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Democracy as public justification: towards a non-authoritarian political theory

Habilitation Thesis

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Abstract

The thesis lays the foundations of a long-term research project addressing the problem of legitimacy of political authority in deeply pluralist societies. The author shows that because normative democratic theory finds itself in a problematic state due to its many-level dissonance (as opposed to the wished-for productive pluralism), political philosophers should approach democracy from a different perspective. This is provided by the theory of public justification (PJ) which addresses a similar class of question – namely how to ensure legitimacy in a morally deeply divided world. On this most generally, the thesis therefore explores the links between two major areas of contemporary political philosophy (democratic theory and public justification/public reason theorising, the latter owing much of its liveliness to the later work of John Rawls). After illustrating the general concerns on two fundamental issues of democratic theory – the concept of political representation, and the status of the majority principle as a decision-making method –, the author develops an analytical framework for understanding the structure of public justification and how it impacts on the resulting theories of PJ. Inspired by the wide-ranging work of Gerald Gaus, the author defends a maximally inclusive version of public justification, based on intelligible reasons, convergence approach to justification, weak internalism about reasons, moderate idealisation, and a combination of justificatory modalities (deliberation, universalisation, bargaininig, and social evolution). This is conceptually related to delineation of what has been called qualified acceptability, the best-known variant of which is the notion of reasonableness – again, arguments in favour of an inclusive construal are put forward.

In the latter chapters, the author shows how his preferred account of public justification speaks to core debates in legal theory, because pluralism and disagreement is a fact of social life that law itself must come to terms with. Next, an inquiry into public justificatory capacities of constitutional courts and parliaments is carried out; it turns out that in contrast to an influential view in political and legal theory, it is parliaments which hold justificatory primacy, at least if the argument in the previous chapters is correct. The last "institution" to be explored via the lens of public justification are human rights, the philosophy of which seems strangely isolated from central concerns of contemporary political philosophy. Again, the account of public justification worked out earlier is found promising as a justificatory ground for human rights. The last two chapters overview several systemic objections to PJ theorising, in order to reconstruct a non-authoritarian justification of a liberal order with core elements of representative democracy.

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In fact, the whole academic and administrative staff at the FSS deserves a big hug. We academics have always reasons to grumble about this or that; however, having a rough idea how things work (or not work) at a few other places, I realise we are not always fully justified.

Some of the stuff I present here has been published before (in slightly or very different shape); some other parts, I hope, will be published soon, or at least prospectively. The works that have already appeared include: Dufek, Pavel. 2018. Democracy as Intellectual Taste? Pluralism in Democratic Theory. *Critical Review* 30(4): 219–255 (bulk of Chapter 2); Introduction + chapters 1, 7 and 8 of Dufek, Pavel et al. 2019. *Liberální demokracie v době krize. Perspektiva politické filosofie*. Praha – Brno: Sociologické nakladatelství – Masarykova univerzita (part on the Introduction, bits of chapter 2, bulk of chapter 3); Dufek, Pavel and Jan Holzer. 2016. Debating democracy in East Central Europe: the issues and their origins. In: Holzer, Jan, Miroslav Mareš et al., *Challenges to Democracies in East Central Europe*. Abingdon: Routledge, 15–35 (bits of the Introduction); Dufek, Pavel. 2018. Normativita, fakticita a liberální projekt lidských práv: K možnostem morálního univerzalismu. In: Petr Agha et al. *Lidská práva v mezikulturních perspektivách.* Praha: Academia, 57–75 (bulk of 5.3); Dufek, Pavel. 2018. Lidská práva, ideologie a veřejné ospravedlnění: co obnáší brát pluralismus vážně. *Právník* 157(1): 50–70 (bits of 4.2 and of 5.3). I guess all the reviewers and editors involved also deserve a high five, as they almost invariably helped make the resulting texts better.

Contents

1. Introduction

The ancient aphorism has it that "the fox knows many things, but the hedgehog knows one big thing." Although Isaiah Berlin who popularised Archilochus's phrase in a longer essay on Tolstoy's understanding of history (Berlin 2013) seems to have meant it rather light-heartedly, it took roots both among the broader public and in the academia. Even political philosophers are sometimes tempted to place themselves in one of the two camps, either believing that normative political though can – and should – aspire at fundamental unity, especially unity of value (typically Dworkin 2011: 1–2), or remaining suspicious about any such attempt to erect a monist philosophical system (even though the latter may admit there is at least a central *concern* to be addressed; cf. Gaus 2011: xiii–xv). The uninitiated might find it suspicious that while the foremost hedgehog Dworkin considers himself to be in the minority because "the fox has ruled the roost in academic and literary philosophy for many de cades, particularly in the Anglo- American tradition" (Dworkin 2011: 2), the leading fox Gaus asserts that "[o]verall (…) moral, social, and political philosophy is the clash of hedgehogs." But this is not surprising after all, because as I show in the second chapter, political philosophers, and prominently among them those who deal with the concept of democracy, have been putting forward highly divergent views of what the social world around us is like. That they see their very own discipline in such contrasting ways illustrates the point, and also sheds some light on the motivations behind this essay.

The truth is that the essay arose partly out of desperateness. Having intensively studied in various areas of political philosophy for the last 15 years or so, and casually in the years before, I still find myself perplexed as to whether I have actually found any convincing answers to any of the questions posed in the literature – or even worse, I find myself wondering which questions are worth asking in the first place. Of course, academic political philosophers are a very smart bunch, and seen from certain distance, all the issues subject to their searching gaze sound quite important. The thing is, they disagree quite strongly what precisely is most important, or even worth considering at all. Yet it cannot be that all questions and all the answers that have been offered are equally important and equally valid. There must be some organising principle which tells the reader or listener where to start and what to look for, right? Insofar as political philosophy aspires to make a difference in the real world, there has to be some way of distinguishing good questions from bad questions, as well as good answers from bad answers, hasn't it? It surely cannot be that the point of philosophising about politics is, well, the ongoing practice of philosophising about politics. Or can it?

Here is the problem as I see it: unless one has an idea – or more strongly put, unless one thinks he *knows* – from the get-go which hedgehogy structure of values and the corresponding set of institutions is worth defending, then he will hardly get anywhere, because the pathways of argumentation in political philosophy point in frightfully many directions. However, how can anyone have a firm idea in which direction to invest her intellectual energy *until after* the (individual) philosophical explorations have been pursued? Yet again, you cannot really engage in such free-floating critical explorations too

much, because then you would spend the rest of your life exploring myriads of arguments, rejections, responses, rejoinders to responses, and so on, without offering much in the way of your own views. There is simply too much literature to be covered, and too many interesting (but possibly flawed) claims and arguments to be considered. And at any rate, in the rather competitive academic business you are expected to start building you own position in the debate right from the beginning of your career anyway. In general, the ways political philosophers come to possess their (sometimes very strong) normative views of politics seems like a very intriguing subject of research for sociology of the social sciences and humanities.[1]

I am thus certainly not a hedgehog, because it remains a mystery to me how one can be at once a staunch advocate of some particular set of normative views *and* a philosopher, if philosophy requires fundamentally critical stance vis-à-vis anyone's beliefs – that is, including one's own. On pain of having chosen the wrong vocation, philosophers need to always admit the possibility of being completely wrong and misguided. How come they keep professing large-scale reconstructions and transformations of political orders, even on a global scale? How can a *philosopher* ever be a liberal, socialist, libertarian, republican, or what have you? They cannot be *all* correct, after all. But I cannot sincerely label myself a pure fox either, because too much foxiness leads to practical impotence, or perhaps toothlesness – there is always *some further objection*, some further argument to a different conclusion, some new ground-breaking book to be addressed. If political philosophy wants to retain its practical sting – the goal of providing coherent general guidelines of political action –, then a bit of hedgehogy obstinacy seems necessary.

In an important book, Jonathan Floyd (2017) shows that the first step towards resolving the many-level dissonance in political philosophy is to be clearer about its point. What is it that political philosophers are trying to do or achieve? Although many suggestions have been proposed during the last 2,500 years, I will follow Floyd here, because his solution is a very succinct and yet a most general one. Political philosophy, in his view, is centrally concerned with providing meaningful and convincing answers to the "organising question" *How should we live?*, which is necessarily accompanied by the "foundational question" *Why should we live that way and not another?* (ibid: 34–37). In this context, to be *convincing* means to offer "the most rationally compelling" argument. *Meaningfulness*, on the other hand, is a proxy for sufficient specificity, so that the answer has some practical guidance. These are sensibly formulated questions, and Floyd does an excellent job of documenting where and why foremost contemporary answers fail: basically, they are either meaningful but unconvincing, or convincing but not meaningful, because it seems *impossible* – as the very title of his book suggests – to provide a complex normative political theory acceptable to all involved parties but determinate enough to guide political action.

[1] Gerald Cohen's (2000: 1–4) brief overview of the childhood roots of his lifelong belief in socioeconomic equality could be one piece of evidence.

I do not believe I have a battery of answers of this sort up my sleeve, at least not as of now, and perhaps I will never be able devise one. If, however, a modicum of obstinacy seems necessary for doing political philosophy, then what are my two cents? Building on Floyd but shifting the perspective a bit, I am interested in whether it is possible to think about politics, and thus answer both questions, in a *non-authoritarian manner*. In a sense, then, the present essay elaborates on Floyd's third "guiding question": *is it possible to provide a convincing and meaningful answer to the first question?* It is "guiding", because the rest of this essay is organised around the attempt to answer it (as in Floyd's own case). Of course, a given answer – a theory of democracy, for instance – can be authoritative in the sense that no reasonable person, upon becoming familiar with it, can earnestly reject it, simply because it is so objectively compelling on rational or moral grounds (preferably both). But this is not how it works in our world, and at any rate, the (non-)authoritativeness I have in mind is of a different kind: it is a way of proposing claims, assertions, ideas etc. which are to be considered by our interlocutors.

Anthony Laden (2012) contraposes the standard philosophical way of "professing" proposals on the back of watertight arguments – that is, logically impeccable series of moves from true premises to conclusions – to a "social picture" of reasoning, as an activity which necessarily takes place "together" and constitutes and *invitation* for others to join the conversation. As such, reasoning is necessarily *public*, because it is by definition "directed at others" (ibid: 150). This is not the place to get into details of Laden's rich position, and my own reasons for following a heterodox path of theorising about politics – going in twists and turns and loops and sidesteps, rather than a straight line from premises to conclusions-qua-next-premises – are more mundane: I am simply sceptical that there are enough sufficiently meaningful (in Floyd's sense) shared premises in political philosophy for the majority of arguments to be considered sound.[2] That, of course, affects no less the conclusions of such arguments – that is, the normative and practical-political suggestions given by political philosophers. Thus, to keep the following chapters under one roof, I stipulate a *desideratum of non-authoritarianism* which applies both to political theorising and to the political organisation of society.

But why should political philosophers care about non-authoritarianism? Such objection might come from numerous sides – MacIntyrean, moral realist, nihilist, Marxist etc. –, not least because the assumption sounds covertly liberal. And if not liberal, then at least too timid. It indeed is normatively "liberal", if liberalism stands for individual freedom from unjustified authoritative commands regarding *how we should live*. Perhaps it is here where the hedgehoggy "central concern" takes over: because the point of political philosophy is to tell people how they should live, and because I cannot see any natural, obvious, self-justifying grounds for any of the available solutions (countless as they are), my first response to any such claim would be to look into the source of its moral authority, and derivatively the authority of the political and legal arrangements that are entailed or implied. Put differently, if there is one big question worth asking over and over in political

[2] As Philp (2008: 145) puts it, putting forward premises which are "unreasonable to deny" is a tall order.

philosophy, then it is the one of *authority*. Much of what follows in the chapters below is animated by this Ur-Question. I cannot pretend to be putting forward a *theory* of authority, much less a complete one, and this was never my aim anyway. Nonetheless, I find it useful and perhaps also sincere to acknowledge right at the outset where I am coming from. Of all the big questions of political philosophy, and more specifically of democratic theory which is my main subject in this work, the importance of the question of (political) authority, I surmise, is the *least controversial one*. My hunch is that most if not all other big questions can be ultimately rephrased in terms of authority, even though the attempted answers will have to make use of elaborate theories of justice, freedom, equality, or democracy.[3]

Perhaps under influence of this hunch, I would have preferred to endow this essay with a Puzzle, a corresponding Claim, an Argument supporting the Claim, and the Upshot explaining what all that means for the theory and practice of democracy. That is, in an ideal world I would have presented a unified normative theory of politics built around the concept of authority. Given what has just been said in the preceding paragraphs, I could not but disappoint myself and perhaps every reader who expects the same. But there is perhaps some hope. The text might be best read as an outline of a long-term research project which aims to incorporate, under the heading of public justification, many of the traditional basic concerns of democratic theory. Apart from the admittedly vague framing in non-authoritarian normative thinking, I can I at least state where I start and why. There are two aspects to this, both having broadly methodological significance in that they are rooted *in mediis rebus*, in the middle of things: first, and this will be the subject of the next section, liberal democracy, as a system of government the primary audience of this text is intimately familiar with, is in the midst of a crisis, according to many observers. My inquiries about the nature of liberal democracy will be set against the background and the perceived need to revise, retheorise, reform or transform its basic building blocks. In this, I am taking a very loose inspiration from Jeremy Waldron's idea of a *political* political theory – one which is philosophically informed, yet firmly embedded in the political practice of the real world. This is why I'm interested in topics such as political representation, the nature of law, or the normative position role of parliaments and constitutional courts.[4]

Second, and this follows from the preoccupation with the sources of justifiable authority discussed above, I take the core liberal values of individualism, moral egalitarianism, and

[3] There thus may be some similarities with approaches such as that of Rainer Forst who takes as the foundational problem for political philosophy the justification of *power* (understood by Forst as the capacity to "*influence, use, determine, occupy, or even seal off the space of reasons for others*"; cf. Forst 2017: 42, emphasis in original). I do not share Forst's broader normative position, though, which I briefly criticise in section 4.3. For another very interesting answer explicitly treading the unifying path of the hedgehog, built around the fundamental principle of (individual or collective) *control* which in turn grounds the values of liberty, democracy responsibility etc., see Sobek (2019).

[4] With my colleagues Jiří Baroš and David Kosař, I have recently co-authored several pieces on the separation of powers and its place in democratic theory and practice. The topic ultimately did not make it to the final version of the thesis, but certainly fits into the "*political* political theory" description. See Kosař, Baroš and Dufek (2019); Baroš, Dufek, and Kosař (forthcoming), and Dufek, Baroš, and Kosař (unpublished).

(individual) freedom to constitute the normative core of liberal democracies (cf. Talisse 2016: 22–24).[5] Although these values or principles will keep reappearing throughout the text,[6] I will not be putting forward a head-on defence (even though I do believe them to be essentially correct and normatively desirable), not least because providing a convincing and meaningful interpretation of them would take me beyond the limits of this text. Nevertheless, a quick glance over the normative underpinnings of extant liberal democratic regimes, as captured in their constitutions and (often) bills of rights and freedoms, reveals that these are centrally built around precisely this combination of values.[7] In other words, both the contemporary scholarly sentiment and the legal-political practice constitute the "things" in the middle of which my inquiry begins, and to which it hopefully returns after some twists, turns, and sidesteps – all the while guided by the desideratum of non-authoritarianism. The chapters/topics which make up this essay can be then understood as fragments of a larger mosaic which I hope will become coherent, intelligible, and non-authoritarian one day. Thus the idea of a long-term research project.

The empirical fact which informs all the chapters below is normative pluralism or diversity as experienced both by societies populating liberal democratic regimes and by political and democratic theory. As argued throughout, normative diversity is bound to result in normative *disagreement* concerning both substantive (How should we live?, What should we do?, What rules of social cooperation to follow? etc.) and procedural issues (What is the best way of reaching substantive decisions? Is it possible to provide a convincing and meaningful answer to the question 'How should we live'?). Importantly, such disagreement no less applies to normative political theorising about how best to organise these regimes and societies, as chapter 2 argues at length. However, if for liberalism the starting point is respect for each individual, especially respect exhibited by political authority which wields irresistible coercive power, the doubt arises whether it is possible to even *imagine* a political decision having both moral authority and legitimacy – that is, it being binding and justifiably enforceable. The old constitutionalist "trick" of assuming that decision by the majority somehow expresses the will of each and every individual cannot withstand critical reflection, as shown in chapter 3 which analyses the concept and practice of political representation, and the majority principle as the default decision-making rule for democracies. In both cases, I argue there is no normatively neutral way of thinking about the topic, pointing to the solution I elaborate in the following chapters.

A promising path towards a solution is to be found in the concepts and surrounding theories of *public justification* and *public reason* (as developed above all within liberal political philosophy), in essence a modern-day variation on the venerable social contract tradition. Authors working on its contemporary reformulations look for a middle way

[5] These values are then protected by a combination of elements of the institutional arrangement, such as the rule of law, the separation of powers, judicial protection of rights, and so on. This is where political philosophy is inescapably joined by constitutional theory.

[6] In chapter 3, the value of *responsiveness* will be added to the mix.

[7] In continental constitutionalist parlance, they are part of what is known as the post-WWII *materieller Rechtsstaat*; cf. Tiedemann (2014).

between two well-stablished, authoritative, yet controversial sources of justification – that is, (empirical) Consent and (objective) Truth. In chapter 4 I look in some detail into the structure of public justification and argue in favour of a maximally inclusive, and therefore in many relevant aspects minimalist, conception of public justification. Imposing few substantive restrictions on the process of public justification – so few, in fact, that the notion of public *reason* ceases to be useful –, it makes successful justification more demanding, at least if the goal is to promote a substantive normative vision of a just society. On the flip side, it avoids (or at least seeks to avoid) authoritarian imposition of idiosyncratic beliefs, thus remaining maximally faithful to the liberal imperative of respect to individuals. The last section of this chapter briefly illustrates the abstract exposition by comparing the basics of two complex theories of justification which, while departing from overlapping initial assumptions about the indispensability of normative justification, end up occupying more or less opposing sides in the debate – namely those developed by Gerald Gaus and Rainer Forst.

In chapter 5 I try to link debates about public justification in political philosophy to the institutional context of liberal democracies. Because the modern liberal democratic state is, among other things, a legal and constitutional state, it is most interesting to see how the public justification approach may be reconciled with the nature of law (5.1). I argue that because the problem of diversity and disagreement is shared by political and legal philosophy, the minimalist approach to public justification is eminently usable in the legal context, providing the most promising content for *public legal reason* as employed by courts, legislatures, and other actor participating in the creation, justification, application, adjudication, and enforcement of law. This is closely linked to the question where in fact to look for public justification in a liberal democracy (5.2). Against the prevailing view that constitutional courts are the primary repositories of public reason, I argue that at least as highest constitutional bodies are concerned, parliaments need to be construed as foremost justificatory bodies. This has to do with the preferred structure of public justification (4.1) and the need to deal in a non-authoritarian manner with the fact of diversity. I then turn to the philosophy of human rights, arguing that (a) they cannot be dissociated from the broader liberal project of transformation of all existing societies into liberal democracies; and (b) that major proposed justificatory strategies fail, for none can coherently deal with what I call the *moralistic fallacy* in thinking about human rights. Again, I call public justification to the rescue, concluding that in combination with social-evolutionary understanding of social morality, it offers the most promising non-authoritarian way of justifying human rights to the *extremely* diverse audience all around the world.

Building on the previous chapters, Chapter 6 addresses several systemic objections to the public justification/public reason approach as such, giving some ideas about how to save the minimalist version of liberal public justification I favour from sliding either into the old comprehensive liberalisms or into the anarchist trap. There is a fine line to be treaded, but I believe it can be done, so that the seeming dilemma actually provides for a middle path. I thusly prepare ground for the concluding chapter 7 in which I briefly look into two

lingering problems: first, can the specific account of public justification actually justify fundamental liberal principles? And second, what does it tell us about the nature of democracy to be instituted?

1.1. Crisis of Liberal Democracy and Political Philosophy

First of all, however, let me expand a bit on the announced crisis of liberal democracy. In the course of the past two decades, a curious paradox has emerged. On the one hand, liberal democracy has spread across continents, being touted as an exemplar of good rule – or even, in the eyes of many, the only legitimate type of rule. This belief has driven much scholarly research into the impediments to successful democratisation (e.g. Plattner 2008). On the other hand, there is a growing sentiment among political philosophers that Western-type liberal democracy, as the implicit poster boy of democratisation efforts, is undergoing a deep crisis which threatens it with political, cultural, economic, environmental etc. doom (or at least protracted agony) unless some transformational shifts happen both in democratic theory and practice. The list of challenges, threats, deficiencies, and promises is a long one, covering basically any problem contemporary democratic societies are faced with. In a peculiar sense, this is actually *good news* for political philosophy, because the discipline has been long understood by its practitioners as especially qualified to provide a competent diagnosis of what has gone wrong and why, as well as of how (liberal) democracy could be "saved" (cf. della Porta 2013). After all, periods of history which witnessed momentous societal changes or crises tended to correlate with appearance of canonical works of political philosophy, as documented by such authors as Plato, Aristotle, Augustine, Machiavelli, Hobbes, Locke, Tocqueville, Mill, Marx, Arendt, Hayek, or Rawls.

