificatory arguments made in Rawls's theory of public reason 'may not be normatively justificatory at all', which is to say, they are not justificatory in an epistemically valid way.⁴¹ The second and third of Gaus's critiques lead him to conclude that public justification 'cannot be identified with that to which all reasonable people will assent, even after reflection'.⁴² In other words, the constraints of Rawls's public reason are not tight enough from an epistemic standpoint. It is worth quoting Gaus's own summary of his argument against political liberalism in full:

Political liberalism is driven to a sort of populist consensualism because it deprives itself of the resources on which to ground the claim that liberal principles are justified in the face of sustained dissent by reasonable people. Any reasonable person who does not accept its claims becomes a counterexample. Pushed by its populism, political liberalism moves to modify and weaken its liberal commitments in search of an even wider and thinner consensus. Ultimately, I think, it loses its character as a liberal doctrine, for little, if anything, is the object of consensus among reasonable people... [who are] very often wrong, and very often resist changing their views even when their errors are pointed out to them.⁴³

Gaus therefore claims that an 'actual consensus - even consensus among all reasonable people - is a chimera' because 'a realistic commitment to a principled compromise would involve each person pressing his own conception of what would be a fair compromise among competing positions'.⁴⁴ Gaus argues that pluralism about justice is too pervasive for any actual consensus to be reached, and that a consensus of

⁴⁰ Ibid.

⁴¹ Ibid., p.136.

⁴² Ibid., p.136.

⁴³ Ibid., p.293.

⁴⁴ Ibid., p.183.

compromise is similarly impossible because the terms of a fair compromise are also subject to reasonable pluralism.⁴⁵ In a disagreement between two reasonable people about a matter of justice each person may reasonably hold a different conception of what counts as a fair compromise between their two competing conceptions and so the reasonable disagreement between them is merely pushed back a step from the disagreement about justice, to a disagreement about how to fairly compromise on the initial disagreement about justice. Gaus does not reject all accessibility conditions, instead he rejects Rawls's accessibility condition as too weak. For Gaus, Rawls's accessibility condition amounts to an assent condition, in the sense that people must actually accept the justification. Gaus, as will become clear, argues that accessibility is better understood in a looser way as justifications which people can comprehend but need not actually assent to.

2. What Can Be Justified?

Some idea of what justificatory liberalism entails should be discernible from the critiques outlined above: it entails a recognition of pluralism over the political, a stronger embrace of rationality, some form of justificatory elitism, and a rejection of consensus. How do these critiques coalesce to offer a positive theory of what can be justified? As the above critiques suggest, what Gaus advocates is a stronger account of the epistemology required for justification. A rich epistemology is to be expected, given Gaus's commitment to the role of epistemology in justification. Rawls's epistemic abstinence makes a thick epistemological account redundant, but Gaus is forced to develop such an account in order to reject the strategy of epistemic abstinence. This thesis, however, is not directly concerned with epistemology and I do not critically engage in any great depth with Gaus's epistemological views. This thesis is, however, concerned with the meta-theoretical appropriateness of epistemology to political theory and so I cannot skate over Gaus's account without providing a summary of the relationship between his epistemology and his account of justification and legitimacy.

Issuing moral demands

⁴⁵ Of particular interest to public reason theorists is the debate over whether to endorse a 'convergence view' of public reason or a 'consensus view' of public reason. Gaus supports the former view and ascribes the latter view to Rawls. For a discussion of this debate see, Kevin Vallier, 'Convergence and Consensus in Public Reason', *Public Affairs Quarterly*, Vol.25, No.4 (2011), pp.261-280.

Gaus's account of justification starts with his deontological understanding of morality as 'a system of demands or requirements' in which agents issue demands that create duties that require fulfilment by some appropriate agent.⁴⁶ The permissibility of issuing moral demands is then tied to a project of political justification by another of Gaus's foundational claims, that politics 'is the continuation of ethics by other means'.⁴⁷ These are not uncontroversial claims, but let's grant Gaus these starting foundations in order to see how they lead him to justificatory liberalism.

Gaus begins with the question of when it is permissible to issue a moral demand. He claims that the issuer (X) does not require the recipient (Y) to accept a moral demand for the demand to be permissible. Rather, it is necessary for Y to 'have a good reason' to accept, regardless of whether she actually does accept the demand. This speaks to the common moral claim that duties are duties whether the bearers of those duties recognise them or not. For example, if X claims that Y has a duty to protect her children from harm, the validity of the duty pertains even if Y does not accept that she holds such a duty. In terms of justification, this move excludes the possibility that both X and Y just so happen to accept the demand despite lacking a compelling reason to accept it. If, for example, it just so happens that X and Y agree that certain ethnic groups ought to be excluded from public education, but lack a good reason for believing this, then the demand itself is impermissible and the agreement of X and Y is irrelevant. Gaus ascribes to Rawls a 'populist' view of moral demands in which agreement between parties is sufficient grounds for justification, regardless of the epistemic quality of the reason given. On this view, agreement justifies the demand regardless of the normative quality of the reasons the issuer and recipient hold for accepting the demand.

Gaus's account of moral demands has obvious implications for the justification of coercive legislation. Nicholas Wolterstorff provides the clearest summary of Gaus's view of the 'legitimacy of legislation', which contains both the conditions under which that legislation is legitimate and the permissibility of publicly advancing coercive legislation, as follows:

A piece of coercive legislation is legitimate if and only if everybody in the public is openly justified in accepting it. The principle for the permissibility of advocating for some piece of coercive legislation is its near kin: it is permissible to advocate for some proposed piece of coercive legislation if

⁴⁶ Gaus, *Justificatory Liberalism*, p.122.

⁴⁷ *Ibid.*, p.294.

and only if one has a good and undefeated reason for accepting it and for believing that everybody in the public is openly justified in accepting it.⁴⁸

The terms used here require some explanation. By ‘the public’ Gaus means those people who do not ‘suffer from gross defects of reasoning’ and who do not have a ‘deep antipathy or contempt for each other’s values’.⁴⁹ By ‘undefeated reason’ Gaus means those reasons or justifications (these two terms are interchangeable at this point) that have not been defeated but may also not be victorious. Gaus spends many pages outlining the various possible epistemic statuses of beliefs and I will not rehearse those arguments here, suffice it to say that ‘undefeated justifications’ (or ‘inconclusiveness’) are epistemically superior to ‘defeated justifications’, but epistemically inferior to ‘victorious justifications’.⁵⁰

Finally, to understand the idea of ‘openly justified in accepting it’ we need to delve a little deeper into Gaus’s account of moral justification. As Wolterstorff puts it, to ‘ask whether someone is openly justified in believing something is to ask what he [the reasoning agent] *would* believe if his epistemic situation were improved in a certain way’.⁵¹ Gaus asks, ‘if [an agent’s] beliefs were subject to extensive criticism and additional information, does *his viewpoint commit him* to revise his beliefs?’.⁵² The question is not whether he would actually change his beliefs in such a situation, but whether his own viewpoint commits him to change his belief. A system of beliefs, then, is ‘openly justified’ when it is ‘stable in the face of acute and sustained criticism by others and of new information’.⁵³ The issuer of the moral demand needs to be open to corrections and new information, even if those corrections or new information is motivationally unpersuasive. This is a liberal (and Millian) conception of justified belief: a belief is only justified if the holder of that belief is willing to amend that belief in light of new evidence and contradictory arguments. Open justification can, however, only be judged from an external perspective. Gaus is not suggesting a hypothetical deliberation procedure in which parties in the deliberation are *actually* given new information or are *actually* subjected to acute and sustained criticism. Rather, an external third party can judge whether the agent or agents would be justified in retaining

⁴⁸ Nicholas Wolterstorff, ‘The Justificatory Liberalism of Gerald Gaus’ in Terence Cuneo (ed.), *Understanding Liberal Democracy: Essays in Political Philosophy* (Oxford: OUP, 2012), p.61.

⁴⁹ Gaus and Vallier, ‘The Roles of Religious Conviction in a Publicly Justified Polity’, pp.51-76.

⁵⁰ See Gaus, *Justificatory Liberalism*, pp.138-158 for his full account.

⁵¹ Wolterstorff, ‘The Justificatory Liberalism of Gerald Gaus’, p.59.

⁵² Gaus, *Justificatory Liberalism*, p.32.

⁵³ *Ibid.*, p.31.

their belief *if* such a treatment were applied to their beliefs. ‘Open justification’ does not then commit the ‘populist’ error of permitting moral demands based on bad reasons internal to an agent’s own belief system. The idea of ‘openly justified’ also contains a publicity condition. It is impermissible to issue moral demands solely based on personal justification. Rather, demands must be publicly justified in the sense that they appeal to reasons that the issuer of the demand can reasonably expect others to recognise as reasons. This aspect of public justification mirrors Rawls’s own conception of public reason, which requires reasons to be public in that they appeal only to the values present in the political conception, and not to controversial claims derived from unshared comprehensive doctrines.

Normative justification and the irrelevance of assent

With respect to his account of moral justification, Gaus’s alternative form of public justification leads him to endorse those principles that are ‘normatively justificatory’. Gaus signs up to the thesis that reasonable people disagree about matters of justice, but does not sign up to Rawls’s claim that their reasonableness alone is sufficient to secure the appropriate public justification. This move is a result of the weaknesses that Gaus identifies in Rawls’s political liberalism. Because ‘most of our beliefs are reasonably held, but can be reasonably rejected by others, arguments that require others to accept these beliefs are inadequate from the perspective of liberal legitimacy’.⁵⁴ In other words, in a world of epistemic pluralism citizens reasonableness cannot lead to agreed principles of justice. As Gaus writes, ‘any reasonable person who does not accept its [a principle’s] claims becomes a counterexample’ to the principle’s legitimacy. Instead of relying on the reasonable, Gaus claims that a liberal theory of legitimacy requires ‘a normative theory of justification’. Such a theory ‘allows them [liberals] to claim that some set of principles is publicly justified, even given the fact that they are contested by some. And this, in turn, appears to call for a moral epistemology, in the sense of an account of the conditions for justified moral belief, or at least justified adherence to social principles’.⁵⁵ Gaus’s conception of public justification is therefore stronger than Rawls’s: ‘For a justificatory liberalism, then, satisfying liberal legitimacy requires a justification of coercive authority that is not open to reasonable doubt’.⁵⁶ Some of this

⁵⁴ Ibid., p.276.

⁵⁵ Ibid., p.3.

⁵⁶ Gaus, ‘Reasonable Pluralism and the Domain of the Political’, p.276.

moral epistemology has been outlined, but it is not yet apparent how this epistemology leads us to liberal principles.⁵⁷

Recall that the purpose of Gaus's account of moral justification and its relationship to coercive legislation was to lead us to the Public Justification Principle, which states that '*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.'⁵⁸ This principle, as previously mentioned, bears a close resemblance to Rawls's Principle of Liberal Legitimacy. Despite the apparent similarity, Gaus cashes out this principle in a very different way to Rawls. Even though 'our guiding beliefs are credible' they are not 'conclusively justified'.⁵⁹ As such, 'adopting them is typically reasonable' but 'even if I am sure that I have made the correct choice for me, it is dubious whether it is surely the correct choice for others'.⁶⁰ Gaus claims that political liberalism errs in the motto he ascribes to it that 'Justification is everything. Little can be justified'.⁶¹ On Gaus's view, this motto subtly misrepresents what he describes as a 'deep truth': 'Justification is of fundamental importance, yet it really is hard to conclusively justify much'.⁶² Gaus claims that once we 'appreciate that the notions of reasonable people and reasonable beliefs diverge...we can see that satisfying the Principle of Liberal Legitimacy should not lead us to seek the consensus of reasonable people', but rather that we must 'seek arguments that are not irreconcilable with reasonable beliefs'.⁶³ With this aim in mind, 'constitutional politics', or what Rawls would call constitutional essentials, are 'not the realm of *consensus*, but of *conclusive* justifications'. Gaus replies that principles of justice 'cannot be grasped in terms of the quasi-sociological notion of a possible consensus, but in terms of an epistemology that reveals to us the conditions that render it unreasonable to reject a justification'.⁶⁴ Conclusive justifications, then, are those which cannot be reasonably rejected. How do we ascertain whether this standard of justification has been met?

⁵⁷ Note that Gaus aims to justify liberal principles, but does not claim to provide a 'conclusive justification of any specific philosophical theory of liberalism', Gaus, *Justificatory Liberalism*, p.178.

⁵⁸ Gaus and Vallier, 'The Roles of Religious Conviction in a Publicly Justified Polity', p.53.

⁵⁹ Gaus, 'Reasonable Pluralism and the Domain of the Political', p.276.

⁶⁰ *Ibid.*

⁶¹ Gaus, *Justificatory Liberalism*, p.293.

⁶² *Ibid.*, p.294. Italics in original have been removed.

⁶³ Gaus, 'Reasonable Pluralism and the Domain of the Political', p.275.

⁶⁴ *Ibid.*

The justification of principles falls into two categories: ‘victorious’ justifications and ‘undefeated but unvictorious’ justifications. Although ‘some substantial fundamental moral principles can be victoriously publicly justified in our society, their number is modest’.⁶⁵ While such ‘victorious’ justifications ‘are fairly rare in a pluralistic society such as ours...undefeated, unvictorious justifications - those that are reasonable but contentious - abound’.⁶⁶ Victorious justifications are ‘not simply undefeated’, they must also ‘satisfy the publicity condition and attain a high standard of proof’.⁶⁷ The ‘publicity condition’ refers to the idea of ‘open justification’ covered previously and Gaus takes a high standard of proof to mean ‘beyond reasonable doubt’.⁶⁸ The second set, ‘undefeated but unvictorious’ justifications, are the most common outcome of public reason. Gaus does not flesh out the notion of ‘beyond reasonable doubt’ in any detail, claiming only that the justification must demonstrate the contrary position to be mistaken and, tautologically, that ‘it must attain a very high standard of proof’.⁶⁹ We then have two categories that need to be filled-in: a limited set of ‘victorious justifications’ and the more extensive, but also more indeterminate, set of ‘undefeated but unvictorious’ justifications. What is the content of these categories?

First, Gaus’s ‘victoriously justified’ justifications. Gaus claims that he seeks ‘nothing so grand as identifying the complete set of victoriously justified liberal principles’, rather he intends to show that such victorious justification are possible.⁷⁰ He claims that freedom of speech, religious toleration ‘extended to wide toleration of competing conceptions of the good life’, antiestablishmentarianism ‘aimed at both religion and substantive views of human perfection’, and a protected private sphere are ‘fundamental liberal commitments’.⁷¹ These are commitments only at a highly abstract level, and Gaus accepts that the interpretation of these principles is subject to reasonable disagreement. These principles are not full-blooded principles of justice, but are instead placeholders for fuller principles, the content of which is left unspecified. Gaus claims that the denial of any of these placeholder principles would be unjustified, which is to say that all the justifications that could be advanced in opposition to these principles

⁶⁵ Gaus, *Justificatory Liberalism*, p.13.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, p.151.

⁶⁸ *Ibid.*, p.150.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, p.175.

⁷¹ *Ibid.*

are defeated, and the principles therefore succeed on the basis that one cannot hold an undefeated contrary position, such as a principle of limited speech or a principle of intolerance. While we might agree that this seems true, it is not adequate in the light of Gaus's own commitment to justification. I return to these problems shortly. For the moment though, what is important here is that Gaus acknowledges that the cashing out of these placeholder principles is subject to public justification.

The second category, 'undefeated but unvictorious' justifications, is even more indeterminate than the first category. Little can be said about this category of justifications, except that they are common and that there are likely to be many undefeated but unvictorious justifications that point towards opposite conclusions. This category of justifications reflects the claim of epistemic pluralism that there are incompatible but non-erroneous conclusions about value. Gaus's response to the existence of this category of justifications is procedural rather than substantive: he only provides a procedure for choosing between these competing but reasonable views rather than specifying his own preferred view.

What is most important in terms of the 'normatively justificatory' character of both categories is that neither sort of justification requires the assent of those subject to the coercive laws that they justify. This reflects Gaus's rejection of Rawls's 'populist' account of justification. As Gaus writes, 'assent is not necessary to justification (neither is it sufficient)'.⁷² As should be clear from the overview of Gaus's account of moral justification, actual assent is irrelevant to justification. What is relevant is that it is normatively justificatory in an epistemological sense, i.e. what one ought to think justified were one to be epistemically informed. Gaus's version of accessibility requires that justifications need to be accessible to all reasonable people in that they are recognised and understood as reasons, regardless of whether they are accepted. If, for example, my justification for the permissibility of abortion is that women have ultimate control over their own bodies, it is irrelevant that some other person disagrees *if and only if* my justification is publicly justified and has therefore been subjected to rigorous criticism.

What Gaus gives us then are two categories of justification, members of the first of which require content, and members of the second of which are uncertain in both

⁷² Ibid., p.151.

number and content. How does Gaus move from these two categories to a justification of principles?

Law making as adjudication

Gaus summarises his argument up to this point as follows:

1) When offering interpretations of victoriously justified principles, inconclusive reasoning is still genuinely public reasoning; (2) when interpreting justified principles, liberal citizens can neither wait until specific interpretations are victorious nor simply go ahead and impose their inadequately justified interpretations. Consequently (3) they must somehow resolve their dispute about the interpretation of these principles. But (4) they cannot, *ex hypothesi*, resolve the epistemic issue about what is best justified, not even by resorting to the opinions of others. Yet (5) they can at least resolve the practical issue about what is to be done.⁷³

I have only given a brief account of these steps (200 pages of detailed argument get us to this point), but the essential ideas should still be understandable. Given that victoriously justified principles still require interpretation and the more common undefeated but unvictorious principles have no content whatsoever, how do we go about organising liberal institutions around justified principles?

Gaus's answer is that given such inconclusiveness we can neither wait for victorious justifications or victorious interpretations, nor can we impose our own view on those who non-erroneously disagree.⁷⁴ Further, we cannot rely on epistemic 'experts' (priests, philosophers etc.) to choose from the various options, as they too are subject to epistemic pluralism. The right response to inconclusiveness is what Gaus calls adjudication. According to Gaus, 'liberal citizens have powerful reasons to adjudicate their disputes about the proper interpretations of public morality'. Politics, then, focuses on 'the adjudication of competing views about justice'.⁷⁵ Law-making should be understood in terms of its adjudicative role in settling disputes between reasonable citizens. What is important for politics is that it can 'end the dispute' by bringing it 'to practical closure even though we are still confronted with an open question'.⁷⁶ Gaus gives four 'tracking desiderata' of adjudicatory institutions. Firstly, they should be 'nonrandom' in that they do not randomly, by lottery for example, select one undefeated but unvictorious justification, to the exclusion of all other competing undefeated but

⁷³ Ibid., p.190.

⁷⁴ Ibid., pp.179-184.

⁷⁵ Ibid., p.271.

⁷⁶ Ibid., p.272.

unvictorious justifications. Secondly, they should be ‘widely responsive’ to the ‘judgments of the many’ not the few. To be responsive, public justification must be subject to public scrutiny. The aim of this public scrutiny is not to reach consensus, however, but rather to ‘determine what is publicly justified’. ‘Normal politics’, i.e. non-constitutional politics is the ‘confrontation of undefeated, unvictorious judgments about the demands of basic principles’.⁷⁷ Thirdly, the adjudicative institutions must ‘track what is publicly justified’. Law making institutions ‘must provide ample scope for wide deliberation, encouraging debate and deliberation among ordinary citizens’. Finally, adjudicative institutions should not be neutral ‘between enacting and blocking legislation’, rather they should err on the side of inaction, and should also ‘reject simple majority rule’.⁷⁸ This is a very brief description of Gaus’s account of adjudication, but it is the idea of adjudication itself rather than its details or the justifications of those details that is of interest. With these ‘tracking desiderata’ in place, the adjudicative institution attempts to reach a verdict on ‘whether the law is publicly justified’, meaning for Gaus whether coercive legislation has been openly justified beyond reasonable doubt. Gaus employs a technical style of writing that sometimes obscures the simplicity of his ideas, but essentially, Gaus’s notion of adjudication advocates an epistemically responsive procedure to produce political certainty in the face of epistemic uncertainty.

3. A Critique of Gaus: The Return of Epistemic Pluralism

My concern in this thesis is not about the feasibility of public reason liberalism, instead it is about finding a political theory that is compatible with epistemic pluralism. To that end, it must be shown that other theories that respond to epistemic pluralism are, in fact, incompatible with epistemic pluralism in some way. That assessment is not, however, a foregone conclusion and Gaus gives a technical and detailed response that could well supply us with a plausible response to the political problems engendered by epistemic pluralism.

With that aim in mind, does Gaus’s justificatory liberalism succeed in showing that liberal principles can be justified despite epistemic pluralism, about both conceptions

⁷⁷ Ibid., pp.232-233.

⁷⁸ Ibid., pp.246-247.

of the good and justice? This question is the same question I addressed to Rawls's political liberalism and goes to the heart of the problem that epistemic pluralism poses to any liberal project: how can a coercive and compulsory political arrangement be morally justified when those who live under it non-erroneously disagree on matters of value? My critique of Gaus's justificatory liberalism points to the validity of Rawls's insistence that moral epistemologies of the sort that Gaus advocates are themselves subject to reasonable disagreement and therefore cannot be publicly justified in the way that any principle of liberal legitimacy requires. Gaus's argument that Rawls makes a 'fundamental error' in trying to 'avoid contentious epistemological issues and focus on the practical political task of securing agreement' is a step in the wrong direction for the epistemic pluralist.⁷⁹

I begin by questioning whether epistemic pluralists can accept Gaus's claim that certain principles can be justified 'beyond reasonable doubt', arguing that they cannot. Second, I argue that Gaus's rejection of actual assent is incompatible with a liberal principle of legitimacy. Finally, I argue that Gaus's focus on epistemology leads him to neglect the practical and political problem of finding a way to live together despite our disagreements. The first two critiques address internal inconsistencies within Gaus's theory, and the third critique targets Gaus's conceptualisation of public justification in the face of epistemic pluralism.

Can principles be beyond reasonable doubt for epistemic pluralists?

Gaus claims that victorious justifications are those that are 'beyond reasonable doubt'. Gaus does little to provide an account of what this would mean in practice, apart from stating that such justifications would have to reach a 'very high standard of proof'. This, however, seems incompatible with a commitment to epistemic pluralism. The lesson of epistemic pluralism is that well-intentioned, sincere, and conscientious people will fail to reach a consensus on matters of value. Even with Gaus's more stringent epistemological conditions in place, the epistemic pluralist must believe that two contradictory positions about value can be non-erroneously held. If, for example, two disputants fundamentally disagree about what the relevant value is at stake, then it seems impossible for one disputant to demonstrate, either to the other disputant or to a third party, that the principle she advances reaches such a high standard of proof that it

⁷⁹ Gaus, *Justificatory Liberalism*, p.4.

is beyond doubt. The point of there being a dispute in the first place is that two people reasoning to the best of their abilities cannot reach agreement. If it were the case that one of the disputants could claim that her principle was beyond reasonable doubt then the disagreement ought not to have arisen, as the other reasonable disputant would not have disagreed. Gaus's claim here, that principles can reach a standard of proof that makes them unimpeachable, runs counter to the force of epistemic pluralism. The point, as Gaus clearly does recognise, is that such unimpeachability is simply not attainable in most cases of value disagreement. As Gaus writes, moral debate is 'so inconclusive because so many considerations are relevant, either directly or because problems about which of two reasons is "weightier" can only be discussed by appealing to yet other, background, considerations, thus reintroducing problems of complexity'.⁸⁰ How, in the light of this, can reasonable disagreements be settled beyond reasonable doubt? Gaus's response of adjudication does not satisfy his own requirement of justification because such disagreements are *by their very nature* those on which justifications conflict. Adjudication will not settle the disagreement, but will instead offer only a practical resolution to the disagreement. Now this might seem satisfactory: in cases of inconclusiveness we must decide to do something for prudential reasons (as I argue in Section III). But Gaus himself rejects this practical reading of justification in favour of normatively justificatory principles. Without this practical argument to fall back on, Gaus denies himself the resources to explain why any reasonable disputant would accept that they have been overruled because the competing justification (which they reject) is beyond reasonable doubt. Gaus's argument seems to reflect a quasi-scientific approach to normative reasoning and to the notion of proof. 'Proof' in normative argument, unlike in scientific argument, will frequently be justifiably contestable, and gesturing towards a 'very high standard of proof' cannot be justificatory without fleshing out the idea of proof, which will, of course, be subject to epistemic pluralism.

Gaus's attempt to strengthen the epistemic standards of public reason commits a similar error to Rawls's. In trying to introduce stronger epistemological standards, Gaus reintroduces non-erroneous disagreement about those very epistemological standards, thereby pushing the problem back a step. The problem that epistemic pluralism poses to political theory is that justification *and the standards of those justifications* are subject to non-erroneous disagreement: there is no way of judging the justificatory

⁸⁰ Ibid., p.155.

standards beyond normal normative discourse, which is littered with epistemic obstacles. When Gaus claims that he agrees with Rawls that ‘questions of the truth or falsity of our moral judgments can be left to one side, and we can instead focus on whether they are reasonable and justified’ he neglects to recognise that by relying on a normative form of justification, the truth or falsity of our moral judgments is reintroduced.⁸¹ Having advocated epistemic, as opposed to value pluralism, earlier in this thesis it is worth noting an internal inconsistency that Gaus’s theory of normative justification faces. Gaus’s remedy to Rawls’s problem is to introduce an epistemological standard which will justify what counts as the justification of political principles. If the standard is epistemologically justified then the principles that flow from the procedure informed by the standard are also justified. Now, this option is available to the value pluralist, but it is at least *prima facie* implausible to be both an epistemic pluralist (as Gaus is) and to be committed to a monistic epistemological standard of public reasoning, insofar as that epistemological standard is normatively laden. How does epistemic pluralism bear on Gaus’s commitment to an epistemological standard? Any epistemological standard of moral justification will itself be subject to epistemic pluralism. The epistemological standard must be normatively laden. Whichever epistemic standard is supported it will have normative commitments attached to it. Epistemic pluralism does not mean that all conclusions about are equally valid (epistemic pluralism is not moral relativism), but it does mean that there is no uniquely privileged moral or epistemological position from which to judge between reasonably held, but incompatible, value judgments. Gaus might respond to this critique that while first order value disputes are subject to epistemic pluralism, disputes about justification are second-order disputes that are unaffected by epistemic pluralism. As we have seen, however, Gaus’s notion of justification is a normative one. The epistemic pluralism that I have advocated, and that Gaus seems to support, is thoroughgoing. While Rawls and Quong try to limit pluralism to conceptions of the good, Gaus accepts that pluralism also covers the political. To then claim that *normative* justification is not subject to epistemic pluralism conspicuously fails to bite the pluralist bullet, especially given the logic of Gaus’s argument for the inclusion of political disagreement in his conception of pluralism.