The topos of *crisis of liberal democracy* has been present in political philosophy basically from the very inception of liberal democracy as a system of rule. This is why it makes sense to construe liberal democracy as always haunted by the spectre of a systemic crisis, perhaps apart from a handful of short-lived spikes in optimism such as post-WWII reconstruction of Europe grounded in a broad consensus of major political currents, or the aftermath of the collapse of communist regimes in the late 1980s/early 1990s. Instructively, the spectre has been always raised by political philosophers of all normative and ideological stripes. But perhaps this time it is for real: it seems to make a difference when the "end of liberal democracy" and the coming of *illiberal* and *national* democracy is announced by the prime minister of a EU member state (Orbán 2014) rather than by some fringe political figure.[8]

Indeed, the emergence of the liberal democratic *materieller Rechtsstaat* after the Second World War was accompanied by repeated laments about a systemic crisis of liberal

[8] Not that long before the apex of quasi-authoritarian centralisation of political power by Viktor Orbán and Jaroslaw Kaczynski (the two Central European bad guys), Cardiff-based Czech legal philosopher Jiří Přibáň (2013: 155) wrote about the threat of a *ruining* of constitutional democracy in Hungary and Poland. Cf. also Dufek and Holzer (2016) for an overview of how "crisis of democracy" has been conceptualised in the CE region.

democracy, or at least the imminent threat thereof. It is worth noting that such sentiments have been cultivated both within the "leftist" camp comprising neo- and post-Marxism, Critical Theory, radical democracy and the like (cf. Mills 1956; Offe 1984; Foucault 2008; Hunt 1980; Habermas 1988; Putnam 2000; Crouch 2004; Wolin 2008) and within the "rightist" squad of conservatives, classical liberals, agonistic liberals etc. (cf. Crozier et al. 1975; Bloom 1987; Deutsch a Soffer 1987; Lasch 1991; Manent 1998; Gray 1995, 2000, 2016; Fiala 2010). All in all, when the Italian political thinker Norberto Bobbio wrote in the 1980s about "broken promises" which liberal democracy had given but never fulfilled (Bobbio 1987: Ch. 1), he might have captured the general sentiment to which this system of rule keeps giving rise.

I tend to think that such uneasiness with the circumstances of liberal democracy betrays, first and foremost, theorists' normative and metanormative assumptions, as exhibited in their delineations of what liberal democracy – and the concept of democracy as such – stands for (as argued at some length in chapter 2). This is understandable, because in order to praise or criticise extant political practice, one needs a measuring stick – that is, some ideal-type scenario from which the criteria of evaluation are derived. It gets lost too easily, however, that this ideal-type scenario (no matter how "utopian" or "realistic" its nature) and the resultant criteria determine the nature of perceived problems, threats, and causes of the crisis. The following chapter extensively builds on this insight in order to criticise the platitudinous attitude of practitioners of democratic theory towards the state of their own discipline. Nonetheless, the gloomy perspective so dear to political philosophers seems to be increasingly buttressed by findings of comparative – "empirical" – research on democracy. Leading democracy scholars present data which seemingly cannot be relabelled either as normal oscillations in the trust exhibited towards the system (as in Norris 2011) or explained away as shifts in political activity to non-electoral participative spheres or channels (Beck 1986: Ch. VIII; Dalton 2004; Rosanvallon 2008a; Vráblíková 2017). This time, we are supposed to be facing a fundamental challenge to liberal democracy and perhaps to democracy as such.[9]

Both empirical and normative scholars of democracy are thus turning their attention to a plethora of looming issues. These include: belief of younger generations in the superiority of democracy over authoritarian alternatives (Foa and Mounk 2016); declining turnout (World Bank 2017); the systemic crisis of electoral political representation (Mair 2013; Bíba and Znoj 2017a); the decay of the participatory aspect of democracy coupled with rise of technocratic governance (Buchstein and Jörke 2007); rise of the executive at the expense of legislative bodies (Dufek, Kosař and Baroš unpublished); depoliticisation and dedemocratisation of political decision-making (be it a consequence of neoliberal capitalism, the welfare state moloch, concentration of power in supranational elites' hands, juristocracy, or any other such phenomenon; cf. Crouch 2004; Barša et al. 2010; Fiala 2010; Mastropaolo 2012; Blokker 2013); commercialisation of the media and concentration of their ownership in the hands of the few, resulting in impaired public

[9] There still are less gloomy or even moderately optimistic voices; see e.g. Merkel (2014); Levitsky and Way (2015).

debates (Carpentier 2011: Ch. 1); erosion of the welfare state and the related surge in income, economic etc. inequalities (Mounk 2017); erosion of the modern state as such (Loughlin 2016; Kysela et al. 2014; Belling 2019); global economic turbulences and corresponding shifts of loci of power (Diamond 2017; Öniş 2017); impact of the recent economic crisis on the quality of democracy and its perception among citizens (Morlino and Quaranta 2017); disruption of fundamental value consensus which makes possible living together under conditions of normative diversity (Manent 2016; Baroš 2018); crisis of civic trust and solidarity (Yeo and Green 2017; Müller 2006; Müller, Karel B. 2016); dissolution of the ability to respectfully disagree, which contributes to a crisis of legitimacy of collective decision-making (Talisse 2009); voluntary self-confinement in the snare of all-powerful state and international institutions, even if practised in the name of emancipation (Deneen 2018); misrecognition of entire social groups consisting in their exclusion from political decision-making as well as from social life (Thompson and Yar 2011); undervaluing or misinterpreting the importance of civil society and the corresponding decline of civic engagement (Edwards 2011: Part III); unchecked multiplication of unelected and technocratic bodies (Caramani 2017); or the rise of populism, perhaps as a response to the technocratic bias (Müller, Jan-Werner 2016; Urbinati 2018; Havlík 2019).

All this is why what political scientists call *deconsolidation* of liberal democracy becomes a real possibility (cf. Dufek and Holzer 2016; Foa and Mounk 2017). The current rise of populist-plebiscitarian forces on both the right and left sides of the political spectrum can be then understood as a response to these perceived multifaceted troubles at the heart of liberal democracy.

Let us accept for the sake of the argument that crisis of liberal democracy is real. One thing that political philosophers need to believe is that the origins – causes or constitutive components – of the crisis are to be primarily looked for in the normative background and institutional structure of extant liberal-democratic political systems. If this assumption did not hold water, then careful philosophical reflection on politics would be misguided as far as rescuing liberal democracy goes, because the relevant knowledge about the crisis would lie elsewhere, with such disciplines as economics, sociology, or psychology.[10] As a result, authoritatively telling large masses of people how they should live would be error and hubris combined. Again, I do not have a bulletproof argument to the contrary. But we can take some solace in considerations which *cannot* be grasped by other disciplines without them moulding into political philosophy: as Sheldon Wolin (2004: 9ff.) among others noticed, periods of disintegration of political orders always invite extensive rethinking and refashioning of the conceptual toolbox we normally use to describe and evaluate political reality. Old meanings of concepts retreat while new ones – or more precisely, their masters and conjurers – struggle for domination.

[10] Or perhaps with biology and other hard *sciences* if one is of a reductionist bent. But then the distinctively normative content of any such reflections would evaporate. Maybe this *ought to* be the case, notwithstanding the inevitable paradox, but I cannot bury myself *that* early.

Even in abstract debates among political philosophers, then, *a lot* is at stake: the way you define democracy and expand this definition towards a conception and perhaps a complex theory of democracy fundamentally pre-determines what you see as democracy's most serious ills, and what remedies are there in your toolbox. Looking at the tentative list of claims about what has gone wrong, common sense suggests that the issues cannot be all equally important, for this would render liberal democracies essentially unrescuable due to the sheer amount of near-fatal problems to which they have fallen victim. Besides that, some of these claims must be clearly *wrong*, if only because they are ruled out by other claims on the list – for example, the modern state cannot be at once eroding and all-powerful. The struggle among different visions of how we *should* live thus necessarily includes a descriptive stage, informing the audience how we *do* live. There is thus a complex interplay between the normative/evaluative and the descriptive, and I try to shed some light on the normative and metanormative aspects of this often overlooked feature of political philosophy in the next chapter.

3. Unity, Diversity, and Bindingness of Common Rules

For everything I have said about not theorising about democracy directly, it seems hardly possible to start completely from a scratch. Democratic theory has been for decades preoccupied with several fundamental questions which animate philosophical imagination (cf. Dahl 2019; Hyland 1995: 1–4; Christiano 2003, 2006), and although I cannot provide exhaustive account of all of them here, it will be useful to overview at least those which represent conceptual and substantive links to the public justification approach I favour. I thus begin by doing what I argued in the previous chapter is undesirable, in order to prepare ground for the shift in perspective which comes in 3.3 and in the following chapters.

I should point out that some fundamental questions will not be addressed head-on, or will not be addressed at all. One concerns the appropriate unit of democratic rule, understood either in geographical terms (city states? modern states? regional groupings? the world?) or in terms of membership in an association (churches? firms and business corporations? international organisations?) I will assume the default unit to be a territorial state, although I am aware of all the difficulties with such assumption (some of them will pop up during the exposition). Another task I will skip – at least for the moment – is showing why democracy as a system of rule is not only justifiable, i.e., morally permissible, but also better than the alternatives (monarchy, oligarchy, epistocracy, dictatorship etc.) – not least because the answers are infected by the problem of intra-disciplinary pluralism discussed in the previous chapter. The third question to be left aside has to do with social conditions of continuing existence of stable democratic rule. Although all these questions are undoubtedly crucial for a theory of democracy to be complete and convincing, my aim in this chapter is different.

What I *will be* interested in is the following set of questions which, as I try to show, open the way towards reformulating the central problems of democratic theory in the language of public justification. Following up on the conclusion to the last chapter, my aim is to show how the Ur-Question of political philosophy (justification of political authority) is implicated in the fundamental normative concerns of democratic theory, and also how and why the public justification approach to doing political philosophy offers the most promising way of answering it.

First, who constitutes the *dēmos*? One intrinsically desirable aspect of democracy is traditionally claimed to be self-government of the democratic people, so that members of this collectivity impose coercively backed rules (i.e., laws) upon themselves and therefore can remain *free*, or autonomous (literally "self-legislating"), as opposed to being forced to obey rules imposed by someone else, such as hereditary monarch or self-proclaimed dictator (cf. Christiano 1996: ch. 1). Who makes up "the people" which is the source of political authority in the given realm?[48] In other words, who is the bearer of *popular*

[48] I am not interested here in transnationalist or globalist extensions of democratic political rights on grounds of either the all-affected principle (Goodin 2007), or the unjustifiability of border coercion (Abizadeh 2008), or any such related principle, even though I acknowledge their force. Neither shall I

sovereignty? The obvious answer would seem to be "all citizens", however that is quite imprecise, for (a) not all citizens have democratic political rights (this applies to minors, mentally disabled, often prisoners) and (b) not all individuals who have political rights are necessarily citizens (numerous countries have awarded resident foreigners voting rights either on the national or subnational level; cf. Earnest 2003a, 2003b). Suppose that we stipulate, for the sake of the argument, that all citizens *are to have* democratic rights. Neither then, however, would be the delineation adequate, because some sets of beliefs and preferences (e.g., racist, or generally those which threaten to undermine liberal democracy), are excluded from being considered in the political process, for reasons of non-conformity with constitutional values, or at least illegality. Thus, although "the people" is the source of authority in a democracy, it is not that freedom/autonomy strictly requires active contribution of all members of a given democratic society. As we will see in 4.2, this parallels considerations about qualified acceptability (or reasonableness) in public justification theorising.

Second, what does it mean that "the people" rule, if direct democracy is either unworkable, or undesirable, or both (Weale 2007: ch. 5; Urbinati 2006: ch. 1)? This is the domain of the theory of political representation. Any given conception of political representation faces a plethora of challenges which have to do with translating the interests, beliefs, values, preferences, identities, perspectives etc. into collective decisions.[49] In the next two sections I will be concerned with two: first, how to preserve *political equality*, so that each citizen can consider himself or herself a co-author of the resulting decisions? Coupled with the value of freedom captured by answers to the first question, an idea of *equal freedom* as the normative core of democratic rule begins to take shape. Second, the concept of political representation is entrusted with solving the puzzle of reconciling *unity* and *diversity* (or *multitude*): that is, the necessity of passing enforceable binding collective decisions on the one hand, and the deep plurality of beliefs and interests which characterises contemporary liberal democratic societies. In a democracy, this puzzle acquires becomes especially noteworthy, because political authority (the state) claims to represent the people as a unitary agent who is assumed to have consented to the exercise of political power in his name. One critical consequence of this normative logic is the claim of laws passed by parliaments, acted upon by the executive, and interpreted and enforced by the judiciary, to obligate *all citizens*, no matter whether any particular individual agrees with them or not.[50] For example, even if you consider abortion a murder, but abortion is legal in your country, you are nevertheless legally obligated to not interfere with the practice, on pain of retaliatory action by the state. A number of authors (e.g. Urbinati 2006: 37ff.; Runciman and Brito Vieira 2008: ch. 5; Lefort 1988) see the

consider suggestions for "thickening" of democratic franchise by awarding group rights, quotas for political representation, and so on (but see 3.1 for the theoretical context of these proposals)

[49] For reasons of brevity, I will speak of "beliefs and interests" from now on, unless context requires greater precision.

[50] The rulings of Czech courts, for example, are always preceded by the phrase "In the name of the Republic". As Jan Kysela pointed out in his comments on a previous version of this text, this is made possible by the principle of attributability of an act of will to a corporate legal person (here, the republic).

dialectic of unity and multitude, of general and particular beliefs and interests, the very driving motive and at the same time the matrix of democratic politics. Because various conceptions of political representation address the very heart of this tension, political representation is widely considered to constitute the backbone of democratic politics (Pollak 2007: 88).

From this follows the third question which directly takes us to the domain occupied by theories of public justification: where does the authority of democracy come from? How can it be that even though you need not actually support the given law or system of laws, you are nevertheless taken to be the co-author of these laws, imposing them upon yourself, and thus expected to obey them? Some of the most interesting work in democratic theory has addressed precisely this deeply puzzling question.[51] To prefigure the rest of this chapter, the answer has to do with preserving the core values democracy is meant to either promote or instantiate (depending on whether we prefer the instrumental or intrinsic understanding of the desirability of democracy; cf. Anderson 2009). Now there are again manifold views about what the value core of democracy *really* is; nonetheless, by synthesising several accounts, we receive the following set of principles:[52] (1) *political equality* mediated by *fairness*; (2) *responsiveness*; (3) *freedom*; (4) *popular sovereignty* (understood as self-government, or collective freedom). A theory of political representation as well as a theory of collective decision-making (which is primarily concerned with the justifiability of the majority rule) are then expected to preserve these values to the highest degree possible.

Let me finally note that the values of freedom and equality are central not only to democracy, but also to liberalism – that is, the hegemonic political philosophy of Western liberal democracies. Approaching the debate from the angle of the liberal theory of public justification, we can add responsiveness as well, because public justification is centrally concerned with ensuring that the rules of social cooperation correspond with reasons individuals have for their acceptance ("endorsement"; see chapter 4). Of course, the particular interpretations of these concepts may differ substantially between the liberal and democratic camps, but that is to be expected, otherwise liberalism would be just another label for democracy and *vice versa* (which sounds implausible and most likely is). My strategy, then, will emphatically not be to argue that liberalism and democracy are somehow normatively and conceptually co-original, which is Habermas's (1996: 118–121 and *passim*) famous solution to the apparent tension between basic rights and popular sovereignty.[53] Instead, my argument – to be gradually expanded throughout the essay –

[51] For two contemporary proposals see Christiano (2008); Ebeling (2017b).

[52] The sources consulted include: Beitz (1989: ch. 1); Dahl (1989: chs. 6, 7); Christiano (1996: ch. 1, 2); Saward (1998: chs. 2, 3); Beetham (1999: ch. 1); Dworkin (2002: ch. 4); McGann (2006: ch. 1); Bohman (2007: 45); Tilly (2007: ch. 1); Weale (2007: 18–23); Christiano (2008: ch. 3); Fuchs and Roller (2008); Przeworski (2010: ch. 1); Morlino (2012: ch. 2); Lembcke et al. (2012: ch. 1). I thus leave aside more controversial values such as multi-level political participation (della Porta 2011; Sekerák 2017) or extensive deliberation (Cohen 2003).

[53] Habermas explicated the co-originality thesis in the context of his justification of a system of fundamental rights.

will be that a theory of public justification of a specific kind is able to accommodate and incorporate democratic theory-based concerns.

3.1 Political Representation and Democratic Theory

Institutionally speaking, mediation of democratic political will in modern constitutional democracies is enabled via elections in which political parties or movements compete for citizens' votes and subsequently fill seats in the parliament. However, there is an important constitutionalist device which allows to theoretically grasp the idea that a "will of the people" is represented at all – namely the doctrine of the *free mandate* which ensures that MPs represent not only citizens who voted for their own party (which is the intuitive understanding of the point of representation), but also, and primarily, the people as a whole.[54] On a deeper conceptual level, this institutional solution rests on the *principal–agent* logic (hereinafter "PA model") which has roots in economic science and which assumes that the principal – voters/citizens/the people etc. – "hires" MPs to work or act for him (such as to promote his beliefs and interests). The principal issues orders and instructions to the agent, possibly having at disposal effective instruments of control, reward and punishment (cf. Runciman and Brito Vieira 2008: 66–73; Lane 2009). Although there are obviously other branches and agents of state power besides the legislative, parliaments definitely constitute the central pillar of *political representation*. Oftentimes, legitimacy of non-elected bodies derives from the length and strength of the so-called *chain of legitimisation* which originates with voters and passes through the parliament (Bergman, Müller a Strøm 2000).

Hanna Pitkin (1967) distinguished in her famous book five "meanings" or aspects of representation: authorisation, accountability, acting for, descriptive standing for, and symbolic standing for. The first two are "formalistic", because they set neither implicit standards of a good representation nor an obligation to pursue any particular goals. Both authorisation and accountability are one-shot acts which precede/follow political representation without affecting or regulating its substance (Christiano 1996: 209; Dovi 2017: 1.2). This, contrariwise, is the point of the other three aspects. *Acting for* raises the question whether the representative really acts "on behalf of, in the interest of, as the agent of" the represented (Pikin 1967: 113). Intuitively, this sounds like the main purpose of the representative relation which sets the yardstick for the rest – that is, whether they ultimately contribute to promoting the beliefs and interests of the represented. *Descriptive standing for* occurs when the representing actor has the same or relevantly comparable personal characteristics as the represented subject (e.g., sex, age, or

[54] For example, Czech MPs cannot commence their mandate until they take the oath of office (Art. 23 of the Constitution) which reads: "I pledge loyalty to the Czech Republic. I pledge that I will uphold its Constitution and laws. I pledge on my honor that I will carry out my duties *in the interest of all the people*, to the best of my knowledge and conscience" (emphasis added). The same conditions apply to the office of the President of the country who is also elected in a direct vote. Note that at least according to the wording of the last sentence of the oath, elected representatives are formally expected to represent *solely* the interests of all citizens (although the "on my honor" bit means that violations of this particular provision probably have no legal ramifications and only result in dishonour of the violator; cf. Mlsna 2015a: 269).

vocation). Applied to the collective body (the parliament), this criterion would require faithful reproduction of the societal distribution of beliefs and interests. Finally, *symbolic standing for* aims at eliciting emotional response, or excitation of deeply held beliefs. Pitkin notes that although all five meanings of representation can stand by themselves, they are not mutually exclusive and often are present side-by-side in manifold combinations.

Pitkin's typology reveals one crucial source of dissatisfaction with the standard model of political representation, and arguably a source of the announced crisis of political representation: the *voters – parties – parliaments* axis cannot by itself ensure substantive acting for on behalf of the beliefs and interests of the represented. While elections intelligibly mediate both the authorisation to act and the potential handing out of rewards/punishments to MPs or political parties for having acted in a certain way, they can rather questionably ensure that the representing actors *really* do what they promised before the elections.

Responsiveness v. Deliberation

Lurking behind Pitkin's typology is another problem which is generalisable beyond the voter–party/MP relationship. Pitkin (1967: 57ff., 140, 209ff.) stresses that especially the substantive variants introduce the normative idea of *responsiveness*: at first glance, few things seem to be more desirable that the representing agent's responsiveness to the beliefs and interests brought up by her voters (as well as ability to respond swiftly and positively to changes and reformulations thereof). The oft-analysed trends of bureaucratisation, elitisation and transnationalisation of democratic politics (Weber 1994; Mastropaolo 2012: ch. 9) can be then rephrased in terms of decreasing willingness of the representing actors to follow both express and implicit demands of the represented. On the other hand, the recent rise of populist political forces can be understood as a response to this trend, aiming to assure the citizens that someone does hear their demands and desires and takes them seriously. If saving liberal democracy is what should concern democratic theory, it would seem that strengthening responsiveness in relations of political representation deserves unambiguous support.

But this cannot be so in a liberal democracy. Recall that elected representatives (especially MPs) are expected – via the oath of office – to act in the interest of all the people, and that laws passed by the parliament are legitimised on behalf of the people as a whole. Otherwise, their universal moral bindingness would be put in doubt. (1) If we ignore for the moment the possibility that the concept of an interest or will "of the people" is incoherent, impossible, or nonsensical,[55] it seems quite uncontroversial to actually demand political representatives to try to arrive at decisions which are in the interest of all, or at least of a great majority of citizens. Now one promising way of at least approaching such a lofty goal is an open, sincere debate based on exchange and serious

[55] See the discussion of the consequences of Arrow's theorem in 3.2 below, and also the reference to Dowding and Bosworth's use of Arrow in their explorations of conceptual vagueness in 2.4. The convergence approach to public justification (4.1) may be understood as a part of a solution.

consideration of arguments and opinions, taking place both in the legislative body and among the general public (especially in the civil society) – where the former is expected to take heed of the latter. However, this is clearly inconsistent with calls for maximum responsiveness, because a fully responsive MP is *obliged* to promote beliefs and interests of a particular group of voters (that is, those who elected him). Under deep and irreducible diversity which characterises contemporary liberal democracies, however, these can never supplant the "interest" or "identity" of the people as a whole (if there is such thing). To claim otherwise ("WE are THE PEOPLE") is to take a page out of the populist-plebiscitarian playbook (Müller, Jan-Werner 2016: 20).