⁸¹ Gaus, *Justificatory Liberalism*, p7.

Actual assent and moral autonomy

Gaus admits one of the limits of justificatory liberalism from the outset:

Given the actual disagreement in our Western societies over liberal ideals, it is manifest that justificatory liberalism cannot explicate “publicly acceptable” principles as those to which each and every member of our actual societies, in their actual positions, actually assent. If that is the test of public justification, justificatory liberalism is most unlikely to vindicate substantive liberal principles.⁸²

Gaus outlines here his rejection of the ‘actual assent thesis’ that he attributes to Rawls. According to Gaus ‘it would be as wonderful as it would be remarkable if the best justification of the regime were also the grounds on which most citizens support it’, but ‘a test for the justification of a political regime...is not whether that justification is widely accepted, or is uncontroversial’.⁸³ In other words, a ‘philosophic justification is not to be confused with popular acceptance, rough consensus, or even probably acceptance by all reasonable parties’.⁸⁴ As Wolterstorff notes, what Gaus means when he talks about a principle being justified is not that it has been justified to someone, instead he means that it has ‘*the property of being justified*’.⁸⁵ This understanding of ‘justified’ implies an odd notion of legitimacy, especially as Gaus commits himself to sharing the following starting premise with Rawls:

Respect for the freedom and equality of our fellow citizens requires that the state’s exercise of coercive authority must be justified to each and every citizen. This, of course, is the idea of the Principle of Liberal Legitimacy.⁸⁶

But the principle of liberal legitimacy, which Gaus endorses, runs counter to his own justificatory liberalism. If, as Gaus argues, what matters is not the actual assent of citizens to liberal principles, but rather that, given a suitably rigorous epistemic procedure, those citizens *ought to assent* to liberal principles, then Gaus’s justificatory liberalism violates the principle of liberal legitimacy. ‘Respect for the freedom and equality of our fellow citizens’ is incompatible with an insistence that principles are legitimate if they meet a certain epistemic standard, regardless of whether citizens actually assent. It is a poor expression of respect for citizens’ freedom and equality if we respond to their non-erroneous objections to certain principles by appeal to the

⁸² Gaus, *Justificatory Liberalism*, p.3.

⁸³ *Ibid.*, p.10.

⁸⁴ *Ibid.*, p.9.

⁸⁵ Wolterstorff, ‘The Justificatory Liberalism of Gerald Gaus’, p.70.

⁸⁶ Gaus, ‘Reasonable Pluralism and the Domain of the Political’, p.274.

quality of the epistemic procedure used to arrive at those principles. Such a response would need to claim that those who object to the principles either lack the ability to recognise the validity of the procedure or lack the ability to see the validity of the procedure in this specific instance. ‘The aim of justificatory liberalism’ according to Gaus, ‘is not so practical: The fundamental goal is to live up to our commitment to justify our demands on others, and this can be accomplished by a philosophical argument that fails to convince many, yet is openly justified to all’.⁸⁷ Gaus cannot plausibly pull apart the notions of ‘convincing’ and ‘justified’ while retaining his other moral commitments. Gaus claims that, given the flawed nature of rationality, not all reasonable citizens will assent to the principles chosen through his procedure, but the fact that they do not assent cannot be compatible with his commitment to the principle of liberal legitimacy unless one accepts Gaus’s corrupted notion of ‘justified’.

More seriously, Gaus’s rejection of actual assent reveals a remiss attitude towards citizens’ moral autonomy and an attendant lack of regard for their motivations. Gaus writes that ‘constitutional politics, then, is not the realm of *consensus*, but of *conclusive* justifications’.⁸⁸ The difficulty with this claim, for epistemic pluralists at least, is that conclusive justifications belong to a world of moral certainty that epistemic pluralism runs counter to. Gaus and Vallier claim that justificatory liberalism ‘is based on the idea that if we are to respect others as free and equal, laws must be justified to them’.⁸⁹ There is an important sense in which respect is conferred by citizens having the final say on the principles they choose to endorse, regardless of whether they meet Gaus’s epistemological standard. As Glen Newey writes, it is a ‘necessary, if not sufficient, condition of autonomy that individuals think and act on reasons which are good reasons *for them*’.⁹⁰ That the principles chosen and the interpretations of those principles meet Gaus’s standard for justification does not mean that those principles are consistent with the autonomy of the citizens subject to those principles. In fact, Gaus’s indifference towards the actual reasons that people hold, suggests a paternalistic form of liberalism in which dissent from the normatively justificatory principles can be waved away on the basis that such dissent is unreasonable. As Rossi notes, ‘for Rawls there is an important sense in which I can be free and autonomous even if I fail to adequately

⁸⁷ Ibid., p.162.

⁸⁸ Gaus, ‘Reasonable Pluralism and the Domain of the Political’, p.275.

⁸⁹ Gaus and Vallier, ‘The Roles of Religious Conviction in a Publicly Justified Polity’, p.5.

⁹⁰ Newey, *After Politics*, p.185. Italics in original.

respond to the demands of reason'.⁹¹ For Gaus, one cannot be free and autonomous unless one has reasoned well. This insistence on good reasoning runs counter to epistemic pluralism's claim that there are enduring epistemic obstacles to reasoned agreement among well-intentioned, sincere and conscientious people.

Gaus's argument also seems in tension with his ambitions for public reason liberalism more generally. Elsewhere, Gaus has written that 'the future of public reason liberalism is not to develop a controversial ideological position that seeks to exclude large parts of our society as "unreasonable," but to press the bounds of inclusiveness as far as possible — and in so doing, showing that the deep strength of liberalism is its unique ability to not only accommodate, but draw upon, our deep diversity'.⁹² How can Gaus's indifference towards the actual assent of citizens be squared with his desire to 'press the bounds of inclusiveness as far as possible'? As Jürgen Habermas understands Rawls's project, the entire purpose of public reason liberalism is to exploit the 'moral concept of autonomy as the key to explaining the political autonomy of citizens in a democratic society'.⁹³ Justificatory liberalism fails to take moral autonomy seriously and its political inconclusiveness is severely curtailed.

Gaus would respond at this point that justificatory liberalism is in fact compatible with respect for citizens' freedom and equality. Rejecting erroneous reasoning avoids infantilising one's opponents and demonstrates a commitment to difference blind equality, by accepting the truth-generating power of the epistemic procedure, regardless of the objections such a procedure may encounter from unreasonable and irrational citizens. This reply is made implausible by its incompatibility with epistemic pluralism, to which Gaus is also committed. In arguing that certain epistemic procedures are better able to 'track-truth', Gaus, in effect, argues that those procedures are best suited to produce public truth. Gaus would object to this interpretation, claiming instead that we can 'divorce the idea of a good reason from truth' and in so doing rid ourselves of the worry that justificatory liberalism is just another form of metaphysical liberalism of a Kantian or Millian variety.⁹⁴ I do not intend to get into metaphysical debates about

⁹¹ Rossi, 'Legitimacy, Democracy and Public Justification', p.21.

⁹² Gerald Gaus, 'Public Reason Liberalism', pp.133-134.

⁹³ Jürgen Habermas, 'Reconciliation Through the Public Use of Reason' in Fabian Freyenhagen and James Gordon Finlayson (eds.), *Habermas and Rawls: Disputing the Political* (London: Routledge, 2011), p.25.

⁹⁴ It might seem that Kant and Mill are not a suitable pairing with which to illustrate metaphysical liberalism. Both thinkers, however, rely on a metaphysical assertion. Kant relies on the (metaphysical)

whether truth is justified belief or whether ‘truth-tracking’ principles are distinguishable from true principles. This refusal to engage also serves to expose another inconsistency in Gaus’s view: to engage in these arguments one would need to make public metaphysical claims. As Rawls and Gaus both believe, metaphysics has no place in political philosophy. If an acceptance of Gaus’s justificatory liberalism is dependent on an acceptance of Gaus’s metaphysics, then justificatory liberalism itself becomes metaphysical in a way that Gaus is explicitly (and rightly) averse to.

In defence of justificatory populism: politics not epistemology

My final critique mounts a defence of the primary target of justificatory liberalism: i.e. justificatory populism. Leaving aside the moral concerns of my first two critiques, the greatest failure of justificatory liberalism is its inability to resolve the political problem of legitimacy engendered by epistemic pluralism. As Rossi notes, ‘Gaus’s epistemically optimal procedure...may lead to epistemically satisfactory normative principles, but it is far from clear that the citizenry will be motivated by this concern for upholding epistemic standards, especially when it trumps other, more practical concerns’.⁹⁵ In other words, even if we accept the justification for justificatory liberalism it is unclear that justificatory liberalism is capable of securing legitimate political institutions. To understand why this is, I turn to Gaus’s own taxonomy of public reason liberalism.

Gaus, along with Fred D’Agostino, has outlined two distinct strands of public reason in the history of political thought.⁹⁶ The first strand, which begins with Kant, represents what they call the ‘epistemological-moral view’. On this view, the answer to the question ‘why reason publicly?’, is that ‘the discovery of truth...results from the exercise of free public reason’.⁹⁷ Gaus and D’Agostino contrast this strand with a second, what they call the ‘pragmatic-legitimation view’. On this view, the answer to

existence of the categorical imperative, while Mill relies (although never consistently) on the claims that only harm is morally relevant and that liberty is the highest value, both of which are metaphysical claims. At both ends of the spectrum of the liberal canon we find examples of metaphysical liberalism of the sort that Rawls rightly rejects, but that Gaus gestures towards replicating.

⁹⁵ Rossi, *Liberal Legitimacy: A Study of the Normative Foundations of Liberalism* (PhD thesis, submitted to University of St Andrews, 2008), p.134.

⁹⁶ Fred D’Agostino and Gerald Gaus, ‘Introduction - Public Reason: Why, What and Can (and Should) It Be?’ in D’Agostino and Gaus (eds.), *Public Reason* (Dartmouth: Aldershot, 1998), pp.xi-xxiii.

⁹⁷ *Ibid.*, p.xii.

the question ‘why reason publicly?’ is a pragmatic one: ‘if we accept a common public reason we can live together in peace’. On this division, and contrary to the common interpretation of Rawls as a neo-Kantian theorist, political liberalism aligns itself more closely to the Hobbesian version of public reason than to the Kantian version. Gaus and D’Agostino admit that ‘Rawls’s conception of political reason contains a normative element missing in Hobbes’, but suggest that both Hobbes and Rawls share a commitment to public reason as a means of securing agreement and stability. By cordoning or bracketing off certain types of private reasoning from public discourse, it becomes possible to ‘reason together to arrive at shared political principles of institutions’.⁹⁸ Although this division is not wholly discrete, Gaus and D’Agostino suggest that the answers given to ‘why reason publicly?’ map onto two different answers to the question ‘what is public reason?’.⁹⁹ The Hobbesian school responds to this question with what Gaus and D’Agostino term an ‘empirical conception of public reason’. On this conception, we ‘take the individual, *qua* believer and desirer, as we find her’, we ‘accept the individual’s actual ways of reasoning, however defective they might be from the point of view of formal theories of decision-making and inference’, and finally, ‘we accept as given the particular level of evidential and inferential adequacy that the individual sets...we do not require her to meet standards that we think are better from the point of view of formal theories of decision-making and inference’.¹⁰⁰ By contrast, the Kantian school responds to the question ‘what is public reason?’ with a more normative conception. On this view, a reason is a ‘genuine public reason if it is a reason that would be embraced by every member of the public *if they reasoned well*’.¹⁰¹ This caveat enables the possibility that if the public fails to reason well, as Gaus believes it frequently does, then very few reasons are ‘genuine public reasons’. This is the conclusion that Gaus wants us to reach: given the limits of human reason, most citizens’ optimal principles fail to meet the epistemological standard and are therefore illegitimate candidates for public reason. The principles that can be publicly justified will be narrowly agreed upon by those who reason well, but the possibility of a deeper or more extensive agreement is beyond our reach.

⁹⁸ *Ibid.*, p.xiii.

⁹⁹ *Ibid.*, p.xiv.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, emphasis added.

It should be clear by now that I align myself more closely to the ‘pragmatic-legitimation’ view, and therefore with Rawls and against Gaus, my criticisms of Rawls notwithstanding. The choice between these strands, however, seems dispositional rather than reasoned, and depends on one’s conception of political theory and its purposes. Developing a critique based on a highly contentious account of the ‘purposes of political theory’ will be unpersuasive to all but those who sympathise with my own idiosyncratic views, and so I do not pursue that line of argument. Instead, the more forceful line of argument is that Gaus’s own position is incoherent. The problem, as I see it, with justificatory liberalism, and with the ‘epistemological-moral’ strand more broadly, is that even if we were to think that Gaus’s theory is morally impeccable and logically irrefutable it still fails, *by its own admission*, to provide a workable grounding for liberal politics. Put simply, if a significant portion of the citizenry reject Gaus’s principles and his arguments for those principles, then justificatory liberalism has no practical force whatsoever. Alternatively, Gaus must resign his theory to endorsing the coercion of many well-intentioned, sincere, and conscientious people to fulfil justificatory liberalism’s demands. Neither of these outcomes is satisfactory from the standpoint of legitimacy that Gaus himself endorses. As David Estlund comments, Gaus seems to ‘conflate the requirements of public reason with the requirements of legitimacy’.¹⁰² Because Gaus is ‘clear that legitimacy requires that norms or doctrines be openly justifiable to every citizen’ it is not sufficient that ‘they be believed to be so by whomever is offering them as reasons’.¹⁰³ That a reason is publicly justified in Gaus’s terms does not tell us anything about whether that reason has the capacity to achieve legitimacy. This problem is not special to justificatory liberalism. Any theory of liberalism could fail in practice if the citizens do not assent to liberal principles. Gaus’s theory seems more likely to fail than most, however, due to his indifference towards the reasoned conclusions of actual citizens. Justificatory liberalism refuses to recognise that justification is itself inherently political and that epistemology cannot take the practical place of politics in deciding what is and what is not justified. D’Agostino puts this thought well:

To settle on a particular conception of public justification, it is therefore necessary to settle questions, at least to our own satisfaction, which are themselves properly political questions. The project of public justification

¹⁰² David Estlund, ‘Justificatory Liberalism: An essay on Epistemology and Political Theory by Gerald F. Gaus’, *Philosophy and Phenomenological Research*, Vol.59, No.3 (1999), pp.824-825.

¹⁰³ Ibid.

therefore cannot be beyond or prior to politics itself. It is not a meta-political project, as some have wishfully thought; it is rather itself a part of a properly political argumentation.¹⁰⁴

The contention here is that the justification of political principles can only be achieved (in a practical sense) through politics. A theory, such as Gaus's, which is deaf to the actual values of citizens, does not intend to respond to politics as we find it, and in particular to a politics characterised by enduring and non-erroneous disagreements about value. Gaus might reply that he does not care about earthly politics conceived in this coarse and epistemologically flawed way, to which politics can respond (without wanting to be dismissive) that it does not care about justificatory liberalism. To recall one of the questions I took public reason liberalism to address, namely 'where is the common ground?', Gaus's answer to this seems to be 'there is no common ground, but that doesn't really matter'. This is because Gaus's 'correctness-based justifications', to borrow Steven Wall's phrase, wrongly prioritise correctness at the expense of their practical utility.¹⁰⁵ Methodological appeals to pragmatism, practicality, or 'the real world' (whose real world?) are inevitably contentious. I do not defend these appeals, but in the next section I argue that a sensitivity to the reality of epistemic pluralism is captured by a political theory of *modus vivendi*.

4. Conclusion

This chapter has provided an account of Gaus's justificatory liberalism as an alternative way to justify liberal principles in the face of epistemic pluralism. I offered three critiques of justificatory liberalism that show Gaus's project to be, in important ways, internally incoherent, and also incapable of providing a solution to the problem of legitimacy engendered by epistemic pluralism. The problem that Gaus faces, which is that *any normative standards* (including standards of justification) will be unable to produce a reasoned agreement, is a problem that must be shared by all accounts of public reason liberalism. Once we accept that there are epistemic obstacles that prevent reasoned agreement on political principles, there is no way for public reason liberals to meet their principle of legitimacy without unjustifiably excluding the non-erroneous views of certain people. Gaus's attempt to move the site of the debate from the

¹⁰⁴ Fred D'Agostino, 'The Idea and the Ideal of Public Justification', *Social Theory and Practice*, Vol.18, No.2 (1992), p.158.

¹⁰⁵ Steven Wall, 'Is Public Justification Self-Defeating?', *American Philosophical Quarterly*, Vol.39, No.4 (2002), p.387.

substance of principles to the epistemic procedure for justifying principles, does not nullify the problem because the normative defence of the procedure will be subject to non-erroneous disagreement. Having rejected two theories that respond to epistemic pluralism, I now follow epistemic pluralism where it leads in presenting my own positive theorising.

Section III: A Political Theory of Modus Vivendi

Chapter 7: Peace and Acceptance in a Modus Vivendi

Be beginning to despair, to despair,
Despair, despair, despair, despair.

Spare!

There is one, yes I have one (Hush there!)

- Gerard Manley Hopkins, 'The Leaden Echo and the Golden Echo'

My criticisms of Rawls and Gaus might suggest that epistemic pluralism presents an insurmountable task for normative political theory. Any answer to questions of how we should organise society will always be met with the objection that there are alternative answers that are both incompatible and non-erroneous. How then, is any answer uniquely justified? Epistemic pluralism seems to imply that the state will be unable to offer a moral justification for its authority to all those subject to its power. Should normative political theorists, with Hopkins, be 'beginning to despair'? Far from despairing, I now argue that there is a way to develop a political theory that is compatible with epistemic pluralism, but only by abandoning the purely moral consensus that Rawls and Gaus sought. Public reason liberalism cannot bear the strain of epistemic pluralism. In its place, we must pursue a pragmatic political way of proceeding, despite ongoing and ineradicable value disagreement. The question of how we live together and on what terms, can only be answered through politics, even when and because our value disagreements will not be resolved. For that task, I turn to a political theory of modus vivendi.

When modus vivendi is discussed, if it is discussed at all, liberal theorists tend to use it as a foil to 'proper' liberalism. We can know that a liberal theory is normatively desirable, both from an external standpoint and from the citizens' own view precisely, because the terms on which those people coexist are *not* modus vivendi terms.¹ What I have argued up to now, however, is that the bases for those more ambitious theories are unsound if we take epistemic pluralism seriously. This turn should come as no surprise, bearing in mind my definition of epistemic pluralism. If reasoned agreement on matters of value is precluded by epistemic pluralism, then it is inevitable that the source for

¹ For the standard criticisms of modus vivendi see Rawls, *PL*, p.147; Paul Kelly, *Liberalism* (Cambridge: Polity Press, 2005), Chapter 6.

some political arrangement cannot be derived from a consensus on value. What remains in the light of epistemic pluralism is *modus vivendi*. In its simplest characterisation, a *modus vivendi* is an agreement to disagree. It is an agreement to disagree not only about the good life but also about political conceptions of justice. More ambitiously, a *modus vivendi* is an agreement to disagree *through* politics. A *modus vivendi* describes both the process through which a political arrangement is reached, but also the arrangement that is arrived at through that process. A *modus vivendi* process of bargaining and negotiation will not necessarily lead to a *modus vivendi* arrangement. Theories of *modus vivendi* are united by their rejection of consensus-based political principles, but animated by the idea that politics is still necessary, despite the irresolvable disagreements about the principles that ought to guide it. Agreeing to disagree is not the end of the matter: a platitude is not a political theory. Even if this provides a common starting point for *modus vivendi* theory, it is unclear what form that agreement will take, what conditions are required to reach that agreement, how wide the scope of disagreement can be, and what political action can legitimately be taken after it is resolved that we have agreed to disagree. A great deal hinges on fleshing out a conception of *modus vivendi* in the right way. Done in the wrong way, a *modus vivendi* runs the risk of becoming the kind of consensus theory that it seeks to oppose.

I aim to address the apparently disheartening prospects of both politics and political theory in this chapter by advancing a theory of *modus vivendi*, a theory which responds to epistemic pluralism and charts a course for how political institutions can be legitimate despite persistent disagreement about value. To develop my own account of *modus vivendi*, I critically assess three of the most prominent theories of *modus vivendi*, John Gray's value pluralist *modus vivendi*, Fabian Wendt's *modus vivendi* of peace, and John Horton's political *modus vivendi* (1). The conception of *modus vivendi* that I develop has many features in common with these conceptions of *modus vivendi* but is distinct from all three, although it shares most with Horton's political conception of *modus vivendi*. By outlining and criticising these three theories I hope to make clear how my own view is both different from and more appealing than existent theories of *modus vivendi*. To do this, I specify the two conditions that define a *modus vivendi*, justify these two conditions without invoking premises that are incompatible with epistemic pluralism, and outline the ways in which my conception of a political theory of *modus vivendi* differs from the other three theories of *modus vivendi* (2).

1. Three Conceptions of Modus Vivendi

Although an agreement to disagree is a consensus of sorts, it is not a consensus on values, which is what epistemic pluralism precludes. One of the risks of endorsing an agreement to disagree is that defining the limits of an agreement will often smuggle in controversial and disputed normative claims. For example, we might limit the modus vivendi to reasonable people or alternatively place liberal constraints on what kind of agreement is permissible. A modus vivendi might also be designed to fulfil moral values, such as toleration or cooperation, which are likely to be incompatible with epistemic pluralism when they are fleshed out. As I see it, the challenge for a theory of modus vivendi is to specify what an agreement to disagree looks like without invoking normative premises that are themselves disputed. In the previous chapter I argued that both Rawls and Gaus apply the brakes before they take off. What I mean by this is that they recognise the reality of pluralism, but do not follow where pluralism leads. There are perhaps normatively attractive reasons for applying the brakes, but there are no reasons that are compatible with epistemic pluralism. Having gestured towards some of the difficulties faced by a political theory of modus vivendi, I nevertheless argue that a theory modus vivendi is the only way forward. If I am right, both about pluralism and about the flaws in Rawls and Gaus, then modus vivendi is the only game in town. Liberal theorists may hope for more, but this hope cannot be realised in light of the depth of pluralism. Similarly, some modus vivendi theorists design their theories in such a way that they too hope for more than an agreement to disagree, but, as I go on to argue, they compromise the coherence of their theories for the sake of normative desirability. My conception of modus vivendi avoids this trade-off.

Avoiding that trade-off must lead us to ask whether any political principles can be defended at all. This dilemma is politically dispiriting and philosophically troubling. It is politically dispiriting because it undermines the possibility of strongly defending principles to which many of us subscribe, and it is philosophically troubling because it reduces the scope of political theory to such an extent that one ought to wonder whether it is worth doing political theory at all. Liberals have sometimes been accused of being incapable of taking their own side in an argument. If my critique of the two theories of pluralist liberalism holds, then the position I am forced to support seems to be not only incapable of taking its own side in argument, but incapable of having any side in an

argument whatsoever. At worst, epistemic pluralism might prevent the rational resolution of conflicts of value *and* prevent any rational debate about what follows from the inability to resolve conflicts of value. What *modus vivendi* offers is a means of arriving at a partial, provisional, and unstable political resolution to enduring disagreement. This resolution may or may not be a liberal resolution. Whether *modus vivendi* is a liberal political theory is a contested issue among its proponents. John Gray, for example, sees *modus vivendi* as the true ‘face’ of liberalism and hopes to redirect liberal theory on a *modus vivendi* path. I do not claim, however, that politics will never be guided by liberal principles, but rather that liberal political principles are not guaranteed by a theory of *modus vivendi*. A political theory of *modus vivendi* does not undermine my general commitment to liberal principles, but it does undermine my commitment to the project of theoretically establishing liberal principles distinct from particular political circumstances. The consequence of this is that there is no liberalism beyond *modus vivendi* because there is no politics beyond *modus vivendi*.

The impossibility of justifying liberal principles, however, does not mark the end of the road for either liberal principles or for political theory: the ultimate upshot of epistemic pluralism is not philosophical apathy or political quietism. In fact, what I argue in Chapter 8 is that the only available response to epistemic pluralism is found in politics and political action. In short, the necessity of politics arises from the reality of epistemic pluralism. We turn to a political theory of *modus vivendi* not because it is the most normatively attractive option, but because *modus vivendi* is uniquely capable of responding to the disagreement engendered by epistemic pluralism. In this sense, a political theory of *modus vivendi* is a last resort: we turn to it because there is simply nothing else available once the depth of epistemic pluralism is recognised.² My advocacy of *modus vivendi* is not driven by a moral fervour that either politics or political philosophy is horribly mistaken; nor is it driven by a belligerent pessimism that we must see the world in all its ugliness in order to be realistic about it. It is driven, I hope, by a resigned but sanguine acceptance of moral complexity and a justified sense of uncertainty about one’s own value judgments as a theorist. A theory of *modus vivendi* is a theory which requires that we, in Talisse’s pragmatic phrase, ‘nonetheless

² Fabian Wendt has outlined four motivations for turning to a theory of *modus vivendi*. My only stated motivation is the reality of epistemic pluralism, which Wendt does not consider. Fabian Wendt, ‘Why Theorize *Modus Vivendi*?’ in Horton, Willems and Westphal (eds.), *The Political Theory of Modus Vivendi* (Dordrecht Springer: forthcoming 2017).

sally forth' in the face of the uncertainty and complexity that shroud our political and moral lives.³

The idea of a *modus vivendi* is not new. In many ways, *modus vivendi* has long been central to the history of political thought and has only faded from view during the twentieth century. *Modus vivendi* theorists identify with a web of thought, with Hobbes at the centre, which supports a conception of politics and political philosophy that diverges from the liberalism of Locke, Kant, and their philosophical descendants. As Chantal Mouffe writes, liberals have for a long time 'seen the solution to that problem [the problem of how to establish peaceful coexistence] in the creation of a *modus vivendi* or, following Schumpeter, a '*modus procedendi*' that regulates the conflict among different views'. Such a view of politics, as Mouffe sees it, suggests that democracy is a 'mere method for making public decisions' rather than a means of securing justice.⁴ This view of politics, which predates modern democracy, is one that contemporary theories of *modus vivendi* aim to revivify.

Modus vivendi, like liberalism, is not a monolithic body of thought. *Modus vivendi* can be invoked in support of liberalism, or it can be invoked to deny the specialness of liberalism; it can focus on the search for peace, or it can focus on the inevitability of conflict; it can be highly morally prescriptive, or barely moral at all. What follows is an outline of three contemporary conceptions of *modus vivendi*, and my criticisms of these conceptions, followed by the development of my own understanding of *modus vivendi*.