The opportunity – or right – of an elected representative to take part in collective deliberation, with the aim of arriving at a collectively desirable result, co-forms the normative justification of the free mandate (see above). This is why calls for instituting recall of political representatives, or at least much greater accountability of elected politicians to their voters, are – beside their other deficiencies – unconstitutional.[56] Moves away from the *trustee* version of the PA model of political representation towards the *delegate* one – with the representative becoming essentially a transmission belt for her voters' political whims (Christiano 1996: 213ff.) – correspond with moves away from *liberal* democracy towards some alternative model of democracy, likely of a populist or plebiscitarian kind (Laclau 2005, Green 2010). If the standard model of political representation cannot be separated from liberal democracy – being a backbone, you cannot simply rip it out and slot in a replacement –, then the demise of the former entails the fall of the latter

(2) If, on the contrary, we were to conclude that the idea of a "common good" or "popular will" is a false idol anyway, so that the only input into the decision-making process are the particular (non-shared) beliefs and interests, then we immediately face the problem of underrepresentation (or absence of representation) on the part of minority beliefs and interests (see below), as well as the problem of the decision-making rule in the representative body (see 3.2). Both problems hark back to the value of equality (and by proxy, freedom) which forms the normative core of democracy.

Underrepresentation, Absence of Representation, and the Possible Remedies

Access to parliaments in most democracies is limited by an electoral threshold which, together with the logic of the electoral system, keeps a number of beliefs and interests which could be otherwise formally represented outside the legislative body (think of ethnic minorities). Similarly, even those which "make it" to the parliament will be often defeated by a dominant majority – this allegedly keeps happening to women as a social group. In general, the claim would be that as long as the composition of the parliament substantially differs from the distribution of beliefs and interests in the society at large

[56] For the Czech case, see Mlsna (2015b: 285) who stresses that constitutionally sanctioned free mandate represents a norm of *ius cogens* (i.e. cannot be legislatively overridden)

(pointing to its elitist features especially in terms of education or wealth), the legislative body will be rendered unrepresentative in manifold senses.[57]

Suggested remedies abound. Here I will put aside the plebiscitarian-populist response which, in conformity with the "majority equals whole" thesis, fully embraces *unity* and rejects the objection from underrepresentation as irrelevant. (1) The most common suggestion in both public and scholarly debates is the "ordinary" *increase of proportionality* of the electoral system, which is meant (among other desirable consequences) to engender a more faithful reflection of the societal distribution of beliefs and interests in the representative body (Christiano 1996: 224–240; Urbinati 2000; Lijphart 2008b: part V). The extreme version of rectifying underrepresentation is the vision of the parliament as a "mirror" of the society (Goodin 2004: 455) which strongly invokes Pitkin's descriptive as well as symbolic meanings of representation. This may lead to the second class of remedies, namely (2) increasing political representation of selected beliefs and interests. The most common instruments include *quotas on representation* and *electoral engineering (*especially redrawing of constituencies). Anne Phillips (1995) speaks about "politics of presence" closely tied to the descriptive and symbolic aspect of representation: only through the physical presence of representatives who embody the relevant minority traits and experiences can we ensure either that their beliefs and interests will be directly *acted for*, or at least raised as a topic for the public debate. Also consistent with this line of argument is Nadia Urbinati's (2000) conception of representation as *advocacy* which combines, on the one hand, "passionate" personal engagement with the championed cause and deliberative independence of the representing agents on the other. Urbinati embeds her advocacy approach to political representation in a broader construal of democracy as inclusive agonistic contest of political forces. Such a political struggle guarantees both political *equality* and the conditions of *liberty* – that is, an equal liberty to participate, via one's political representatives, in democratic political life.[58]

Although the outlined reforms of the standard model of political representation sound plausible, there are reasons to keep one's optimism in check. First of all, increasing proportionality is not necessarily consistent with the politics of presence, advocacy, or generally with strengthening descriptive or symbolic representation of the groups in question. The latter may actually require *disproportionate* special treatment dependent on the statistical distribution of the given beliefs and interests in a society, as well as assessing the seriousness of the case at hand. Obviously, this gives rise to the problem of the burden of proof: who, of all the possible candidates, deserves special treatment? Phillips (1998) shifts the burden over to opponents of representative parity, arguing that each instance of absence of representation requires convincing justification. Assuming this is a plausible approach (which sounds rather dubious, because descriptive faithfulness was never an unchallenged master-purpose of a collective representative

[57] This kind of lament was voiced already in mid-19th century by thinkers such as Tocqueville or J.S. Mill.
[58] Urbinati (2000: 777) believes her conception straddles the divide between the *trustee* and *delegate* versions of the PA model of political representation.

bodies), another crippling problem arises: there are limits (however vague in the abstract) to diversity in parliamentary politics, beyond which the clash of numberless beliefs and preferences turns destructive.[59]

Goodin (2004) points out that calls for representation of particular interests or identities tacitly assume only *moderate* diversity as regards their quantity, internal heterogeneity, and the complexity of overlaps among them. Each representative body, after all, has only a limited number of seats, time allotted for deliberation, or the range of debatable issues/topics. Moreover, if we expect the representatives to try to somehow approach a "common good" or "popular will" in their deliberations, there are clear disbenefits to increasing diversity – especially if we simultaneously require the representatives to be moderately *responsive* to those who they represent. Goodin thinks that instead of aiming hopelessly at maximum representation of diversity as such, we should make sure the "sheer fact of diversity" is represented well. Put differently, representatives in the legislative body ought to always bear this fact in mind in their deliberation and decision-making. Importantly, such a conclusion provides indirect argument in favour of deliberative autonomy of representing agents (see above). This is because representatives are now expected to always factor in diversity – and by consequence a kind of an indirect "shared interest" – into their reasoning as well as political actions (Weale 2007: 152).

Political Parties and Representation: Thinking the Unthinkable?

There is, however, an even graver challenge to the standard model of political representation, which threatens with eroding one of its three main pillars. I briefly noticed in 1.1. that empirical scholars of democracy increasingly begin to adopt political philosophers' pessimistic diagnoses of the state of liberal democracy. An analogous trend is discernible in empirical research on political parties, with numerous authors acknowledging that parties have been gradually losing – or giving up on – their *representative* function (primarily consisting in articulation and aggregation of interests, beliefs, preferences etc.) in favour of the *institutional* one, which covers the recruitment of political personnel and the governance of the state (Bartolini and Mair 2001; Katz and Mair 2002; Mair 2013). At the same time, however, the idea that political parties are indispensable for the functioning of a modern constitutional democracy, or at least that it is hard to envision how constitutional democracy could survive without political parties, resists easy abandonment.[60] As Peter Mair (2013: 81) put it, "parties – or at least the classic mass party – gave voice to the people, while also ensuring that the institutions of government were accountable."[61] Political philosophy had been long oblivious to the

[59] See also the classic debates in political science about fragmentation and polarisation of party systems in Sartori (2005). I thank Jan Kysela for this reference, who also noted that Sartori did not have to deal with the intricacies of identity politics in his time.

[60] The classic account here is Schattschneider (1942); cf. Dalton, Farrell and McAllister (2012: 3–26).

[61] A lifelong scholar of parties and party systems, Mair opened his last book on a very dispirited note: "The age of party democracy has passed. Although the parties themselves remain, they have become so disconnected from the wider society, and pursue a form of competition that is so lacking in meaning, that they no longer seem capable of sustaining democracy in its present form" (Mair 2013: 1).

systemic normative importance of political parties, which is now slowly being redressed (cf. van Biezen a Saward 2008; Rosenblum 2008; Ypi a White 2016; Bonotti 2017). I will return to the systemic role of political parties in the chapters to follow , so a brief comment-cum-claim shall be sufficient here: political parties, properly construed, are *the* political actors who designedly formulate complex political programs sensitive to the general interest(s). The widely analysed phenomena of cartel parties and entrepreneurial (business-firm) parties (Katz and Mair 2009; Kopeček and Svačinová 2015; Hloušek and Kopeček 2017) underline this trend. Bíba and Znoj (2017b) construe the crisis of traditional political parties as a *symptom* of the crisis of contemporary liberal democracies, rather than its cause. However, insofar as liberal democracy is representative – parliamentary – democracy, which it inevitably is (as this very section attests), then difficulties besetting the standard model of political representation indeed constitute one of the *causes*.

Does the retreat of political parties signal the beginning of the end of liberal democracy? Are we willingly-nillingly forced to "think the unthinkable" – that is, that liberal democracy *has to somehow work* without political parties? The contributions discussed below explore how, by way of advanced theoretical *and* institutional innovations, liberal representative democracy can be saved. The "only" thing required is to abandon the constraining normative rationale of the standard model. To once more foreshadow the argument, however, I am of the view that caution is in place. To the extent that all these innovations are meant to save liberal representative rather than supersede it, they need to presuppose a more or less functioning electoral model of political representation.

Towards Innovations: Elements of Political Representation

Opening the path to innovations in the theory and practice of political representation is actually quite easy. All that needs to be done in the first step is to realise that the standard electoral model of representation is but a specific response to a more general set of questions, namely *WHO represents WHOM, HOW, which particular CHARACTERISTICS and what was the METHOD OF SELECTION and what is the LOGIC of the relationship*. An abundance of options is available in each case, which has been duly noted by political and legal theorists. As regards the WHO question, some have argued that representing agents also include the administration due to its proximity to the citizens and thus greater sensitivity to their interests (Carolan 2009; Rosanvallon 2011). Others highlight the deliberative qualities of constitutional courts, labelling them as "argumentative representatives" who introduce to the public debates the voice of reason and highest principles of political morality (Alexy 2005; Mendes 2013). Outside highest constitutional bodies, NGOs and other elements of the civil society are obvious candidates. Answers to the WHOM question may quickly move from individuals and social groups (including "the people" as a whole") to the global poor, all of humanity, future generations, discourses (Dryzek and Niemeyer 2008), divine will, animals, the nation, or social class etc. With respect to CHARACTERISTICS, I use "beliefs and interests" throughout as a shorthand for a much wider spectrum of attributes – besides beliefs and interests themselves, these

include needs, preferences, beliefs, opinions, desires, life perspectives, socio-economic characteristics, "true nature", expertise and so on.

While election by vote is the traditional METHOD OF SELECTION, many decision-making posts in a democracy are assigned by appointment (which harks back to the chain of legitimisation issue mentioned earlier). Democracies are also familiar with selection by lot (Manin 2007: chs. 2–3; Dowlen 2008; Buchstein 2010; Guerrero 2014), although today this method is nowhere as popular as it used to be. It is worth noting, however, that selection by lot provides, statistically speaking, the most descriptively adequate group of representatives, which means that if faithful mirroring of the distribution of characteristics in a society is deemed to be an important or overriding goal of political representation, then sortition is the obvious method of choice.[62] This is why selection by lot is often employed in designs of deliberative mini-publics which are meant to improve deliberative and participative capacities of democratic rule (Warren and Pearse 2008; Grönlund, Bächtiger and Setälä 2014). A special case of selection is self-authorisation which will be addressed below.

Finally, the LOGIC of the representative relationship can be analysed along several axes. We have already come across the distinction *formalistic* and *substantive* representation, as well as the *delegate* v. *trustee* variants of the latter (including Urbinati's *advocacy* attempt to transcend the antithesis). On the most general level, all that is covered by the *principal–agent* model of representation which provides the linchpin of the standard electoralist solution. Looking over the numerous alternatives which pop up with each element of representation, however, it should be clear that the PA logic becomes quickly useless if we move beyond the voter–parties–parliaments paradigm: neither children, nor the mentally handicapped, future generations, fauna, the global poor or some other such "principal" can be reasonably construed to instruct the representing agent how to act and hold him accountable later.

Before I move to some leading suggestions at transcending the PA model, let me stress an important point (to which I will keep returning). Moving beyond the standard electoralist solution to political representation opens up a potentially infinite field of possible combinations of the respective elements. At first glance, this would seem to be a blessing, because reformers of ailing liberal democracy now have at their hands a flexible instrument of innovation. However, if what I say in chapter 2 bears scrutiny, then the debate on political representation manifests precisely those pathological consequences of intra-disciplinary diversity which should be taken much more seriously (or so I argued).

Abandoning Responsiveness

In a previous subsection I commented on the dilemma between deliberation and responsiveness. Philip Pettit (2009, 2010) argues that if we replace responsiveness with

[62] Also worth noting are the epistemic consequences of a highly diverse representative body (to which selection by lot leads). As argued by Landemore (2013), Schwartzberg (2015) and others, cognitively diverse bodies – especially more numerous cognitively diverse bodies – are more likely to arrive at *correct* (good, desirable, beneficial etc.) decisions than less diverse counterparts. See also 2.7 in this essay.

the requirement of *indicativeness*, a new perspective on the quality of at least some representative relations opens up. More strongly put, a possibility opens up to understand some relations as representative in the first place. Theoretically, indicative representation consist in flipping the "arrow of expectations": in the standard model, the represented subject – as the source of demands – expects the representing actor to promote in his/her actions the beliefs and interests of the represented, either as a delegate or a trustee. Although indicative representation allows for initial authorisation (by voting, appointment, or otherwise) and subsequent holding to accountability, the actions of the representing agent are themselves understood as revealing – being the source of information on – the beliefs and interests of the represented. To wit, the actions are the *indicator* thereof. Apart from the initial authorisation (if there is any), it is thus the actions of the representing actor which, conceptually speaking, represent the first link of the representative chain. Because beliefs and interests of the represented emerge only through these actions, the notion of responsiveness makes little sense in this context. Since the recognition of indicative quality requires relevant similarity between the representing and the represented, Pitkin's descriptive meaning of representation returns to the stage through the back door – and so does the imperative of increased proportionality, or perhaps statistical mirroring, in case of collective representative bodies. Because we have abandoned responsivity as a normative criterion of good representation, the tension between responsiveness and deliberation disappears at the basic level.

Pettit thinks that indicative representation reveals the essentially democratic – because representative – nature of governmental agencies, NGOs, deliberative assemblies and other statistically representative bodies, whistleblowers, and numerous other unelected actors who promote some other subject's beliefs and interests. Things become more complicated if indicative representation were to be consistently expected from elected collective bodies, because elected representatives will necessarily act on a host of different motivations than solely to express the beliefs and interests of their voters – for instance, they will want to be re-elected (Pettit 2010: 430; Mastropaolo 2012: 195ff.). Finally, the fundamental tension between unity and diversity remains intact, because it is far from obvious *towards whom* the representative's action ought to be indicative.

Jane Mansbridge (2003) goes one step further in basing her conceptualisation of political representation on empirical observations. What she calls *promissory* representation is basically equivalent to Pettit's responsive version (and, of course, to the standard model of electoral representation): one actor promises to act in the interest of the other actor, is authorised to do so (via elections) and later (next elections) has to report back and be either rewarded or punished. The second variant Mansbridge distinguishes is *anticipatory* representation in which the representing agent acts according to her beliefs about what voters will reward in the next elections. *Gyroscopic* representatives are those who act more or less independently of any rewards or punishments, following mainly their own judgement of what is right, beneficial etc. *Surrogate* representation emerges when representatives act on behalf of a subject not belonging to their electoral constituency,

which means there is no formal relationship of authorisation or accountability.[63] Importantly, each variant generates its own criteria of good representation which are independent on formalistic authorisation and accountability, such as the nature and intensity of mutual deliberation (anticipatory) or the very fact of successful representation of marginalised beliefs and interests (surrogate).

Mansbridge (2009, 2011) subsequently embeds her gyroscopic variant in a complex *selection* model of representation which she opposes to what she now calls the *sanction* model (i.e., the standard one based on promissory representation). Selective representation is meant to replace the *trustee* account of substantive representation which betray, in Mansbridge's view, hierarchical or even aristocratic – i.e., inegalitarian and therefore undemocratic – overtones: the trustee is construed as the wiser, more competent of the two, entrusted with defining the "real" beliefs and interests of the represented. On the contrary, the egalitarian selection relationship builds on mutual trust, where one possible source of this trust is (again) descriptive similarity between the representing and the represented – especially in cases of insufficiently crystallised onterests of preferences of the latter (Mansbridge 2009: 380–381).

Constructivism and Self-Authorisation

As already hinted, all these innovations at least indirectly aim at supplementing or supplanting the PA logic of representation on the theoretical level, and the lopsided dominance of the electoralist legitimisation on the practical-political level. In the view of Michael Saward (2010: ch. 1), they nevertheless stop short of an adequate retheorisation of political representation. Of the many reasons he puts forward, three are most relevant for my purposes. First, they are too focused on the *forms and categories* of representation (in which they share the flaws of Pitkin's model), thus ignoring *what is going on* in the practice of representation. Second, they neglect its "constitutive" dimension, by assuming without further reflection the existence of the represented subject with its beliefs and interests. Third, they are still confined to the territorial limits of the modern state. Saward's *representative claim*, a truly radical constructivist proposal, opens up a new perspective on a range of important issues in the theory of political representation, two of which are especially pertinent to the narrative of this essay: construction of the represented subject in the very act of representation; and self-authorisation of the representing actors.[64]

Already in the work of Thomas Hobbes (1996) we find the idea that the collective of citizens to be represented (in the democratic parlance, "the people") is actually moulded into existence only through the very actions of the representing subject (Hobbes's sovereign, revolutionary constitutional assembly, and so on). Before the act, there was only *multitude* – a sociologically and psychologically fragmented aggregate of individuals and groups merely happening to find themselves in the same place (Hobbes 1996: ch. XVI;

[63] Andrew Rehfeld (2005) suggests further loosening of – in effect, abandoning – the territorial imaginary, by creating non-territorial, randomly selected and permanent electoral constituencies.
[64] I should add that there are many more complexities to Saward's theory to which I cannot do justice here.

cf. Runciman 2009). Until the identity and interests of this aggregate are explicitly identified and articulated, the represented subject does not exist as a distinct actor possessing autonomous will, desires, demands etc. Recall Bono Vox's heroic self-appointment as the representative of the "poorest and most vulnerable" people of the world:[65] Before the U2 frontman identified the group of people whose "rage, anger and hurt" he articulated, no such social group aware of its status ("world's poorest and most vulnerable") and demanding representation on the highest levels of international politics existed. Only through the performative act of the self-appointed representative, a truly creative (in the artistic sense of the word) intervention into social and political reality which exhibited clear signs of a dramatic performance, came the collective actor into being (Saward 2017).[66]

The major advantage of the constructivist account is a *radical* opening up of the field of political representation, because in principle *anyone* can stake a claim to represent this or that subject. All that matters is whether the claim is accepted as convincing and/or legitimate by the relevant public (which may or may not overlap with the represented actor), so that the representative claim can ground political action. Saward stresses that the verdict whether this or that claim deserves recognition is determined solely by the audience, as opposed to any external observer (such as the political philosopher). In Bono's case, the audience addressed were primarily political elites attending meetings such as G8/G20, WTO, IMF and the like; the secondary audience consisted of media consumers around the world. This is why insufficient knowledge of the real beliefs and interests on the part of political philosophers ceases to be a problem (recall the difficulties of distinguishing justified from unjustified claims for special representation such as quotas). Similarly, the representative claim steers clear of the *essentialism* objection, because it doesn't even attempt to come up with an "objective" definition of the beliefs and interests. Both the theory and practice of political representation are thus rendered radically democratised, because the audience can actively participate in its interpretation – which, in reality, amounts to *self-interpretation*. This is especially the case if the audience is largely identical with the represented subject (a pretty common occurrence in normal democratic politics), such as when an elected MP tries to convince voters in her constituency that she is the best champion of their beliefs and interests and deserves re-election (Saward 2010: 54). The constructivist meta-framework thus invites to be filled with innovative conceptions of political representation built around active role of the represented.

[65] "I don't have any fear. I have no fear of politicians or presidents or prime ministers. They should be afraid, because they will be held accountable for what happened on their watch. I'm representing the poorest and the most vulnerable people. On a spiritual level, I have that with me. I'm throwing a punch, and the fist belongs to people who can't be in the room, whose rage, whose anger, whose hurt I represent. The moral force is way beyond mine, it's an argument that has much more weight than I have. So I'm not feeling nervous" (Wenner 2005).

[66] Other important contributions to the constructivist account of political representation include Ankersmit (2002); Urbinati (2006); Disch (2011, 2015); Montanaro (2011); Brito Vieira (2015); and Disch, de Sande and Urbinati (2019). Influences of poststructuralist social ontology, speech acts theory, and aesthetic approach to political action are expressly avowed by these authors (although to varying degrees).

Raising a representative claim requires neither formal nor informal authorisation; in this respect, it has affinities with Pitkin's substantive acting for on behalf of the represented. It needs to be pointed out that a representative claim is not necessarily a *democratically legitimate* one just by virtue of it being raised. If we, however, follow Saward (2010: 144) in understanding legitimacy basically along Weberian ("sociological") lines, then what ultimately counts is the combined reaction of the audience and the represented subject, as opposed to a political philosopher's deepest beliefs.[67] But political philosophers can analyse the conditions and context of representative claims-making which links the approach to well-worked out deliberative conceptions of democracy. Referring to Mansbrige, Saward (2010: 165) writes about deliberative *accountability* over time of the representatives to the represented, which takes precedence over promissory accountability tied to the standard model. Perhaps the most general message which constructivism wants to convey is that political representation constitutes first and foremost a *systemic* phenomenon, as opposed to a narrowly conceived relation between two *ex ante* existing actors (that is, principal/voter and agent/MP).