All three theories are motivated by the idea that we must agree to disagree, but diverge on what form this agreement can take. For example, if I think that torture is morally permissible in certain cases and you think that it is impermissible in all cases, then what follows from our second-order agreement to disagree? Would I be justified in campaigning for legislation that permits torture, despite knowing that you would find such legislation morally objectionable? Or would our agreement to disagree mean that both of us ought to refrain from advocacy? Does our agreement to disagree indicate that we accord one another some degree of respect, or does it simply mean that we both accept that the other party is immovably wrong and that further discussion is therefore

³ Talisse, *Pluralism and Liberal Politics*, p.108.

⁴ Mouffe, *The Democratic Paradox*, p.23.

pointless? The answers to these questions depend on how we conceive of a *modus vivendi*.

In assessing these three conceptions of *modus vivendi* I aim to distinguish my own conception by its differences and to develop a theory of *modus vivendi* that is compatible epistemic pluralism. Although all three *modus vivendi* theorists that I discuss here are closer to my own view than either Rawls or Gaus, this is not merely an exercise in splitting hairs. Just as the sharpest disagreements in philosophy are often between people who are broadly in agreement, so too are the differences here the most important, precisely because there is more at stake if *modus vivendi* really is the only game in town. I proceed by looking at three *modus vivendi* theorists: John Gray, Fabian Wendt, and John Horton.⁵ It is Horton's version of *modus vivendi* that my own conception shares most with, and which I go on to develop. But to see why this conception is the most compatible with epistemic pluralism it needs to be seen where other conceptions fail.

John Gray's value pluralist *modus vivendi*

The most well-known proponent of *modus vivendi* theory is John Gray. In *Two Faces of Liberalism* Gray builds on a Berlinian account of value pluralism to argue for a *modus vivendi* that pursues 'common institutions' in the absence of common values.⁶ Gray describes *modus vivendi* as the 'application of value-pluralism to political practice' and his conception of *modus vivendi* is an attempt to formulate a political theory on the basis of the truth of value pluralism.⁷ As I argued in Chapter 3, there are a number of significant problems with this approach, in particular the difficulty of relying on a highly controversial and disputed metaphysical thesis as a suitable basis

⁵ There are at least two other theories of *modus vivendi*, or *modus vivendi*-like theories, that could be included here. The first is David McCabe's liberal *modus vivendi*, which argues for a *modus vivendi* from distinctively liberal premises. Although McCabe offers an interesting interpretation of *modus vivendi*, his aim of defending liberal principles from the outset pursues a line of thought that I try to avoid here. Moreover, the criticisms that I level at Gray can be made against McCabe too, although in even stronger form. If Gray is wrong, as I argue he is, in his commitment to *modus vivendi* as a liberal theory then McCabe is also wrong and more plainly so. The second candidate for inclusion is Steven Wall's theory of 'constitutional settlements', his term for *modus vivendi* arrangements, which offers a conception of *modus vivendi* very similar to Horton's. As there does not seem to be much difference between Horton's view and Wall's view, and Wall only has one paper outlining his view in any detail, I focus on Horton's conception to avoid unnecessary complexity and repetition. See David McCabe, *Modus Vivendi Liberalism* (Cambridge: CUP, 2010); Steven Wall, 'Political morality and constitutional settlements', *CRISPP*, Vol.16, No.4 (2013), pp.481-499.

⁶ Gray, *Two Faces of Liberalism*, p.6.

⁷ *Ibid.*, p.25.

for political theory. Rather than restating these criticisms of value pluralism as a theory of value, it is worth affixing the argument against a value pluralist *political theory* directly to Gray's conception of a *modus vivendi*. Doing so will demonstrate both that his conception of *modus vivendi* cannot be disentangled from his commitment to value pluralism, and that such a reliance has undesirable and even incoherent consequences. Even if it were justifiable to begin with value pluralism, Gray's formulation of *modus vivendi* to meet the demands of value pluralism is unsustainable. It is the entanglement of *modus vivendi* with value pluralism that ultimately leads Gray to defend a form of *modus vivendi* that is constrained by various moral ideas, in particular the idea of toleration, which violate his commitment to value pluralism, and also my commitment to epistemic pluralism.

In Gray's telling, *modus vivendi* is a form of liberalism. More importantly, it is the true 'face' of liberalism. The other face, which is Gray's target, is the 'Enlightenment liberalism' of Kant and Rawls, which searches for a 'system of universal values'.⁸ Each of these two faces represents a different conception of toleration. On the Enlightenment face, toleration is 'the pursuit of an ideal form of life', whereas the *modus vivendi* face sees toleration as 'the search for peace among different ways of life'.⁹ For Gray, we must turn away from this first face and instead embrace toleration as peaceful diversity. Gray makes the point that proves his undoing when he writes that like 'any political philosophy, *modus vivendi* articulates a view of the good. It is an application of value-pluralism to political practice'.¹⁰ The practice of value pluralism in politics centres on the idea of providing 'common institutions in which many forms of life can coexist'.¹¹ The role of common institutions is to ensure the conditions of peace and security that enable the coexistence of conflicting beliefs and lifestyles. What this leads to is an acceptance of 'a second-best quality' in which the political structure 'is not what any citizen would ideally choose' but which they endorse 'on the grounds that it secures peace amongst radical disagreement and conflict'.¹² Gray's value pluralism leads him to understand *modus vivendi* as a political means of securing toleration, conceived in a minimal way to mean the peaceful coexistence of incommensurable ways of life.

⁸ Ibid., p.138.

⁹ Ibid., p.2.

¹⁰ Ibid., p.25.

¹¹ Ibid., p.26.

¹² Matt Sleat, *Liberal Realism: A Realist Theory of Liberal Politics* (Manchester: Manchester University Press, 2013), p.96.

Common institutions are a means of securing toleration rather than the institutionalised expression of common values. The distinction between common institutions and common values maps onto Gray's distinction between the 'two faces' of liberalism, in which common institutions protect the diversity of values, whereas Enlightenment liberalism suppresses diversity in the name of universal values.

Gray often writes as if the ideas of value pluralism, toleration, and *modus vivendi* form part of a natural anti-Enlightenment whole, and that a commitment to one entails a commitment to the other two. At other points, these three ideas seem almost interchangeable. He claims that *modus vivendi* 'expresses the belief that there are many forms of life in which humans can thrive' and that among these forms 'there are some whose worth cannot be compared'. When such 'ways of life are rivals, there is no one of them that is best'.¹³ What this seems to describe is not *modus vivendi* at all, but rather a conception of value pluralism as instantiated by 'ways of life'. The blurring of these conceptual lines is indicative of the problems faced by Gray's conception of *modus vivendi*. Gray believes that we can move seamlessly from value pluralism to toleration, and ultimately to a *modus vivendi* that reflects these two prior commitments. His desire to formulate a political theory from the starting point of value pluralism begins a series of steps that lead him to endorse a half-hearted conception of *modus vivendi* that is incompatible with his critique of Enlightenment liberalism.

As I discussed in Chapter 2, Gray's conception of value pluralism is not fully shared with all value pluralists, although the differences are slight. Like all value pluralists, however, Gray's value pluralism describes a non-contingent fact. For Gray, this is the fact that there are 'ways of life' that 'will always be different' some of which 'cannot be compared in worth'.¹⁴ These ways of life instantiate plural values which are similarly incommensurable and conflicting. Between these ways of life there can be no rational evaluation, and there is no standpoint outside of these ways of life from which to judge their worth. This notion of value pluralism is, for Gray, tied to human diversity rather than to the diversity of values themselves, but the outcome is the same: there is not a single ideal way of life. This position expresses the ubiquitous anti-perfectionist liberal acceptance of diverse comprehensive doctrines but in value pluralist terms. As a result, it is wholly compatible with the Enlightenment liberal thought of Rawls that Gray takes

¹³ Gray, *Two Faces of Liberalism*, p.5.

¹⁴ *Ibid.*, pp.34-35.

as his target. Where Gray's value pluralism leads him to differ, is in the application of value pluralism to the notion of toleration.

Value pluralism is 'an historical fate', 'our common condition', and an 'account of ethical life as we find it'.¹⁵ Gray moves from this descriptive claim of what value pluralism is, to the normative claim that the diversity that results from value pluralism ought to be protected. There is no justification offered for this move, nor is there any defence of his shift from descriptive to normative, without any mediating principles or values, such as moral autonomy. Putting those issues to one side, Gray argues that the protection of pluralism is achieved through toleration. Toleration for Gray is not simply a passive acceptance of diversity, but rather the active protection of that diversity. This is where Gray's preferred face of liberalism distinguishes itself from the Enlightenment face. Whereas the Enlightenment face tolerates diversity as a means to truth, his face has no such telos. For Gray, the ends of diversity are diversity itself. This leads him to conclude that if 'liberalism has a future, it is in giving up the search for a rational consensus on the best way of life'.¹⁶ Not only is such a search futile once the truth of value pluralism is recognised, but even the search itself jeopardises the diversity that Gray prizes.

When Gray moves from value pluralism as a theory of value, to toleration as a political value, he assumes that toleration must provide the conditions for value pluralism to flourish. This might not on the face of it seem troubling, until it becomes apparent that Gray not only wishes to see value pluralism protected, but also that the means through which value pluralism can be protected is through the public acceptance of value pluralism as a metaphysical truth. The public acceptance of this truth is, as I argued in Chapter 4, made difficult by its controversial status. As Gray admits, *modus vivendi* 'articulates a view of the good'.¹⁷ The 'good' in this case is value pluralism, or the diversity of ways of life that results from value pluralism. As Bacon puts it, Gray's view of the good 'stems from a recognition of value pluralism that takes the good to be irreducibly plural and accordingly holds that it is diminished by any attempt to reduce pluralism. Any legitimate *modus vivendi* requires that citizens see that the good is

¹⁵ Ibid., pp.34-35.

¹⁶ Ibid., p.1.

¹⁷ Ibid., p.25.

plural'.¹⁸ Put another way, *modus vivendi* 'requires citizens to revise their own moral doctrines to accommodate value pluralism'.¹⁹ Toleration, for Gray, must be characterised by an acceptance of the truth of value pluralism. This is troubling because it seems to violate the very diversity of ways of life that Gray wishes to protect from the uniformity of value espoused by Enlightenment liberalism. By building his notion of toleration around value pluralism Gray commits himself to the view that 'all conflicts about rival claims about the best life for humankind are collisions of illusions'.²⁰ That all universal religions fall under this category of 'illusions' is not, as Horton puts it, 'an obviously promising basis for a politics of *modus vivendi*' precisely because it excludes from the scope of toleration all those who reject Gray's value pluralist notion of toleration.²¹ Given Gray's antipathy towards humanism²² and 'new atheism',²³ it should worry him that his conception of toleration excludes those whom he explicitly wishes to include in his anti-Enlightenment face of liberalism. Gray attempts to rebuff this criticism by denying the close relationship between value pluralism, toleration, and *modus vivendi*. He claims that 'value-pluralism does not strictly entail *modus vivendi*. As a matter of logic, value-pluralism cannot entail any political project'.²⁴ As Talisse puts it, this claim is 'truly puzzling' considering the apparent entailments that Gray draws between value pluralism, toleration, and *modus vivendi* elsewhere.²⁵ The reason that Gray wants to deny a strict entailment is precisely because his argument for *modus vivendi* is reliant on a public acceptance of value pluralism as true. This acceptance, as Talisse, Bacon, and Horton all point out is incompatible with the diversity he aims to protect. Although Gray acknowledges this criticism he claims that *modus vivendi* does not 'aim to convert the world to value pluralism'.²⁶

Although this difficulty is damaging to Gray's conception of *modus vivendi*, the particular criticism that I want to level at Gray's idea of *modus vivendi* does not dwell on this point in isolation, but rather focuses on how this understanding affects Gray's

¹⁸ Michael Bacon, 'Breaking Up is Hard to Do: John Gray's Complicated Relationship with the Liberal Project', *Social Theory and Practice*, Vol.36, No.3 (2010), p.375.

¹⁹ Talisse, *Pluralism and Liberal Politics*, p.81.

²⁰ Gray, *Two Faces of Liberalism*, p.21.

²¹ John Horton, 'John Gray and the Political Theory of *Modus Vivendi*' in Horton and Newey (eds.), *The Political Theory of John Gray* (Oxford: Routledge, 2007), p.47.

²² John Gray, *Straw Dogs* (London: Granta, 2002).

²³ John Gray, 'What scares the new atheists' in *The Guardian* (03/03/2015).

²⁴ *Ibid.*, p.135.

²⁵ Talisse, *Pluralism and Liberal Politics*, p.77.

²⁶ Gray, *Two Faces of Liberalism*, p.25.

conception of toleration. If the point of toleration is to protect diversity then the *modus vivendi* will only be legitimate if it is capable of protecting the diversity that results from value pluralism. On Gray's view, *modus vivendi* aims not only to find a workable political arrangement despite value disagreement, but also to allow the flourishing of diverse ways of life, some of which may be non-liberal ways of life. He writes that 'people who belong to different ways of life need have no disagreement. They may simply be different'.²⁷ As the previous critique indicated, Gray builds into his understanding of *modus vivendi* the assumption that those ways of life must not impinge upon others. This leads Gray to introduce certain limits on what can count as a legitimate *modus vivendi*. If the purpose of a *modus vivendi* is to secure the toleration of diversity, then many forms of an agreement to disagree will not suffice. Only those versions of *modus vivendi* that protect diversity are for Gray legitimate. His commitment to the protection of diversity leads him to reintroduce universal liberal constraints of the sort he had previously denounced and renounced.

In order to avert the possibility that a *modus vivendi* could legitimise political agreements that fail to protect diversity, Gray introduces the idea of a 'universal minimum of generically human values'.²⁸ He argues that 'every human being is at risk from evils that can make any kind of good life difficult, or impossible'.²⁹ Gray claims that 'to be tortured, or forced to witness the torture of loved ones or compatriots; to be separated from one's friends, family or country; to be subjected to humiliation or persecution, or threatened with genocide; to be locked in poverty or avoidable ill-health...are great evils for all who suffer them'.³⁰ These evils are twinned with universal goods which might include 'freedom from the threat of violent death, such virtues as human sympathy, and such norms as are embodied in the ideas of fairness'.³¹ That these goods and evils are 'generically human' allows Gray to claim that they are universal in an empirical rather than normative way. Gray is at pains to emphasise that to 'affirm the reality of universal human goods and evils is not to endorse a universal morality'.³² It is 'the constancy with which these experiences are found, across remote

²⁷ Ibid., p.5.

²⁸ Ibid., p.24.

²⁹ Ibid., p.66.

³⁰ Ibid., p.66.

³¹ John Gray, *Enlightenment's Wake: Politics and Culture at the Close of the Modern Age* (London: Routledge, 1995), p.122.

³² Gray, *Two Faces of Liberalism*, p.67.

cultures and distant epochs' that demonstrates their universality, not any 'consensus of belief'.³³ The universal minimum of what is good and what is bad for human flourishing springs directly from human nature, which for Gray is both readily apparent and essentially uncontroversial. While the appeal of a universal minimum is clear, it is also clear that it cannot be maintained in conjunction with the value pluralism that inspires it. If value pluralism tells us that there are many valuable ways of life that are incommensurable, then Gray cannot then invoke an idea of universal goods to limit which of those ways of life are permissible without violating his commitment to value pluralism. He attempts to obviate this criticism by drawing a distinction between universal goods and evils and a universal morality. According to Gray,

Universal values are compatible with many moralities, including liberalism as it has been understood by recent philosophers who take their cue from Locke or Kant; but they underdetermine them all. There is no one regime that can be reasonably imposed on all. Even minimal standards can be met in different ways. Minimally legitimate regimes need not, and often do not, protect the same basic rights. Like the universal evils they are framed to prevent, basic rights conflict with one another. Such conflicts can rightly be settled in a variety of ways.³⁴

Gray's philosophical sleight of hand here does not absolve him of the criticism that he seeks to avoid. That 'minimal standards can be met in different ways' distracts from the actual point of controversy that there are minimal standards in the first place. That there are a variety of ways in which I could become a footballer or a violinist, does not entail that those standards are themselves fully malleable. If I cannot kick a ball or pull a bow across the strings then I fail to reach the required standard to be considered a footballer or a violinist. There might be more than one way to skin a cat, but a shaggy dog is not going to meet the standard. Similarly, the plurality of means to some ends does not mean that the ends are themselves plural. Consequently, Gray's distinction between 'universal human goods and evils' and 'a universal morality' collapses. Standards are standards regardless of how minimal they might be. Value pluralism brings into question the idea of universal standards *per se*, not a lesser question about thickness of standards. Gray levels the critique that he succumbs to when he writes, 'if

³³ Ibid., p.66.

³⁴ Ibid., p.67.

ethical life contains conflicts of value that are rationally undecidable, that is a truth we must accept — not something we should seek to tidy away for the sake of theoretical consistency'.³⁵ Gray's constrained *modus vivendi* tidies away the real problem of non-erroneous disagreement by introducing limits that curb what counts as a legitimate *modus vivendi*. Although Gray's limits do not explicitly prevent a non-liberal *modus vivendi* from counting as legitimate, a non-liberal *modus vivendi* would still need to meet the minimum moral requirement to be considered legitimate. It is hard to see how a theory that required the prevention of Gray's evils would not be in some significant sense a liberal theory. To avoid Gray's universal evils a legitimate regime would need to ensure the prevention of torture (bodily integrity), the avoidance of persecution on religious, sexual, or ethnic grounds (a principle of non-discrimination), the avoidance of permanent poverty (some principle of redistribution), the right to see one's family and friends (freedom of association). If we look at Gray's list of evils in this way then what we end up with is some, although not all, of the basic principles that any standard liberal theory endorses. Because he believes that 'universal human values' imply 'constraints on what can count as a reasonable compromise between rival values', Gray ultimately restates the liberal belief that only political arrangements that protect basic liberal freedoms can count as legitimate.³⁶ As Bacon writes, 'if pluralism is as pervasive as he believes — so much so that the universalistic liberal project is unable to be carried out because it is unable to accommodate pluralism — it is not possible to identify a universal standard alongside that plurality'.³⁷ In other words, Gray can either have pluralism *or* a constrained *modus vivendi*, but not both. The point of turning to *modus vivendi* in the first place was to find a political theory that is compatible with epistemic pluralism. If the choice that confronts theorists is a choice between a pluralist *modus vivendi* and a morally-constrained *modus vivendi*, then the choice is clear: a morally-constrained *modus vivendi* must be abandoned.

Fabian Wendt's *modus vivendi* of peace

Fabian Wendt has developed a conception of *modus vivendi* around the dual pillars of compromise and peace. More precisely, Wendt sees *modus vivendi* as a theory that is

³⁵ Ibid., p.35.

³⁶ Ibid., p.20.

³⁷ Bacon, 'Breaking Up is Hard to Do: John Gray's Complicated Relationship with the Liberal Project', p.378.

motivated by the search for peace and compromise as the means of securing it.³⁸ This takes Gray's idea of toleration as 'peaceful coexistence', but abandons Gray's value pluralist grounding and with it the focus on toleration. For Gray, the point of peace is to ensure value pluralist toleration, whereas Wendt aspires to peace as an end in itself. By avoiding the value pluralist route, Wendt also avoids the problematic line of thought from value pluralism through toleration, that leads Gray to endorse a morally-constrained form of *modus vivendi*. For Wendt, *modus vivendi* arrangements are 'institutions that enable us to live together in peace under circumstances of disagreement and conflict'.³⁹ As a result, 'modus vivendi arrangements are the instruments to realize peace' where peace is defined as 'the stable absence of violence'.⁴⁰ Elsewhere he connects these two ideas in order to describe peace as 'something that requires nothing more than a compromise on non-violent coexistence'.⁴¹ Peace is achieved through *modus vivendi* arrangements born of compromises between parties who disagree. *Modus vivendi* arrangements are necessarily compromises because 'all parties regard some other arrangement as optimal but prefer finding agreement to finding no agreement on any arrangement at all, they make concessions and end up at an agreement on an arrangement each party regards as sub-optimal (but acceptable). Every party therefore accepts the arrangement as a 'second-best option''.⁴² Like Gray, Wendt sees a *modus vivendi* as a political arrangement that fulfils certain moral values. Also like Gray, that value is not justice. For Wendt, the motivating value of a *modus vivendi* is peace. It is Wendt's conception of *modus vivendi* as a political theory of peace that I find problematic. I proceed by outlining Wendt's conception of peace in a *modus vivendi* in more detail, before offering some connected criticisms of his conception. I argue that although peace is a necessary precondition of a *modus vivendi*, it is not the *sine qua non* of *modus vivendi* as Wendt understands it.

Wendt claims that peace 'is a moral value both because it has specific and non-specific instrumental value for almost everyone and because it has intrinsic value'.⁴³ To unpack

³⁸ Fabian Wendt, 'Peace beyond compromise', *CRISPP*, Vol.16, No.4 (2013), p.579.

³⁹ Fabian Wendt, 'The Moral Standing of *Modus Vivendi* Arrangements', *Public Affairs Quarterly*, Vol.30 (2016), p.351.

⁴⁰ Wendt, *Compromise, Peace, and Public Justification*, pp.77-78.

⁴¹ Wendt, 'Peace beyond compromise', p.580.

⁴² Wendt, *Compromise, Peace, and Public Justification*, p.8.

⁴³ *Ibid.*, p.248.

these claims briefly, what Wendt means by ‘non-specific’ instrumental value is that peace is a ‘precondition for being able to pursue one’s life projects’ whatever they may be.⁴⁴ It is non-specific in the sense that one does not need to know the details of one’s own life project in order to know that peace will be a pre-requisite for the successful fulfilment of that project. By ‘specific’ instrumental value Wendt means that peace has value because ‘it gives people a sense of security’. Why the value derived from a sense of security is qualitatively different to the value derived from the partial assurance granted by peace that one will be able to pursue one’s life projects is not made clear, but this is not of real importance here. Finally, the reason that peace is intrinsically valuable is that, as Wendt simply puts it, ‘violence is bad’.⁴⁵ This follows from his definition of peace as the ‘stable absence of violence’. If violence is intrinsically bad then the absence of violence, i.e. peace, is intrinsically good. For Wendt, a *modus vivendi* is not limited to peace and it may well include greater or fewer moral ideas, depending on what can be agreed upon by the deciding parties. That a *modus vivendi* might reflect other moral values is significant, but ought not to distract from the central point that peace is the defining characteristic of Wendt’s *modus vivendi*.

Having briefly set out Wendt’s idea of peace in a *modus vivendi* I now discuss the difficulties faced by Wendt’s conception. Wendt claims that the ambition of his project is to replace justice with the ‘more realistic goal’ of peace as the ‘first virtue of social institutions’.⁴⁶ The reason that peace is a more realistic basis for political agreement is that ‘it is in the interest of almost everyone’.⁴⁷ It is easy to agree with Wendt that peace is of significant value and, perhaps more tentatively, agree that a recognition of the value peace is more widely shared than any particular conception of justice. Nevertheless, peace is only one value amongst many, and there does not seem to be any good reason to think that peace will always prevail over the other values held by the relevant parties. Gray addresses this point when he asks,

When peace and justice are rivals, which is worse, war or injustice? Neither has universal priority. Peace may be more urgent than justice; the claims of justice may override the immediate needs of peace. In conflicts of this kind,

⁴⁴ *Ibid.*, p.87.

⁴⁵ *Ibid.*, p.85.

⁴⁶ Wendt, ‘Peace beyond compromise’, p.573.

⁴⁷ Wendt, *Compromise, Peace, and Public Justification*, p.90.

people need not differ about the content of the good or the right. Where they differ is on how their rival claims are to be reconciled.⁴⁸

One need not endorse the value pluralist reasoning that underpins Gray's argument in order to agree with the central point. One potential difficulty with Wendt's notion of peace is that it seems to suggest that while there cannot be a consensus on political principles there can nevertheless be a consensus on peace. Sleat identifies this as a key failing of *modus vivendi* theory. He claims that a *modus vivendi*, which he lumps together with Shklar's liberalism of fear, relies on 'agreement on what the minimal universal human goods or evils of peace or fear consist of'. The universal good of peace is, however, a matter 'on which people disagree', meaning that 'it is questionable whether these commitments [to peace] are really as universal and pervasive' as *modus vivendi* theorists assume.⁴⁹ To be compatible with epistemic pluralism there cannot be a *summum bonum* to which a *modus vivendi* appeals. Although peace offers perhaps the most widely shared normative commitment, it is not universally shared. Epistemic pluralism precludes the possibility of there being any value which trumps all others all the time for all people, regardless of how seemingly innocuous that value is. The agreement that is reached in a *modus vivendi* is not tantamount to a consensus on peace. If that is all that a *modus vivendi* amounts to then it does nothing more than replicate the structure of liberal theory, albeit in a more realistic (or unambitious) way.

Wendt is alive to this criticism and criticises Chandran Kukathas's conception of peace as 'not realistic' precisely because it too closely resembles a consensus on peace. Wendt proposes a 'realism requirement' for conceptions of peace that peace 'should be conceptualized as being possible without any moral consensus'.⁵⁰ He expands on this in his own explanation of the prudential rather than moral character of his conception of a *modus vivendi*:

No specific content is claimed by the conception of peace beyond an arrangement that secures stable, non-violent coexistence. And because peace is built on a compromise, we have no presupposed consensus on morality. The involved parties are allowed to agree on the arrangements for purely prudential reasons. Because most people actually have an interest in finding peaceful relations with others, most people *will* have prudential reasons to agree to some compromise on non-violent coexistence. Peace, therefore, does not presuppose moral consensus and seems to be feasible

⁴⁸ Gray, *Two Faces of Liberalism*, p.7.

⁴⁹ Sleat, *Liberal Realism*, p.103.

⁵⁰ Wendt, 'Peace beyond compromise', p.584.

because most people will have prudential reasons to search for compromise on non-violent coexistence.⁵¹

While Wendt's conception of peace is not the consensus on peace that he criticises in Kukathas's work,⁵² he nevertheless places too much emphasis on the role of peace in a *modus vivendi*. He writes that peace 'cannot be understood as the mere momentary absence of violence or as a very fragile absence of violence. Peace is not truce'.⁵³ Peace as truce, though, is what *modus vivendi* should aspire to. Wendt seems to acknowledge this when he claims that peace 'is the absence of violence *despite* persistence of conflict'.⁵⁴ This is exactly what a truce achieves. The conflict continues, ideally through politics if the *modus vivendi* is successful in achieving a workable arrangement, but it is not suspended. The motivating force behind a *modus vivendi* is that disagreements about value cannot be settled by reason, and the aim of a *modus vivendi* is to find a way to continue that disagreement in such a way that limits the damage done to all affected parties. This mirrors the idea of a truce between warring nations in that the conflict has not ended — the war goes on — but certain actions are suspended in the interests of mutual benefit. The problem here arises from Wendt's characterisation of peace as the *stable* absence of violence. It is not enough for Wendt that there is not pervasive violence, he also requires that the absence of violence is in some sense stable. By caveating the absence of violence with a stability requirement Wendt turns a minimal conception of peace into a thicker (and thus more controversial) conception of peace.

There is a hard balance to be struck here. A *modus vivendi* aims to avoid invoking premises that are not widely shared (due to pluralism) and in so doing, avoid the various moral controversies that result from pluralism. It is understandable then, that *modus vivendi* theorists attach so much importance to one of the few values, peace, which a theory of *modus vivendi* seems to permit. Although *modus vivendi* must find something solid on which to build its theory, those foundations should still be as minimal as possible. On Wendt's conceptualisation of peace, however, he risks turning 'peace' into a substitute for 'cooperation'. While cooperation is certainly valuable (and necessary for politics to operate), the possibility of cooperation is the very thing that is at stake in a *modus vivendi* negotiation. Are you, as a citizen, willing to agree to cooperation under

⁵¹ Ibid., p.580.

⁵² Chandran Kukathas, *The Liberal Archipelago* (Oxford: OUP, 2003).

⁵³ Ibid., p.75.

⁵⁴ Ibid., p.78.

these terms, or are you unwilling? As Wendt notes, ‘there can also be relatively stable peace without genuine cooperation’ when ‘all parties have a deep-rooted disposition to mind their own business and to let other people live their own way’.⁵⁵ Wendt’s thicker conception of peace as cooperation conflates the point of achieving peace, which is as a means to cooperation, with peace as cooperation itself. It may be the case under certain *modus vivendi* arrangements that the *modus vivendi* arrived at is one of minimal cooperation: you stay out of my way and I’ll stay out of yours. This might be in cases where there are significant and exclusionary religious minorities, such as the Amish communities in the United States. Even in cases without exclusionary minorities, we can still imagine that the relevant parties can agree to peace, understood as the absence of violence, without agreeing in a second step to cooperate. Just because I want to protect myself from your violence and you want to protect yourself from mine, does not give sufficient grounds to think that we will also be willing to work together on joint political projects. The ‘stable absence of violence’, not conceived of as a truce, but rather as something more enduring, presupposes an affirmative answer to the question that a *modus vivendi* asks, when no affirmative answer can be given.

If my critique of Wendt’s understanding of peace holds, then his thicker conception of peace is not the only version of peace that is acceptable in a *modus vivendi*. Although the achievement of peace is a condition of a *modus vivendi*, peace is not the master-value of a *modus vivendi*; it is not, to recall the terminology of value pluralism, the *summum bonum*. Similarly, anarchy or war or whatever results from the absence of an agreement is not the *summum malum* of a *modus vivendi*. Peace is not a *sine qua non* for a political theory of *modus vivendi*. Although peace is highly desirable given the background of moral disagreement, there will be a variety of circumstances in which no *modus vivendi* will be reached and peace will not be achieved. The relevant parties may prefer the internecine absence of politics to a *modus vivendi* and a theory of *modus vivendi* should not prohibit that outcome. In both the bargaining procedure of the *modus vivendi* and in the arrangement arrived at through the bargaining procedure, peace will be one option available to the relevant political agents. In order for there to be a choice, peace cannot be built into the agreement, instead it is arrived at (or not arrived at, as the case may be) through the political process. As Wendt notes, ‘peace and public justification are important moral values, but they are just two moral values among

⁵⁵ Fabian Wendt, *Compromise, Peace, and Public Justification*, p.77.

others'.⁵⁶ Relatedly, violence is generally an evil, but it is not always the highest evil. There may be an array of circumstances in which I would be willing to endure violence if the failure to endure it would require me to sacrifice some other good. The most obvious example of this would be in cases of rebellion against an oppressive dictator. It seems highly plausible that I, as an opponent of the dictator, would rather endure further violence than concede political authority to my oppressor. A theory of *modus vivendi* should make no attempt to secure peace in a pre-political way and the continuing possibility that peace will succumb to violence is in fact essential to the normative appeal of a *modus vivendi*, as I argue in Chapter 8.

A *modus vivendi* is an agreement on there being such a thing as politics, for which peace is a necessary condition. A Leninist or an anarchist may have little interest in agreeing to peace if the conditions of that peace fail to live up to her own political principles. She can nevertheless agree to a *modus vivendi* that is deeply unsatisfactory from the standpoint of her own moral and political values because she wants to get some form of politics up and running, if only for prudential reasons. For Horton, a *modus vivendi* 'does not imply that peace and security exhaust political concerns (and necessarily so), but they do have a special place as peculiarly fundamental goods of politics'.⁵⁷ This peculiarity is not moral peculiarity, however: peace is not a universally shared moral commitment capable of generating consensus. Peace and security are instead peculiar because they are the necessary conditions for having such a thing as politics, as we recognise it around here, in the first place. Wendt's failure to recognise this important truth about *modus vivendi* leads him to his thicker, and ultimately unsustainable, conception of *modus vivendi* as a theory of peace.

The criticisms that I have presented of Wendt might give the impression that I find little of value in his understanding of *modus vivendi*. In fact, Wendt's political theory is closer to my own than any theorist I have examined in the thesis thus far. Wendt's response to pluralism is more coherent than both Rawls's and Gaus's responses in Chapters 5 and 6. My criticism of his conception of peace is really a criticism of the weight he attaches to peace as a value. His minimal understanding of peace as 'the absence of violence', shorn of the stability caveat is, I think, the correct way to think of

⁵⁶ Ibid., p.248.

⁵⁷ John Horton, 'Realism, liberal moralism and a political theory of *modus vivendi*', *European Journal of Political Theory*, Vol.9, No.4 (2010), p.438.

political peace in a *modus vivendi* and one that my own conception shares. Even closer to my own view, however, is John Horton's version of *modus vivendi* to which I now turn.

John Horton's political *modus vivendi*

Apart from Gray, John Horton has been the most prominent and consistent defender of *modus vivendi* theory over the last twenty years. It is noteworthy then that Horton's conception of *modus vivendi* arises, in part, out of his critique of Gray's conception. As I outlined in the section on Gray, Horton is sceptical about the value pluralist foundations of Gray's *modus vivendi*. Instead, the motivation for turning to a *modus vivendi* in Horton's account is the fact of disagreement *per se*, rather than any form of moral pluralism. For Horton, it is 'the persistence of disagreement that matters' and implicitly not the metaethical grounds of that disagreement.⁵⁸ Horton makes the important point that a theory of *modus vivendi* is not solely motivated by the conflict of values, but can also be explained and justified in terms of conflicts of interests. As he points out, a common sort of political conflict 'arises precisely where a value is shared, but there is not enough of it to satisfy everyone who wants it'.⁵⁹ As Chapter 4 indicates, I do not follow Horton in thinking that the brute fact of political disagreement is a suitable or sufficient basis on which to build a political theory. Having said that, nothing much hinges on this disagreement. Unlike Gray's value pluralism, Horton's grounding in brute disagreement does not have deleterious consequences for his conception of *modus vivendi*.

Horton's *modus vivendi* is, as he describes it, a 'nascent idea' in need of significant additions and revisions.⁶⁰ As Horton writes in his sketch of a theory of *modus vivendi*, his account is 'not without its problematic aspects and certainly more work needs to be done on the theory before any potential it may have can be properly assessed'.⁶¹ Although the 'sketch' that Horton offers is brief, it is not nascent in the sense he suggests.⁶² In fact, Horton's conception of *modus vivendi* is the most complete, precisely because it is least determinate. Horton accepts that his theory is 'very thin in terms of any substantive content, and leaves much more open to the workings of

⁵⁸ John Horton, 'John Gray and the Political Theory of Modus Vivendi', p.48.

⁵⁹ *Ibid.*

⁶⁰ Horton, 'Realism, liberal moralism and a political theory of *modus vivendi*', p.432.

⁶¹ *Ibid.*, pp.437-438.

⁶² Horton, 'Realism, liberal moralism and a political theory of *modus vivendi*', pp.431-448.

whatever political processes are operative in determining the shape of any actual settlement'.⁶³ This might seem an odd thing to say in favour of a theory, but *modus vivendi* does not aspire to be like other political theories. Its minimalism, and the indeterminacy of its prescriptions, are deliberate responses to the disagreements that make such a theory necessary in the first place. As Steven Wall writes of his own theory of constitutional settlements, 'any general account...is bound to look incomplete' because 'different political societies must fashion their own settlements and these settlements will reflect a whole range of historically contingent factors'.⁶⁴ Were a theory of *modus vivendi* to look 'complete' it would almost certainly be incompatible with epistemic pluralism. Horton's modesty about his own conception of *modus vivendi* therefore belies the significance of his thought. Although there is indeed some work to be done to flesh out his conception, it is Horton's version of *modus vivendi* that I develop and draw on to outline my own understanding.

Horton conceives of *modus vivendi* as a theory of legitimacy. He defines a theory of *modus vivendi* as,

a conception of legitimate political arrangements conceived as the practical outcome of processes of negotiation, bargaining and compromise prompted by conflict and disagreement, which at a particular point in time cannot be resolved in such a way that the parties no longer continue to disagree about the merits of whatever is at stake.⁶⁵

Although both Gray and Wendt frequently discuss political legitimacy in relation to *modus vivendi*, neither specifies that a theory of *modus vivendi* is a theory of legitimacy.⁶⁶ This can be seen more clearly when Horton writes that he takes legitimacy to be the 'first virtue of political institutions'.⁶⁷ Recall that for Wendt it is peace, not legitimacy, which is the first virtue of social institutions. This conceptualisation of a *modus vivendi* immediately alters the way in which we think about what a *modus vivendi* aims to achieve. Where Gray and, to a lesser extent Wendt, talk about *modus vivendi* in relation to other values that are not obviously directly political, Horton's conceptualisation is political in the first instance. Legitimacy is a virtue of political institutions and of political relations between individuals and between individuals and

⁶³ Horton, 'Towards a Political Theory of *Modus Vivendi*' (working paper), p.10.

⁶⁴ Wall, 'Political morality and constitutional settlements', p.486.

⁶⁵ Horton, 'Towards a Political Theory of *Modus Vivendi*', p.6.

⁶⁶ See Gray, *Two Faces of Liberalism*, pp.106-110; Fabian Wendt, *Compromise, Peace, and Public Justification*, pp.237-246.

⁶⁷ Horton, 'Towards a Political Theory of *Modus Vivendi*', p.1.

the state. As Peter Jones notes of Horton's understanding of legitimacy, the 'legitimacy of a regime turns on how it is regarded by its population' and not on 'its intrinsic quality'.⁶⁸ This might seem to be a superfluous point given that all three theories of *modus vivendi* are *political* theories, but it is significant insofar as political theories, in keeping with the argument made in Chapter 4, should abstain as much as possible from taking a stance on controversial moral doctrines. Horton's *modus vivendi* is, to put it in Rawlsian terms, 'political not metaphysical' from the ground up, and as a result, is appropriately freestanding.

Although Horton's *modus vivendi* is 'political' in the way I just outlined it is not devoid of all normative content. He acknowledges that his theory is to 'some extent' descriptive, but a *modus vivendi* 'does not pretend to be entirely lacking such a normative dimension'.⁶⁹ Like Wendt, Horton claims that '*modus vivendi* is, at its best and irredeemably, second rate', but 'it is not so bad for all that'.⁷⁰ The mingling of the descriptive and normative is by design, rather than accident, and is motivated by a desire to encourage 'greater acceptance of the ways politics is, and *to some extent* has to be in any world at all like ours'.⁷¹ In this sense, Horton's conception of *modus vivendi* differs markedly from Gray's claim that a *modus vivendi* 'articulates a view of the good'. Because Horton's *modus vivendi* is political from the outset, the moral good does not feature. Like Wendt, Horton avoids the troublesome route that Gray takes from value pluralism to a constrained *modus vivendi*. Although Horton and Gray seem to be in opposition on this point, at some points Gray indicates a far more sympathetic view of the descriptive imperative in political theory. Gray writes that,

the task of political philosophy is not to give practice a foundation. It has never had one in the past, yet somehow the human species has stumbled on. The aim of political philosophy is to return to practice with fewer illusions. For us this means shedding the illusion that theories of justice and rights can deliver us from the ironies and tragedies of politics.⁷²

Although I argued that Gray does not succeed in shedding his own illusions, it is this vision of political theory that Horton is guided by, and which informs his understanding of the relationship between the descriptive and the normative.

⁶⁸ Peter Jones, 'The Political Theory of *Modus Vivendi*', *Philosophia*, Vol.45 (2017), p.447.

⁶⁹ *Ibid.*, p.3.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, p.4.

⁷² Gray, *Two Faces of Liberalism*, p.139.

Horton identifies two aspects of a *modus vivendi*: what he calls the ‘form’ and the ‘content’. These are not wholly discrete aspects of a theory of *modus vivendi*, but the division of work provides a useful way of outlining Horton’s conception. Firstly, the ‘form’ of a *modus vivendi* is that it must, ‘in some sense, be ‘acceptable’ or ‘agreeable’ to the various parties subject to it, and thus not a situation that is maintained *entirely* through coercion’.⁷³ It is worth noting that Horton is careful to avoid the phrase ‘agreed to’, preferring instead ‘agreeable’ or ‘acceptable’ in order to pre-empt any objections that a theory of *modus vivendi* is nothing more than a reheated theory of consent-based political obligation.⁷⁴ What does it mean for the *modus vivendi* to be ‘acceptable’ to the relevant parties? Acceptance here is an acceptance of political authority. While that implies that the parties accept the principles that have been reached, they are accepting the authority itself rather than the principles. Although ‘an actual *modus vivendi* is highly unlikely to be what any of the parties most desire — it is not their first choice — they nonetheless accept it as legitimate; that is, they accept that it has not *simply* been coercively imposed on them. And in accepting it as legitimate they thereby acknowledge that, at least in general terms, it has authority’.⁷⁵ To clarify the conceptual lines here, a *modus vivendi* must be acceptable, which means that those subject to the arrangement accept that the institutions of the *modus vivendi*, i.e. the state, exercise legitimate authority over them. Horton emphasises the presence, but not dominance of coercion in a *modus vivendi* because his conception of *modus vivendi* ‘does not preclude coercion and the threat of force from having *any* role in the creating and maintaining of a *modus vivendi*’.⁷⁶ The point of allowing at least some coercion into a *modus vivendi* is that coercion, or the threat of coercion at least, may well be one way in which a *modus vivendi* is capable of commanding widespread acceptance. Sometimes the reason that it will be prudent for people to agree to a *modus vivendi* is that not agreeing might lead to violence, political exclusion, imprisonment, and death. By agreeing to a *modus vivendi* the relevant party hopes to avoid these outcomes. The point here is that we can imagine a political arrangement that is maintained *entirely* through coercion and is therefore acceptable *only* on the basis that failure to accept it would lead to violence, exclusion, imprisonment and so on. A situation maintained

⁷³ Horton, ‘Towards a Political Theory of *Modus Vivendi*’, p.7.

⁷⁴ I will use the terms ‘acceptable’/‘acceptance’ and not ‘agreeable’ to avoid confusion.

⁷⁵ Horton, ‘Towards a Political Theory of *Modus Vivendi*’, p.7.

⁷⁶ *Ibid.*, p.7.

entirely through coercion would not be acceptable and would therefore not be a *modus vivendi* on Horton's conception. A situation that is characterised by at least some coercion may well still count as a *modus vivendi*, so long as the arrangement is still in some sense acceptable.

Quite how acceptance is communicated is not immediately clear from Horton's account of *modus vivendi*. This is because Horton is not prescriptive about the 'processes of negotiation, bargaining and compromise' that lead to a *modus vivendi*. Even if we understand what is meant by acceptance in general, the question remains to whom does acceptance apply. For example, should a *modus vivendi* be acceptable to a small group of political representatives of the relevant moral, political, and religious groups within society, or should it be acceptable to each and every person subject to the authority that results from the *modus vivendi*? In other words, who are the relevant negotiating parties? Horton is, however, clear on the means of negotiation that can be used in a *modus vivendi*. He writes, 'a *modus vivendi* emerges through the deployment of whatever moral, intellectual, cultural, rhetorical, emotional, motivational and other resources that the parties can mobilise in the political process'. This includes 'whatever moral values and ethical commitments the parties bring to a conflict that can be constructively utilised in the forging of a workable political settlement'.⁷⁷ Like Wendt and Gray, although to a different degree, a *modus vivendi* is reached through a negotiation that is not limited by the reasonable. Whether reasons can be shared by all or whether those reasons are in themselves legitimate reasons is irrelevant. Horton's conception of *modus vivendi* is deeply pragmatic (in the non-philosophical sense) in that it advocates a policy of 'whatever works' in the particular circumstances that political actors find themselves.

Horton addresses the problem of acceptance, when he asks, 'does every individual have to accept a particular *modus vivendi* for it to be legitimate?'.⁷⁸ Horton's concern is that this requirement would be 'such a demanding condition that it can never be met'. Because Horton is motivated by a desire to offer a realistic account of legitimacy, over-demandingness threatens to undermine the realism of a *modus vivendi* theory. He offers three possible answers to the question, but concedes that 'I do not have an answer to

⁷⁷ John Horton, 'Towards a Political Theory of *Modus Vivendi*', p.7.

⁷⁸ *Ibid.*, p.17.

this question that satisfies me, let alone anyone else'.⁷⁹ The first answer is that 'a legitimate modus vivendi only obtains between those who do in fact accept it'. Those who do not accept it would 'exist in a relationship of coercion in so far as the supposed modus vivendi is merely, in their view, imposed on them'. The second answer is what he terms the 'threshold conception': 'widespread acceptance by a diverse range of groups within a society is sufficient for there to be a modus vivendi, even if there are a few people who reject it'. The appeal of this view is that a theory of legitimacy cannot 'make a modus vivendi subject to the veto of each and every individual'. The third answer is that there 'is no authoritative answer, but only different perspective on whether there is a modus vivendi'.⁸⁰ Horton finds all three responses unsatisfactory in some way, but does not spell out exactly why they are unsatisfactory. For my part, it seems that a combination of the first two answers is sufficient, but I address this challenge when defending my own conception of modus vivendi and will not duplicate that argument at this stage.

The 'content' of Horton's modus vivendi is the securing of 'a tolerable level of peace and security'.⁸¹ Although this aim is deliberately minimal and vague, it nevertheless requires some elucidation. Peace, for Horton, is understood as 'the avoidance of serious civil disruption and the maintenance of a level of social order that is at least sufficient to enable the parties subject to it to live minimally worthwhile lives'.⁸² As I made clear in the previous section, peace is not a *summum bonum* in Horton's conception, but is instead 'what differentiates a political settlement from its absence'.⁸³ Peace and security 'can be understood more or less capaciously' but peace is not 'something that is either present or absent', but is instead 'mostly a matter of degree'.⁸⁴ Horton thinks that 'a tolerable level of peace and security' will mostly be recognizable because 'we are generally pretty clear about when peace and security are seriously lacking'.⁸⁵ Horton does not explicate his conception of peace in a modus vivendi in much greater detail than I have presented here. He is right not to do so. Peace, like a modus vivendi itself,

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid., p.7.

⁸² John Horton, 'Realism, liberal moralism and a political theory of modus vivendi', p.438.

⁸³ John Horton, 'Towards a Political Theory of Modus Vivendi', pp.7-8.

⁸⁴ Ibid., p.8.

⁸⁵ Ibid.

should remain vague in order for it to be sufficiently capacious to include the varieties of peace that might motivate the parties of a *modus vivendi* to find it acceptable.

Although the content of Horton's conception of peace is thin, his conception of the role that peace plays is not. Specifically, his understanding of the role that peace plays in a *modus vivendi* differs from Wendt's understanding in an important way. Whereas Wendt seems to believe that peace will generally provide a sufficient prudential basis for parties in a *modus vivendi* to arrive at some arrangement, Horton stresses that the value accorded to peace will sometimes not be enough. A theory of *modus vivendi* 'has the honesty to admit that there is no *must* here; there are no guarantees that a *modus vivendi* will in fact always be possible — nothing can guarantee that'.⁸⁶ Where Wendt is inclined to think that a *modus vivendi* will mostly be reached, Horton accepts that a theory of *modus vivendi* must admit the possibility that peace will not always be sufficient to motivate people to reach acceptable terms. This point relates back to their different conceptualisations of a *modus vivendi*. Because Wendt sees *modus vivendi* as a theory of peace he places great stead by the motivational capacity of peace to achieve a political arrangement. Because Horton sees *modus vivendi* as a means to politics, peace plays only a subsidiary role.

It should be clear that I do not have a great many critical comments to make about Horton's conception of *modus vivendi*. That is because the version of *modus vivendi* that I now defend takes its central features from Horton's conception. The criticisms that can be levelled against Horton can generally be levelled against my own conception and so I respond to them in that context in what follows. Although I do not depart significantly from Horton's conception, I aim to develop it and fill in some of the gaps by formalising two conditions of a *modus vivendi*. Because Horton's conception is not grounded in moral pluralism, I have the additional task of developing a conception in such a way that it is compatible with epistemic pluralism.

⁸⁶ *Ibid.*, pp.17-18.

2. An Epistemic Pluralist Theory of Modus Vivendi

Having analysed three major accounts of modus vivendi, I now develop my own conception of modus vivendi. I take various aspects from each of the three theorists discussed above, although my account is most clearly indebted to Horton's. I have described my conception as an epistemic pluralist theory of modus vivendi because it is motivated by the reality of epistemic pluralism. It also serves to distinguish my conception from the value pluralist conceptions of modus vivendi that dominate the existing literature. This description might, however, be misleading because I say very little about epistemic pluralism beyond this point. The route to a political theory of modus vivendi was laid by epistemic pluralism and the reason for turning to a modus vivendi is given by epistemic pluralism. But once those foundations have been built a political theory of modus vivendi, like a space shuttle docked in its scaffolding, launches itself free of those foundations. My conception of modus vivendi does not attempt to protect or enhance epistemic pluralism. Most importantly, epistemic pluralism does not need to enjoy public acceptance. A modus vivendi justifies political authority by appeal to an array of reasons (including non-moral reasons) that those subject to power find motivating. Utilitarian or religious deniers of epistemic pluralism still have prudential reasons to endorse a modus vivendi even if they think that those who disagree with them are simply wrong. This reflects the distinction I made in Chapters 3 and 4 between an agent constraint understanding and a theoretical constraint understanding of freestanding theory. A modus vivendi does not require that citizens subscribe to epistemic pluralism, instead a modus vivendi arises in response to the conditions of disagreement that result from epistemic pluralism. Epistemic pluralism makes a modus vivendi necessary, but then modus vivendi theory takes the baton, leaving epistemic pluralism behind. This is not to say that epistemic pluralism is not essential to my overall account, but instead to caution against any expectation that my conception of modus vivendi will have a tinge of epistemic pluralism about it. The relationship between epistemic pluralism and modus vivendi also explains why I do not find Horton's grounding of modus vivendi in brute disagreement troubling. Epistemic pluralism supersedes brute disagreement as a justification for turning to a modus vivendi because even in an idealised world where everyone reasons sincerely,

conscientiously, and with good intentions, there will still be ineradicable non-erroneous value disagreement.

Rather than attempting to define a political theory of *modus vivendi* in terms of broad commitments (anti-utopianism, recognition of pluralism, realism) or in terms of what it is opposed to (utopianism, monism, moralism), I define a political theory of *modus vivendi* in terms of the conditions required to reach a *modus vivendi*. When I refer to a ‘political theory of *modus vivendi*’ I am not referring to a particular approach to political theory, but rather to the institutional arrangements that *modus vivendi* aims at, and the processes required to reach those arrangements. As Wendt notes, both Gray and Horton use *modus vivendi* ‘as the name for their realist approach to politics *and* for the kind of institutional arrangements that this approach takes as the goal of politics’.⁸⁷ Although I do not use ‘*modus vivendi*’ to describe an approach to political theory, I do use it in two different ways. Firstly, a *modus vivendi* is the process through which a political arrangement is reached. Secondly, a *modus vivendi* describes the arrangement that is arrived at through that process. As a concept, *modus vivendi* incorporates both of these meanings and its specific meaning will depend on its particular usage. Both ways of using the term *modus vivendi* are necessary to capture what it is. *Modus vivendi* processes will (sometimes) lead to a *modus vivendi* arrangement and a *modus vivendi* arrangement can only be arrived at through a *modus vivendi* process. My conception of a political theory of *modus vivendi* is not motivated by a desire to rectify the errors of ‘moralism’ (as I explain in Chapter 8), nor is it motivated by a desire to offer an alternative way of theorising about politics. A *modus vivendi* is the route through which legitimate political institutions can be achieved, despite endemic non-erroneous disagreement about value; it is nothing more and nothing less.

A *modus vivendi* is reached when a political arrangement satisfies two conditions. So, a political arrangement is legitimate when these two conditions are met. By setting out a *modus vivendi* in this way it allows a distinction to be drawn between the possible and contested motivations behind *modus vivendi* theorising and what a *modus vivendi* entails. On my account of a *modus vivendi*, the only necessary motivation for turning to a *modus vivendi* is epistemic pluralism. This approach follows Rawls’s method in *A Theory of Justice* of defining a political concept, in his case justice, in terms of the

⁸⁷ Fabian Wendt, ‘The Moral Standing of *Modus Vivendi* Arrangements’, p.13, fn.10.

conditions required to achieve it. Similarly, I aim to identify the necessary conditions of a *modus vivendi* in order to define a concept of legitimacy. Rather than asking the thorny question of what legitimacy *is*, we can instead ask the more reified question of what is required to achieve legitimacy through a *modus vivendi*.

The character of this thesis has largely been critical, rather than positive, and the few positive claims I have made up to this point have been purposefully limited in scope. Readers could reasonably expect that I should now take a stand on some substantive prescriptions. If I am engaged in political theory as a normative endeavour then I should have something to say about how we ought to proceed in the light of epistemic pluralism. My theory of *modus vivendi* is prescriptive, but only minimally so. My prescriptions, like Horton's, are not the highly theorised prescriptions that are found in the liberal theory of Rawls, Raz, and Dworkin or in the republican theory of Philip Pettit. The prescriptions I make are both vague and limited, and deliberately so. Edward Hall, writing on Bernard Williams, suggests that 'there is little reason to think that a general theoretical account of the conditions of a *modus vivendi* solution is going to be forthcoming'.⁸⁸ I do not go so far in thinking that *no* abstract conditions can be specified, as these conditions are how I define a *modus vivendi*, but the vagueness of these conditions is necessary because the specifics of a *modus vivendi* are a question 'that belongs to the level of fact, practice and politics'.⁸⁹ We have to be able to outline, in the broadest possible terms, the idea of a *modus vivendi* as a theory of legitimacy in order for it to count as a political theory, while also accepting that vagueness and indeterminacy are burdens that the theory must bear if it is to be compatible with epistemic pluralism. I try to strike a balance between those two divergent demands in what follows.