Political Representation Without Political Philosophy?

The upshot of the overview of recent scholarly debates on political representation is this. I started this chapter by explaining the place of theories of political representation in the broader context of theories of democracy. Correspondingly, the blind spots and limitations of numerous conceptual innovations start to take shape if set against the background of "traditional" concerns about the point and purpose of political representation in liberal democracy. It is supposed to preserve political equality, but whereas the electoral model guarantees at least prospective equality in the form of equal political rights, the various innovative instruments always favour only those represented subjects who happen to be "covered" by representatives skilled enough or positioned to exploit the political opportunity structures. Also, while suppressing the criterion of responsiveness may enable various imaginative modifications of the concept, political representation without responsiveness must be incomplete, because it leaves a question mark over the substantive aspect of representation, as opposed to rhetorically convincing the audience or the represented constituency that substantive representation is taking place (Severs 2010). Moreover, the issue of responsiveness is reinvigorated through the question of decision-making methods in democracy, as explored in 3.2 below. Finally, there is a distinct possibility that the numerous modes and channels of representation end up in a (destructive) competition or even conflict instead of (constructive) synergy, as seems to be the case with the "compound" model of multi-level and multi-channel political representation in the EU (Lord and Pollak 2013). With respect to the fundamental tension between unity and diversity, all this casts doubts over the capacity of alternative conceptualisations of political representation to produce *legitimate collectively binding decisions*.

[67] Here one type of theoretical complexity becomes relevant, namely the difference between the *intended* and *actual* audience and/or represented subject.

Representation studies thus only reinforce the disorganised state of affairs in democratic theory, as analysed in chapter 2. Who is to tell which criteria or priorities should inform the decision about which suggested path of innovation to take, if any? For sure they cannot be pursued all at once. Referring to Shapiro's (1989) notion of *gross concepts*, Andrew Rehfeld (2017) notes that theorists of political representation routinely mistake their (latent or explicit) normative assumptions – i.e., which political morality should be realised via political representation – for a careful conceptualisation of what political representation is and is not. Conceptual fuzziness is then reframed as a virtue, because it allows for infinite conceptual reconfigurations on behalf of democratic innovations.

In order to know what expectations should be placed on the practice of political representation, we need to be clear about what we expect (liberal) democracy itself to be, for they are fundamentally intertwined. However, we disagree about what kind of democracy is desirable. Recall my comments in 2.4 on competing conceptual holisms. The same applies to political representation and the broader normative context of the concept: we cannot simply replace one model of political representation with another, as if it was some kind of module in a construction kit, and expect that the liberal democratic business will go on as usual. In other words, if the standard model of political representation is the backbone of liberal democratic politics, then we cannot have the latter without the former. This applies, first and foremost, to *political parties* and *parliaments* as two pillars of the standard model of political representation. Thus, if liberal democracy is to be saved, we need to rescue the proper place for legislatures and parties in political philosophy. Because democratic theory has been rather content to demote both to a place of secondary importance, I will show in 5.2 how they centrally matter for a complete theory of public justification.

3.2 Majorities, Supermajorities, and Democratic Values

I will now expand on the idea of political equality (and partly also freedom and popular sovereignty) by considering a topic which is closely related to that of representation, namely the majority principle as a decision-making rule for liberal democracy. Both among the general public and in the political scientific community, the link between democracy and the majority principle is perceived to be very strong. Numerous scholarly contributions even list the principle among *necessary conditions* of democracy (Bobbio 1987: 24–25; Van Parijs 2011: 7; cf. Saunders 2010a: 115) – that is, a condition that needs to be met by the given system of political rule in order for it to qualify as democratic, whatever the other conditions. A more controversial possibility is to construe majoritarianism as a *sufficient condition*, which would mean that any political system that uses the principle would count as democratic.[68] At any rate, deciding by majority constitutes an essential condition of legitimate decision-making. As Wojciech Sadurski

[68] Robert Dahl (1989: 135) claims that this is the standard in democratic theory. But this seems to be an error on Dahl's part, having perhaps confused sufficiency for necessity. To my (limited) knowledge, no respectable conception of democracy takes the majority principle as a sufficient condition for democracy.

(2008: 39) puts it, the legitimising power of the majority principle is "so pervasive that we often do not notice it and rarely do we question it: we usually just take it for granted."

One thing needs to be cleared up upfront. I am interested here in "majority principle", "majority rule", "majoritarian decision-making" or the "will of the majority" as *method* or *procedure of decision-making* for any issue subject to a collective decision. To win out, a proposal needs to get at least n/2+1 votes, where *n* is the number of votes cast *or* the number of eligible votes.[69] This is important, because majoritarianism has been also theorised as a *type* or *style of political practice*, including institutional arrangements in a given political system and the associated political culture. This second approach is embodied in the notion of *majoritarian democracy*, as explored in post-WWII political science. The authoritative statement comes from Arend Lijphart (2008a: 114–115; cf. Emerson 2012: 15–22) who contrasted majoritarian democracy to the *consensus* model (himself preferring the latter) which incorporates such institutions as proportional electoral system, coalition governments, bicameral parliaments, or constitutional review of legislation. The two are certainly not congruent, because the majority principle as a method of decision-making is easily applicable in consensus democracies, an in fact is routinely employed in their day-to-day functioning. For example, constitutional courts, otherwise having the role of the main "countermajoritarian" institution, normally decide cases by simple or absolute majority of justices.

The link between political representation and the majority principle is a very close one, affecting the construal of both the representing and represented actors. Suppose the subject are collective representative bodies, which corresponds to the idea that that parliaments represent the people at large. We can then always ask what proportion of the constituency is required to authorise the representative's action and reward/punish her later, as well as how many members of the representative body are needed for the decision to be regarded as a legitimate expression of the constituency's will. To generalise, any collective actor (involved in political representation or not) may face the question whether the majority principle is a desirable or undesirable method of decision-making. Let me overview in the next subsections some major justifications of the majority principle as a default decision-making rule: as it turns out, they are centrally concerned with the values of freedom, equality, and popular sovereignty.[70]

Justifying the Majority Principle I: Maximisation Freedom

The famous German legal philosopher Hans Kelsen (2013) considered majority rule as a second-best solution right behind unanimity, because it maximised freedom. Compared to other methods, deciding my majority minimises the number of people who are forced to act against their will (always less than 50 %), which is the same as saying that it maximises the number of those who do act according to their will. Under both

[69] Which marks the difference between plurality voting (also relative or simple majority) and absolute majority. For a formal analysis of the majority principle as a rule of aggregation, see List (2013: section 2)
[70] I leave aside the epistemic argument for the majority principle as I cannot do justice to it here. Cf. Goodin and Sipekermann (2018).

submajoritarian and supermajoritarian principles, the number of people forced to act against their will equals the sub- or super-majoritarian threshold (1/3, 3/5 etc. of n) plus or minus one person – which is always a larger number than n/2–1. Moreover, this argument has been formalised in terms of expected utility (Rae 1969; cf. Lagerspetz 2017: 168–169). If, however, the values assigned to win, loss and status quo are not the same for every voter (e.g., other than –1, 0, 1), then the freedom-maximising method is *weighted voting* tied to the intensity of the felt interest (Brighouse and Fleurbaey 2010). Unfortunately, weighted voting by definition violates political equality, and as such disqualifies as a default decision-making method in a liberal democracy.[71]

Justifying the Majority Principle II: May's Theorem, Political Equality, and Responsiveness

The foremost procedural argument in favour of the majority principle grounded in the value of equality is *May's theorem* (May 1952) which states four formal and intuitively uncontroversial condition to be met by any decision-making method. These are (i) *decisiveness* – the method produces a determinate result for any set of individual preferences (for, against, or tie);[72] (ii) *anonymity*, or the same weight of preferences irrespective of other characteristics of voters; (iii) *neutrality* – none of the possible outcomes is intrinsically favoured by the method; and (iv) *positive responsiveness* (or *monotonicity*) – if the group decision among A and B is indifference or B, and one voter changes her individual preference in favour of the winning option (i.e., switches from A to indifference, or from indifference to B), then the collective decision follows suit (i.e., the result is B). Suppose there are two options and an odd number of voters; May's theorem proves that the decision-making method which uniquely meets all four conditions is the absolute majority method (May 1952: 682).[73] If it is the case that the four conditions are normatively desirable, or (more strongly) constitute the bare minimum, then the majority principle seems to have a strong argument on its side.

The first condition is uncontroversial, because the very point of decision-making methods is, well, to produce a decision. Most authors (e.g. Beitz 1989: 59; Dahl 1995: 128; Weale 2007: 162; Sadurski 2008: 46) believe than neither the fourth condition causes any concerns, not least because it is normatively neutral. However, this is not apparent, because positive responsiveness entails that if there is a tie among a large number of voters – say, 10,000:10,000 – then one voter's change of mind results in victory (10,001:9,999). But this is not self-evidently desirable; why should we interpret the condition in the strictest of senses? As argued by Bruce Ackermann (1980: 285–289) or Ben Saunders (2010b: 167–169), the condition could be weakened in a probabilistic

[71] Besides that, the measuring the intensity of "felt interest" faces basically the same vexing problems as the notoriously difficult measuring of the intensity of preferences (see also later in this chapter).
[72] This is not a trivial condition, as the problem of cyclical majorities arising under Arrow's theorem proves (see below), as does the problem of incomplete comparability (Boot 2017). In fact, Martijn Boot (ibid: 330–331) emphasises that the absence of preference for one option over the other does not mean indifference, precisely because the two options may be incomparable.
[73] Termed "simple majority" by May.

direction, so that a change of preference in favour of one option increases the likelihood of this option winning. The downside is that absolute majority ceases to be the unique solution, because this weaker condition (together with the other three) is now also met by *lottery voting*. All individual preferences are put in a box, and the winning option is determined by random selection. Owing to the positive correlation between the number of identical preferences in the box and the probability of the corresponding option being randomly selected, lottery voting is positively responsive in this weaker sense.

As far as political equality goes, the anonymity condition proves crucial, because it excludes both dictatorship and weighted voting. It thus ensures *equal respect* to all, giving each individual equal ex ante probability of making a difference (Christiano 1996: 55; Waldron 2010: 1055). Being a more technical expression of the 1 person = 1 vote imperative, anonymity captures at the fundamental level the value of political equality (at least in the context of aggregative procedures). Finally, *neutrality* rules out both supermajoritarian methods as well as unanimity, because their logic favours the *status quo* (you always need more people to change the way things are than to block the change). Jointly, anonymity and neutrality ensure double impartiality (towards individuals and towards states of the world), and as such constitute a particular version of procedural *fairness* which co-guarantees political equality (Beitz 1989: 59). Together with positive responsiveness, they thus meet at least two fundamental values of democracy, as defined in the Introduction to chapter 3. Who is there to protest fair and responsive decision-making methods?

Blind Spots of May's Theorem

First of all, we should keep in mind that the original statement of May's theorem applied solely to a pairwise selection (comparison). Goodin and List (2006) proved the theorem can be generalised to more than two options; however, the corresponding method changes from absolute to relative majority (plurality voting), and only the first choice of each voter may enter the aggregation. Without these restrictions we are faced with Arrow's impossibility theorem (discussed in more detail below), according to which no method of aggregation of preferences meets certain intuitively plausible conditions at once (which overlap to a large extent with May's theorem conditions). Another way of dealing with three and more options is to break up the decision-making process into a sequence of pairwise votes which, on their own, meet the conditions: for instance, instead of one-shot vote on alternatives X, Y and Z, the decision-making body votes first ox X and Y and then on the winner and Z. Unfortunately, the problem of manipulation of the voting agenda immediately arises, because the final result depends on the order in which the respective options are voted on. Suppose X beats Y, Y beats Z, but Z beats X (for whatever reason) – i.e., there is a cycle in collective preferences. In such a case, the winning option is that which *avoids* the first round of pairwise voting, because the option it loses to is eliminated there. Accordingly, the winning party is that which is capable of nominating its preferred option for the second round.

Second, the status of the conditions stated by May remains open (in other words, they are not undisputed). May himself (1952: 681n7) noted that neutrality may be undesirable in many situations, which opens the normative door for supermajoritarian methods (common as they are in real-world liberal democracies). Further, anonymity is bulletproof only to the extent that we do not care *at all* about the quality, intensity, or source of expressed preferences, or about the social position of voters – that is, only if the only thing that matters politically is the method of aggregation of votes, as analysed by rational choice theory (Beitz 1989: 60).

Third, and related, there is the predicament of permanent (structural) minorities especially under conditions of mutually reinforcing sources of marginalisation, as well as the no-less-common case of deep divides between the majority and the minority. For such reasons, many authors stress that political equality needs to be construed more broadly than simply as numerical equivalence of votes (Weale 2007: 163). Reflections on democracy thus intermesh with consideration of *fairness* and *justice*, to the effect that majoritarian decision-making ends up being not only less just, but also *less democratic*, than a coin toss, or pure luck (Saunders 2010a: 117). A host of alternatives are available, such as rotation or compensation (Risse 2004: 60), lottery voting, inverse weighted voting (minorities' preferences = weightier), Borda-type methods, supermajoritarian procedures, minority veto, or some broader institutional fix (e.g. consociational arrangements in Lijphart's sense). What matters is background justice against which the democratic decision-making process takes place (cf. Rawls 1999: 73–78). A plausible evaluation of the majority principle thus must take into consideration its (likely) consequences. However, as we know from chapter 2, there is little agreement on what constitutes background justice and injustice; I will return to this point later in this section.

The Spell of Arrow

Compared to May, Kenneth Arrow (1963: 13; cf. Sen 1984: 8) went a step further in one particular aspect, by formulating two rationality criteria pertaining to any set of individual preferences. *Completeness* requires that any pair of alternative options can be ranked (X is better, Y is better, or X and Y are indifferent). *Transitivity* requires that ix X beats Y and Y beats Z, then X must beat Z as well. Arrow thus avoided, first, the problem of indecisiveness, because a complete set of preferences always provides *some* determinate answer about the ranking.[74] Second, cycled preference sets are ruled out. Individuals whose preferences violate any of the two conditions are declared *irrational* in this specific technical sense; in public justification terminology, they would be excluded from consideration on grounds epistemic unreasonableness (see 4.2). However, a major problem emerges once identical conditions are imposed upon collective preference ranking – that is, on what has been since termed *social choice*. In combination with other

[74] Incompleteness rides on the back of a difficult philosophical issue of *incommensurability* which occurs if we have no criterion to decide between two or more options. Philosophers disagree whether incommensurability causes real and significant problems for practical reasoning or not; cf. Boot (2017) and Chang (1997) for contrasting answers.

(uncontroversial) conditions, they give rise to the impossibility theorem. These other conditions are (for a formalised account see Arrow 1963: 22–31, 96–100; cf. Gaus 2008: ch. 5; Peter 2009: 7–20):

Universal Domain, or inclusion of all logically possible profiles of individual preferences. Because each voter is defined solely by her preferences here, this condition expresses certain interpretation of the value of political equality;

Weak Pareto Principle, which states that if all voters strictly prefer X to Y, then social choice also has to strictly prefer X to Y;[75]

Irrelevance of Independent Alternatives, or the dependence of the collective ranking of any two options X, Y only on the individual rankings of X, Y (so that the collective choice between X and Y is not affected on how Z is ranked in the individual profiles);

Non-dictatorship, so that collective choice is not determined by the preferences of a single voter (this is obviously desirable if we are looking for a democratic decision procedure).

If transitivity and completeness ensure the rationality of preferences, then universal domain and non-dictatorship protect the fairness and egalitarian nature of the decision-making procedure, and Pareto principle and irrelevance of independent alternatives secure the link between individual preference rankings and the collective (social) choice – that is, the latter's responsiveness. Intuitively, all these thus again represent desirable conditions. Arrow's *Impossibility Theorem* then states that in case of more than two options and more than three voters, *no* rule of aggregation (decision-making method) meets all these conditions.[76] Contrary to May's theorem, then, Arrow's theorem states that the majority principle is fatally flawed as a decision-making method. In the words of William Riker (1982: 119), it threatens to produce arbitrary and *meaningless* results. Pairwise majority vote singled out by May's theorem violates the transitivity condition, because it can lead to cyclical results on the collective level (X>Y>Z>X) – also called the *voting (or Condorcet's) paradox*, of which Arrow's theorem is a generalisation.[77] Decisions passed on the back of a majority vote thus reveal little about the distribution of preferences in a society. In light of the theoretical hope invested in the principle, this is a highly destructive conclusion.

Rescuing Majoritarianism? Single-Peakedness and the Median Voter

Analogously to May's theorem, however, we may ask whether all the conditions stated by Arrow are *really* necessary – that is, whether one or another cannot be relaxed or eliminated in order to rescue at least some decision-making methods. We certainly want to retain non-dictatorship, as giving up on this condition would make the entire enterprise

[75] The strong version of the Pareto Principle has it that if all members of a group rank Y as at least as good as Y, and a sole voter strictly prefers X to Y (i.e., he is not indifferent like the rest), then the social choice must also prefer X to Y

[76] Strictly speaking, the theorem does not hold for infinitely large groups of voters, but its deployment requires controversial mathematical tools (so-called ultrafilters; cf. Taylor 2005: 118ff.))

[77] In May's terminology, cycling violates decisiveness.

of grounding decision-making procedures in a set of democratic values self-defeating (this would be especially true for political equality).[78] The weak Pareto principle is equally hard to abandon, because responsiveness constitutes another fundamental democratic value. Here we can see why conceptualisations of political representation which relegate the normative status of responsiveness to secondary importance tread a risky path.

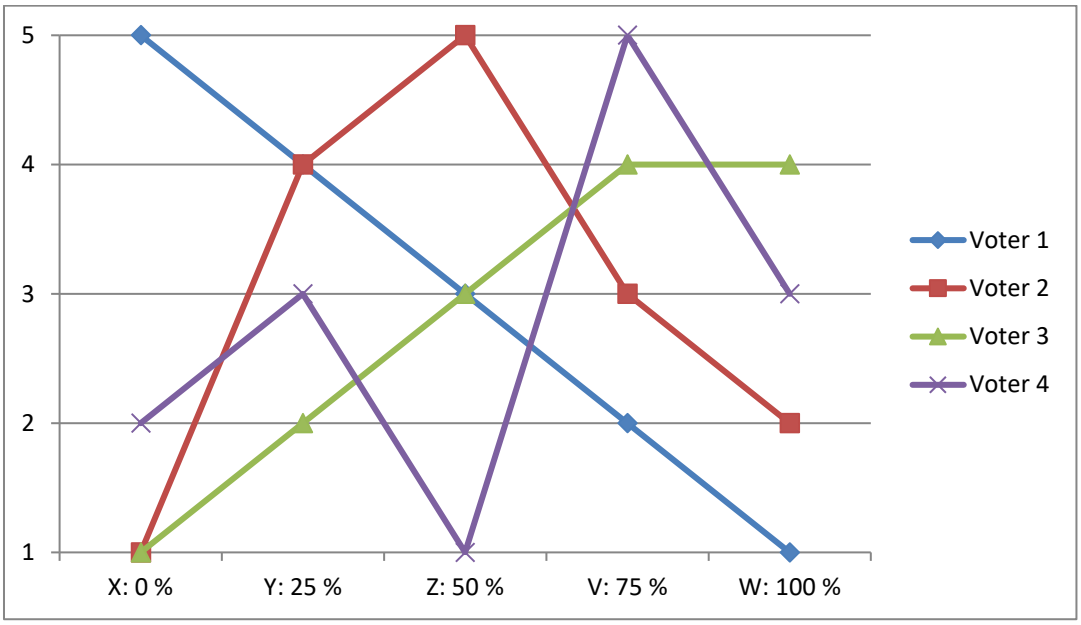
There is one promising solution specifically developed for majority principle, consisting in two additional conditions which are mutually interrelated.[79] The first condition requires one-dimensional ranking of the relevant options across all preference profiles – that is, all voters have to rank them along an identical dimension. The x-axis in figure 3.1 is such one-dimensional space – let the respective five options stand for the rate of inheritance tax, for example. Option X equals no tax at all, option W introduces complete redistribution of wealth after one's life is over (an egalitarian paradise of sorts), options Y, Z, and V three reasonable in-between options.[80] There are four curves capturing the preferences of four imaginary voters: Voter 1 is a radical libertarian who (obviously) prefers zero tax to 25% tax to 50% tax to 75% tax to the libertarian nightmare in a complete redistribution of wealth between generations. Voter 3 is a committed socialist who sees things almost identically but in reverse. However, he knows that a 100% inheritance tax is mostly a theoretical pipedream which lacks support even among his party comrades, which is why an 85% rate seems basically equally as good. Voter 2 might be a socially oriented Christian democrat who rejects both the libertarian and the socialist utopias, but is unable to come to terms with colossal inequalities of wealth accumulating across generations. Voter 4 is an adrenaline junkie who rolled a dice. As regards the aggregation itself, what matters is that no preference depends on any other dimension of ranking other than the rate of inheritance tax (such as the deservingness of any person's wealth). Dryzek and List (2003: 14; cf. Dryzek and Niemeyer 2006) label such scenario as *consensus at a meta-level* which overlays the disagreement at the substantive level (see also 2.6 above). Although the voters disagree which of the options X, Y, Z, V and W is the best one, they share the dimension of evaluation.