The two conditions of a *modus vivendi*

A *modus vivendi* is a political arrangement achieved through a bargaining procedure between the parties subject to the arrangement. The relevant parties, loosely meaning those people who must live under these arrangements, can put forward representatives who bargain on their behalf, or they can bargain directly with the other parties. The scope of the negotiation is indeterminate and is similarly part of the negotiation. Under

⁸⁸ Edward Hall, *Realism and Liberalism in the Political Thought of Bernard Williams* (PhD thesis, submitted to LSE, 2013), pp.248-249.

⁸⁹ Bernard Williams, 'Realism and Moralism in Political Theory', p.17.

certain situations a fully worked out set of political principles ('constitutional essentials' in Rawls's terminology) will be negotiated, but the scope may be limited to a far more minimal set of political principles. How this bargaining procedure takes place is similarly subject to bargaining. We might imagine that groups within the society choose representatives who negotiate on their behalf, or that there is a more direct form of negotiation between those subject to power. Wendt imagines that the bargaining in a *modus vivendi* will be conducted between politicians and not between all those subject to state power.⁹⁰ While this is certainly a practical way of presenting a *modus vivendi*, it is not the only way. The degree of uncertainty or lack of specificity about the actual terms of the negotiation might appear deliberately obfuscating at worst, or simply unconsidered at best. This is, however, inevitable in a theory of *modus vivendi*. If I were to set parameters on or restrict the forms of deliberation I would require normative ideas that are incompatible with epistemic pluralism. If the two conditions are met the process is irrelevant, although there may be an empirical question about which forms of negotiation are more or less likely to elicit acceptance.

A theory of *modus vivendi* is not a social contract theory, although it resembles a social contract theory in some ways. The reason it is not a social contract theory is that the process of the negotiation in a *modus vivendi* may never actually happen. Of his own theory of 'constitutional settlements', which are similar to *modus vivendi* arrangements, Steven Wall explains that these 'need not be expressed in written texts and need not stand at the beginning of a political society's history'. Rather, they 'are complex on-going social practices that both express certain values to which political societies are committed and establish procedures for resolving disputes among members of these societies'. Because they are a 'product of both normative commitment and the balance of power...they are always subject to change and renegotiation'.⁹¹ Like Wall, I do not conceive of a *modus vivendi* as a theory that gives an account of legitimacy *ex nihilo*. What *modus vivendi* hopes to offer, as a theory, is an explanation of how political institutions, including the political institutions we already have, can be legitimate. As I quoted from Gray earlier, the aim is 'to return to practice with fewer illusions'; to see our political world clearly and to offer some ways of thinking about it in terms distinct from the terms of Rawlsian liberalism. A theory of

⁹⁰ Fabian Wendt, *Compromise, Peace, and Public Justification*, p.243.

⁹¹ Wall, 'Political morality and constitutional settlements', p.483.

modus vivendi should therefore not be thought of as a state of nature theory because the use of a fictitious method runs counter to modus vivendi's desire to shed illusions rather than multiply them. While the idea of bargaining is present in my conception of a modus vivendi, the bargaining process should be understood as ongoing and permanent. On my view, a modus vivendi is not reached and the matter settled. The bargaining will continue even once the arrangement is accepted. There is no beginning to the process and there is no real end either. This is what I take Bernard Williams to mean, when he claims that an answer to the 'first political question' of securing order is 'required *all the time*'.⁹² Legitimacy is not achieved in a first step and then forgotten, but is instead a constant feature of politics.

The content of the arrangement and the means through which it is arrived at are not 'anything goes', but they are very close. There are only two conditions that limit a modus vivendi, what I call the *acceptance condition* and the *peace condition*. Both conditions must be met for a political arrangement to count as a modus vivendi. What follows in the remainder of this chapter and in the next chapter is an attempt to clarify and defend what Horton described as the 'problematic aspects' of modus vivendi by explicating the following two conditions. A modus vivendi must therefore be:

- i) Acceptable (broadly construed to include grudging acceptance) to those subject to it (*the acceptance condition*), and
- ii) Capable of securing peace, understood as the relative absence of violence (*the peace condition*)

Neither condition has priority because they are jointly sufficient to establish a modus vivendi. The acceptance condition is what makes a modus vivendi a political situation, rather than a merely coercive arrangement. I might be able to force people to acquiesce to my political demands at the barrel of a gun, but the resulting arrangement would not be acceptable and would therefore not be a modus vivendi. Were it simply coercive then the situation could not properly be described as 'political' and a political theory of modus vivendi is made redundant. On this conception of a modus vivendi, there is no 'moral minimum' of the sort advocated by David McCabe or John Gray, although one might expect that those two conditions would decrease the likelihood of a deeply unjust

⁹² Bernard Williams, 'Realism and Moralism in Political Theory', p.3.

arrangement for reasons that I discuss in Chapter 8. A *modus vivendi* is not, however, purely about self or group interest. This conception of a *modus vivendi* differs from Rawls's more Hobbesian characterisation of a battle of interests, but is also closer to the reality of actual political conflict. Only occasionally in the course of a political dispute is self-interest openly invoked, and even then, it will often disguise an underlying but unarticulated normative claim, such as desert or justified partiality. Far more frequent are those disputes that invoke a wide array of justifications, spanning from ethical reasons and local political values to practical considerations and empirical assertions. Where a *modus vivendi* differs from, say, political liberalism is that prudential reasons and self-interest are legitimate tools for political settlement, but their inclusion does not entail that moral reasons are illegitimate tools. It does follow from this, however, that a *modus vivendi* is significantly less moral than liberal theory requires.

Both conditions are problematic. Firstly, how do I define 'acceptable' in such a way that it is both philosophically coherent and practically useful, especially considering the depth of pluralism that a *modus vivendi* intends to respond to? Secondly, how do I define peace, and perhaps more importantly, how do I define the necessary level of peace? Beyond these problems of definition there is a spectre haunting *modus vivendi* theory: in specifying conditions my conception of *modus vivendi* appears to rely on the kinds of normative judgments which are incompatible with epistemic pluralism. If this is true, then *modus vivendi* theory is no better than the liberal theories that I criticised in Section II. I argue, however, that a political theory of *modus vivendi* is uniquely able to resist the criticism that it relies on controversial normative claims. In order to do so, I turn to Bernard Williams's idea of 'standards internal to politics' to justify the two conditions of a *modus vivendi*. Williams provides the necessary materials to defend the two conditions of a *modus vivendi* without resorting to external and controversial normative claims.

Defending the acceptance condition

The acceptance condition, which requires that a *modus vivendi* is acceptable (broadly construed to include grudging acceptance) to those subject to it, is the more controversial of my two conditions. Horton writes that this condition must be treated with 'considerable care' because it does not mean 'substantive agreement on principles

or values' but rather 'a kind of shared willingness to acknowledge the legitimacy of some particular set of political arrangements'.⁹³ There are three challenges to the acceptance condition that I must respond to. The first is why acceptance, and not agreement, is the relevant condition. The second is whether a *modus vivendi* needs unanimous acceptance from all those subject to it. The third challenge is that the acceptance condition is nothing more than a liberal principle of legitimacy and is therefore contentious.

Firstly, why do I endorse an acceptance condition rather than an 'agreement' or 'consent' condition? Acceptance is to be understood as an acceptance of political authority. The parties subject to the *modus vivendi* must accept that the political arrangements which have been reached through some procedure are ones that they find acceptable. How acceptance is communicated or recognised is not immediately clear. Part of my conception is that acceptance should be understood to mean that the relevant parties do not have good reason to object to the political arrangement. Acceptance will therefore be recognizable not only by its presence, but also in those situations in which it is absent. The acceptance condition does not require each person subject to political authority to sign a contract or to use public services to signal their acceptance. Instead, the absence of acceptance will be expressed through objections to the *modus vivendi*. If I am satisfied that some other party is representing my moral commitments and material interests then I may choose not to engage in the bargaining procedure. But if I believe that my commitments and interests are being neglected then I will signal my disapproval of both the absence of a suitable representative and of the arrangements arrived at without my contribution. On this understanding, acceptance is the absence of intransigent objections. As Wendt notes, acceptance, unlike agreement, 'is a mental state or mental act. Hence citizens living under *modus vivendi* arrangements do not give consent when accepting *modus vivendi* arrangements'.⁹⁴ I follow Wendt here in thinking that the acceptance condition is not to be confused with consent and that acceptance can be achieved without explicit consent being given. Further, acceptance trumps agreement in the hierarchy of legitimacy. As Horton argues:

Consent does not ground or justify political legitimacy: the basis of legitimacy is not to be found in a voluntary decision that makes it legitimate. Although acknowledgement of its authority by its citizens is part of the story

⁹³ Horton, 'Realism, liberal moralism and a political theory of *modus vivendi*', pp.438-439.

⁹⁴ Wendt, 'The Moral Standing of *Modus Vivendi* Arrangements', pp.351-352.

of what it means for a state to be legitimate. It does not follow that it is the giving of consent that creates its legitimacy.⁹⁵

On Horton's view of legitimacy, which I share, consent does not do any meaningful work. He continues,

I do not acknowledge its [the state's] legitimacy *because* I have consented to it; not least because if consent is understood to be an act that confers authority on the state I typically will not have consented to it. The affirmation of legitimacy matters, but that affirmation is grounded in something other than that affirmation itself.

That 'something other' is acceptance, as a precondition of agreement. Agreement, far from being essential, is in fact the product of accepting the political authority of the state. Acceptance begets consent, and not the other way around. A further benefit of invoking acceptance as opposed to agreement is that acceptance is far more minimal than the wholehearted agreement implied by consent. This is why I stipulate that acceptance includes 'grudging acceptance'. As parties in a modus vivendi are at least partially motivated by prudential reasons of self-interest and self-preservation, the notion that they would accept a modus vivendi despite the various moral objections they might have towards it, captures the 'second-best' quality of a modus vivendi more fully than a notion of 'consent'.

The inclusion of prudential reasoning means that people can find the modus vivendi acceptable solely for prudential reasons. Parties can be wholly dissatisfied with the moral content of a modus vivendi and still find it acceptable if the alternative to finding it acceptable is the continuation of war or the jeopardisation of their own safety. This is an undeniably low bar to set for acceptability. The inclusion of prudential reasoning indicates the resonances between my political theory of modus vivendi and Judith Shklar's 'liberalism of fear'.⁹⁶ For Shklar, the point of liberalism is to avoid the worst excesses of cruelty. For modus vivendi theorists, the point of a modus vivendi is to avoid the worst excesses of the absence of politics, or in Shklar's own words, it concentrates on 'damage control'.⁹⁷ In general, but not always, the existence of politics will be preferable for those subject to its power than the absence of politics. As I claimed earlier, a modus vivendi arrangement is not the *sine qua non* of a modus

⁹⁵ John Horton, 'Political legitimacy, justice and consent', *CRISPP*, Vol.15, No.2 (2012), p.142.

⁹⁶ Judith Shklar, 'The Liberalism of Fear' in Nancy Rosenblum (ed.), *Liberalism and the Moral Life* (Cambridge, MA: Harvard University Press, 1989), pp.21-37.

⁹⁷ *Ibid.*, p.27.

vivendi theory. It may not be possible to reach an acceptable settlement and the pursuit of a modus vivendi will fail. Modus vivendi offers no guarantee of political legitimacy, it is a possible route to political legitimacy which may or may not be taken: there can be no guarantees in politics. The problem of persistent disagreement engendered by epistemic pluralism does not have a full philosophical solution. The question of whether a group of people are willing to find common terms of politics is not one that can be answered prior to the practice of politics. What a political theory of modus vivendi provides is a philosophical framework in which that question can be asked and in which a variety of answers might be given, including liberal answers. Acceptance, understood in this way, is a far weaker requirement than endorsement.

As an example, I might grudgingly accept an authoritarian political arrangement in order to end a civil war in which my life was at risk. I do not accept the arrangement because it is the one I would choose given a full range of options, but I accept it because it is the only offer on the table which might reduce the likelihood of my death. That is not to say, however, that I would *necessarily* accept any arrangement other than civil war. Because my conception of modus vivendi depends on the actual first-person perspectives of parties in a modus vivendi, some of the relevant parties might, on balance, prefer continued civil war to acceptance of peaceful authoritarianism.⁹⁸ A modus vivendi is not prescriptive about whether, under what circumstances, when, or with what reasons any person in a modus vivendi ought to accept some arrangement. The decision will not only depend on the political and personal circumstances, but will also depend on each person's motivation to find the arrangement acceptable at a certain point of time. If that sounds like a very flimsy basis for politics, that's because it is. I address the issue of instability in a modus vivendi in Chapter 8.

The second challenge to my conception of acceptance is whether acceptance needs to be unanimous. Must every party who is subject to the authority of the modus vivendi find it acceptable? My answer is that they need not. There will always be some parties in who will refuse to accept the terms of the arrangement, whatever those terms are. Unanimity of acceptance cannot be a requirement of a modus vivendi because epistemic pluralism ensures that there will always be some people for whom *any* political authority is illegitimate. A theory of legitimacy that aspires to theorise about a world

⁹⁸ See Wall, 'Political morality and constitutional settlements', pp.484-486 for an outline of what he calls 'the primacy of the first-person perspective'.

characterised by pluralism cannot be held hostage by those who refuse to acknowledge that such a thing as legitimacy exists. A modus vivendi holds between those who accept it as legitimate, but if a threshold level of acceptance is reached (indeterminacy of such a threshold put to one side) then those who continue to refuse to accept it, will nevertheless, be coerced by the legitimate modus vivendi institutions. Such people will be free to oppose the terms of the arrangement, although they would not be immune from sanction. If they can persuade enough people to join their cause then the acceptance condition would be violated and the modus vivendi would not hold.

That liberal theories of legitimacy aspire to unanimity is derived from their consensus-based conception of politics. Once the prospect of consensus is jettisoned so too is the aspiration for unanimity. In the section on Horton's conception of modus vivendi, I claimed that a combination of two of his responses to this question would be sufficient to reject the unanimity challenge. To recall, Horton offered three justifications as to why a modus vivendi need not be acceptable to all those who are subject to it: firstly, a modus vivendi is between those who accept, others are simply coerced; secondly, a threshold of acceptance is necessary, but unanimity is not; thirdly, a modus vivendi will be acceptable for some and unacceptable for others, there is simply no way to tell objectively.⁹⁹ The third response, as Horton acknowledges, seems incompatible with advancing modus vivendi as a theory of legitimacy. The first two responses, however, capture why unanimity of acceptance is not a requirement on my conception of modus vivendi. Simply put, a modus vivendi that lacks *a sufficient degree of acceptance* will either not be reached in the first place or will otherwise quickly disintegrate. The apparent problem of unanimity will dissolve in practice because it will be plain to see whether the necessary threshold of acceptance has been reached. If the threshold has not been reached then the peace condition will not obtain. To put it more clearly, a political arrangement that does not fulfil the acceptance condition will be recognisable because it will be clear that it has not fulfilled the peace condition. If half of the parties in a modus vivendi do not find the arrangement acceptable, hence they find it illegitimate, the violence that characterises the absence of a modus vivendi will resurface and the modus vivendi will be untenable because it fails to meet the peace condition.

⁹⁹ Horton, 'Towards a Political Theory of Modus Vivendi', p.17.

The third and most serious challenge to the acceptance condition requires the most thorough defence. Horton claims that the really ‘tricky issue’ is that ‘a modus vivendi cannot require as its condition any of the more demanding versions of the principle of liberal legitimacy, which entail that the exercise of political power must be justified to each and every individual over whom it is exercised in terms that cannot be reasonably rejected’.¹⁰⁰ A political theory of modus vivendi, by invoking acceptance as a condition, appears to make a clear moral claim that political power is only legitimate when it is acceptable to those subject to it. It might seem that I have committed, albeit in a less obvious way, the error that I accuse both Rawls and Gaus of making, namely, that I have introduced moral restrictions on politics that are incompatible with my commitment to epistemic pluralism. The force of my criticism of Rawls and Gaus was that they both resorted to normative assumptions that are incompatible with epistemic pluralism.

Why then does epistemic pluralism not apply to the peace condition and the acceptance condition? How can these limits be justified without appealing to moral ideas that are off-limits to an epistemic pluralist? One might argue, against my conception, that the acceptability of an arrangement is irrelevant in judging whether a state is legitimate or not, especially if the state is just from some particular moral viewpoint. Alternatively, one could say that peace is only one value amongst many, and argue with Rawls that justice, not peace, is the first virtue of social institutions. The danger here is that a theory of modus vivendi makes itself vulnerable to the objection that it imbues the idea of ‘acceptance’ with a special normative weight that stands in need of a justification that is not forthcoming. This need for normative justification (the justification of reasonableness in Rawls, the justification of justification in Gaus) looks to be recursive. As hard as theorists might try to force it under the surface, the critic will say, it will always pop back up somewhere else. Epistemic pluralism forces political theory into an interminable game of normative whack-a-mole. The way that moral values try to re-insert themselves in a modus vivendi is through the resemblance of the acceptance condition to consent theories of political obligation. Any standards or limits will be subject to non-erroneous value disagreement. What makes these two conditions special? How can my conception of modus vivendi escape this trap?

¹⁰⁰ Horton, ‘Realism, liberal moralism and a political theory of modus vivendi’, p.439.

In one sense, these conditions are not special, rather they are deliberately ordinary. The modesty or ‘lightness’ of epistemic pluralism was part of its attraction as an explanation of value disagreement. So too is the ordinary character of the two conditions part of what makes them special. This is because both conditions are necessary to get politics off the ground. To borrow Bernard Williams’s phrase, these two conditions of a *modus vivendi* are standards that are ‘internal to politics’. It is Williams’s idea of norms which are latent and internal to politics that justifies the two conditions of a *modus vivendi* without resorting to moral ideas. To see how Williams’s arguments can be used for my own ends, it is useful to see how Williams originally deployed it.

My acceptance condition is similar but not identical to what Williams calls the ‘Basic Legitimation Demand’, or ‘BLD’. The BLD requires that the state gives an acceptable answer to the ‘first political question’ of ‘order, protection, safety, trust’.¹⁰¹ Securing ‘order, protection, safety, trust, and the conditions of cooperation’ is the ‘first’ political question because ‘solving it is the condition of solving, indeed posing, any others’.¹⁰² The two conditions of a *modus vivendi* are very similar to William’s BLD in that the BLD requires an answer to be given to the question of order and security that is acceptable to those subject to it. Williams’s account of ‘realist legitimacy’ differs from my own account of *modus vivendi* in three major ways: he requires that an arrangement is justifiable, although not necessarily justified, to ‘each person’;¹⁰³ he endorses a much thicker conception of peace than I do, including protection, trust, ‘and the conditions of cooperation’;¹⁰⁴ and his account of legitimacy sees liberalism as the only legitimate answer to the BLD.¹⁰⁵ Although he does not describe his theory as a *modus vivendi*, it seems to me that it is a *modus vivendi* theory of legitimacy and one which my own conception shares a great deal in common with. My interest here, however, is not with his account of legitimacy *per se*, but rather with his defence of the BLD as a principle that arises from within politics.

¹⁰¹ Williams, ‘Realism and Moralism in Political Theory’, p.3.

¹⁰² *Ibid.*, p.3

¹⁰³ *Ibid.*, p.4.

¹⁰⁴ *Ibid.*, p.3.

¹⁰⁵ *Ibid.*, p.8.

‘It may be asked’, Williams writes in defence of the BLD, ‘whether the BLD is itself a moral principle. If it is, it does not represent a morality which is prior to politics. It is a claim that is inherent in there being such a thing as politics’. He continues,

the situation of one lot of people terrorizing another lot of people is not per se a political situation: it is rather, the situation which the existence of the political is in the first place supposed to alleviate (replace). If the power of one lot of people over another is to represent a solution to the first political question, and not itself be part of the problem, *something* has to be said to explain (to the less empowered, to concerned bystanders, to children being educated in this structure, etc.) what the difference is between the solution and the problem, and that cannot simply be an account of successful domination.¹⁰⁶

Although the acceptance condition does not share Williams’s emphasis on ‘explanation’ or justification, Williams’s argument can offer an invaluable defence of my conception of *modus vivendi*. The acceptance condition is what distinguishes a political theory of *modus vivendi* from brute coercion and domination. Successful domination, which may meet the peace condition but not the acceptance condition, is not a properly political situation at all. Slavery, as Williams notes, is not a legitimate form of political organisation, it is instead merely a form of ‘internalized warfare’ between slaveholders and slaves.¹⁰⁷ The existence of a state does not provide sufficient evidence to demonstrate that what we are dealing with is a political situation. North Korea is both a state and not a political situation, although politics may be expressed in various ways within the national boundaries that define North Korea. States such as this are merely instances of institutionalised war amongst various conflicting groups, including those people who consider themselves (but are not actually) the monopolists of political authority. That the war has all but been decided in favour of the ruling dictatorship does not mean that the war has ceased. Acceptability is therefore a standard that is ‘inherent in there being such a thing as politics’. Without acceptance, the situation is not political at all.

My defence of the acceptance condition replicates Williams’s defence of his BLD: the acceptance condition can be derived from ‘standards internal to politics’ and does not need to resort to some prior moral idea for its force. Acceptance, in some form or another, is necessary for there to be politics. The peace condition alone cannot produce a political situation — acceptance of the terms of that peace is also necessary. As a

¹⁰⁶ Ibid., p.5.

¹⁰⁷ Ibid.

descriptive claim about what politics *is*, rather than what it *should be*, the acceptance condition is not in violation of epistemic pluralism because epistemic pluralism explains value disagreements and therefore has nothing to say about descriptive matters. Williams's phrase, 'internal to politics', is potentially slippery. Which politics is he referring to? Whose politics is he referring to? Surely there are standards internal to American politics that are not internal to Turkish politics. Thinking historically, the standards internal to modern liberal democratic politics are markedly different to the standards internal to the politics of Italian city states or to the standards internal to the Afsharid dynasty of Persia. At this point we have to turn to William's idea of 'now and around here', or to Richard Rorty's equivalent notion of 'how we do things around here'.¹⁰⁸ It just so happens to be the case that there are standards of politics at this moment in time and in these particular places where certain standards can be identified. This identification does not occur from the point of view of the universe, but instead from the first-person perspectives of those subject to political power. What we are talking about when we refer to such standards is a phenomenology of politics that is highly contingent. Standards that exist now are not standards that have always existed and they may yet prove to be standards which are only transitory. They are, however, the standards bequeathed to us by history (and, to a lesser extent, philosophy) and the only ones that we have 'around here'. 'Around here' certainly includes established liberal democracies, but it is not clear that it includes illiberal and non-democratic states. I do not intend to delve into this question because it is beyond the scope of this thesis, except to speculate that the globalisation of the past fifty years may have prompted a universalisation of the idea of acceptance, to the extent that versions of it are latent in almost all actually existing states. If this is true, then the idea of 'around here' is more of a chronological idea than it is geographical. 'Around here' describes modernity rather than any particular state or culture or region. If someone claims that these standards are not internal to politics then they are invoking an idea of politics that I do not recognise, and our disagreement is then not a disagreement that can occur within *political* theory, precisely because some shared recognition of the political is a necessary feature of theorising.

¹⁰⁸ See Michael Bacon, 'That's the way we happen to do things around here': Richard Rorty and Political Liberalism' (PhD thesis, submitted to LSE, 2004).

It might be helpful to restate my defence of the acceptance condition with explicit reference to the workings of a *modus vivendi*. When the parties in a *modus vivendi* are confronted with the question of whether they are willing to submit to political authority, there is an implicit idea of what politics *is* that precedes that question. Do you want to have politics or do you want to have the absence of politics? The choice that the relevant parties will make in that situation will be informed by their shared understanding of politics and what they are submitting to. That they should be asked whether they are willing to accept it is also part of the shared understanding of what politics is. If they were not asked, and simply had political authority forced upon them, then they would be unable to recognise that situation as political because acceptance is part of how we understand politics ‘around here’. Without the acceptance condition a *modus vivendi* is merely a means to negotiated oppression. This may occur in the real world, but it will not be a *modus vivendi*, it will not be legitimate, and it will not be a political situation. ‘Politics’ does not seem to me to do any normative work in my account, although I would anticipate that this is the likeliest criticism of my defence of the acceptance condition. The reason it does not do any work is that the parties in a *modus vivendi* are not required to set any store by the idea of politics. If some of the relevant parties believe that they can fulfil their conceptions of the good or even their political aims by rejecting all political arrangements, then they are free to do so. That they will likely face coercion if they are a small dissenting minority, or be subject to the violence that results from the absence of politics in the case of a recalcitrant majority, is their risk to take. If they want to avoid those outcomes, however, a *modus vivendi* is the only option available to them.

Defending the peace condition

Having offered a defence of the acceptance condition, I now turn to the peace condition. I do not have nearly so much to say in defence of the peace condition, mostly because the Williamsian defence of the acceptance condition also serves as a defence of the peace condition. I will not rehearse it in full, but only outline the structure of this defence. Also, my critique of Wendt’s conception of peace and the linkages between the peace condition and the acceptance condition as described in the previous section,

should give a fairly clear (although indeterminate) picture of what I mean by peace and why it is a condition.

As Williams writes, ‘the situation of one lot of people terrorizing another lot of people is not per se a political situation: it is rather, the situation which the existence of the political is in the first place supposed to alleviate’.¹⁰⁹ The relative absence of peace is necessary for there to be such a thing as politics as distinguishable from civil war or anarchy. Peace within a state (wars between states would not necessarily affect a *modus vivendi*) arises out of the desire to have some form of politics rather than having some form of war. There cannot be any other political questions prior to the establishment of some form of peace. Asking ‘what is justice?’ is meaningless until there is an arrangement in place that prevents arbitrary and unregulated violence. As Rawls argues in *A Theory of Justice*, justice does not obtain in situations of extreme scarcity. Societies need to reach a threshold of prosperity before we can begin to talk about justice. Similarly, societies need to reach a threshold of peace for concepts like justice to become operative. Although civil wars, for example, are politically motivated, they do not occur within politics, but rather seek to define what counts as political and who gets to control that definition of the political. Peace, like acceptance, is part of what politics is for us ‘around here’. The peace condition is perhaps less controversial than the acceptance condition because it is so hard to imagine what politics would look like if random and unchecked violence was a regular occurrence.

As I argued with reference to Wendt’s conception of *modus vivendi*, the peace condition might seem to suggest that a political theory of *modus vivendi* is a political theory of peace. In other words, where Rawls takes justice to be the ‘first virtue of social institutions’, *modus vivendi* takes peace to be the first virtue. In keeping with my critique of Wendt, however, I define peace only as the ‘relative absence of violence’ rather than the ‘stable absence of violence’. This small alteration changes Wendt’s thick notion of peace into a thin notion and thus avoids the difficulties that I identified in Wendt’s use of this concept. Cooperation is not a requirement on this conception of peace. A *modus vivendi* might simply be organised around a principle of ‘stay out of my way and I’ll stay out of yours’. A *modus vivendi* does not guarantee a liberal state and it might not even guarantee a state at all. Under certain (extremely fortunate and

¹⁰⁹ Williams, ‘Realism and Moralism in Political Theory’, p.5.

favourable) circumstances it might be possible that a state as we currently understand it is unnecessary for the maintenance of peace. If such an arrangement is acceptable to those subject to it then even varieties of anarchism can count as *modus vivendi* arrangements.

I use the term ‘relative absence of violence’ here because what counts as violence will depend on the political context in which a *modus vivendi* occurs. The important aspect of this conception of peace is that the violence is absent *relative* to the level of violence if some political arrangement were not reached. What this means in practice will depend on the political context. As a rough guide, though, the relative absence of violence might mean the rule of law, the absence of sustained violent political conflict, the absence of sustained civil strife, or some basic protections of property. Again, however, my definition is relative and therefore indeterminate. What is capable of motivating citizens to accept a *modus vivendi* will differ according to the political context. This does not mean, of course that violence is wholly absent from a successful *modus vivendi*. Leaving aside those instances of violence that occur in all societies, such as murder, even a successful *modus vivendi* will not guarantee that there will be no violence against politicians or that there will be no terrorism or rioting. The relative absence of violence only means that there is sufficiently less violence in a *modus vivendi* than there would be otherwise, so that the parties are motivated to accept to an arrangement. There is, therefore, considerable latitude in what the relative absence of violence means in any given situation. The real test of peace in a *modus vivendi* is whether it is sufficiently desirable for the parties subject to political power, that they find the arrangement acceptable.

On my conception, a *modus vivendi* will admit a variety of more and less full accounts of peace, but those less full accounts of peace are still acceptable for a *modus vivendi*. Consider, for example, a state (or possible state) that has for many years been riven by a violent civil war. The content of the *modus vivendi* that could be reached between the various opposing factions is likely to be extremely minimal. They might be willing to agree to supporting the rule of law and to ending outright warfare between the various groups, but little else beyond this. It is also likely in this situation that significant violence would continue despite the *modus vivendi* (although necessarily less violence than during the civil war). For example, there would probably be various reprisals against individuals for their perceived crimes during the war, and in a state suffering

from significant material deprivation the rule of law would be significantly weaker than in well-established states. For Wendt, such an arrangement would not count as a *modus vivendi* because peace in this situation is too liable to fracture. On my conception, however, this truce-like peace is sufficient to achieve a successful *modus vivendi*. I return to the issue of fragility in a *modus vivendi* in Chapter 8. The two conditions of a *modus vivendi* can be grounded by standards internal to politics, without falling back on moral or liberal commitments that are incompatible with epistemic pluralism. There can be no politics without peace and there can be no politics without some degree of acceptance: these are the limited claims of a political theory of *modus vivendi*.

3. Conclusion

In this chapter I have developed and defended a political theory of *modus vivendi* that is defined by the two conditions (acceptance and peace) that are necessary for a *modus vivendi* to obtain. I have done so by analysing and criticising (to differing degrees) three conceptions of *modus vivendi* before outlining my own theory in response to these existing ideas. I have defended and defined the two conditions by appeal to the idea of ‘standards internal to politics’, adapted from Bernard Williams. The task in this chapter was to develop a political theory that is compatible with epistemic pluralism, and which offers an account of why people would agree to a sub-optimal (from their own perspective) political arrangement. That a political theory of *modus vivendi* is compatible with epistemic pluralism does not necessarily mean that it is an appealing theory. I now turn to a defence of *modus vivendi* from an external standpoint by addressing three objections that could be levelled against my conception.

Section III: Epistemic Pluralism and a Political Theory of Modus Vivendi

Chapter 8: Political Instability and Injustice in a Modus Vivendi

There is, it seems to us,
 At best, only a limited value
 In the knowledge derived from experience.
 The knowledge imposes a pattern, and falsifies,
 For the pattern is new in every moment
 And every moment is a new and shocking
 Valuation of all we have been.

- T.S. Eliot, 'East Coker'

In this chapter I make one clarification and address three objections to my conception of modus vivendi. These objections are external, in that they address the conception itself, rather than the internal coherence of the various elements that constitute the conception. It seems reasonable to think that even if modus vivendi provides an account of legitimacy in the face of epistemic pluralism, that is still deeply flawed in other ways, especially from a normative perspective. My overarching aim here is best summarised by the sentence that preceded Antonio Gramsci's famous 'pessimism of the intellect, optimism of the will' aphorism, which reads: 'The challenge of modernity is to live without illusions, and without becoming disillusioned'.¹ The argument of the thesis up to now, has been motivated by a desire to cast off illusions, in particular the illusion of reasoned agreement on value. What this chapter offers are some good reasons not to become disillusioned once those illusions have been shed. By responding to the three objections I aim to not only to defend my conception from the force of these critiques but also to show that a political theory of modus vivendi is not a counsel of despair. Although I argue that a theory of modus vivendi is a 'last resort', there are good reasons to think that it is not so bad for all that.

I begin with a clarification about the relationship between a theory of modus vivendi and 'political realism' (1). Although I describe this as a clarification, it could also be formulated as the objection that the challenge of epistemic pluralism is best met by political realism and not by a theory of modus vivendi. This is not only an exercise in conceptual clarification, but also an important way of distinguishing modus vivendi from its alternatives. I argue that modus vivendi fulfils realist *desiderata* and that

¹ Antonio Gramsci, Letter from Prison, '19th December, 1929' in *Letters from Prison, Vol. 1* (New York: Columbia University Press, 1994), p.300.

realism's methodological starting point is incompatible with epistemic pluralism. I then turn to three direct objections to a theory of *modus vivendi* (2). First, I address the objection that my conception of *modus vivendi* would be unstable by accepting instability as an inevitable feature of political arrangements that arise out of pluralism. Second, I respond to the most serious objection against *modus vivendi* that it institutionalises injustice, by appeal to the peace condition and by appeal to the instability that is inherent to a *modus vivendi*. Finally, I anticipate and respond to the objection that a *modus vivendi* is inherently conservative because it merely institutionalises the *status quo*. This final objection speaks to the worry that a theory of *modus vivendi* will tend towards reactionary political arrangements by merely granting legitimacy to the way things already are, rather than imagining how things could or should be. In response to this final objection I argue that far from institutionalising the *status quo*, a theory of *modus vivendi* is both more radical and malleable than the liberal theories that it challenges and that the *status quo* objection can therefore be rejected.

Before addressing those objections, I first want to clarify the relationship between *modus vivendi* theory and political realism. As I have said, this is not an objection *per se*, but rather a way of differentiating my conception of *modus vivendi* from the related and more dominant current of political realism.

1. What's Wrong with Political Realism?

It might seem odd that I have developed my conception of *modus vivendi* without significant reference to 'political realism' — the broad church of thought that sees political normativity as conceptually distinct from morality. It might seem especially odd, given that I drew heavily on the ideas of Bernard Williams, who is widely credited as the progenitor of contemporary realism. Further, my argument throughout the thesis has been against the possibility of reasoned agreement on political principles, an argument against consensus that realists share. As Marc Stears notes, 'politics takes place in the face of inevitable disagreement, and, indeed, it is best understood as the functional response to that disagreement'.² Despite the apparent affinities between my own view and political realism, the exclusion of realist arguments is deliberate on my part. This is not because there are no significant overlaps or familial resemblances

² Marc Stears, 'Liberalism and the Politics of Compulsion', *British Journal of Political Science*, Vol.47, No.3 (2007), p.545.

between *modus vivendi* and political realism, but because I think that my conception of *modus vivendi* does not require, and in fact, cannot rely on the essential realist methodological claim. Whereas realism starts from a methodological critique of ‘moralism’ and builds its commitments from this starting point, my account of *modus vivendi* starts from epistemic pluralism and its (limited) commitments are built from those more solid foundations. My specific concern with realism is that it argues from premises about the purpose of political theory, which are themselves subject to epistemic pluralism. Realists would be better served by abandoning their methodological dispute and embracing a theory of *modus vivendi* that moves beyond problems of method and on to the problems of politics. There are two intertwined criticisms here. The first is that realism is superfluous because my conception of *modus vivendi* fulfils realist *desiderata*. The second is that the methodological basis of realism is incompatible with epistemic pluralism.

Modus vivendi is often taken to be one subspecies of the broader realist movement. Horton sees his conception of *modus vivendi* (and this is one difference between his and my conceptions) as trying to ‘incorporate the realist critique’.³ In his attempt to tie together the disparate strands of realist thought, William Galston treats *modus vivendi* and political realism as interchangeable.⁴ Other attempts to formulate realism as more than just a critical response to the failings of mainstream theory have tried to distance realism from *modus vivendi* approaches.⁵ In this section I try to draw apart *modus vivendi* theory from the broader category of realist theory and show that it is *modus vivendi* and not realism that offers the only coherent response to epistemic pluralism.

Realism is an umbrella term for a set of dispositions towards the study of politics. These dispositions can be systematised into themes or lines of thought, although it remains unclear whether realism amounts to a substantive alternative to liberal theory or merely a corrective methodology.⁶ As such, there is not one single version of political realism and its proponents are as diverse as the proponents of the kind of liberal theory that it

³ Horton, ‘Realism, liberal moralism and a political theory of *modus vivendi*’, p.432.

⁴ William Galston, ‘Realism in Political Theory’, *European Journal of Political Theory*, Vol.9, No.4, (2010), pp.431-448.

⁵ See Enzo Rossi, ‘Modus Vivendi, Consensus, and (Realist) Liberal Legitimacy’, *Public Reason*, Vol.2, No.2 (2010), pp.21-39; Matt Sleat, *Liberal Realism*.

⁶ See Galston, ‘Realism in Political Theory’, Enzo Rossi and Matt Sleat, ‘Realism in Normative Political Theory’, *Philosophy Compass*, Vol.9, No.10 (2014), pp.689-701; Mark Philp, ‘Realism without Illusions’, *Political Theory*, Vol.40, No.5 (2012), pp.629-649.

opposes. As Matthew Festenstein comments, realism is an ‘undisciplined rabble of doctrines, temperaments and sensibilities’ and resists attempts to classify its concerns fully.⁷ Mark Philp goes further in claiming that ‘like literary or artistic realisms, political realism is more an intellectual moment of resistance to established ways of thinking than it is a unified movement with agreed principles, methods, or aims’.⁸ Realism, in its contemporary formulations, derives its key concepts from Bernard Williams and, less commonly, Raymond Geuss. There are other common sources from the history of political thought, such as Thucydides, Machiavelli, Hobbes, Nietzsche, and Weber, and there are more modern shared inspirations, such as Richard Rorty and Judith Shklar, who feature in some but not all accounts of political realism. It is Williams’s brand of liberal realism that is the most frequently cited and widely embraced version of realism. Williams’s immediate contribution to political realism is quite brief, although much of his critical work on ethics could be reinterpreted in a realist light.⁹ What has been written about Williams’s realism far outweighs what Williams actually wrote, and so the realism that I address here is informed by those who have built their own realist theories on Williams’s insights. While Geuss has made significant contributions to the realist debate, his project of breaking down the normative/descriptive distinction indicates that he is engaged in an altogether more iconoclastic philosophical endeavour than the more modest ambitions of this thesis.¹⁰

Despite the varieties of realism, there is a common idea that defines realist thought. At the heart of realism is Williams’s rejection of ‘the priority of the moral over the political’.¹¹ Guided by this priority, political ‘moralism’ approaches questions of political theory from the starting point of ethics and, by viewing all political questions through the narrow lens of morality or ethics, moralism denies politics the special normative consideration it merits.¹² This idea can be understood in different ways. Williams finds the core problem of political moralism to be its tendency to ‘make the

⁷ Matthew Festenstein, ‘Pragmatism, Realism, and Moralism’, *Political Studies Review*, Vol.14, No.1 (2016), p.40.

⁸ Mark Philp, ‘Realism without Illusions’, p.631.

⁹ See Bernard Williams, *Truth and Truthfulness* (Princeton: Princeton University Press, 2002) and Bernard Williams, *Ethics and the Limits of Philosophy* (London: Collins, 1985).

¹⁰ Raymond Geuss, *Philosophy and Real Politics* (Princeton, NJ: Princeton University Press, 2008), pp.16-17.

¹¹ Williams, ‘Realism and Moralism in Political Theory’, p.8.

¹² See Galston, ‘Realism in Political Theory’, Enzo Rossi and Matt Sleat, ‘Realism in Normative Political Theory’, *Philosophy Compass*, Vol.9, No.10 (2014), pp.689-701; Mark Philp, ‘Realism without Illusions’, *Political Theory*, Vol.40, No.5 (2012), pp.629-649.

moral prior to the political’, and the core of realism its embrace of the claim that ‘political philosophy is not just applied moral philosophy’.¹³ Jeremy Waldron includes this relation between moral philosophy and politics in his conception of a ‘*political political theory*’¹⁴, while Enzo Rossi invokes a similar idea in the contrast he draws between the approach of *fiat justitia et pereat mundus* and its realist alternative, *salus populi suprema lex est*.¹⁵ For Glen Newey ‘the major project of modern liberalism is to use ethics to contain the political’.¹⁶ All of these share a rejection of the Kantian claim that ‘all politics must bend its knee before the [morally] right’.¹⁷ These iterations of this idea share the common belief that realism entails ‘a way of thinking about politics that is not simply a branch of moral philosophy’.¹⁸ All of these descriptions are pitched at a high level of abstraction. This reflects a slight oddity in realist thought. While realists make much of their theoretical commitment to the study of politics, practice, and power, realist prescriptions tend to operate at a meta-theoretical level, which is to say that they are primarily concerned with *how* we theorise about politics rather than *what* we theorise about politics.

Edward Hall and Matt Sleat have identified three ways in which the realist turn can be interpreted.¹⁹ The first impulse is to develop ‘a more practical political theory’ through ‘a greater appreciation of feasibility constraints or sensitivity to the conditions of political possibility’. Second, realism might be driven by the ‘thought that politics has a character that cannot be sufficiently subsumed by morality’ because ‘there might be something appropriately called political ethics that is not simply the application of personal ethics to the political sphere’.²⁰ Third, realism might arise in response to ‘a set of philosophical concerns about the nature of ethics and the place of ethical thinking in our lives’. Realism, on this view, ‘does not set politics against ethics per se; instead it

¹³ Bernard Williams, ‘From Freedom to Liberty’ in *In the Beginning was the Deed*, p.77.

¹⁴ Jeremy Waldron, ‘*Political Political Theory: An Oxford Inaugural Lecture*’, New York University School of Law: Public Law and Legal Theory Research Series, working paper (2012).

¹⁵ Various translated as ‘Let there be justice, though the heavens may fall’ and ‘Let the good of the people be the supreme law’.

¹⁶ Glen Newey, Review of Quentin Skinner, *Liberty Before Liberalism* in *Times Literary Supplement*, No.4969 (1998).

¹⁷ Immanuel Kant, *Perpetual Peace*, quoted in William Galston, ‘Realism in Political Theory’, p.387.

¹⁸ Mark Philp, ‘Realism without Illusions’, p.3.

¹⁹ Edward Hall and Matt Sleat, ‘Ethics, morality, and the case for realist political theory’, *CRISPP*, Vol.20, No.3 (2017), p.279.

²⁰ *Ibid.*

is an attempt to philosophise about politics without relying on understandings of morality which we have little reason to endorse'.²¹

All three impulses might be seen to flow from the reality of epistemic pluralism. Firstly, the reason that we should be mindful of feasibility, and one of the reasons that feasibility is a constraint in the first place, is given by epistemic pluralism. We cannot expect full compliance on a utopian programme of social reengineering because there are currently insurmountable epistemic obstacles to reasoned agreement about that programme. Secondly, the reason that politics cannot be subsumed by morality is that people have competing and contradictory accounts of morality due to epistemic pluralism. Politics must therefore stand theoretically above those accounts rather than among them. A political theory must respond to the fact of diverse moral views and therefore cannot itself *be* a particular moral view. The third impulse, which Hall and Sleat defend, also arises out of pluralism. One of the key reasons that 'we ought to accept that philosophy...has to start from within moral experience and so cannot ground it' is that our moral experiences non-erroneously differ because of epistemic pluralism.²² The problem with much contemporary ethical thought is that it ignores the possibility that there will rarely (if ever) be single non-erroneous answers to ethical questions. Because ethics is misled by this oversight, so too is any political philosophy which derives its normative claims from ethical thought. It is not only that much political theory relies on 'understandings of morality which we have little reason to endorse', but that epistemic pluralism means that those subject to political authority will have incompatible and non-erroneous understandings of morality, and are therefore justified in refusing to endorse competing understandings. All three motivations for turning to realism can be reinterpreted as motivations that stem from epistemic pluralism. Although pluralism certainly has an important place in much realist thought, it rarely plays the lead role it has in this thesis. As Hall and Sleat note, realism intends to criticise not only non-pluralist accounts but also ideal theory, 'high liberalism', utopianism, moralism, universality, and the priority of justice.²³ Despite these common features, I do not identify my conception of *modus vivendi* as a distinctively realist political theory.

²¹ *Ibid.*, pp.279-280.

²² *Ibid.*, p.282.

²³ *Ibid.*, p.280.

Despite its heterogeneity, realism, especially the dominant form of liberal realism that seems to be emerging, can be critiqued as a whole. Although there are differences between realists, these differences are less important than the fact that they all endorse some version of the ‘priority of morality’ critique of mainstream theory. All three ‘impulses’ behind realism that Hall and Sleat identify, meet at the same critical juncture: there is something wrong with moralism as an approach to political theory. While other features of realism may vary, this critical starting point is constant. My first argument against realism is not that it is wrong, but rather that it is superfluous. It is superfluous because of the existence of a political theory of *modus vivendi*. All the criticisms that realists level at liberal moralism cannot be levelled at *modus vivendi*. *Modus vivendi* fulfils the realist *desiderata* of practicality, of anti-utopianism, sensitivity to pluralism, and responsiveness to politics while it avoids the contentious methodological claim that distinguishes a realist approach from a moralist approach to political theory. Whether realism as a ‘*methodenstreit*’, or a methodological dispute, will lead anywhere is uncertain, whereas a political theory of *modus vivendi* provides both a new starting point for normative political theorising and a practical way of conceptualising legitimacy in the face of epistemic pluralism. At the start of the thesis I proposed two questions: why do people arguing in good faith disagree about value, and what can politics do in the light of that disagreement? I answered the first question with the idea that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value between well-intentioned, sincere, and conscientious people. I answered the second question with a theory of *modus vivendi*. Neither answer, however, needs to draw on the methodological claim of realism to be persuasive.

Political realism as a corrective vs. *modus vivendi* as a last resort

Williams writes that the ‘general position’ of political realism rejects ‘the priority of the moral over the political’.²⁴ The methodological rejection of a certain approach to political theory is the first step for Williams in developing political realism. Everything flows from his initial distinction between moralism and realism. Realism’s focus on the method of political theory aims to correct the alleged methodological flaws of moralism, but no methodological errors need to be found in order to think that *modus*

²⁴ Bernard Williams, ‘Realism and Moralism in Political Theory’, p.8.

vivendi is the only option once epistemic pluralism is recognised. The turn to a *modus vivendi* is a last resort: *modus vivendi* is what remains when all other responses are incompatible with epistemic pluralism. This is not, however, the motivation behind realism.

As Rossi describes it, most of the debate around political realism is a dispute about methods, although more recent work has tried to move realism beyond the confines of methodological disagreement and towards substantive theorising.²⁵ The characteristic claims of political realism, such as Williams's insistence that 'political philosophy is not just applied moral philosophy' or Geuss's rejection of the claim that 'one can complete the work of ethics first...and then in a second step, one can apply that ideal theory to the action of political agents' are second order claims about how we ought to theorize.²⁶ It is this grounding in second order claims which makes realism contentious.

Second order claims require a prior argument about the ends of philosophy, its purpose, and its limitations. These are certainly interesting issues, but they are not matters on which we are likely to reach a reasoned agreement on precisely because of epistemic pluralism. As soon as we ask the question, 'what should political theory try to achieve?' we must resort to values that are open to contestation because they are subject to epistemic pluralism. The ideal vs non-ideal theory debate, which is related but non-identical to the realism vs moralism debate, highlights the essentially contested character of these second-order disputes. Should practical concerns about feasibility be built into theorising or is the aim of political theory to outline ideal conditions, regardless of the probability of their success? Should political theorists accept Marx's line that 'philosophers have only interpreted the world in various ways; the point, however, is to change it' or is interpretation, both descriptive and normative, the essence of political theory?²⁷ Is there such a thing as political normativity distinct from morality or must we try to align our moral and political worlds? My point here is not

²⁵ Enzo Rossi, 'Can Realism Move Beyond a *Methodenstreit*?', *Political Theory*, Vol.44, No.3 (2016), pp.410-420. Edward Hall explicitly tries to address the 'neglect' of the 'more constructive elements of realist political thinking' by constructing a 'political conception of liberty from the non-political value of freedom'. That there is a constructive 'lacuna' in the realist literature might reflect some of the difficulties I suggest here. See Hall, 'How to do realistic political theory (and why you might want to)', p.284. See Robert Jubb, 'The Real Value of Equality', *The Journal of Politics*, Vol.77, No.3 (2015), pp.679-691 for an attempt to develop a realist conception of equality.

²⁶ Geuss, *Philosophy and Real Politics*, p.8.

²⁷ Karl Marx, *Theses on Feuerbach XI* in David McClellan (ed.), *Karl Marx: Selected Writings* (Oxford: Oxford University Press, 1977).

that these questions are not worth asking, but rather that the prospect of their resolution seems highly unlikely given epistemic pluralism. Despite this, political realism hitches its wagon to one side in a methodological dispute, even though the wagon cannot start moving until the dispute is settled. The inability to reach any sort of second order resolution will preclude any first order resolutions (although some realists, such as Geuss, may well be sceptical of the idea of coherent philosophical resolution at all). Even before we fail to reach the more ambitious aim of resolution, those second order disputes will prevent any *attempts* at first order resolution by relentlessly dragging substantive disagreements back into the realm of methodological disagreement. More relevantly, these second-order disputes will do nothing to clarify which political options are available to theorists committed to epistemic pluralism. A political theory of *modus vivendi* is parsimonious because it skips this second-order dispute about the purpose of political theory. If epistemic pluralism, as I have presented it, is the best explanation of value disagreement, then this alone behoves political theorists to develop a response.

On my conception of *modus vivendi* the starting point is the reality of epistemic pluralism. From there, the options are either: develop a political theory that does not invoke premises incompatible with epistemic pluralism, or invoke such premises and develop a theory that is deaf to moral pluralism. A theory of *modus vivendi* is a theory for those who accept epistemic pluralism. If someone does not accept epistemic pluralism then my theory of *modus vivendi* will have little appeal. But realism is not, *and cannot be*, presented in the same way because it starts with the claim that ‘the method of liberal theorists is mistaken — we should theorise differently’. Realism is therefore normative from the ground up, whereas a theory of *modus vivendi* starts with a descriptive truth about our contemporary moral world. Where realism considers liberal theory to be ‘practically irrelevant’ or where realists accuse liberals of ignoring ‘political realities like the importance of power, history, and ideologies’, *modus vivendi* moves directly from the reality of pluralism to the political response to pluralism. The distinction that I am trying to draw between *modus vivendi* and political realism might strike readers as the result of the narcissism of small differences. The major point of difference is about the logical order of the relevant concepts. Whereas realism starts from a methodological critique of moralism and builds its commitments from this starting point, my account of *modus vivendi* starts from epistemic pluralism and its (limited) commitments are built from those more solid foundations. Rossi writes of the

proponents of realism that they ‘think of their position as more of a rupture with the discipline’s mainstream: the issue isn’t just to change the way in which we go from moral beliefs to political norms, but rather to change our starting point altogether’.²⁸ A theory of *modus vivendi* might provoke a rupture, but it does not set out to do so. In response to Rossi’s question, ‘can realism move beyond a *methodenstreit*?’, my answer is that it might be able to, but that any effort expended on that project is wasted when we have a political theory of *modus vivendi* that *has already* moved beyond potentially irresolvable disputes about method. If the point of realism, as I have claimed, is to critique a way of doing political theory *and* *modus vivendi* is immune to these criticisms, then that seems to provide, *ceteris paribus*, a good reason for realists to endorse a theory of *modus vivendi*. There might be other reasons for realists to reject a *modus vivendi*, more on which shortly, but a realist rejection of *modus vivendi* cannot rely on the methodological critique of liberalism that is central to realism.

Realists would be sceptical of my claim that a theory of *modus vivendi* can skip over the methodological dispute between moralism and realism. In one way, this scepticism is justified. I am, inevitably, using a particular method to justify my conception of *modus vivendi*, even if I have not spelt out what that method is in any detail. A realist critic may well point out that I have appropriated the methods of realism and then attempted to shed my realist skin when it comes to making first-order prescriptions. There is a kernel of truth to this criticism: claiming to reject the realist method does not mean that I have not covertly deployed it. My response to this objection is that it relies on a conflation of pluralism and realism. Realism, in all forms, is motivated to some extent by an idea of moral pluralism. The reason realists refuse to set out a political ideal that makes little mention of how politics works, is that politics is characterised by the disagreement elicited by moral pluralism. Realists then interpret this to mean that moralism neglects politics and that the cure to moralism is to politicise political theory. On my conception of *modus vivendi* however, the problem is not the neglect of politics, but rather the neglect of pluralism. What is wrong with political liberalism, for example, is that it does not recognise the depth of epistemic pluralism. This may *lead it* to neglect politics, power, self-interest and all those other realist concerns, but this is merely epiphenomenal. A theory of *modus vivendi* does not start out with the intention of correcting liberalism’s method, instead it starts out with the intention of responding to

²⁸ Enzo Rossi, ‘Can Realism Move Beyond a *Methodenstreit*?’, p.411.

pluralism. The method is implied by this concern, and not with some other separate concern about the nature of theorising. I do not, for example, think that Rawls is particularly wrong in his method in *Political Liberalism*, it is only that he does not go far enough in recognising pluralism. This error is a matter of substance and not a matter of method. With epistemic pluralism as a starting point, I do not need to rely on either a ‘realist’ or ‘moralist’ method to arrive at a theory of *modus vivendi*, and any such mediating ideas of method would only make the argument more convoluted and contentious. To summarise my response, one need not think that there is something wrong with moralism, to think that there is something right with *modus vivendi* theory.