The second condition states that preference ranking of each voter is such that there is only one "peak" (highest rated option) in the preference profile, with each option to the right or left of the peak being preferred less (and less). In figure 3.1, preference profiles of voters 1 and 2 *are* single-peaked while those of voters 3 and 4 are not. Voter 3, moreover, cannot even identify her most preferred alternative, because she is indifferent between V and W, while voter 4 has two peaks, going up–down–up–down along the way. The single-peakedness condition thus excludes 3 a 4's preference profiles from aggregation, even though they are logically possible (and, at least in case of person 3, empirically quite reasonable). This amounts to abandoning the condition of *universal domain* in the context

[78] Dictatorship otherwise meets all the remaining four conditions of Arrow.
[79] I follow here the explication in Dryzek and List (2013).
[80] An alternative story could feature possible policy domains for spending a budget surplus (e.g., on welfare, military expenses, climate change policies, healthcare, or space exploration technologies).

of social choice, the step being justified precisely as an attempt to avoid the results of the impossibility theorem.

Figure 3.1: One-dimensionality and single-peakedness of preferences



Note: numbers on the vertical axis denote the ranking of options (higher = better). The horizontal axis captures five alternative rates of the inheritance tax

The *median voter theorem* then states that, assuming normal (Gaussian) distribution of preferences and full turnout,[81] there is one unique winning option – also called the Condorcet winner, i.e. defeating all other alternatives in a sequenced pairwise vote. This "winner" is represented by the preferences of the voter who has the same number of voters to his "left" and "right" (whatever the dimension actually is).[82] The median voter thus cannot lose in a majority-principle based vote – and, strikingly, *the majority vote is the only method of finding out where this winning alternative is located in the spectrum* (provided all the conditions are met). Again, this sounds like a very strong theoretical argument in favour of the majority principle. Political scientists have developed some practically based defences as well, including the implicit pressure towards compromise and the corresponding marginalisation of extreme political views. The reason is that all political actors – especially political representatives – are rationally compelled to seek support of the median voter (more precisely, the group of people sharing the median

[81] In the real world, approximating this ideal would probably require introduction of compulsory voting. Cf. Saunders (2010c); Hill (2011) for opposing views of the issue, and Wass and Blais (2017) for the broader theoretical and empirical context of voter turnout.

[82] This is fully consistent with the collective distribution of votes as a whole being shifted to the left or right, so that the median does not overlap with the centrist position. For example, the egalitarian political culture in Scandinavian countries would most likely push the median more to the "left" (politically speaking; in our figure, the tilt would be actually to the right because the rate of tax is higher) compared with the more individualistically-minded USA.

voter preferences), because whoever wins his sympathies is well-positioned to win the electoral competition. Although real-world conditions never live up to the ideal, the argument still holds, even if approximatively. Finally, and perhaps even more importantly for our purposes, the median position seems to express, however imperfectly, the elusive ideal of the "popular will" (Weale 2007: 170–179), thus at least partly rescuing *collective self-rule (autonomy)* as another fundamental value of democracy.

The apparent difficulty concerns the frequency with which we may reasonably expect single-peakedness to occur in empirical reality. Real-world voters will likely apply cross-cutting dimensions of evaluation in many a case of policy preferences, such as when economic and environmental issues, or defence and welfare priorities come to cross-purposes. Albert Weale (2007: 172ff; 2013: 170–178) responds rather defensively, by suggesting breaking up of political issues into pairwise choices in a one-dimensional space, thus looking for *issue-by-issue medians* the combination (aggregation?) of which takes us as close as possible to the "popular will". The more offensively-minded Dryzek and List (2003: 15–22) employ both theoretically and empirically informed considerations to argue that collective deliberation under conditions set forth in deliberative democratic theory may greatly contribute to the coveted one-dimensional ordering of preferences.

In contrast to these immanent attempts to rescue popular sovereignty, I suggest abandoning it as a fundamental value to be retained. This, of course, amounts to violating a core democratic principle. However, already in 2.8 I suggested abandoning *democracy* as a tacitly assumed starting point for answering political philosophy's organising question (*How should we live?*), and here we can such a strategic move was so important: it makes possible the elimination of popular sovereignty from the set of inviolable principles, leaving us with *freedom*, *political equality/fairness*, and *responsiveness*. As emphasised at the outset of this chapter and worked out in the chapters to follow, the theory of public justification can provide its own coherent interpretation of these values. In chapter 4 I will build up on this point, arguing that a specific variant of public justification – *convergence justification* – can do without any reference to shared moral or political goals (reasons) while securing equality, freedom, and responsiveness. Before getting there, however, let me complete the exposition of the majority principle. Each of the following aspects will have us arrive, albeit from different directions, at the theory of public justification as a promising way of coping with the problem of political authority.

Intensity of Preferences v. Reasons for Preferences

Suggested as cure to manifold ills of liberal democracy, deliberative democracy also figures in one intriguing response to the problem of intensity of preferences. It has been long known that especially interpersonal comparison of the "strength" or "importance" of preferences turns out extraordinarily difficult (Dahl 1956: 48–50; cf. Elster and Roemer 1993). But this leaves an ugly gap in the whole aggregative enterprise. The respective preferences between two options count the same (1 point for one or the other), even though one voter may be almost indifferent between them while for another, they

represent an existential choice. Look again at Figure 3.1: preferences between Z and V in voters 1 and 4 cancel each other out, even though voter 4 prefers Z to V much more than voter 1 prefers V to Z.[83] But this seems counterintuitive. Typically, the rejoinder is that unless we have some reliable method of measuring the intensity of individual preferences on a cardinal scale as well as comparing them across persons, it makes no sense to worry about intensity at all.[84] The retort to the rejoinder takes us to the realm of deliberative democracy: what *really* matters, the argument goes, is not the intensity of preferences per se but the *quality of reasons* behind the preferences. It seems natural to conclude that we are nudged towards reappraising the deliberative context which precedes the voting act itself, because it may significantly impact the quality of reasons grounding voters' decisions (Saward 1998: 78; Sadurski 2008: 41–45).

My reply to the retort amounts to showing that we do not have to "go deliberative" in order to be able to appreciate the importance of supporting reasons. While deliberative democratic mechanisms are certainly welcome in the real world if they can achieve what they are claimed to be capable of achieving – such as unleashing the "unforced force of the good reasons" (Habermas 1994b: 47) , this tells us little about the desirable decision-making method. Even with laundered reasons we still need to figure out how to arrive at a binding collective decision, because real-world *consensus* on a unique solution cannot be reasonably expected. In other words, the primary task still belongs to philosophical reflection on how the proposed reasons are to be approached, as I show in the last subsection of 3.2 below and also at other places later.

Majority v. A-majoritarian Procedures: Towards a General Theory of Decision-Making Methods

Numerous other possibilities of juggling with the conditions of Arrow's theorem or theorising "around" them have been suggested. Unfortunately, I cannot let myself be lured in any of the rabbit holes, as it would not move my own argument forward much. Here is then only a telegraphic (and admittedly selective) summary. For example, further relaxation may concern the *independence of irrelevant alternatives* criterion, which brings in the Borda count and related methods – however, at the expense of triggering the problem of strategic voting, or manipulation of the voting agenda.[85] Coming from a completely different angle, Partha Dasgupta and Eric Maskin (2008) ask which of the "imperfect" voting methods (apart from dictatorship) approximate the ideal in the largest number of "domains" (single-peakedness is one such domain). Their theorem shows that in all domains, majority voting is at least as good as any other method (such as plurality

[83] It is true that voter 4's preferences were decided by the roll of a dice in my example. However, the general point still stands, as the story was purely illustrative.

[84] Saward (1998: 77ff.) argues explicitly along this way. See Balinski and Laraki (2014) for an imaginative proposal they call *majority judgment*, combining ordinal ranking of candidates for office with determining their "quality" on a 7-point scale.

[85] As well as logrolling and other largely undesirable phenomena. A good summary of the Gibbard-Satterthwaite theorem which states that *all* voting procedures are manipulatable is given in Balinski and Laraki (2014: 96–99). See also List (2013: 3.2) for an overview of a host of other possible relaxations and a wealth of references.

voting, two-round system with runoff, or Borda count), while there are domains in which the majority principle is the sole applicable procedure. Its decisive advantage is thus *maximum robustness*. Gerry Mackie (2003) analysed the frequency of cycles both in individual preference profiles and political decision-making, concluding that the disheartening picture drawn by social choice theorists is grossly exaggerated.[86] Still another path was taken by Anthony McGann (2006: 74ff.): admitting the inevitability of cycling, he argues that this result actually *strengthens* democracy by opening the door for "multiple, overlapping potential winning coalitions" (ibid: 85). Again, this is assumed to stimulate deliberation and search for compromise, as well as to make it possible for minorities to stand up for their interests within a majoritarian decision-making system.

Instead of presenting further variations on the exchange between critics and defenders of the majoritarian principle, let me reconsider the entire approach to decision-making methods. There are two basic reasons, one internal and one external. Internally, the status of the conditions accompanying the theorems cannot be critically evaluated from within the theories themselves. Both May's and Arrow's conditions are *axioms*, and as such are beyond challenge unless we step outside the given theory (or perhaps an entire theoretical-methodological framework that is rational choice theory). However, no such external evaluation has been provided by the respective authors who tend to rely on normative intuitions which unsurprisingly diverge. From an external point of view, the majority principle proves inadequate *in principle*, because the "only" thing it deals with is aggregation of individual (sets of) rankings of ordinal preferences into a collective ranking. Even if majority rule turned out to be most effective, robust etc., democratic theory provides manifold other criteria that can be plausibly applied in order to establish the desirability of a given decision-making rule (as explicated in chapter 2). To name a few, political stability, effective implementation of results, or their fairness all express important normative goals that, possibly, any theory of decision-making methods should take into account.

Expanding on this line of reasoning, Matthias Risse (2009a) argues that none of the strategies of justification presented above has the resources to conclusively demonstrate its superiority over competing methods of decision-making. This is because they are either *too inclusive*, with other methods besides the majority principle also fulfilling the stated requirements, or they are *too exclusive*, setting arbitrarily such criteria that competing methods are ruled out *ex ante*, before any comparison commences. The value of political equality is an example of the former problem: in pairwise voting, it is trivially met by a coin toss and non-trivially by lottery voting. Borda count exploits both loose ends: by looking for the candidate/option with the highest average support, it does seek to "maximise" – but the maximandum is a different value than the number of people who are self-determining. The same applies to Balinski and Laraki's (2014) *majority judgement* proposal which, by introducing ordinal qualitative evaluation, partly responds to the intensity-of-preferences objection. Besides employing a different maximandum, the latter

[86] However, the trouble with voting cycles may not lie with their ubiquity but their *unpredictability* – we never know if and when they occur or not.

two methods make use of a broader spectrum of information than merely the individual rankings of options, and it is far from clear why they should be always prohibited from doing so (Risse 2009b: 805).

Entirely outside the majoritarian maximising logic stand random selection (of different types) and fair division/distribution methods, including the criteria of seniority or rotation. Decision by experts (*sanior pars* in earlier terms, literally "of the healthier part") have non-majoritarian roots, too, at least in the first stage (Przeworski 2010: 35).[87] The most radical "solution" of the problem consists in *removing the issue* from the ambit collective decision-making. I will argue in the concluding chapter that the theory of public justification has a lot to say about this possibility.

I thus concur with Risse's call for a general theory of group decision-making methods. Only a broader of this sort will (A) allow to determine which conditions favour aggregative/maximising approaches (and of what subtype, i.e., ordinal ranking or positional), and when it is advisable to opt for random choice, fair distribution etc. Further, it will (B) explain which particular method (e.g., majority or supermajority) is most appropriate, as well as (C) justify the criteria of appropriateness in each case (Risse 2009b: 809; cf. Dahl 1989: 162). Although the theory of public justification cannot by itself furnish all that is required for such a general theory, it will certainly constitute one of its core components.

Majority or Supermajority? On the status of Asymmetrical Rules

I noticed earlier that supermajoritarian voting procedures violate May's neutrality condition, which on the face of it seems like a serious flaw. At the same time, qualified majority thresholds are common elements of liberal democratic constitutional orders, usually covering momentous collective decisions such as constitutional changes via legislative means, or certain classes of decision by constitutional courts. Can they ever be philosophically justified?

Melissa Schwartzberg gives a negative answer, even though she leaves some room for truly exceptional circumstances. (A) The argument from institutional stability emphasises protection of the "rules of the game", usually embodied in certain constitutional provisions. Qualified majority, among other things, reduces the probability of cycles predicted by Arrow's theorem. Schwartzberg however argues that it is unclear which constitutional provisions ultimately deserve such special protection. Why should the will/opinion of an earlier – and perhaps very remote – generation override that of the current one? Moreover, if some provisions do indeed require shielding off from the results of the democratic decision-making process, then it should be irrelevant how many votes for or against have been cast (ibid: 130; cf. also Saward 1998: 71). (B) The appeal to *broader consensus* and the avoidance of "bare majorities" assumes such arrangements will lead to substantively better legislation. Schwartzberg (2014: 133–141) objects that

[87] Due to expectable disagreements among experts themselves, majority voting returns to the mix a roundabout sort of way.

supermajority is both unnecessary, because consensus emerges outside the decision procedure itself (usually in the deliberative process which precedes it), and insufficient, because a minority may block the change of a provision which over time lost its previous broad support. (C) The argument from *protection of vulnerable minorities* referring, among other things, to cumulative violations of anonymity (see above) is contested by Schwartzberg on the grounds of unintended consequences of human action: the veto-power held by an erstwhile disadvantaged minority may become a tool of upholding unjust *status quo* exploited by a privileged minority (which may or may not be identical to the original one). Although Schwartzberg (2014: ch. 7) acknowledges worries about the possibility of epistemic or moral error on the part of majorities which may bring catastrophic consequences upon a minority, she believes that mechanisms such as public deliberation, suspension of validity of legal provisions, or targeted minority veto provide a better way of avoiding such undesirable results.

What to make of Schwartzberg's arguments? I have stressed repeatedly that no conception of democracy, and by implication no democratic decision-making rule, floats normatively unbound in the conceptual space. This means that the majoritarian v. supermajoritarian dispute (among others) cannot be settled unless we are clear about what we expect a given decision-making method to (help) achieve. For example, if there are normative-theoretical reasons for believing that May's condition of neutrality is not fundamentally desirable, or that some further value it is meant to protect (such as political equality or impartiality) is better secured by a non-neutral method, then one strong objection to qualified majority is defeated. Alternatively, it might turn out that worries about "unjust entrenched minorities" and the like are screened out by the logic of the broader normative theory. Because the fundaments of a theory of public justification are yet to be introduced (see the next chapter), I can only state at this point that something along these lines will be the case with Schwartzberg's objections to the supermajority method.

3.3 Conclusion: Public Justification to the Rescue

This promise also allows to avoid the possible disappointment by the preceding discussion of the majority principle as such, which would seem to amount to the observation that one camp will not agree with the other camp, that other-campers$_1$ will not agree with other-campers$_2$, and so on – all the while putting forward plausible if partial arguments. Let me therefore try to turn a burden into an advantage. Recall that section 3.1 concluded on an analogous note. The two "case studies" presented in this chapter might be then read as confirming that the challenge of normative diversity and the resulting many-level disagreement, when set against the necessity of arriving at legitimate, binding collective decisions, indeed constitutes an attendant of liberal democracy. Is there anything more for political philosophy to say? I believe so, and will argue that the theory of public justification provides a clue.

Here is an outline of how this might be done. As emphasised throughout the text, public justification theories happen to interrogate the same set of questions as democratic

theory – that is, what is the normative source of legitimacy of common rules and what are the criteria of acceptability. But it also shares at least three general criteria of a good answer– namely *freedom, equality, and responsiveness*. However, because PJ theories aim to track individuals' reasons, whereas voting rules track only their preferences, it offers a way of engaging the problem of political authority from a different angle. By inquiring whether each individual, properly idealised, has sufficient reason to endorse a given common rule (or a proposal of such a rule), it pushes the issue one step back to a more abstract level. Only after we figure out what does it mean to have sufficient reasons of this kind, can we start modelling the best institutional arrangements to realise the conditions of acceptability. These *might* be of a democratic kind, and most likely will be, but it might also turn out that there are classes of decisions which should not be subject to collective decision-making at all – i.e., that they should be left up to the individuals themselves, or "removed from politics". But even the "democratic" portion of decisions, as seen from the vantage point of public justification, needs to accommodate a particular interpretation of freedom and equality of all individuals, plus the responsiveness of the decision procedure to their preferences. Among other thing, this means that the decision procedure itself needs to be publicly justified (Gaus 1996: 182). As long as this is the case, however, we need a different set of criteria than democratic theory is able to provide by itself. What public justifiability amounts to is the subject of the next chapter.[88]

[88] In my future work I hope to look into the relationship between the theory of public justification and what has been called *the discursive dilemma* (in short, the problem of aggregating *judgements* instead of preferences). Especially the more technical literature keeps advancing at a rapid pace, and an adequate treatment would require a more focused approach. I mention the issue very briefly in 4.2 in the context of two alternative "framings" of public justification. In a nutshell, it turns out that majority decision of the same group of reasoners (decision-makers) may bring about inconsistent conclusions about some set of propositions (e.g. in legal or political cases), even though their individual sets are fully consistent (in this, the dilemma is structurally analogous to voting/Condorcet's paradox). All turns on whether it is the individual premises or conclusions which are aggregated. The former possibility "collectivises" the group of reasoners, in the sense that it treats their premises as belonging to one supra-individual entity which needs to figure out what premises it actually holds. The latter approach merely aggregates individual conclusions, thus avoiding the idea (for some, spectre) of a group agent. See a. o. List (2006); Peter (2009: 71–73); List and Pettit (2011); List (2012).

5. Public Justification in the Real World (Sort of)

5.1 Public Justification and Law

I have proceeded on the implicit and sometimes explicit assumption that theorising about the possibilities and limits of public justification, with a special emphasis on the issue of political authority and the general bindingness of the rules it produces, represents a major pillar if not centrepiece of contemporary political philosophy. In this section, I try to show that public justification theorising should be of eminent interest to legal philosophers and legal theorists, too. Apart from the substantive points explored below, there are several general reasons for this. First and most generally, the legitimacy of political authority may be construed as a necessary procedural condition of the legitimacy of law as such – all the more so if we want liberal (constitutional) democracy to satisfy the broad requirements of the rule of law. This should resonate even with legal positivists who otherwise refuse to taint the study of law as a social fact with moral assumptions. Second, I have argued (4.1) that the scope of public justification includes, and perhaps includes in the first place, individual legal norms as the proper subject of justification. Third, neither legal theory can avoid facing up to the challenge of deep normative diversity spilling over to disagreements over moral, metaphysical, and practical issues. Building on a few sporadic contributions from within the field itself, I will show on the following pages how incorporating the public justification perspective into theoretical reflection on law can help shed new light both on the deepest questions regarding the source of legitimacy of law or its purpose, and the shallower yet still momentous tasks of constitutional engineering and the related institutional design.

At first glance, it would seem that a tighter connection between the spheres of political and legal philosophy is rather easy to establish, as the linking element is already out there. Indeed, the notion of *reasonableness* has been employed quite widely in the academic study of law (Bongiovanni et al. 2009: xi). Upon a more careful analysis, however, the two discourses turn out to be mostly unrelated, intersecting rather arbitrarily and randomly (Sadurski 2009: 129). In legal theory, the notion of the reasonable is employed loosely, as an intentionally open category whose shape and content vary depending on the domain of interest and particular branch of legal science.[123] Put inevitably vaguely, reasonableness as ascribed to the subjects of law stands for the virtue of *prudence* or *practical wisdom* (*phronesis)*, that is, the ability of striking the right balance between normatively relevant considerations, of predicting the likely consequences of human action, and so on. The commonly used overarching term is *the reasonable person* (Mangini 2019; MacCormick 2005: ch. 9; Ripstein 2009).[124] Importantly, jurisprudential literature

[123] There thus may be difference in how "reasonableness" is understood between common and civil law systems; between customary- and legislature-based law-making; between public, private, and criminal law; domestic, between European, and international law; also in how the notion is understood by courts and legislatures as sources of legal norms; how it applies to acts of individuals and state institutions, and so on.
[124] The notion of reasonableness may also apply to legal persons (if the conceptual shift is kept in mind), as attested by several decisions by the Czech Constitutional Court employing a "test of unreasonableness" (Broz 2015).

tends to construe reasonableness as the regulative idea behind the test of proportionality as extensively employed by courts – and *vice versa*, the test of proportionality is routinely presented as a typical venue of reasonableness-driven legal decision-making (Alexy 2009: 6; Kumm 2010; Sadurski 2009: 135). Some even see proportionality and reasonableness as synonymous, at least in the context of judicial balancing (Barak 2012: ch. 13; Bobek 2009: 325). Nonetheless, in each of these domains the particular delineation of the reasonable and the unreasonable remains a matter of methodological and interpretational discretion by the involved actors. My discussion of reasonableness' indeterminacy and vagueness (see 4.2) becomes especially relevant here. This is because under normal circumstance, indeterminacy can be considered a defect of law, as indeterminate law cannot provide conclusive resolution to a legal problem, thus defeating its own point and purpose.

Law as a Device of Coordination?

Such considerations cast doubt over the arguably widespread construal of law as a *response* to the fact of diversity, from which also stems law's alleged superiority as the central vehicle of regulation of social life.[125] In this perspective, law's dominion over competing modes of regulation of social life is meant to provide a remedy precisely to the kind of difficulties brought up by deep diversity. In contrast to the ambiguity and vagueness of the moral and political discourses, law makes it possible to conclusively determine the distribution of duties, rights, and freedoms among citizens. This triumphalist view of law has much in common with conceptualising the function of law as an instrument of social control, or control of human behaviour (cf. Fuller 1975). If anything, the preceding chapters should cool down such optimism; as I will argue further, precisely because law faces the same challenge of many-level diversity, the public justification approach to law can be of considerable help in reviving at least some of the optimism.

A large part of law is the product of political action which, in a normal liberal (constitutional) democracy, embodies normative pluralism and the corresponding disagreement (Waldron 1999b: 36). In civil law countries, even the smaller part constituted by judicial "co-creation of law" presupposes legislation as a result of political competition. Laws which translate morally and/or epistemically salient issues and the corresponding solutions to the legal language cannot but face disagreement – especially among those who disagree strongly with the rights and duties established by the legal norms, but who are nevertheless expected to abide by them. From this follows, second, that many legal concepts remain either moral or morally loaded concepts, to the effect that even *theoretical* disagreements about law – i.e., what law *is* and *is not*, or alternatively, what are the grounds of law (Dworkin 1986: 5) – exhibit the same features as *normative*

[125] This kind of comment/objection was raised by an anonymous reviewer in response to my (obviously rather uncommon, at least among Czech legal scholars) depiction of the philosophy of human rights as basically an ideological contest. See fn. 2 in Dufek (2018b).

disagreements among political philosophers about democracy, authority, or freedom.[126] Conflicts between rights, especially those between fundamental rights, represent the most obvious example. Or consider the rather uncontroversial statement that although positive law may be first and foremost a social fact (as legal positivists would claim), it also embodies the collective striving for *justice*. Finally, also the test of proportionality, believed by both supporters and critics alike to be conquering the human rights-related judicial imaginary around the world (Huscroft, Miller and Weber 2014: 1; Urbina 2017: 1–2), capitalises on the perceived inability of law to provide objective legal answers to many important constitutional questions.

Third, disagreement about law is multi-layered and multi-dimensional, as comprehensively shown by Samantha Besson (2005). Besides the most general categories of *theoretical* and *normative* disagreements, Besson (ibid: ch. 3) distinguishes *semantic, conceptual, and normative* sources of disagreement, the latter two being further disaggregated by her. Conceptual disagreements concern either the meaning of or the application of a concept, the latter encompassing both empirical and normative disputes. Conceptual disagreements can be further categorised as either pivotal (concerning the core meaning) or borderline, the latter being triggered by, to wit, ambiguity, vagueness, and abstractness of concepts. Normative (substantive) disagreements are either of epistemic or metaphysical kind, the former arising of our cognitive/epistemic limitations and essentially overlapping with Rawlsian burdens of judgment. Metaphysical disagreements then comprise principled and interpretative variants, the difference consisting in their (in)dependence on existing social practices. All these spill over to moral and ultimately legal indeterminacy, which, according to Besson, becomes the "central dimension of legal practice" (ibid: 67).[127]

Factoring in the no less widespread disagreement (both among theorists and practitioners) over the best methods of interpretation of law, we obtain a very different picture from that which has law as the main bulwark against diversity. Although we are not forced to subscribe to the global or radical indeterminacy thesis which would disrupt the very possibility of existence of a legal order, I think it is safe to conclude that some – perhaps high – degree of local indeterminacy of law is inescapable. I see this as a plausible reply to the objection voiced among other by Brian Leiter (2009: 1227ff.) who stresses that there is in fact "massive agreement" in law and legal practice. It is precisely the

[126] Dworkin's assault on legal positivism was based precisely on the claim that theoretical disagreements about law are often disguised normative (moral) disagreements about what morality tells us about the criteria of validity of law, as opposed to mere empirical checks whether consensually agreed-on criteria have been met in a given case. Much of positivist jurisprudence then aims to prove that theoretical disagreements about law are not contaminated by morality in this sense, and that they can be either reframed as factual (empirical) disagreements about the content of the Hartian rule(s) of recognition, or revealed as covert attempts to change the law (that is, normative legal arguments disguised as theoretical ones). See Dworkin (1986: 3–11); Leiter (2009); Patterson (2018). Shapiro and Plunkett (2017: 45) acknowledge the normative project is a legitimate one, just not subsumable under the heading of general jurisprudence – its place is within "normative jurisprudence", or perhaps even better in political philosophy and ethics. They also note, though, that political philosophy might turn out to be the best way of doing general jurisprudence

[127] For further explorations of vagueness in law, cf. Kiel and Poscher (2017); Endicott (2000).

interface between law and politics where this putative agreement vanishes. Even if it emerged that such cases were comparatively less numerous, their direct connection to issues of justification and legitimacy would still render them pre-eminent even from a legal point of view.

The dominion-of-law thesis thus needs to be weakened. The more modest perspective sees law as a *primary tool of social coordination under conditions of diversity*, not least by structuring disagreement by means of binding procedures of resolution. Of course, disagreement about law will not simply disappear. On the contrary, it co-constitutes the "paradox of the rule of law", as Besson terms it: law appears to be necessary for resolving disagreement, but the disagreement persists nevertheless, challenging in turn the self-evidence of law (Besson 2005: 117ff.). However, this is a productive paradox, because it opens up the space for the idea of public justification right in the heart of legal thinking. After all, the problem is analogical to the one that animates public justification theorising: what reasons are there for acceptance of *legal* norms? And which reasons can be put forward on behalf of this or that *interpretation* of the norm in question?

It might be objected that such questions are of little to no interest to legal philosophy. But this would be wrong. While the age-old distinction between legal positivism and legal non-positivism is debates philosophy, it still proves useful for my purposes. Suppose the central question of general jurisprudence is *What is law?* Depending on the particular problem under theoretical scrutiny, this arch-question can be further specified: what is the best way of finding out what valid law requires? Who or what is the source of valid law? Whence comes law's practical claim, that is, the reasons for action? Are illegitimate legal acts possible, and if they are, how do we recognise illegitimate? Which types of argument can a judge use in deciding cases or in constitutional review? It might be that some answers will appeal to both positivists and non-positivists, such as the impermissibility of purely religiously based justifications or reasons grounded in beliefs about racial inferiority of selected social groups. In many other aspects, however, legal-philosophical disagreement will not be overlain by practical consensus. For instance, shall judicial decisions in private law cases prioritise economic productivity, maximisation of welfare, protection of rights, fairness, conformity with previous decisions (*stare decisis* and the like), will of the parliamentary majority, or yet some other criterion? Legal theory and practice both offer conflicting answers, grounded as they are in differing moral evaluations of the available options (Den Otter 2009: 4–5; Solum 2006a: 1451–1452).

For all these reasons (but certainly not only for them), a non-positivist will reject full conceptual separation of law from morality. Any theory of law, the argument goes, necessarily includes at least some evaluative statements, and most likely also a broader justification of the (moral) *legitimacy* of law. However, once legal philosophy admits legitimacy as a subject of theoretical reflection, it becomes a version of political philosophy (Edmundson 2013: cf. Besson 2005: 8ff.). To drive the point home, the problem of legitimacy of common rules backed by coercion gave rise to the very debate on public reason and public justification.

A legal positivist must reject the claim that moral statements or even moral justifications co-form the *concept* of law, not least because we would be immediately faced with numberless mutually incompatible concepts of law, as grounded in the preferred moral, religious etc. doctrines (Sobek 2011: 81). Provided she is not a dogmatic formalist, even a legal positivist should nonetheless acknowledge that morally relevant considerations of justice, fairness and the like are often important if not decisive elements of legal (especially judicial) practice, that it can hardly be otherwise, and that law's *content* (as opposed to the concept of law) can very well overlap with morality.[128] The proportionality test discussed at several places above is in fact a text-book example of this. One version of contemporary legal positivism – *inclusive positivism* – even admits that Hartian rules of recognition[129] themselves may be based on moral considerations (cf. Waluchow 1994; Coleman 1982; Himma 2002; Kramer 2004). Finally, no positivist of any stripe can ultimately avoid the question of democratic legitimacy of legal norms (Waldron 1999a; Campbell 2004; Sadurski 2006). But this is equivalent to saying that normative (often moral) theories always accompany legal theories, the "only" difference being whether the former have been formally incorporated into the latter, or just shadow them.

If what has been said in this essay about pluralism and diversity holds, then no philosophy of law – positivist, non-positivist, or hybrid – can avoid the problem of disagreement. Among its other functions, law is the medium through which political authority articulates its decisions and claims abidance on the part of the subjects of law, on pain of coercion. This is why paramount importance needs to be assigned not only to public justifiability of norms during both law-making (as addressed by political philosophers), but also to public justifiability of their subsequent interpretation, at least in a liberal democracy. Seen from the public justificatory perspective, then, the goal of judicial decision-making should not be to provide what the judge considers *the best* argument for or against a given decision (and by proxy, for or against a given action). Judges should be primarily looking for arguments/reasons which are most likely to be publicly justifiable, thus potentially co-forming the content of a society's public reason.

Public Legal Reason: Exclusiveness, Inclusiveness, and the Incompleteness Problem

Let me thus restate the PR/PJ terminology with respect to the domain of law. Reasons which support legal norms or their interpretations and which are accessible to all reasonable citizens can be rather unsurprisingly labelled *public legal reasons*.[130] Inaccessible reasons of the same class comprise *non-public legal reasons*. The set of principles and requirements which determine the content of and constraints on public debate about law as well as its interpretation give rise to *public legal reason* (henceforth also PLR) which applies either to persons in relevant positions, or to entire institutions. Suppose the parliament passes a law securing full benefits of marriage of non-

[128] The exclusive legal positivist Andrei Marmor (2011: 113 *passim*) argues that positivism has no reason to reject even the claim about *necessary* overlap between the content of law and morality.
[129] That is, rules which determine the criteria for categorising any given norm as a legal norm.
[130] See 4.1 above for a discussion of what accessibility may entail.

heterosexual couples, basing the decision on a reinterpretation of the constitutionally protected principle(s) of equality and non-discrimination. However, the conservative-leaning constitutional court abrogates (annuls) the law in whole, citing the sinfulness of non-heterosexual types of intimate relationships, as stated in the Holy Scripture and doctrinally validated in the church's catechism. While the former reason is certainly public (even if the particular interpretation may be found controversial by many), the latter constitutes a text-book example of non-public reasoning.[131] Under the mainstream consensus construal of public reason/justification, it becomes critically important how constraining its content is: if public reason prohibits the use of non-public reasons by judicial officials (which is rather expectable, as shown below), then the model decision by constitutional court is illegitimate, carries no normative force, and as such cannot claim abidance by those subject to the decision.[132]

In this respect, Lawrence Solum (2006a: 1466) distinguishes three variants of PLR – laissez-faire, exclusive, and inclusive. The *laissez-faire* approach avoids imposing any conditions on the process of public legal justification (henceforth also PLJ), that is, it takes *all* possible reasons as public. In the example with marriage, the constitutional court's decision would turn out unproblematic (at least at first glance) and the annulment of the law would be legitimate.[133] The *exclusive* conception of PLR either prohibits the use of non-public reasons at least in some contexts related to PLJ (the weaker version) or prohibits them across the board (the stronger version). In this perspective, the Court's ruling could not probably pass the test of public justification, because mainstream PJ/PR theorising understands the courts and above all constitutional courts as the primary domain of the strictures of public reason.[134] Finally, the *inclusive* conception of PLR requires provision of public reasons at least in some, and possibly in all, justificatory contexts. In my example, the constitutional court *could* make use of the "argument from sin", but only as an *obiter dictum* – the *ratio decidendi* itself would have to be couched in another class of arguments/reasons (such as the expectable catastrophic empirical – say,

[131] Of course, there may be other *public* reasons for annulling the law. Similarly, the parliament can also produce a case for criticism if it justified the law for instance by insisting on the radical feminist thesis that heterosexuality as such is oppressive (not that such a scenario is to be expected in the foreseeable future).
[132] This leaves open the possibility that non-public reasons can be nevertheless used as a part of public justification on behalf of the convergence approach. In the present example, this would nevertheless still *not* imply that the Court's decision was legitimate – it could be (and most likely would be) reasonably rejected by the subjects of the decision.
[133] Solum (2006a: 1475ff.) rejects the laissez-faire option in its entirety, citing the threat of instability and loss of legitimacy if law was to be supported by sectarian moral, religious, philosophical etc. beliefs. Upon a more careful consideration, however, this is too quick: even laissez-faire reasons need to pass the test of public justification, which means that if Members of the Public found the court's reasoning unacceptable, the decision would still not pass the test. Two clarifications are necessary here: (1) There may be other defects of non-public reasoning by highest state institutions, such as cultivation of a culture of disrespect, which would speak strongly against the laissez-faire version at least in their case. (2) The present point has to do with the theory of public justification, not the practice of constitutional review in liberal democracies as we know them – it is another question how a laissez-faire conception of PLR could be stably implemented.
[134] See also my discussion in 5.2 below.

demographic – consequences of passing the law, incompatibility with some established provision of the constitutional order, or violation of a previous ruling by the court).[135]

This distinction allows Solum to identify the main difference between LPR/LPJ and PR/PJ *simpliciter*, or in other words, what is the crux of the shift from public political debate about proposals for common legal rules to the more narrowly construed discussion about existing law and its interpretations (though with no less public consequences). While public reason should, in Solum's view, be conceptualised along the inclusive conception, public *legal* reason needs to be modelled as exclusive, thus requiring judges to use *solely* public reasons.[136] Although I have some reservations regarding Solum's position, one general feature deserves special emphasis – namely the cognisance that public *legal* reason has to be kept sufficiently *shallow* in order to avoid big metaphysical claims, because these inevitably lead toward sectarianism. In a related article, Solum (2006b) argues that the combo of deep moral pluralism and the burdens of judgment (see 2.1 above) gives support to a non-dogmatic conception of *legal formalism* as the best expression of the content of public legal reason. This obviously stands in stark contrast to the trust invested by contemporary legal theory and practice in the method of balancing, including the proportionality test.[137] As observed by Cass Sunstein (2007), however, even though shallowness of judicial reasoning carries clear advantages, it is not clear that "judicial minimalism" is always desirable. There might arise good reasons for "going deep", thus couching one's reasoning in more ambitious and therefore more controversial theories.

My goal here is not to pass a conclusive verdict on these advanced legal-theoretical debates; I am simply documenting how the considerations essential to public reason and public justification theorising speak to some core issues of legal theory and philosophy. I will now briefly discuss one major criticism of PJ/PR which inevitably affects PLR/PLJ as well. The criticism is not only pertinent to the domain of public legal justification, but also underlines a major advantage of the minimalist ("inclusivist") approach to PR I generally favour. This is the objection from *incompleteness* which is especially damaging to the exclusivist approach to PLR favoured by Solum and others. Incompleteness of public reason means that precisely because a whole range of potentially relevant considerations have been excluded from the domain of public justification (due to their non-publicness/unreasonableness), successful public justification of *any* determinate

[135] What if the previous ruling was unjustifiable, too? I do not have any generalisable response to this possibility, because much depends on particular path-dependencies of the given political system. Nevertheless, such scenarios would seem to trigger considerations of justifiability – and thus legitimacy – of political authority as a whole, as opposed to the level of individual laws.

[136] Such view corresponds most closely with understanding public reason as a set of Razian exclusionary reasons, as also discussed in chapter 4. Lawyers, MPs officially discussing bills on parliamentary ground, or legal theorists taking the mantle of public intellectuals or legal advisers will then also be subject to stricter rules of justification than ordinary citizens (Solum 2006a: 1478ff.)

[137] Legal formalism can be however easily turned *against* PLR by stressing the autonomy of law vis-à-vis other normative systems. In this perspective, the very existence of positive law constitutes an exclusionary reason blocking the application of public reason/public justification in debates about law, simply because law is thought to possess internal resources for resolving legal disputes. Cf. Schauer (2004: 1937ff.)

common rule or course of action becomes impossible. Put simply, the pool of reasons which are left will not tell us what to do, leaving public reason indeterminate (Schwartzman 2004). Such a result, however, would be near fatal to both political and legal legitimacy construed in broadly liberal terms. If pluralism and disagreement apply to the legal domain as well – and I have argued they do –, this would strongly suggest that the desired legal justification cannot be *public* in the sense required by Solum et al. – that is, based either exclusively or simultaneously on shared public reasons.[138]

On the other hand, the inevitable inclusion of non-public reasons does not constitute a problem for the intelligible reasons/convergence approach, because this approach *presupposes* that Members of the Public will utilise non-public reasons or evaluative standards (as long as they pass the intelligibility test). In somewhat colloquial terms, although non-public reasons have been officially barred from the good company, they keep creeping back in, and the inclusivist version of PLR is capable of accommodating them. We can see here why PLR/PLJ in fact constitute a special case of PR/PJ: public justification connected to law-making – that is, providing reasons for or against proposals of common norms – is of the same genus of "public reasoning about law" as the putatively authoritative interpretation and enforcement of law by judicial institutions. As I showed in chapter 2, academic reflection of the entire enterprise is importantly affected as well.

The Purpose of Law-Making

Before I move on to the institutional expression of public justification in a liberal democracy, I will briefly comment on another aspect of PR/PJ which bears on a central issue in legal philosophy. Analysis of a "proper purpose" (Barak 2012: ch. 9) is again closely related to the balancing test, constituting the very first step in the process of evaluation. I have noted earlier that the test of proportionality as employed by constitutional courts is often regarded by legal scholars as practical embodiment of the theoretical notion of reasonableness, or more precisely, of testing the reasonableness of legal provisions. Seen through the lens of public reason, the appropriateness of the lawmaker's intent becomes one criterion of the publicness of the reasons offered:[139] If the intent is "bad" (egoistic, wicked, unconstitutional etc.), then the proposed norm lacks reasonable – that is, public – reasons in its support, thus losing legitimacy and being open to derogation or abrogation. For instance, if a proposed norm brings about limitations of fundamental rights, it has to be supported by strong, proper reasons based in public interest or some such value.[140] Although the scrutiny of the lawmaker's motives is standardly linked to the US version of constitutional review, it does have its place in continental legal systems too which otherwise tend to emphasise the impact of a given norm (Sadurski 2018: 341ff.). Anticipating section 5.2, such review of the motives behind

[138] For extended criticisms of Rawlsian public reason along these lines, see De Marneffe (1994); Reidy (2000); Horton (2003).
[139] Sadurski (2018: 341ff.) speaks of a "motive-oriented scrutiny".
[140] Such was the case with the 1998 Czech constitutional amendment which extended the time limit for apprehension of suspects or accused persons from 24 to 48 hours. The specific reason given was to prevent the release of suspects for whom there were objective grounds for taking into custody.

enacted legislation may be rephrased as violation (justified or not) of the principle of parliamentary autonomy (or breach of its jurisdiction), which under normal circumstances represents a constitutive element of the separation of powers.

Wojciech Sadurski (ibid: 350) thinks that illicit motives on the part of the lawmaker establish sufficient reason for annulment of a law or its part. The criteria of appropriateness or illicitness are to be looked for in the purposes of state action in the given domain – in most general terms, these domains correspond with the traditional branches of state power (legislative, executive, judicial), even though the criteria remain amenable in accordance with the particular issue at hand. By specifying the boundaries of permissibility for reasons propounded in favour of the given norm, these criteria or principles thus (again) play the role of Razian exclusionary reasons.[141]

At least three questions remain open. First, how are we to find out whether the public reasons offered for the proposal (e.g., in the explanatory memorandum) are *sincere*? Are constitutional courts authorised and/or well-equipped to undertake such inquiry (Schwartzman 2011)? Second, what if there are proper purposes in favour of the proposal available, except for that the proposer missed them (deliberately or not) and worked only with illicit motives? Could the proposal still be justified? Third, and most importantly for this essay, how do we tell *which* motives and purposes are permissible? To answer this third question, legal scholars cannot but look into the structure of public justification and the related problem of qualified acceptability, as discussed in chapter 4. Again, the theory of public justification proves helpful for a robust philosophy of law.[142]

5.2 What is the Site of Public Justification? Courts, Parliaments, and the Rest

Having outlined the relationship between public justification, public reason, and law, I am now positioned to look at some length into the practical side of public justification theorising. My exposition until now probably reveals that much of the scholarly discussion proceeds on a fairly abstract level. Although the occasional foray into real-world politics and institutions does happen, the debate has primarily occupied properly philosophical ground, and the list of conceptual and metanormative distinctions that one needs to keep track of has been steadily expanding. On the one hand, this allows more precise delineation of what is at stake, as well as effective differentiation among the respective positions in the debate. We want the abstract-level theorising to continue for

[141] Dimitrios Kyritsis (2015, 2017) builds his original theory of the separation of powers on this idea, adopting Aileen Kavanagh's (2016) construal of the SoP as an expression of a "joint enterprise of governing". Within this framework, each branch of state power is assigned a properly delimited sphere of action, as well as specific goals thereof.

[142] Even more complexity could be added, though. For example, one may treat separately the justifiability of *motivations* for endorsing some norm and justifiability of the *actions* sanctioned by the norm. Second, the doctrine of double effect is always lurking in the background. Finally, there is a lot of ambiguity and vagueness in the notion of causing *harm* which is taken as a paradigmatic example of expressing *disrespect*. Micah Schwartzman (2020) thinks that it is precisely the cases exhibiting mixed motives on the part of the lawmaker (neither wholly public nor entirely non-public) that call for constitutional review.