I have claimed that the canonical text of realism, if there is one, is Williams’s essay ‘Realism and Moralism in Political Theory’. This posthumously published essay offers a very brief outline of Williams’s understanding of realism and moralism and yet his two-and-a-half page critique of moralism is essential to political realism’s methodological demands. As Paul Sagar writes, the ‘recent growth of interest in political realism has to a large extent derived from sympathy with Williams’s insistence that political philosophy should reject political moralism as a misunderstanding of what both political theory and political practice must properly be’.²⁹ My argument against realism is that this methodological focus is misdirected, not least because there are good reasons to think that Rawls is not the paradigmatic moralist that Williams makes him out to be.³⁰ I do not want to go into any detail on whether or not Rawls is or is not a moralist because instead, I want to make a broader point, that the division of the world of political theory into ‘realists’ and ‘moralists’, even if such categories are meaningful, has no effect whatsoever on my conception of *modus vivendi*. What is valuable in Williams’s essay is what comes after his sketch of the realist/moralist divide, which I drew heavily on in the previous chapter. Political realism focuses too much on the first part of Williams’s essay rather than on the more substantial ideas about legitimacy and standards internal to politics that follow. My contention is that these substantive, rather than critical ideas, can float free from the *methodenstreit*, and that my conception of *modus vivendi* theory does exactly that. Rossi claims that *modus vivendi* ‘can be seen

²⁹ Paul Sagar, ‘From Scepticism to Liberalism? Bernard Williams, the Foundations of Liberalism and Political Realism’ *Political Studies*, Vol.64, No.2 (2016), p.380.

³⁰ See James Gledhill ‘Rawls and realism’, *Social Theory and Practice*, Vol.38, No.1 (2012), pp. 55-82; Robert Jubb, ‘Playing Kant at the Court of King Arthur’, *Political Studies*, Vol.63 (2015), pp.919-934.

as one way to develop the new realist programme in political theory'.³¹ If my argument here holds then this issue might be important for realists but it is unimportant for modus vivendi theorists. If the question is 'should realists be modus vivendi theorists?' then I think the answer is both that they should but also that it does not matter to modus vivendi theory whether they are. We can think that a theory is *realistic* without making any sort of assessment of whether it is *realist*. A theory can aspire to be realistic without the trappings of realism and moralism. The ambition of this thesis is to be realistic in recognising the reality of epistemic pluralism as an inevitable feature of our political and moral lives. If my account of modus vivendi is persuasive to realists then that is all to the good, but I do not think that the terminology or methodology of realism is necessary to defend my conception of modus vivendi.

Having made that clarification, I now turn to three more direct objections to my conception of modus vivendi, to show that a modus vivendi is not just the only plausible theory of legitimacy compatible with epistemic pluralism, but also that it can withstand the most serious normative criticisms levelled against it.

2. Three Further Objections to Modus Vivendi

Two persistent objections to modus vivendi theory are that it is unstable and that it institutionalises injustice.³² In what follows, I address these objections to defend my conception of modus vivendi. Specifically, I concede the objection that a modus vivendi is unstable in order to counter the more serious objection that it institutionalises injustice. I then address a third, related criticism, that a modus vivendi institutionalises the *status quo*. I make three main claims here. Firstly, I argue that a modus vivendi is, as its critics have claimed, unstable. Secondly, that this instability, far from being fatal to the project of modus vivendi, is both inevitable and part of its normative appeal. Rather than confronting liberals on their own terms, a theory of modus vivendi should distinguish itself through its willingness to accept instability as an inevitable feature of politics. When it is re-interpreted in this way, modus vivendi can offer at least some response to the criticism that it institutionalises injustice. The third objection claims that even if a modus vivendi does not institutionalise injustice *per se*, it nevertheless

³¹ Enzo Rossi, 'Can Modus Vivendi Save Liberalism from Moralism? A Critical Assessment of John Gray's Political Realism' in Horton, Willems and Westphal (eds.), *The Political Theory of Modus Vivendi* (Dordrecht: Springer, forthcoming 2017).

³² Horton, 'John Gray and the Political Theory of Modus Vivendi', p.49.

institutionalises the *status quo*. This objection is one that I suspect motivates much of the scepticism towards modus vivendi thought among liberals and especially amongst egalitarian liberals. Rather than imagining the desirable features that a political community and its institutions ought to exhibit, a theory of modus vivendi merely institutionalises the present values and power relations of a particular society without reflecting on whether those values and power relations are in fact the ones that citizens ought to endorse. In other words, a modus vivendi places too much emphasis on the way things are, and not enough on how they ought to be. This criticism is sometimes made against political realism, and despite the differences between modus vivendi and realism that I argued for in the previous section, my conception of modus vivendi seems similarly susceptible. As Lorna Finlayson notes, while realism is generally taken to be a methodological position it is ‘striking that many commentators perceive a special tension or difficulty in being *both* ‘realistic’ (or ‘relevant’) *and* politically radical, that is, strongly critical of the existing state of things’. More concisely, many theorists see an ‘affinity between ‘realism’ and a kind of conservatism’.³³ It is this apparent ‘affinity’ between being realistic and being conservative that I try to break here.

I argue that my conception of modus vivendi permits radical deviations away from the *status quo* in a way that liberal theory does not. Importantly, however, those deviations are in the hands of the actual citizens and not in the hands of political theorists. A political theory of modus vivendi cedes the power of political reform and change to actual political agents because epistemic pluralism precludes that imaginative power from being conferred exclusively on the theorist or philosopher.

The instability objection was most famously made by Rawls in *Political Liberalism*. Rawls claimed that a modus vivendi is unstable because it depends on a precarious balance of powers.³⁴ Changes to this balance will destabilise the agreement and, as a result, destabilise the peace that the modus vivendi intended to achieve. On this account, modus vivendi fails on its own terms to secure its limited ambition of acceptable peace. This objection can take two forms. Firstly, it might be claimed that a modus vivendi will allow the strong or the majority to exploit and coerce the weak or minority into an unfair agreement. Secondly, it might be argued that in a society where the political beliefs actually held by its citizens are unjust or illiberal, then an unjust and illiberal

³³ Finlayson. *The Political is Political*, p.113.

³⁴ John Rawls, *PL*, p.147.

agreement will result. This might include, for example, a widespread rejection of free speech, a rejection of principles of non-discrimination, or support for the death penalty. As Matt Sleat, a realist critic of *modus vivendi*, puts it, ‘without any moral criteria for what counts as a legitimate form of political order, *modus vivendi* might legitimise profoundly unjust societies’.³⁵ This critique can be fleshed out in two different ways. The first is to suggest that in its pursuit of practical legitimacy, *modus vivendi* forgets the normative character of political theory, leading it to normatively undesirable (or at least sub-optimal) prescriptions. The second is to argue that *modus vivendi* theorists misunderstand the nature of political legitimacy by drawing too hard a line between legitimacy and justice. On this second expansion, critics suggest that the legitimacy of political institutions, expressed by the authority of the state, are in fact dependent on the capacity and willingness of the state to pursue and enforce justice.

To both versions of this critique, *modus vivendi* theorists will respond: normatively undesirable for whom and on whose conception of justice? This response emanates from epistemic pluralism. The insurmountable difficulty of reaching reasoned agreement on those questions, means that no conception of justice can achieve a sufficient degree of acceptability to make the institutions based on that conception legitimate. For *modus vivendi* theorists, the philosophical pursuit of such a conception is futile and the claimed consensus, illusory. While I think that this response to the second critique is adequate, it is unlikely to persuade those who are not already sympathetic to *modus vivendi*. We might also think that while this objection to *modus vivendi* misses the point of resorting to a *modus vivendi* in the first place, that there is nevertheless a genuine worry that *modus vivendi* is simply too normatively unattractive to draw widespread support. I try to reformulate my conception of *modus vivendi* to mitigate that worry. In addition to countering the objection that a *modus vivendi* legitimises injustice, I also want to counter the related but non-identical criticism that a *modus vivendi* will tend towards the *status quo* and conservatism.

My argument is motivated by a desire to reconcile two seemingly disparate ideas. Firstly, the idea that accounts of liberal legitimacy are inadequate once the depth of moral pluralism is recognised. This idea is the common motivation behind *modus vivendi* theory. The second idea, common in much liberal theory, but uncommon

³⁵ Sleat, *Liberal Realism*, p.99.

among (or at least peripheral to) modus vivendi theorists, is that the world is in multifarious ways deeply unjust. My aim is to show that one can coherently hold both ideas and that modus vivendi can supply at least some resources for addressing persistent and widespread injustice. This is not, however, the more ambitious claim that modus vivendi is especially well equipped to prevent institutionalised injustice, but rather the more modest claim that a modus vivendi is no more likely than liberal theory to institutionalise injustice. What this chapter aims to provide is a positive case for modus vivendi that addresses its alleged normative deficiencies.

The instability objection

To frame these objections more clearly it is worth very briefly restating my conception of modus vivendi. To recall, a modus vivendi must be:

- i) Acceptable (broadly construed to include grudging acceptance) to those subject to it (*the acceptance condition*), and
- ii) Capable of securing peace, understood as the relative absence of violence (*the peace condition*)

As I argued in Chapter 7, my conception of modus vivendi diverges from Wendt's conception in that it does not require the 'stable absence of violence', preferring instead the more indeterminate, 'relative absence of violence'. More broadly, my conception of modus vivendi does not see political stability as a necessary feature of a modus vivendi. Acceptance does not need to be stable in the sense of it being permanent, and peace is always relative to its absence, and similarly impermanent. This is not to say that a modus vivendi will be chronically unstable, but rather that stability is not an ideal for a political theory of modus vivendi. Of course, stability is not a binary notion: there can be more or less stability in any given state. The point, however, is that on my conception of modus vivendi, Rawlsian stability is neither a realisable ambition nor a necessary feature of political arrangements.

Responding to Rawls's characterisation of modus vivendi might seem to be a step in the wrong direction if the aim is to advance modus vivendi as a compelling alternative approach and to decouple the idea from its negative and critical connotations. There is, however, I think a good reason for returning to Rawls's brief and rather uncharitable reading of modus vivendi beyond the fact that his account is the one that most theorists

will be familiar with. The problems that Rawls identifies with a modus vivendi can be turned on their head to show a positive side to modus vivendi theory that increases its normative appeal. To understand why Rawls thinks that modus vivendi is unstable we first need to briefly look at the idea of stability in *Political Liberalism*.

What Rawls hopes to achieve in *Political Liberalism* is ‘stability for the right reasons’, which ultimately takes the form of his overlapping consensus, where each citizen takes ‘modules’ from their own comprehensive doctrine that then lend support to the political conception. This consensus on a liberal political conception will be stable for the ‘right reasons’ insofar as it is endorsed by reasonable citizens for moral reasons drawn from their own comprehensive doctrines. The wrong reasons, according to Rawls, would be in pursuit of a balance of power for reasons of self-interest or at least for non-moral reasons, for example prudential reasons. Grudgingly agreeing to some political arrangement for non-moral reasons or for lack of a preferable alternative would not provide a sufficiently stable foundation for liberal political institutions, or so Rawls argues. An agreement like that, based on the balance of power, would amount to ‘stability for the wrong reasons’: the brush that Rawls tarnishes modus vivendi with. He also famously described modus vivendi as ‘political in the wrong way’ - so modus vivendi on Rawls’s view is doubly misguided - it is stable for the wrong reasons and it is political in the wrong way. Rather confusingly, he also claims that modus vivendi would be unstable because it rests on a contingent balance of power that is liable to change. Changes to the political circumstances would ‘upset the fortunate convergence of interests’.³⁶ Stability, on this view, can only be secured by a moral agreement on principles, a claim that relies on a particular moral psychology of motivation and compliance that I won’t discuss here. Rawls identifies two worries about a modus vivendi that point in different directions. On his critique, a modus vivendi might be stable, but only through unjust coercion. This is the claim that stability can be obtained by force or threat of force. More commonly, however, a modus vivendi will be unstable because the agreement of citizens depends on their interests being maximised given the constraints imposed by other citizens maximising their interests. If circumstances change and certain groups see the opportunity to profit from withdrawing their acceptance, then the modus vivendi will collapse.

³⁶ Rawls, *PL*, p.171.

There are two sorts of claims here. The first is an empirical claim about the stability of a *modus vivendi* in contrast with the stability of his own political liberalism. This is a strange sort of comparison for a political theorist to make because so little support can be adduced either way. What evidence could be marshalled in favour or against the hypothetical success of two highly abstract theories? Were Rawls to point to history as his evidence then defenders of *modus vivendi* would quickly respond that some of the most enduring political institutions (including the British Parliament) are much closer to a *modus vivendi* than they are to the kind of constitutional consensus that he advocates. The second sort of claim is a normative one. This is the idea that political institutions are only legitimate if citizens have a moral reason to accept the power that the state will exercise over them.

Horton has offered a response to the normative form of Rawls's stability objection, arguing that:

- i) There are no such moral reasons on which all citizens, or even a significant majority of citizens, could realistically be expected to endorse, in part because of Rawls's 'contentious conception' of the reasonable
- ii) Rawls's proposed solution to the problem of legitimacy does not resolve 'how to deal with those who do not accept Rawls's preferred principles'
- iii) The values that *modus vivendi* appeals to (i.e. peace and security) are more likely to attain consistent support (and thus stability) than Rawls's own principles because these principles are 'more minimal and less exclusive'.³⁷

Although I am sympathetic to the first two of these responses, I do not think that they address the criticism of *modus vivendi* directly. Pointing to the weaknesses of political liberalism is wholly justified, but it is not sufficient to point to the failings of another theory if the aim is to justify one's own theory. That political liberalism fails does not mean that *modus vivendi* succeeds. The third point addresses the objection directly but is, I think, unpersuasive. There are two reasons that I find this response unpersuasive. The first is that, as Sleat has noted, peace and security can be trumped by other values from within certain belief systems. Those ways of life that 'place high worth upon goods such as honour, glory, militaristic duty, or the salvation of the soul, may actually

³⁷ Horton, 'The Political Theory of John Gray', pp.50-51.

require conflict, and in some instances, war and violence'.³⁸ In addition, there are those ways of life that place 'high value on peace yet which see conflict and violence with particular groups, such as 'infidels', the bourgeoisie, the oppressors, or a certain religious or ethnic minority, as positively encouraged'. These ways of life are frequently dismissed as irrelevant to liberal legitimacy by liberal theorists, or otherwise ignored altogether, despite being far more widespread than most theorists are willing to recognise. At the more odious end of the spectrum these ways of life include fascism, racial purism, and religious fundamentalism. At the more acceptable end of the spectrum, we might include anti-colonialists and various shades of Marxists, communists, and anarchists. Modus vivendi theorists may have a response to this, which is to admit that there will inevitably be groups of people who will not, under any circumstances, accept a modus vivendi, regardless of how favourable it is to them. The solution to the problem that these groups pose is not an attractive one, but it is a necessary one: they must be coerced in the name of peace. This solution, however, is also the one adopted by Rawls when he writes that those doctrines that are 'not only irrational but mad and aggressive' must, 'like war and disease', be contained 'so that they do not overturn political justice'.³⁹ If we substitute 'the modus vivendi' for 'political justice' we arrive at modus vivendi's stance towards these intractable groups. In this sense, then, modus vivendi replicates one of the more problematic aspects of political liberalism.⁴⁰ I should note that Horton's argument does not suggest that a modus vivendi will *certainly* attain agreement, only that it is *more likely to*, given its minimal moral commitments. This claim then reverts to the empirical claim about stability, for which evidence either way is scant. On this more nuanced version, the third defence begins to resemble the first two of Horton's ripostes, in that it shows the weakness of political liberalism without demonstrating the superiority of modus vivendi regarding stability. It seems that none of these responses are successful in showing that a modus vivendi will achieve the kind of stability that liberals desire. One way to counter this apparent failure would be to reconceptualise the idea of stability in

³⁸ Sleat, *Liberal Realism*, p.103.

³⁹ Rawls, *PL*, p.64.

⁴⁰ It is worth noting that Rawls believed that unreasonable people would be able to reach a modus vivendi, writing that 'unreasonable doctrines are a threat to democratic institutions, since it is impossible for them to abide by a constitutional regime except as a modus vivendi'. Rawls, *PL*, p.489.

a *modus vivendi* by moving away from Rawls's conception of morally-grounded stability.

For Rawls, stability means a set of institutions that exist for a significant period of time that support a fixed set of principles. A theory of *modus vivendi* need not necessarily endorse that conception of stability, however, and instead could conceive of stability as the securing of peace for a significant period of time, but without the addition of fixed principles. On this conception, a state can maintain stability while also altering the principles that it supports. This conception has the added benefit of reflecting stability as it exists in reality. The British state has been stable, in the sense that it maintains peace and security (in the vaguest terms), for perhaps hundreds of years. Stability has been maintained despite tremendous changes to the state's guiding principles. The dissolution of the Empire, the legal status of slavery, extensions to suffrage, the development of the welfare state, to name only a few examples, all dramatically changed the nature, purpose, and scope of state power and the principles it supported. These changes did not undermine the state's authority to the extent that it could have been considered unstable. On this account of stability, principles need not be stable over time for the institutions themselves to be stable. This idea of stability through evolution seems to reflect the idea inherent in certain versions of democratic theory, that citizens are committed to the democratic institutions themselves rather than to the democratic outcomes. Although I think that this conception of stability has some appeal, it also stretches it beyond its breaking point. To return to the previous example, if we took a snapshot of the principles of the British state in 1790 and compared them to a snapshot of the principles of the same state in 1990 there would be little continuity beyond private property rights, the rule of law, and some loosely related commitments to liberalism. To consider these two states as a stable entity would be misleading. That most current citizens would not even have counted as citizens in the eighteenth century suggests that these two states cannot be considered stable. That a state has not endured civil war or social collapse does not mean that it is stable, as the evolutionary conception of stability would lead us to believe. Dramatic alterations to the constitutional essentials should

also be counted as instances of instability.⁴¹ This leads us back to the Rawlsian conception of stability of both institutions *and* principles over time.

This argument about instability might appear to depend on my particular conception of *modus vivendi*. If we conceptualise a *modus vivendi* in a different way we might be able to sidestep the stability objection. Bernard Dauenhauer, amongst others, distinguishes between two different understandings of *modus vivendi*. Rawls, according to Dauenhauer, understands *modus vivendi* to be ‘a working arrangement between contending parties, *pending the settlement of matters in debate*.⁴² On this conception, ‘those who accept such an arrangement would constantly be looking for a settlement on matters on *other* terms than those involved in the working agreement’. As a result, ‘their consent to the *modus vivendi* would be inherently unstable’. This conception of *modus vivendi* aligns closely with Hobbes’s view of a *modus vivendi* in which peace is secured only in a precarious and provisional way that must be constantly reaffirmed through state power. Dauenhauer contrasts this understanding with a second, less critical conception of *modus vivendi* as ‘an arrangement...that effects a workable compromise on issues in dispute without permanently settling them’. On this definition, there is no suggestion that a *modus vivendi* is ‘only temporary, pending something permanent’.⁴³ This second conception suggests that a *modus vivendi* can be just as stable (at least in theory) as a conventional liberal theory. Dauenhauer supports this interpretation on the basis that the ‘presumption in favor of a constitution or any of its parts can never become so strong that it is beyond reasonable contestation’. Therefore citizens ‘who are free to challenge a constitution have reason to be loyal to a society that provides this freedom’, whereas citizens who ‘find themselves thwarted by political provisions that are treated as unchallengeable have significantly less reason to be loyal’.⁴⁴ Whether this motivational claim is true in practice is debateable, although it does at least seem plausible. On either of these two conceptions, however, I think that

⁴¹ There is much more to be said about the spectrum of change and instability, in particular, specifying the point at which change is so dramatic as to constitute instability. This, however, goes beyond the scope of this thesis.

⁴² Bernard P. Dauenhauer, ‘A Good Word for *Modus Vivendi*’ in Davion and Wolf (eds.), *The Idea of Political Liberalism: Essays on Rawls* (Lanham: Rowman & Littlefield, 2000), p.219, emphasis in original.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

a modus vivendi is still unstable because of the impossibility of consensus entailed by epistemic pluralism.

A modus vivendi, on any conception, will draw upon an array of factors to reach an agreement. That there is a significant enough majority of people who are willing to accept a modus vivendi on certain terms at point X, does not mean that there will be a significant enough majority of people who are willing to agree to that same modus vivendi at point Y. Changing social circumstances will alter both the degree of support for the modus vivendi itself and the support for the content of the modus vivendi. Citizens will agree to a modus vivendi that is 'second-best' in relation to their own preferred political arrangement, but the extent to which they are willing to compromise will depend on their material circumstances and the ordering of their values at that point. Changes to their material circumstances or changes to their values will diminish the degree to which they are willing to accept an arrangement, thereby destabilising the modus vivendi. For example, citizens in a state that has been torn apart by civil war would probably be willing to compromise a great deal on their ideal arrangement in order to restore order and peace. However, some years after that initial compromise the threat of civil war may have receded and their material circumstances improved. The original terms of the compromise are no longer acceptable, and they subsequently withdraw their acceptance for the modus vivendi by refusing to acknowledge the authority of the state. This withdrawal may take many forms, most probably through acts of civil or violent disobedience, such as the refusal to pay tax, open hostility towards representatives of the state, the refusal to take part in political processes, or widespread protest. For a more concrete example, the uprisings of the Arab Spring offer a range of the ways in which the withdrawal of acceptance can be communicated politically, although the differences between the various uprisings also indicate how difficult it is to develop a comprehensive test for acceptability and its withdrawal. There is no simple test for when the requisite amount of acceptance has been lost.

Such examples need not be so dramatic. We could imagine that revelations of widespread and serious corruption among public officials, decisions to invade another state, or an economic crisis that exacerbated wealth inequalities could all prompt sudden withdrawals of acceptance from a significant proportion of the citizenry. This feature of a modus vivendi marks it out as distinctive from liberal theories. If we grant

Rawls his assumption that an overlapping consensus could be formed, then that consensus would seem to have a durability that a *modus vivendi* lacks. On his account, changes to social circumstances would not affect the consensus because the consensus does not respond to circumstances. In the final paragraphs of *A Theory of Justice* he writes that ‘to see our place in society from the perspective of this position is to see it *sub specie aeternitatis*: it is to regard the human situation not only from all social but also from all temporal points of view’.⁴⁵ For a theory of *modus vivendi* though, political life can never be seen *sub specie aeternitatis*, it can only be seen from within a historical and social context, and no principles can be immune from the vagaries of history. Although Rawls moved away from this view of political theory and liberalism in *Political Liberalism*, his continued commitment to justice as fairness indicates a similar view, albeit in a different register. Where the emphasis in *Theory* was on the view of the universe from the perspective of justice, *Political Liberalism* offered the view of the universe from the perspective of reasonableness. As I argued in Chapter 5 no such view is possible as a result of epistemic pluralism.

Conceding that a *modus vivendi* is unstable might seem to give too much ground to its liberal critics. My argument, however, is that instability is inevitable in *any* society and that those theories that think themselves immune from instability are misguided. If, for example, Rawls believed that the principles and institutions of justice as fairness would remain intact for the next hundred years (granting that such principles and institutions could, in practice, be established in the first place) then I think he is simply wrong. One only needs to look at the course of history in the last fifty years to see that such an ambition is insensitive to the churns and twists of social, cultural, economic, and political life. That does not dispel my central point, however, that a *modus vivendi* is also unstable. It is important, I think, that a theory of *modus vivendi* admits this. A theory of *modus vivendi* should not chase a liberal chimera. Stability, for the right reasons or for the wrong reasons, is incompatible with political life as it exists under conditions of pluralism. Rather than confronting liberals on their own terms, a theory of *modus vivendi* should distinguish itself through its willingness to accept instability as an inevitable feature of politics. As soon as we let the messy force of politics into normative theorising the stability of an arrangement is threatened. Horton is therefore right when he argues that there ‘can never be any guarantee; and it is right to suggest

⁴⁵ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999), p.514.

that there are always circumstances that can undermine a modus vivendi. To which the appropriate response is *c'est la vie*'.⁴⁶ Politics is unstable, which means that a political theory that recognises endemic political disagreement is also unstable. What I now argue is that this instability is not only inevitable, but also that instability can be a good thing. A theory of modus vivendi which embraces instability can combat the charges that a modus vivendi institutionalises a) injustice and b) the *status quo*.

The institutionalisation of injustice objection

The second objection, which is one that I take to be widely held among liberal theorists (although it is rarely addressed directly), suggests that modus vivendi is simply too normatively unattractive because it institutionalises injustice. As Hobbes notes in *On the Citizen*, 'he who has enough strength to protect everyone, has enough to oppress everyone'.⁴⁷ This idea is one that would be hotly contested by most liberal theorists who believe that liberalism offers the only way out of this impasse through accountable power constrained by a system of rights. It is also the idea that animates anti-statist varieties of anarchist and libertarian thought. The particular concern with a modus vivendi is that its authorisation of power is also an authorisation of injustice.

I take this to be the most serious objection against a modus vivendi. It can be understood in two ways. On the first account, the stronger groups in a given society, either in terms of sheer numbers or in terms of political power, can force an unfavourable agreement onto the weaker groups. On the second account, the political beliefs held by the citizens of a state are unjust and illiberal, thereby engendering an unjust modus vivendi. Both routes lead to 'a concern about the capacity of the politics of modus vivendi to allow, or even institutionalise, the oppression of the weak'.⁴⁸ This concern can be addressed by those accounts of modus vivendi that endorse a 'moral minimum' which protects certain essential rights. As I argued in Chapter 7, such accounts of modus vivendi are incompatible with my conception of epistemic pluralism. There is however a recourse for modus vivendi theorists without resort to a moral minimum. The problem of institutionalised injustice, especially on the second account, can be countered by the instability that is inherent to a modus vivendi. As the previous chapter argued, a modus

⁴⁶ Horton, 'John Gray and the Political Theory of Modus Vivendi', p.50.

⁴⁷ Thomas Hobbes, *On the Citizen* (Cambridge: CUP, 1998), p.84.