5.3 The Liberal Project of Human Rights and the Moralistic Fallacy

In this section I show how the theory of public justification helps shed light on central problems in the philosophy of human rights. I do not have the space or even intention to develop a complete philosophical account of human rights, and the section will serve primarily as further illustration of the wide applicability of the PJ approach. It will turn out especially pertinent for human rights philosophy, because, as I will argue shortly, this otherwise very lively area of moral and political philosophy is strangely isolated from the broader concerns animating contemporary debates.

What makes someone engage seriously with the philosophical underpinnings of human rights (hereinafter also HR)? Maybe some individuals out there have a truly "scientific" motivation and are interested in finding out how things really are in the world – that is, whether human rights "exist" in some objective sense or not. Looking over the field of HR philosophy, however, the much more fitting answer is that human rights offer a powerful tool of critical evaluation of the state of the world as well a vision of reforms of the political, legal, and economic orders.[180] Charles Beitz (1999: 288) wrote some time ago that for cosmopolitan-minded authors, human rights as enshrined in the *Universal Declaration* and the related norms of international law represent "a reasonable proxy for standards of global justice." The same, however, goes for so-called political justifications based in the functions human rights have in contemporary international politics and law, as well as for teleological justifications couched in terms of human dignity and living a life worthy of human beings: both take a morally based attitude towards social reality.[181] Put differently, human rights are often a function of ethical and political beliefs. Now if the moral ideal is to cohere with the folk understanding of human rights as unconditional, pre-political moral claims belonging to every human being *qua* human being, as well as with the role it has been assigned in international law which actually shares much in common with the folk idea of HR, the *ought* of HR needs to be supplemented by an *is*, some hard fact of empirical or metaphysical reality independent on moral and political beliefs.

Costas Douzinas stresses that the paramount function of human rights is *ontological*, that is, identity-bestowing, which he thinks conceptually precedes the commonly cited protective and assistance functions (Douzinas 2000: 253–261; 2007: 7). This is to say that our understanding of what it is to be human – our philosophical anthropology – fundamentally changes depending on whether the abstract human being is ascribed human rights or not (and which ones). And *vice versa*, both the form and content of human rights are in turn shaped by our construal of *humanity* or *human nature*. Douzinas sees all these terms as floating signifiers carrying "enormous symbolic capital", over the control of which major political, social and legal (and philosophical, let me add) struggles are

[180] For a similar view see Reidy (2011)

[181] The literature is somewhat heterogeneous as regards the basic metaparadigmatic structuring of the field (see 2.1 for a similar claim about democratic theory). Nonetheless, I believe that the distinction I prefer – that is, between foundationalist, political, and constructivist-teleological approaches (see Baroš and Dufek 2014: 73ff.) – overlaps to a large extent with Cruft, Liao and Renzo's (2015) triad of non-instrumental, instrumental, and practice-based justificatory strategies.

being fought. Douzinas' own position on the issue has strong affinities with radical political theory, drawing extensively on neomarxims and post-structuralism in his critiques of the contemporary human rights regime, which puts his words into perspective. Nonetheless, the basic insight remains inspirational: even if Douzinas was only half-right, so that the ontological function of HR was only *also* important, it would indirectly still speak in support of the primacy of the normative in HR theorising.

The Liberal Project and Fallacies in the Waiting

It would be in vain to deny that the worldwide promotion of human rights embodies the values of a *liberal political project* which aims at transformation of existing societies in a HR-conforming direction. This is corroborated in numerous ways: by the intellectual history of the idea of natural rights/rights of man, by the intellectual and power context of building the *new world order* after the Second World War (starting with the *Universal Declaration*), or by the values of individual freedom, equality, and autonomy which form the value base of the dominant conception of human rights.[182] John Charvet and Elisa Kaczynska-Nay (2008: 283) are among the few who openly admit that the first (though arguably very long) step towards successful implementation of the mainstream conception human rights will require transformation of existing political units (states) into constitutional democracies.[183] Although the majority of authors remain agnostic in this regard, a look at the ever-thickening national and regional systems of protection and promotion of human/basic rights within the European area give us a reason to believe that at minimum, a *constitutional* – that is, liberal – judicial-political framework proves indispensable for an effective HR-related practice.[184] In short, the extant international human rights regime started and still runs as a *prescriptive* project.

On the other hand, however, philosophy of HR should be always able to incorporate the standard ("folk") rationale behind human rights which construes then as *universal, equal, inalienable,* and *inherent to all human beings*. As a special case of moral rights, HR and the corresponding duties/obligations necessarily precede political decision-making and positive law (including positivised rights) as the result of political decisions. In other words, under this folk understanding of human rights, they constitute anything but a normative project, let alone a liberal one – to the contrary, human rights are an objective fact of (moral) reality. Although liberalism may have been the first political philosophy to "discover" human rights, this does not make them an invention of liberalism. However, once the inquiry starts about the grounds for such strong and politically extremely salient set of beliefs – that is, why do we think that people actually have those rights which appear in the relevant documents of international law, the responder has nowhere to look for

[182] At minimum, these are elements of the mainstream narrative of post-WWII human rights developments; cf. Charvet and Kaczynska-Nay (2008: 1–78, 223–288, 318); Donnelly (2013: 13–17); Sadurski (2011); Normand and Zaihi (2008: 195). For a powerful argument to the contrary, emphasising the pivotal role of the Global South, see Jensen (2016).

[183] The implicit second step is the creation of a worldwide political authority (a world state or at least a world government).

[184] Chris Brown (1999) argues in a quasi-communitarian manner that human rights are the *consequence* rather than cause of the reasonably satisfactory performance of liberal democracies

other than some set of moral-political ideas, perhaps underpinned by a bit of metaphysics. Typically, the response will be a broadly liberal one, even though alternative visions such as Douzinas's (2000, 2007; cf. also Chandler 2006; Somek 2014) emancipatory radicalism are equally on offer.

For reasons concisely summarised by Robert Alexy (2012: 7), even philosophers re well-advised to search for a moral-factual core of the concept o human rights. The combined features of universality (i.e., their belonging to each human being) and non-positivity (i.e., independence on and priority to legislation and politics) of HR require objectivity, or existence of necessary moral truths, because otherwise the floor is set for a power-political decision on the validity of any given set of norms, including HR – which would obviously contradict their very point.[185] In the worst-case yet not so uncommon scenario, this creation of subjective preferences or will (where the subject may be a democratic people) cloaks behind a rhetoric of objectivity, rationality, and universality, thus freeriding on the positive reputation of human rights. Perhaps this is where the radical systemic critique of the current human rights regime originates.

I am however more interested in another facet of the debate. It seems to me that attempting to justify human rights a s a fact of (moral) reality on the back of strong normative convictions about the desirability of human rights constitutes an *ought–is fallacy,* also called a *moralistic fallacy*, in essence the obverse of the better-known naturalistic fallacy. Roughly put, because human rights (or the moral ideals protected and promoted by human rights) are desirable, they *must* exist objectively. Moreover, somewhat magically they must have more or less the same shape as they have been already given in extant legal documents of both domestic and international law.[186] But we know – and this is the driving idea behind public justification theorising – that people differ widely in what they consider the correct set of moral ideals, and philosophers of human rights are no exception to that. Thus, it would seem that the ethics of human rights is hardly distinguishable from an interplay of subjective beliefs, which nevertheless – again, as if by magic – end up converging on a preordained list of rights.

However it is really just a seeming, at least at this stage, because it might still turn out that human rights do indeed exist is the objective (Alexy's) sense. In such a case my reference to moralistic fallacy would prove merely that the inference itself was invalid, not that the conclusion supporting the objectivity of human rights was incorrect. The *ought–is fallacy* would transform into a *fallacy fallacy*, returning the ball into the non-objectivist court. I will return to some metaethical attempts to ground the objectivity of human rights in the latter part of the section.

[185] Less stringently put, in order to be able to *disagree* in the first place, parties to a dispute need to share certain minimal set of semantic, epistemic, ontological etc. truths; cf. Corradetti (2009: 4). Otherwise, the parties simply talk past each other.
[186] A similar point is raised by David Stamos (2016: 24, 57).

The Strange Exceptionalism of Human Rights Philosophy

As the entire thesis is meant to attest, political philosophers have been in recent years centrally concerned with the fact of deep normative pluralism which characterises all liberal democracies. Pluralism results in many-level and many-dimensional disagreement among defenders of alternative visions of a good, just etc. society. As has been also pointed out, free circulation of ideas in society may paradoxically lead to erosion of elementary value consensus which, however, makes the existence of such a free society possible in the first place (Talisse 2009: ch. 1; Baroš 2018). As already discussed in 2.1, three general questions framing political-philosophical inquiry can be distinguished (Floyd 2017). First, *How are we to live?* Second, *Why should we live that way and not another?* And third, *Is it possible to provide a convincing and meaningful answer to the first question?* The first question defines the vocation of political philosophy, the second one captures the content of most contributions to the debate, and the third one points to a meta-inquiry into the possibility of achieving success in the task political philosophy has set out to cope with.[187] Even though on the most abstract level, ideological dominance in liberal democracies belongs to liberalism (as admitted by both supporters and critics), in reality political philosophy produces inconclusive disputes about the best answer to the first two questions – not least among those who consider themselves as belonging to the liberal camp. Importantly for my purposes, apart from easy cases such as neo-Nazism or slavery (which have never been a thing in political philosophy anyway) there is equally little agreement over which classes of answers are to be categorised as *unreasonable*, that is, irrelevant for the justificatory enterprise (as discussed in chapter 4).

For some strange reason, none of this seems to apply to the philosophy of human rights. The debate about philosophical justification proceeds as if the repeatedly corroborated inability to convince ideological opponents about the truth of one's deepest normative beliefs did not have the slightest footing. The semi-sacral quality of human rights proves again through the fact that unlike all other basic concepts of political philosophy which are essentially open-ended and invite disputes about their content, the content of human rights is more or less fixed in advance. What remains to be done is "merely" discovering the correct path leading to the finish – that is, a fitting normative justification.[188] Or put differently, the concept of human rights seems to break free of the Rawlsian *burdens of judgment*, that is, the inescapability of disagreement among reasonable persons reflecting on crucial moral and political issues. To refresh, burdens of judgment point to the impossibility of arriving at an unanimously accepted moral (ethical) stance without resorting to oppressive use of state power (Rawls 2005: 36ff., 54ff.); at minimum, they show that such consensus cannot be always expected. My hunch is that this human rights exceptionalism is fuelled precisely by strong normative beliefs at the input, compounded by the extraordinary practical and emotional message arising from the experience of human suffering. Whatever the sources of this exceptionalism, however, the shift in the

[187] The present essay can be read as elaborating above all on the third question.
[188] The determinedness with which some authors trade critical philosophical gaze for service on behalf of political goals sometimes reaches puzzling heights. See Sandkühler (2010) for a recent example.

style of philosophical argument – from tentative explorations of possible shared ground of justification towards searches for the smoothest way towards a predetermined goal – is nothing short of stunning.

Five Human Rights Universalities

This is where the *fallacy fallacy* thesis comes into the picture. If we managed to cut through the layer of divergent normative beliefs towards some objective core of human rights, the primacy of normativity under conditions of deep diversity would cease to present a thorny philosophical problem. Despite the philosophical bustle which is not going away any time soon, we could rest in calm, knowing that the objective truth is out there somewhere. I focus here on the five strategies of justification skilfully presented by Jack Donnelly in a famous article as well as a now-classic monograph (Donnelly 2007; 2013), because they very closely relate to the set of topics I am interested in. I will first discuss the three strategies Donnelly favours or at least considers acceptable, and then move to the two he rejects.

Donnelly conceptualises human rights as a teleological moral-political *project* the goal of which is defined by a specific conception of *human dignity*, or a vision of a life worthy of a human being whose realisation requires the values protected by human rights. Such justificatory approach combines teleology and pragmatism, because the existence of human rights "ultimately rest[s] on a social decision to act as if such 'things' existed" (Donnelly 2013: 22). Human dignity then belongs to all people by virtue of being members of the species *Homo Sapiens Sapiens*. This renders Donnelly a prime target for the moralistic fallacy objection, because his preferred vision of what human dignity is and which human rights it entails – thus carrying weighty practical consequences as regards duties of others – is but one among many in the philosophical supermarket. Why, then, is Donnelly convinced that his normative conception of a desirable human life is objective, in the sense of universally valid?

The most straightforward strategy is to invoke what he calls (1) *international legal universality*, or the empirical fact that the *Universal Declaration* and the related international human rights law have been "accepted… by virtually all states in all regions as blocs" as well as by other key actors of international politics (Donnelly 2013: 286). Although this is ultimately a contingent empirical fact dependent on the involved actors' decisions, it does ground objectivity in the pragmatic-practical sense. My gripe with this strategy is twofold. First, to label as "consensus" or "acceptance" merely a cynical nod to treaties which a great number of the involved actors have no intentions of abidance is just unacceptable stretching of the term.[189] Second, the experience amassed by constitutional democracies themselves attests that adjudication of conflicts between fundamental rights themselves, or between fundamental rights and other constitutional principles, requires *normative* measuring sticks which make such weighing possible.[190] As argued above,

[189] Charvet and Kaczynska-Nay (2008: 281) make a similar point.
[190] Conflict between human rights is a distinct if oft-ignored possibility which raises significant difficulties. Cf. Freeman (1994: 501).

human rights are primarily a tool of normative *criticism* of the current state of affairs, which inevitably ties the realm of international law to political philosophy (cf. Alexy 2006: 17).

Donnelly imagines the bridge between the two domains (empirical and normative) being supplied by (2) the *overlapping consensus universality* which draws on the Rawlsian idea developed within political liberalism's conception of public reason. Donnelly (2013: 70) claims that this (largely implicit) consensus on the idea that "every human being has certain equal and inalienable rights" is endorsed "by most leading elements in almost all contemporary societies". In other words, whatever the other requirements of particular moralities or religions, they come together around a set of "political" values to which they submit (and renounce raising further controversy), resting assured that all other such teachings or doctrines do the same (Rawls 1995: 143ff.). Empirically speaking, however, this is just not true (yet): even though the human rights-friendly interpretations *may* take over ion the future, this is not the same as claiming that they matter-of-factly have, or will do so anytime soon. And if any limited consensus exists, it certainly does not cover the complete list of international human rights and the resulting duties and other requirements.

Donnelly (2013: 70) argues that those who do not participate in the consensus (that is, actors who reject substantial parts of the Universal Declaration model, as enshrined in the international human rights law) are "almost by definition unreasonable", even though they "should be listened to and perhaps even sought out". Donnelly thus employs a version of the qualified acceptability criterion, because he moralises the idea of an overlapping consensus by requiring it to be based on a consensus of *reasonable* doctrines, with *unreasonable* doctrines falling out of the purview of justification. However, because reasonableness had been already defined by Donnelly as basically "reasonable by liberal standards", this is at once a trivial and a sectarian conclusion.[191] Moreover, the argument is question-begging to start with, because the idea of an overlapping consensus *presupposes* the existence of a set of political values around which the consensus may arise. In contrast, human rights as a liberal political project are meant to only *establish* such a community of mankind, which is why it cannot be employed as a justification of the desirability of the project – put simply, it would be justifying itself in an arbitrary manner.

The third type of objectivity-grounding universality which Donnelly affirms relies on (3) human rights' *function* as a tried-and-tested tool of dealing with social, political, and economic challenges of modernity. Specifically, he has in mind protection of human dignity against the threats produced by the machinery of the modern state and the capitalist economy. Gesturing to Habermas's work, Donnelly aims to deflect the objection pointing to Western origins of both the idea and practice of HR.[192] However, this is where

[191] Cf. Dufek (2018b: 70); for a further elaboration see Talbott (2010: 177–181).

[192] Cf. Habermas (1998). This is a variant of the more general argument that the (geographical, temporal) origins of an idea prove little about its validity, or correctness. However, as Michael Freeman (2011: 16) points out, the validity of a concept is tied to its meaning, and meanings of concepts are at least partially determined by its usage in a particular time and place.

the downside of a "relativistic" understanding of universality comes to the fore. Because it is no longer coterminous with the idea of human rights as inalienable and inherent to all human beings, which grounds the standard model of HR, we cannot be sure that it actually justifies the same thing. As argued above on the back of the moralistic fallacy, the Universal Declaration model presupposes and *requires* a metaphysical/ontological grounding, notwithstanding the noncommittal phrasing of the drafts of the UDHR as well as of the UN Charter (Glendon 2001: chs. 5, 7). Perhaps unwittingly, Donnelly opens the door to rejection of human rights as such, either because some other instrument of facing up to the challenges of modernity may prove more effective than human rights (say, socialist planning with the help of state-of-the-art supercomputers, or human genome engineering), or in the wake of a systemic shift in global power relations.

I do agree with Donnelly in rejecting (4) the *historical and anthropological universality* according to which all the world's major cultures, religions, and moral traditions, seen both synchronically and diachronically, exhibit normative equivalents of human rights. Political philosophers mostly agree that the idea of "the rights of man" originated in natural law teachings of the 17th century; lawyers may even insist that the history of human rights as we understand the term today was born no earlier than in the 20th century, most likely after the Second World War (Alston and Goodman 2013: ch. 2; Moyn 2010; Jensen 2016). This is not the place to engage in a thorough comparative analysis of texts, and I will thus move on to the last type of universality Donnelly mentions.

Objectivism, Perspectives, and Social Norms

Criticised by Donnelly as hopelessly controversial, (5) the *ontological* universality of human rights brings back to the scene the problem of metaphysical objectivity of human rights. Donnelly and numerous other authors reject this "foundationalist" strategy because it cannot support its claims by some "hard evidence" (as they will always be non-believers), and thus always faces the ultimate sceptical "How do you know?" retort (cf. Donnelly 2013: 20–23; Raz 2010; Beitz 2009). As I showed above, however, if the standard model of HR is to hold its ground (a) in clashes with positive law (domestic, private etc.) as well as claims and interests of powerful actors in world politics; (b) deflect the radical criticism (voiced by Douzinas et al.) that it is *itself* an expression of the interests of dominant powers; and (c) avoid the moralistic fallacy charge, some such metaphysically robust justification seems necessary. William Talbott (2005: 15, 31ff.) acknowledges this is a *metaphysically immodest* aspiration, yet we have reasons to believe that an *inescapable* one nonetheless, at least if the standard model of HR is to be normatively justified.

The range of first principles and fundamental values on offer is however daunting. How do we judge whether the required descriptive fact anchoring normative projects is (normative) agency (Gewirth 1996: ch. 1; Griffin 2008), interests (Tasioulas 2015), needs and capabilities (Miller 2012; Hapla 2018), discoursive nature of humans (Alexy 2006; Forst 2014: ch. 2), moral status (Cruft 2010), or merely membership in the *Homo Sapiens Sapiens* genus (Donnelly 2013: *passim*)? All these represent particular solutions to the problem of *human nature* – and if what I say above holds, then this issue can hardly be

avoided in philosophical justifications of HR.[193] It should be clear, on the other hand, that human rights become just another door in the labyrinth of competing justifications of basic political concepts (see also chapter 2 of this thesis). There is something deeply puzzling about a liberal project of human rights whose philosophical champions are perpetually unable to agree on the most basic assumptions. And it is also disconcerting, for this moral truth carrying obvious political consequences is meant to engage other moral, religious etc. traditions in an envisioned "polylogue" about human rights.

It thus seems as if human rights required, for reasons of principle, a philosophical justification they cannot, again for principal reasons, be given. On the one hand, the non-positivist rhetoric of the UN Charter and the Universal Declaration of Human Rights remains politically indispensable; on the other hand, it seems to lead to a philosophical dead-end while eating its own tail. In accordance with my earlier exposition in chapter 2, I am of the view that the ontological puzzle of human rights cannot be solved or overcome unless we address the issue of *perspectives* – that is, cognitive filters which tell us what to look for and what to ignore in social reality, both descriptively and normatively speaking. In other words, a perspective forms or co-forms a specific social ontology, thus being especially relevant to the issue of human rights.

Let me give an example which nicely links human rights and the theory of public justification. It concerns the ontology of social norms whose very existence as well as impact on human behaviour seem quite uncontroversially constitute a social – collective – fact, independent of the opinions or particular actions of any given individual. However, as Cristina Bicchieri shows in her research combining findings of social psychology, evolutionary theory, and experimental economics, it may be more fruitful to approach social norms through the lenses of *methodological individualism*. A social norm is then "social construct reducible to the beliefs and desires of those involved in its practice; if individuals for some reason stopped having those beliefs and desires, the norm would cease to exist" (Bicchieri 2006: 22). Although methodological individualism probably represents a minority position in the social sciences, it is a legitimate – "qualified" – one, besides illustrating nicely the import of ontological assumptions (as mediated by perspectives) which prefigure the available social scientific *explanations* of some fact or phenomenon. Numerous beliefs about human nature and/or objectivity of this or that set of values are then examples of such ontological claims which prop the *normative* layer of perspectives, as expressed in evaluative and prescriptive statements regarding human rights.

Suppose now that Bicchieri is right about the nature of social norms. In such a case, the promise of resting objectivity/universality of human rights either on a selected class of international legal documents, or on an all-encompassing value consensus, or on an unmovable metaphysical proof, is doomed to fail: only after these norms become "internalised" (though in a very complex sense including cognitive heuristics such as cue-

[193] The only possible "way out" consists in permanent existentialist self-creation, which however may not lead to *any* coherent idea of human rights.

taking, occasional automatisms, nested expectations, or desire to imitate) can we speak of the "existence" of such norms. Once we acknowledge these complexities, we may better understand the sources of empirically observed tensions and clashes between positivised universal moral norms (i.e., the international human rights law) and the particular *lived (local) moralities*. Of course, friends of human rights assume the regulative idea is *moral change* understood as *progress* from the particular towards the universal (Herman 2008). But there are reasons for caution, for the goal is a change in behaviour, not self-congratulatory rhetorical victory.