⁴⁸ Horton, 'John Gray and the Political Theory of Modus Vivendi', p.54.

vivendi must be able to secure peace of some sort, but it will always be based on contingent factors which are liable to sudden change, meaning that stability is always precarious. The reasons that the state can give to me to agree to its principles might apply at one point in time but not another. Because modus vivendi agreements are drawn from and reflect the balance of power in a society, shifts in that balance will destabilise the agreement. *Contra* Rawls, and pushing back against the pursuit of stability among modus vivendi theorists such as Horton, I think that instability can in fact be drawn on to show how injustice can be responded to, and how its occurrence made less likely to begin with.

The two limits on the conception of modus vivendi that I outlined above, in conjunction with the instability that I have argued is inherent to a modus vivendi, give us good reason to think that an unjust modus vivendi will either be unsuccessful to begin with or will quickly fracture. The second condition is the relevant one here because the peace condition of a modus vivendi can be undermined by a fairly small section of a population. If the point of a modus vivendi is to achieve acceptable peace, then the failure to secure peace will signify a breakdown of the modus vivendi. Few states could endure sustained civil disobedience or open violence from even a small minority of the population without the political authority of the state being undermined. In the making of a modus vivendi citizens have a good reason to reach a modus vivendi that is not unjust even towards a small minority, as that small minority has the capacity to undermine the second condition of a modus vivendi. Institutionalised injustice against even a minority will threaten that peace. The widely used slogan of protest movements ‘no justice, no peace’ brings this idea to the fore. A minority group may be willing to settle for what they perceive to be less than their conception of justice in the name of peace and security, but they will not be willing to agree to outright oppression.⁴⁹ As Horton notes, ‘people will generally not be willing to accept arrangements that seriously threaten their fundamental interests or most deeply cherished beliefs’.⁵⁰ This is not to say that a modus vivendi will not in certain respects be unjust, as it clearly in some circumstances will be, but instead to suggest that a modus vivendi will be unlikely to be deeply unjust towards minorities in the way that liberal theorists worry it would. It might seem *prima facie* implausible that such a small minority of presumably weak

⁴⁹ I take oppression to be a particularly severe and targeted form of injustice, rather than a conceptually different phenomenon.

⁵⁰ Horton, ‘Realism, liberal moralism and a political theory of modus vivendi’, p.439.

or persecuted citizens might be able to destabilise the political power of a large and dominating majority. There is, however, some strong historical evidence that governments can be (and frequently have been) overthrown by the consistent resistance of as little as 3.5% of the population.⁵¹ In fact, this research suggests that no insurgency has failed when 3.5% of the population have engaged in consistent protest against the state. Other empirical analysis puts this figure at 5%.⁵² A 3.5% threshold for successful revolt would mean eleven million people in the United States or two and a quarter million people in the United Kingdom. Revolts of this scale would amount to the biggest displays of sustained protest ever witnessed in either country. Without wanting to infer too much theoretical significance from empirical evidence, it seems *prima facie* plausible that small minorities are indeed capable of destabilising states. This research provides at least some support to my claim that, generally speaking, a small section of a polity is capable of destabilising and potentially overthrowing a government or state. This brief foray into the empirical, only serves to add some ‘real world’ credibility to my claims, but the argument here does not depend on whether revolution or reform can be achieved by a small minority. Instead, my argument is that a modus vivendi *will fail on its own terms* of acceptance and peace if the degree of injustice is such that the modus vivendi is unable to maintain the relative absence of violence. This claim holds separate from any empirical debate. This is not to say that the protested state will cease to exist, but rather that it will no longer be a modus vivendi because it violates the peace condition.

My argument depends on an acceptance of instability. If we insist on stability as a strong *desideratum* for a modus vivendi then the argument fails. The ability of groups to combat injustice depends on a modus vivendi being unstable, or at least susceptible to destabilisation. If, however, the options are either to accept instability, and in so doing, give modus vivendi the tools to counter institutionalised injustice, or to reject instability and deny modus vivendi the tools to resist injustice (in theory), then I think the choice is clear. Furthermore, if my argument about stability holds, then instability is an inevitable feature of political life, whatever theory one chooses to endorse, and to

⁵¹ Erica Chenoweth and Maria J. Stephan, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict* (New York: Columbia University Press, 2011).

⁵² Mark Lichbach, *The Rebels's Dilemma* (Ann Arbor: Michigan University Press, 1995).

ignore it or to theorize it away would be wishful thinking of the sort that *modus vivendi* theory abhors.

The obvious rejoinder to my point here is that the 3.5% in these historical cases were the active participants who represented a far larger segment of dissatisfied citizens and that such significant and sustained opposition to the state only arises in contexts in which there is at least the possibility of success. In cases where the overwhelming majority oppress a small minority which has no quiet constituency of support, it seems less likely that the opposition would succeed. Indeed, my argument seems to apply to certain societal circumstances better than to others. For example, a *modus vivendi* in which a reasonably large minority (say 15%) are oppressed by the majority has a reasonable chance of causing instability through a range of political actions. That seems less likely, however, in the case of societies in which an overwhelming majority (say 98%) belong to monolithic majority group, while the remaining 2% comprises a small and similarly monolithic minority group. Such a society would probably meet the two criteria for a *modus vivendi*, even if that *modus vivendi* were deeply oppressive towards the small minority. In that situation, the likelihood of instability is decreased, given the widespread support for the agreement, forcing the *modus vivendi* theorist to legitimise oppression. This, however, is a matter of political judgment, the truth of which can only be measured by the real exercise of power in the reality of a particular political context. When imagining those cases in which there is a stark difference in power between two groups it is worth noting that political liberalism has the same problem with regards to the coercion (and oppression) of unreasonable people. In this way, at least, a *modus vivendi* fares no worse than liberal theories in general. The point here is that a *modus vivendi*, from the outset, makes significant injustice unlikely precisely because a *modus vivendi* is both unstable and committed to securing peace.

You can't teach an old dogma new tricks⁵³: The *status quo* objection

I now turn to issue of whether a *modus vivendi* institutionalises the *status quo*. In Tom Stoppard's 1974 play *Travesties* a fictionalised James Joyce argues with a fictionalised Tristan Tzara about the purpose of art and the role of the artist. Tzara, the progenitor of Dadaism, argues that art must be dynamic, destructive, and revolutionary, whereas

⁵³ This quip is commonly attributed to Dorothy Parker, although there is little evidence to support this attribution.

Joyce sees art as primarily reflective and politically inefficacious. Their argument culminates with Joyce's conclusion that art should 'leave the world exactly as it finds it'.⁵⁴ A theory of *modus vivendi* appears to suggest a similar attitude towards politics. Rather than remaking political institutions or reforming principles of justice, a *modus vivendi* merely reflects the existing values and power relations of a *polis*. This critique differs from the previous critique that a *modus vivendi* institutionalises injustice because the *status quo* is not inherently undesirable in the same way as injustice. There may be many normatively desirable elements of the *status quo*. The worry here, however, is that my conception of *modus vivendi* is inert and incapable of imagining anything other than the legitimation and institutionalisation of the way things already are. What I argue here is that the opposite is true: a *modus vivendi* is more open to deviations from the *status quo* than the liberal theories it challenges.

The idea that *modus vivendi* theory is tied to conservatism is partly a result of the theorists who have advocated a *modus vivendi*. The Hobbesian tradition, of which *modus vivendi* is a part, is decidedly anti-radical, and *modus vivendi*'s best-known advocate, John Gray, is also associated with a form of pessimistic conservatism that rejects the utopian aspirations of much political philosophy. In addition to this intellectual lineage, a *modus vivendi* suffers from its commitment to real politics and real people. Because the 'real world' is more conservative than most political philosophy, it is assumed that a political agreement drawn from the beliefs of real citizens will inevitably adopt the prejudices and unjustified traditions that they hold.⁵⁵ I do not wish to define 'conservative' or 'reactionary' in any very definite way, as the content of each of these terms will depend upon specific features and a history that varies from society to society. For my purposes here, I use these terms only as placeholders to convey anti-radicalism, or a tendency towards the maintenance of the *status quo*.⁵⁶

Contrary to this perception, a *modus vivendi* is not only unlikely (or at least no more likely than any liberal theory) to sanction injustice, but it also expands the space for

⁵⁴ Tom Stoppard, *Travesties* (London: Faber and Faber, 1975), p.302.

⁵⁵ It is tempting to agree with Nabokov that 'reality' is 'one of the few words which mean nothing without quotes'. The same probably applies to the term 'the real world' (Vladimir Nabokov, 'On a Book Entitled *Lolita*' in *Lolita* (London: Weidenfeld and Nicholson, 1961), p.302.

⁵⁶ 'Radicalism', which I place at the other end of the spectrum to the *status quo*, is not to be equated with utopianism, which exists on a separate axis altogether.

radical political action in a way precluded by liberal theories. Far from being conservative or committed to the *status quo*, *modus vivendi* presents a vision of politics in which radical political action is made possible. To make that case, we can contrast the instability of a *modus vivendi* with the *desideratum* of stability in Rawls's political liberalism. John Gray has claimed that the 'most basic assumption of Rawlsian liberalism, which is that the task of political philosophy is to specify once [and] for all a set of basic rights and liberties that are immune from the vagaries of political conflict' is in violation of what he calls the 'truth of modern pluralism'.⁵⁷ This truth means that 'we have no alternative to the pursuit of a Hobbesian *modus vivendi*'. Rawls's desire to avoid this conclusion leads him to advance a theory of which the 'striking feature...is its utter political emptiness'.⁵⁸ Rawls's aim of securing stable institutions and principles is illusory because our 'liberties cannot be fixed once and for all - least of all by the philosopher - precisely because the *political* task is to reach a practical agreement on them that is bound to shift with circumstances'.⁵⁹

What Gray points to here is the idea that fixed principles, of the sort that liberal theorists aspire to, strip political theory of its political content. This idea is common among realist theorists, such as Bernard Williams and Raymond Geuss, who similarly argue against an 'ethics first' approach to political theory that gives little to no space to distinctively political thought. A *modus vivendi* theory, however, is political through and through because of its origins in epistemic pluralism. For Rawls, this is its failing. What Rawls fails to recognise, however, is that politics, not political theory, is the best means through which societies can improve from the perspective of justice (and perhaps the only way, depending on your conception of justice). The stability that Rawls seeks is not only chimerical, but also commits him to political institutions and principles that would inevitably become sclerotic. On Rawls's conception of stability, we are left with political stagnation and stasis. The notion of 'stasis' is particularly useful here, because it suggests both equally matched opposing forces and, albeit less commonly, civil strife. This second connotation refers to the period of feuding between ancient Greek aristocrats, as recounted in Thucydides' *History of the Peloponnesian War*. Although I think that it is ill-advised to draw philosophical conclusions from etymology, the dual

⁵⁷ John Gray, 'Rawls's Anti-Political Liberalism' in *Endgames: Questions in Late Modern Political Thought* (Cambridge: Polity, 1997), p.54.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

sense of ‘stasis’ illustrates the idea that stability can also be characteristic of a political malaise.

On a *modus vivendi* account, Lenin’s famous question ‘what is to be done?’ has traction in a way that it cannot within a liberal framework.⁶⁰ The focus on political action and practice in a *modus vivendi* (as opposed to *a priori* theoretical coherence), means that Lenin’s question becomes the primary question that both theorists and citizens must address. In Rawls’s theory, there is only one answer: accept and advocate political liberalism. Liberalism admits only one answer and only one course of action. Political liberalism is, as Gray claims, politically empty. Without the lifeblood of political strife, liberalism ossifies into dogma. There is no place for political action beyond the scope of political liberalism. Shifts in circumstances, in particular, shifts in the locus of political power, prompt no revisions to political liberalism.

A theory of *modus vivendi*, however, admits the full range of answers and courses of action, and can adapt to changing circumstances as they arise. New political coalitions, formed in response to economic and social change, can withdraw their acceptance to pursue other terms. If, as we see currently in much of the Western world, wealth is concentrated in the hands of a small minority, those excluded from that wealth can withdraw their acceptance in order to modify the terms of the political arrangement. In addition to this, the range of political actions they can use to pursue their goals is far wider than in liberal theory. Violent disobedience against the state, revolutionary ferment, widespread industrial seizures, and even terrorism might all be legitimate means of political change in a *modus vivendi*. I should make it clear that I am not endorsing any of those methods, but rather using them to show that a theory of *modus vivendi* can be severed from its conservative connotations both in terms of the range of permissible political doctrines and in terms of the actions available to political actors to pursue those doctrines. The point is made more succinctly by the American union organiser Eugene Debs, who claimed that ‘intelligent discontent is the mainspring of civilization. Progress is born of agitation. It is agitation or stagnation’.⁶¹ Where liberal theory sides with stagnation, *modus vivendi* is able to envisage the conditions of agitation. A *modus vivendi* is constantly being made, un-made, and re-made. Through

⁶⁰ Vladimir Lenin, ‘What is to be Done?’, trans. S.V Utechin and P. Utechin (Oxford: Clarendon, 1963).

⁶¹ Eugene V. Debs, ‘The Issue’, reprinted in *The Writings and Speeches of Eugene V. Debs* (New York: Hermitage Press, 1948), p.304.

this unstable process, positive changes away from the *status quo* might be achieved. Politics is in a constant state of flux and citizens should be able and willing to withdraw their acceptance when they no longer find the agreement tolerable. This is the nature of politics: there is no telos, there are no immortal political principles, only those principles that serve and reflect the people who submit to political power at a certain point in time.

I want to make a concluding remark about the nature of radicalism in a *modus vivendi*. ‘Radicalism’, as I have used it here in contrast to the *status quo*, does not imply positive change. Radicalism can take various forms and many of them may be deeply harmful. As Finlayson writes, ‘it would be a fallacy to draw a simple equation between the ‘radical’ and the good, the ‘conservative’ and the bad’.⁶² It does not follow, therefore, that radicalism leads to a more just world. It is entirely conceivable that radical political causes contribute to the world becoming less just. This does not have any bearing on my argument here, however, as my aim was to address the objection that a *modus vivendi* institutionalises the *status quo*. All I have tried to show is that radicalism, of all stripes, is compatible with a political theory of *modus vivendi*. Whether that radicalism promotes justice or hinders justice will be decided by political actors through politics, and not by political theorists through theory. *Modus vivendi* therefore has a radical ‘potential’, but nothing more. A theory of *modus vivendi* which accepts instability is uniquely malleable about its own principles and institutions, but it does not, and cannot commit to principles in advance and so the radical potential may yield no results. Nothing, especially not justice, is guaranteed by a *modus vivendi* and this is a price *modus vivendi* must pay.

3. Conclusion

I have argued in this chapter that *modus vivendi* does not need to rely on realism’s methodological starting point and that it is not a counsel of despair. By defending it against the institutionalisation of injustice and institutionalisation of the *status quo* objections I hope to have more clearly articulated my conception of *modus vivendi*, specifically its relationship to stability and its relationship to justice. I have not tried to show that a *modus vivendi* is a normatively desirable state of affairs, but rather to

⁶² Finlayson, *The Political is Political*, p.123.

suggest that it is not necessarily a highly undesirable state of affairs either. I have advanced a reformulation of *modus vivendi* that addresses what I take to be the most troubling objection that it institutionalises injustice. To do so, I have argued that instability is an inevitable feature of politics. In accepting this, a political theory of *modus vivendi* distinguishes itself from liberal theory, and also provides the necessary materials to theorise a response to the possibility of an oppressive *modus vivendi*. By embracing instability, a theory of *modus vivendi* can also counter the charge that it merely institutionalises the *status quo*. I argued this by contrasting *modus vivendi* with political liberalism, which errs towards stasis. To refer to T.S. Eliot's lines from 'East Coker' in the epigraph, because 'the pattern is new in every moment' *modus vivendi* encourages a 'new and shocking/ Valuation of all we have been'. New political moments require new valuations and a theory of *modus vivendi* enables those political valuations. My conception of *modus vivendi* offers both the only plausible account of legitimacy in the face of epistemic pluralism, and also a way of reconceptualising political change beyond the confines of liberal thought. A political theory of *modus vivendi* is not a counsel of despair, it is a call to political action without illusions.

Concluding Remarks

The end of all our exploring
Will be to arrive where we started
And know the place for the first time.

- T.S. Eliot, 'Little Gidding'

In the introduction to this thesis I posed two questions: why do people arguing in good faith disagree about value? And what is to be done politically about that disagreement? Although much of the thesis is pitched at a high level of abstraction and engages in some knotty philosophical problems, I think that the answers that I have given, epistemic pluralism and a theory of *modus vivendi*, are, in the best possible way, unexceptional. In non-technical terms, we disagree because reasoning about value is difficult, and the only viable response to the disagreement elicited by that difficulty is to try to secure an acceptable and relatively peaceful arrangement between those who continue to disagree. These answers are so conventional that they are probably the sorts of answers that someone with a passing interest in politics might give to the two questions I posed. Marc Stears, in his analysis of what he calls 'the politics of compulsion', claims that politics 'takes place in the face of inevitable disagreement, and, indeed, it is best understood as the functional response to that disagreement'.¹ Epistemic pluralism explains that inevitable disagreement and *modus vivendi* provides the framework of a 'functional response'. What we end up with, at the 'end of all our exploring', should be a familiar idea of politics and its conditions. Even if we, in Eliot's phrase, 'arrive where we started', I hope that we know the place a little better, even if not for the first time.

Despite the familiarity of my conclusions, they have some significant implications for contemporary political theory. Rawls's claim that 'the question the dominant tradition has tried to answer has no answer' was motivated by his fact of reasonable pluralism. My wider conception of epistemic pluralism should lead us to believe that the question of public reason liberalism, the question of which political principles are justified despite epistemic pluralism, likewise has no answer. Political authority cannot be justified by appeal to a consensus on political principles because epistemic pluralism precludes the possibility of a reasoned agreement on matters of value, even on a thinly

¹ Stears, 'Liberalism and the Politics of Compulsion', p.545.

normative conception of justice. It is not only Rawls's project that is undone by epistemic pluralism, but also the more prescriptive conceptions of *modus vivendi*, such as John Gray's value pluralist version. That those more ambitious projects should be abandoned does not mean that normative political theory is a futile endeavour. *Modus vivendi* provides the minimum requirements of politics, but it does not set the outer limits of what might be possible. Further, *modus vivendi* offers a practical answer to the question that follows from the impossibility of consensus: what can we do politically when no agreement on value is possible? This question can only be answered (although never permanently resolved) through politics, and a theory of *modus vivendi* provides the framework for the many ways in which that question might be answered.

I argued that a *modus vivendi* can give us hope that an agreement to disagree is not a counsel of despair, but rather liberates political agents from the constraints of liberal theory. Nevertheless, epistemic pluralism should dent our aspirations for what politics can do. Societies characterised by epistemic pluralism will never be saved by politics, nor will they be saved from politics either. The nature of politics is protean and being protean is its only consistent shape. The history of political philosophy has, in the most general terms, been a search for immutability. First, the search for immutable systems of government and then, more recently, for immutable political principles. Immutability might only be realised through a stable moral consensus of the sort that epistemic pluralism tells us can never exist. The price that we pay for the exercise of human reason is the endless difficulty and uncertainty of politics, with all the ceaseless evaluation, judgment, compromise, and confusion that it entails. *Modus vivendi* reflects this reality. By its very design, *modus vivendi* is in a perpetual state of passage. Political arrangements are forever being made and unmade. It is a way of proceeding in the face of value disagreement but it is also a means to further disagreement within politics. This does not entail that *modus vivendi* valorises disagreement, rather a *modus vivendi* is the necessary political response to the inevitability of disagreement.

The argument of the thesis

I have argued that epistemic pluralism, understood as the claim that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value between well-intentioned, sincere and conscientious people, explains why value disagreement is so persistent. This disagreement is not only persistent, but also non-

erroneous. I argued that epistemic pluralism, and not value pluralism, can provide a foundation for political theory because it does not make controversial metaphysical claims about value, but rather explains disagreement through the uncontroversial burdens of judgment. An acceptance of epistemic pluralism precludes the possibility of reaching a moral consensus on value, even of the sort that Rawls and Gaus think possible. Theories of public reason liberalism are therefore incompatible with epistemic pluralism because they rely on claims that are themselves subject to non-erroneous disagreement. In the face of such disagreement the only option is to turn to a *modus vivendi*, which I defined in terms of two conditions: acceptance and peace. These conditions can be defended by appeal to the idea of ‘standards internal to politics’, which do not rely on moral ideas that are incompatible with epistemic pluralism. These conditions are necessary requirements for there being such a thing as politics at all. A *modus vivendi* is not, as its critics have claimed, a counsel of despair. By accepting the inevitability of political instability, my conception of *modus vivendi* can respond to the criticisms that it institutionalises injustice and that it institutionalises the *status quo* by showing that significant opposition to a *modus vivendi* arrangement may prompt its collapse.

In Chapter 2 I reviewed the idea of value pluralism by drawing on its key proponents to outline its essential claims of value universality and objectivity, value plurality, value incommensurability, and value conflict. I surveyed the key disputes between value pluralists to outline the most compelling conception of value pluralism. I then outlined the appeal of value pluralism as a theory about value with reference to its distinctive claims about the nature of value.

In Chapter 3 I drew on Rawls’s idea of the ‘fact of reasonable pluralism’ and his ‘burdens of judgment’ to develop my conception of epistemic pluralism. I argued that epistemic pluralism is best understood as the claim that there are enduring and currently insurmountable epistemic obstacles to reasoned agreement on matters of value between well-intentioned, sincere and conscientious people. These obstacles are given by the burdens of judgment, which provide a set of reasons why reasoned agreement on matters of value is impossible. While I take the idea itself from Rawls, I justify my wider conception of epistemic pluralism by arguing that Rawls’s limitations on pluralism are a consequence of normative stipulations and not a consequence of

conceptual analysis. I then outlined the appeal of epistemic pluralism, describing it as a ‘light’ theory, which is agnostic about our most contentious disagreements.

In Chapter 4 I argued that epistemic rather than value pluralism, provides the appropriate form of moral pluralism for first-order political theory. I employed a theoretical constraint understanding of Rawls’s conception of freestanding theory to argue that value pluralism is too controversial to ground first-order theory. I argued that epistemic pluralism is not similarly controversial by rejecting the claim that it is reliant on value pluralism, and rebutting the claim that my version of freestanding theory is controversial because it amounts to scepticism.

In Chapter 5 I outlined and criticised Rawls’s political liberalism as a response to epistemic pluralism. First, Rawls does not justify his asymmetrical treatment of pluralism. His refusal to recognise that there is non-erroneous disagreement about political values is incompatible with an acceptance of the burdens of judgment. I criticised Quong’s defence of asymmetry by arguing that his distinction between justificatory and foundational disagreement merely restates Rawls’s distinction between the right and the good, which is the subject of the dispute. Second, Rawls’s invocation of reasonableness to limit the views of people who can assent to his proposed principles, descends into circularity. Reasonableness is defined in terms of acceptance of liberal principles and so the willingness of Rawls’s reasonable citizens to agree to a liberal programme is both unsurprising and inadequate as a response to my wider conception of epistemic pluralism.

In Chapter 6 I outlined and criticised Gaus’s justificatory liberalism as a response to epistemic pluralism by arguing that his attempt to induce a limited consensus by introducing strict ‘normatively justificatory standards’ is incompatible with epistemic pluralism. The point is that *any normative standards* (including standards of justification) will be unable to produce a reasoned agreement. This problem must be shared by all accounts of public reason liberalism.

In Chapter 7 I reviewed three accounts of modus vivendi by Gray, Wendt, and Horton. I argued that both Gray’s and Wendt’s conceptions of modus vivendi are incompatible with epistemic pluralism, but that Horton’s political conception is not. I developed Horton’s conception by defining a modus vivendi in terms of two conditions, acceptance and peace. I defended these two conditions by appeal to Williams’s idea of

‘standards internal to politics’. These standards are compatible with epistemic pluralism because they are what are necessary for there to be such a thing as politics at all. Having said that, these conditions may not always be met and so politics through a *modus vivendi* is not guaranteed.

In Chapter 8 I defended my conception of *modus vivendi*, first by distinguishing between my conception of *modus vivendi* and political realism. I argued that while realism has many valuable insights about political theory, *modus vivendi* fulfils realist *desiderata* and that the essential realist criticism of ‘moralism’ is both unnecessary and problematic for epistemic pluralists. I then addressed three objections to a *modus vivendi*, by arguing that an acceptance of the inevitability of political instability allows *modus vivendi* to respond to the criticisms that it institutionalises injustice and that it institutionalises the *status quo*.

Indications of future research

Considering the agnosticism of epistemic pluralism and the indeterminacy of *modus vivendi*, I am wary of becoming too prescriptive at this late stage. I shall only note two ways in which I think some of the ideas presented here might be developed.

Firstly, one of the most interesting consequences of a political theory of *modus vivendi* is what it means for political action, both for individuals and for groups. A wider range of political actions are permitted by *modus vivendi* thought than by liberal theory. Violence, threats, manipulation, and exploitation might be useful and even necessary tools in the pursuit of acceptance, although the moral tools of liberal theory might also continue to play a role. As Floyd and Stears suggest, ‘people will often need to act in morally regrettable yet politically necessary ways in the course of forging and preserving whatever forms of society they take to be desirable’.² Normative political theory might focus on what counts as political necessity, how necessity functions in a *modus vivendi*, what the limits on action might be, and how those limits are to be judged in accordance with epistemic pluralism. If political theory is to retain its normative role, then any attempts must avoid succumbing to the curtailed pluralism that afflict Rawls’s and Gaus’s liberalism.

² Floyd and Stears, ‘Introduction’ in *Political Philosophy versus History*, p.4.

Secondly, an endorsement of *modus vivendi* might prompt a revision of the traditional liberal canon of justice, human rights, and equality, in favour of a turn to the analysis of more peripheral political ideas, such as obligation, trust, and solidarity. A *modus vivendi* establishes what politics looks like in the wake of epistemic pluralism, but it does not tell us anything about the kinds of political ideas that will motivate acceptance or political action. This does not mean abandoning the liberal canon altogether. Rawls's political liberalism might offer an attractive ideal of democratic liberal politics that those subject to a *modus vivendi* can strive for. For example, radically redistributive principles might command widespread acceptance, and their absence might provoke widespread unrest. But these normative ideals can only exist *within* a *modus vivendi* framework. Equality and justice may prove to be essential concepts, but these too must be understood only as political ideals that members of a *modus vivendi* might find reasons to pursue. Liberalism, even Rawls's moderate political liberalism, has no special status and it must stake its claim to authority within politics. Only by understanding the limits of what politics must look like can political theory envisage its horizons.

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