On the back of a Bicchieri-inspired analysis of social norms, Jacob Barrett and Gerald Gaus (2020) add another layer to a conception of public justification the contours of which I find congenial. Against what they call *legal centralism*, they argue it would be a mistake to understand law as the *primary* instrument of social coordination (as discussed in 5.1 above). Instead, they suggest assigning priority in this respect to social norms which either may or may not me reflected in statutory law. A wealth of sociological and psychological research then attests that abidance to legal norms increases if law does not conflict with dominant social norms and moral beliefs. Or more precisely, owing to the methodological individualist approach, abidance can be expected if law does not conflict with *individual beliefs about which norms and opinions prevail in a society*, and thus about what are the social – both empirical and normative – expectations placed on him. In contrast, the mere threat of legally sanctioned punishment is usually much less effective as a coordinating device. Again, one consequence of this interplay between social norms and positive law is that some undoubtedly desirable human rights-based legal norms (such as those against caste hierarchies, female circumcision or child marriages) will *not* gain wide support among those who need them most, simply because will not be able to crack the wall of antithetical social norms.[194] Interestingly, no one is directly to blame for this result. The upshot is that public justification of legal norms, and especially of positivised human rights, needs to be sensitive to the moral input coming from the audience.[195]

Social Evolution of Morality and Public Justification

To sum up, while the values and ideals embodied in the standard model of human rights are certainly desirable, and the model itself has undeniably brought about moral progress

[194] Barrett and Gaus call it a *bottom-up* approach to public justification. Cf. also Gaus (2011: 448–546; 2016: 205ff.); Bicchieri (2017)

[195] To avoid misunderstanding, I am not defending a strongly relativist claim about radical incommensurability of perspectives, or the untranslatability of moral vocabularies. Such an extreme position seems untenable (cf. Corradetti 2009: chs. 1–2). I do nonetheless accept that *partial* conceptual and moral incommensurability – that is, absence of a shared metric or procedure for adjudicating conflicts among perspectives – is real, which is all I need for the purposes of my argument (for a recent defence of the "possibility of incommensurability" see Boot 2017). The practical problem philosophy of human rights needs to deal with concerns not universalism and relativism *in abstracto* but the justification of a specific, fairly expansive, and gradually expanding inventory of international human rights and the corresponding duties of various actors. That perspectives have both ontological and normative dimensions only supports my case.

(at least from the liberal point of view), normative philosophical justification keeps lagging behind, inducing scepticism or even resignation.

Is there a way out of the predicament? I want to outline contours of one such modest possibility, which however requires several steps that cannot but sound radical in the context of human rights philosophy. First, we need to make a choice between self-congratulating on a shiny ever-expanding list of human rights in the form of international human rights law, and a sober acknowledgement that the list is not only theoretically unjustifiable, but also practically unenforceable. As Alessandro Ferrara (2003: 397) puts it, "if we want to have a definition of human rights as actionable even when they are not embedded in the constitution of the country where they are being violated, and if we want our definition of human rights to be capable of sorting out violations that can legitimately be stopped if necessary through the use of international military force, we must adopt a much narrower definition than the one included in those documents." Exaggerating only a bit, philosophy of human should proceed (at least in the early stages of the argument) as if the international human rights law did not exist. This step avoids the moralistic fallacy as outlined earlier in this section, because no strictly required goal of theorising is imposed at the start.

Second, morality as such needs to be understood as a set of rules (norms) which make social cooperation possible, rather than a treasury of normative truths waiting to be unearthed by a sufficiently penetrating mind. Issues primarily addressed and perhaps resolved by morality then concern dilemmas of collective action, such as exposing and punishing cheaters and/or free-riders, or the stabilisation of the expectations we place on other people. Morality thus reveals as an outcome of a long-term process within which the principles of (among others) reciprocity and fairness are moulded, as are the corresponding moral emotions of approval of or aversion to a given action (Bicchieri 2006: chs. 3, 6; Gaus 2011: ch. 11). Such an approach, of course, avoids the search for moral-ontological foundations for HR. Yet this ceases to be a flaw if we abandon, as I suggested we should, the standard model of human rights.

The previous two points are clearly influenced by an evolutionary understanding of morality. While I do not subscribe to lofty but controversial claims about the explanatory and justificatory all-powerfulness of evolutionary theory which points to a thorough naturalisation of morality (Stamos 2016: ch. 7), I think there is a lot to be said on behalf of social evolution of norms. One benefit of such approach is avoidance of authoritarian and/or sectarian claims and demands which are meant to be ultimately backed by coercive force.

I tend to think, and this is my third point, that the approach opens up the space for universalist *public justification* of human rights, spilling over in the best scenario to a version of the abovementioned polylogue. Precisely because I resist full naturalisation of morality, does a philosophical project of this kind make sense for human rights (in fact, it may be understood as a part of the social evolution of the underlying norms). Because the justificatory problem is structurally equivalent – we ask what reasons are available in

support of a certain action, rule, or norm that is about to make a moral difference for the given set of individuals –, my argumentation from chapters 4 and 5 applies here with the same force, even though the changed context needs to be also taken into account. Thus, justification of human rights has to employ weak idealisation, weak internalism about justificatory reasons, as well as an intelligible conception of these reasons. Further, it needs to descend to the level of social morality (as opposed to positive law), and shy away from none of the four modalities of justification, even though the universalist and social evolutionary ones will likely take priority.

The specific shape of public justification for the domain of public rights would obviously need to be specified further. Yet I hope it is clear now why I favour the contours outlined above. Such approach leaves justificatory primacy to philosophical reflection; is broadly but not unlimitedly inclusive (that is, the boundaries of the reasonable remain very broad); can accommodate the vision of human rights as a normative project; and is compatible with the claim that human rights result from an "existential" decision to grant them to each other as human beings – or more precisely, to recognise that they have been thusly granted (e.g. Alexy 2012; Forst 2007; Tugendhat 1997: 336–363). At the same time, it is accommodative of the "negative" minimalist argument from *universal evils* which seems to offer a more promising basis of mutual justification than "positive" ideals of human well-being (see 4.2). These evils include such wrongs as pain, physical coercion, torture, oppression, premature death, genocide, humiliation, or most generally using individuals or entire groups merely as means to achieving other's ends. All these undermine or make impossible social cooperation as such. What needs to be emphasised, though, that even this minimalist account of human rights constitutes a fairly ambitious practical goal, given the human rights record in the contemporary world.

Public justification thus aspires to provide a meta-principle for evaluating the acceptability of proposed human rights norms. In this sense, it can be thought of as a super-paradigm of sorts which offers an inclusive basis for a meta-consensus (see 2.6 in this essay). Although it is certainly not the only candidate,[196] it does share with the alternatives the basic rationale: namely that a fruitful philosophical justification of human rights lies elsewhere than in combative attempts to *rebut* relativism or *prove* the truth of some universalistic conception of justice. Rather, it asks which values, principles, or norms may serve as a shared basis for social cooperation, including cooperation on a global scale. Only then can we consistently entertain the idea of an intercultural *dialogue* or *polylogue* on human rights which is not merely a monologue covered under lofty phrases.

[196] Worth noting is the *consequentialist* meta-principle through which the criterion of well-being returns to the scene, albeit on a different level. William Talbott (2010: chs. 1–5) thus combines an essentially Millian indirect consequentialism with an evolutionary perspective which highlights the role of morality and law in solving the problems of collective action.

7. Conclusion: Navigating Between a Rock and Democracy

Have we then simply made a one big dialectical circle, from comprehensive liberalism as the dominant political philosophy of contemporary liberal democracies through a non-authoritarian meta-level fantasy to a more level-headed comprehensive liberalism which however retains the non-authoritarianism desideratum – a *liberalism*$_N$? I tend to think that such development should be resisted, because such "return to correctness" dissolves most of the virtues of PJ theory which make it such a promising theoretical position in the first place. This regards, first and foremost, the development of a mutually acceptable normative basis of social cooperation, which seems especially pressing in times of systemic difficulties – in the worst-case scenario, creeping deconsolidation – of existing liberal democracies. It would also greatly complicate my underlying intent in this essay – namely to show how central issues and problems in democratic theory can be reformulated in a different but overlapping normative-conceptual framework. To its detractors, liberalism$_N$ will most likely look just like the old comprehensive liberalism in sheep's clothing.

However, avoiding comprehensiveness (and therefore sectarianism, however dialectically disguised) threatens with a slippery slope towards anarchism because, as we saw in the previous chapter, even convergence PJ seems to want to eat the cake and have it at the same time. That is, it proves extraordinarily difficult to develop a stable non-sectarian/non-authoritarian liberal political philosophy which is still capable of justifying basic liberal principles, let alone the whole liberal democratic framework. I certainly do not think I have achieved in this thesis, and it was never its aim anyway. However, perhaps bits of what I have written and suggested might be put together and reconstructed as a public justification-based normative political of liberal democracy. In this concluding chapter, I will make a couple of tentative steps towards such a reconstruction.

7.1 Taking Stock

The first three chapters served as a preparatory ground, illustrating some internal problems of democratic theory while discussing two of the fundamental issues it is centrally concerned with. Upon critically reviewing the state of the scholarly debate on political representation and the majority principle, I concluded that a complex answer to either of them requires a comprehensive normative theory of liberal democracy. I suggested a candidate – the theory of public justification –, which simultaneously gives the promise of overcoming the destructive dissonance in democratic theory. If political philosophy wants to retain its practical goal of providing general guidelines for political action, such a "step aside" seems desirable – especially in times of the announced crisis of liberal democracy, of which there are, metaphorically speaking, as many diagnoses *but also suggested remedies* as there are political and democratic theorists. If perspectival diversity is true, then these theorists are talking about different worlds in a very real sense, and neither the diagnoses nor the solutions can be expected to be *convincing* and *meaningful* when transplanted to a different framework (perspective).

The theory of public justification is a promising candidate, because its central concern returns to the Ur-Question of political philosophy as such – the legitimacy of political authority. At the same time, it starts *in the middle of things*, by taking seriously the fundamental liberal values of individualism, freedom, and equality – as enshrined in constitutions, bills of rights, and many judicial (constitutional) decisions. The task of reconciling individual freedom and political authority thus receives a new impetus, because the theory of public justification offers a productive way of dealing with the same class issues democratic theory is concerned with. Since its basic departure point is the fact of deep diversity, the resulting disagreement, and a possibility of conflict, it is able to address the deepest roots of the reconciliation problem, at least as it emerges in contemporary liberal democratic societies. As Gaus's (2015b) response to Enoch's (2013) mercilessly disparaging review of his *The Order of Public Reason* (Gaus 2011) as well as thrashing of the PJ enterprise as such attests, the convergence approach to public justification aspires to elucidate the possibility of a common ground even for political philosophers who have nothing but contempt for competing philosophical projects. It is "accommodative rather than combative" (Gaus 2015b: 1094), seeking common ground rather than proof of a particular vision of moral truth.

I showed in chapter 4 that in order to keep this promise afloat, public justification needs to follow a distinctively minimalist path as regards both the structure of public justification and the delineation of qualified acceptability, usually tracked under the heading of reasonableness. It turned out that these two aspects are closely related, their combination providing the boundaries of the reasonable – that is, of the reasons and persons who are admitted, or listened to, in the process of public justification. The excursus to Forst and Gaus in 4.3 further illustrated why the minimalist, inclusivist, weakly internalist, moderately idealised, intelligible-reasons based convergence justification has advantages for the type of society it is meant to guide. Moreover, this approach translates quite well to the real world, as chapter 5 tried to substantiate with respect to the nature of law, the role of highest state institutions in the process of public justification, and the possibilities and limits of justification of human rights. Especially in the latter case, the importance of a social evolutionary modality of PJ stood out. Several systemic objections to the PJ taken up in the sixth chapter have then prepared ground for my concluding reflections on the promise of PJ (7.2) and its possible reconstruction of our thinking about democracy (7.3).

7.2 Against Theoretical Correctness

Both Billingham (2017) and Wendt (2019) suggest giving up the neutralist pretensions of PJ and returning to the fray of substantive arguments about the best way of organising political life. Because I need and want to avoid sectarianism, let me give convergence liberalism one more pass. As Gaus (2017) stresses, the common world we are willing to share with others *arises out of public reason (justification) itself*, instead of being some ontological blueprint upon which we base our public reasoning. This is why it can be

hoped to provide "relatively settled public categories, rules, and interpretations, which provide the necessary fixed points to allow for individual planning and dynamic changes" (Gaus 2016: 178). Gaus captures the underlying idea in the notion of a *public moral constitution* in which all citizens are able to participate. Recalling the assurance-inducing and therefore stability-enhancing function of public reason, we can understand the idea of a public moral constitution as a convergence version of public reason.

Taken one step further, it all begins with a *modus vivendi*, a realisation of the long-term benefits of peaceful cooperation (Gauthier 1986; Moehler 2018), or of the shared interest in avoiding universal evils of physical suffering, oppression, humiliation, torture, genocide and the like (Gray 2000: 66–67). First comes order, then perhaps justice (Hardin 2005) – but justice, unlike peace (and perhaps order), is controversial as regards its interpretations. We can never be sure that prudential concessions transform into internalised common rules, and if they do, whether these rules will be genuinely non-authoritarian. But we know from experience that the first kind of "phase transformation" happens, much of the impressive apparatus of game theory being devoted to explaining how this is possible. As regards the non-authoritarian character of common rules, perhaps all we can confidently offer is *hope*. But the faith of correctness-based normative political theories that their truth is the truest of all the available truths renders this hope more idealistic by an order of magnitude. I thus believe it perfectly legitimate to see how far the minimalist assumptions of convergence justification can take us. If one source of the present crisis of liberal democracies is decreasing social trust, then I cannot see how dogged insistence on one correct version of social morality (or of legitimacy, as Billingham suggests) can prove of any help.

Two further challenges stand ahead. The first one has been already entertained at various places in this essay: is the version of public justification I explicate and defend in chapters 4–6 sufficient to justify the basic tenets of liberalism? We might very well start *in mediis rebus*, but to what kind of place do we return, theoretically speaking? Can we rest assured that basic liberal and democratic institutions are publicly justified (Bajaj 2017: 3144), and perhaps *uniquely* publicly justified (I take on the democratic aspect in the next section)? Perhaps the major cause for careful optimism is the prospect, most carefully worked out by Gaus (2011: 335–388, 509–546) and Vallier (2019: 156–219), of fundamental *individual rights* being publicly justified. Whatever the worldview and political, moral, economic etc. goals of Members of the Public, they all have undefeated reason in favour of robust guarantees that they will be able to pursue these goals without non-consensual interference from outside. These guarantees include, in a descending order of importance, *rights of agency* (freedom of thought, right against harm, right against legal coercion, right to personal property, right to obtain resources), *associational rights* (families, churches etc.), *jurisdictional rights* (encompassing individual property rights in the usual sense), *procedural rights* (legal and political), and *international rights* (especially freedom of movement and trade). Because this first stage – or "highest order" – of public justification precedes ordinary legislation (in fact, the legislative body has not been "established" yet), these rights cannot be normally overridden by ordinary laws. This is why also

constitutional rules for amending, changing, interpreting, applying, adjudicating etc. other legal and moral rules (which need to strictly respect individual rights) are selected at this stage.

To simplify only a little bit, anything over and above this set of publicly justified rules is "disrespectful, inegalitarian, illegitimate, and authoritarian" (Vallier 2019b: 6), if claimed as a product of the highest order of justification. In a sense, then, this is the convergence liberal's version *basic structure of justification* (see 4.3 on Forst), a necessary precondition for any further real-world decisions on common binding rules. Two points are worth stressing: for one, public justification of property rights in general is not the same as justification of a *particular account* of property rights, so it is not *obvious* that this leads to some kind of libertarian fantasy land. In fact, Vallier subsumes under rights of agency what he calls *welfare rights*. While he thinks that a functioning market orders are the best means to respecting welfare rights, there will almost certainly be social democratic Members of the Public who would reject a complete prohibition of redistributive measures. Libertarians' "commitment to social trust and cooperation should lead libertarians to ascribe moral and political authority to a property regime with at least some welfare rights established through the redistribution of external goods and services" (Vallier 2019a: 206).

7.3 Democratic Minimalism with Open Back Door

Note, however, that political rights come only *fourth* in the order of justification.[200] What does it tell us about the status of democracy and its numerous elements? The first thing to note is that even if the status of the *Public Justification Principle* as a necessary condition of legitimacy is retained (*pace* Wendt), it remains open if there are any other necessary conditions. One point is derivable from the very convergence theory of PJ: it is very likely that at least some of the time, the set of socially eligible (i.e., publicly justified) proposals will have more than one member. Recall my toy example of preferences for rates of inheritance tax (Figure 3.1) – it is quite likely that at least some options on offer will be acceptable for all participants, so that they could first narrow down the range to (probably) the vicinity of options Y and V and then take a vote (I am not claiming that particular example reflects reality).[201] However, while democratic enactment follows very soon after the PJ stage (Billingham 2017: 543n5), its boundaries are strictly limited by that higher-order justificatory decision.

Here the preferred conception of public justification proves critical. As explained already in 4.2, the reasons-for-decisions frame which takes as the subject of public justification *reasons* (as opposed to rule proposals) has very close connection to deliberative democratic mechanisms as a means of checking whether the proposed reasons are

[200] Vallier (2019: 214) even ups the ante when he suggests that the right to vote should be limited to issues which do not violate other primary rights, because voting rights are a means of controlling others.

[201] Unlike relaxation/violation of the Universal Domain condition, as required by the single-peakedness solution to Arrow's Impossibility Theorem, this will be a fully self-imposed restriction, arising from the mechanism of public justification.

justified (Lister 2013: 41–44). Thus, decisions based on the resulting "balance of reasons" will be often preceded by deliberative exchanges – and the first modality of justification (see the end of 4.1) will be activated. The same goes to the premise-based (=reason-based) solution to the discursive dilemma, as discussed by Christian List (2006). But there are some concerns which need to be addressed by deliberative democracy-friendly public reason theorists, arising from the technical work on assurance and stability discussed in chapter 6: for instance, Chung's (2020: 95) results show that even extensive deliberation among participants cannot by itself guarantee assurance/stability in implementation of proposals, if there is certain moderate level of suspicion present about the genuine intentions of others. Success depends on a host of contextual variables, such as the type of post-deliberation decision rule, or the symmetric/asymmetric standing of deliberating parties.[202]

If, on the other hand, the coercion frame (and by extension, a respect-for-moral equality frame, although Lister does not address it) is selected, especially combined with the intelligible reasons approach (4.1), the deliberative phase loses its fundamental role and is joined by a combination of bargaining and universalising arguments, set against the background of publicly justified higher-order rules. Because this is a dynamic reiterative process – laws can be always changed –, in a longer timeframe the social evolutionary modality takes over, reflecting the changes in composition, cultural predispositions, or external circumstances of the given society.

What this means for democracy, though? In 4.3 I explained that, on the one hand, the convergence/intelligible reasons approach to PJ has an important place reserved for democratic regimes because they are, comparatively speaking, more widely responsive that competitors, and thus must likely to respect basic individual rights (Gaus 2011: 451–452). On the other hand, it precludes higher-order public justification of anything more than a minimalist conception of representative democracy, "comprising, as it were, universal suffrage, free elections, party-based representation, a set of basic rights, or the rule of law including the separation of powers." So perhaps exactly like with basic liberal values and principles (7.2), we have a case of "old wine in new bottles" here (cf. Gaus 2007): having started from a distinctive set of inquiries about the nature and shape of political authority, we arrive at a classical conception of democracy. Even though democratic minimalism has been widely criticised, its main advantage lies in its essential compatibility with a publicly justified social morality. Although there are several shifts in focus and perspective as regards replacing the majority principle with a supermajoritarian one at least for the level of coercive laws,[203] we end up with basically the same *core* of liberal democratic politics.

[202] Remarkably, Chung argues (ibid.) that successful PJ and stable implementation require *asymmetric standing*, which is in direct opposition to the fundamental normative commitments of deliberative democracy. More work in this direction seems to be called for, however.

[203] As noted by Gaus (1996: 182) or Vallier (2019b: 11), democratic procedures themselves must be publicly justified, because there is disagreement about democratic procedures all the way down. In other words, democratically deciding about the best democratic procedure leads into infinite regress.

In this context, section 5.2 (in conjunction with chapter 4) can be read as claiming not only that parliaments are better equipped than constitutional courts to face the task of public justification, but also that they in fact represent *irreplaceable* and *paramountly important justificatory* elements of liberal democratic orders. This means, among other things, that instead of replacing the standard model of political representation, for example by relaxing the responsiveness criterion, or by introducing a plethora of new and often self-authorising representative actors, political philosophy needs to come up with a novel understanding of the representative and justificatory role of parliaments and political parties. This has been increasingly happening in recent years (Rosenblum 2008; Muirhead 2014; White and Ypi 2016; Bonotti 2017), and here is to hoping that the debate continues. For the convergence liberal, one challenging task concerns the reconciliation of intelligible reasons and the constitutionally sanctioned expectations that MPs will act in the interest of all the people (3.1).

To avoid misunderstanding – and this is one of the shifts in focus and perspective –, it needs to be stressed there are no fixed limit in any direction on the range of institutional innovations. There are no glass theoretical walls against, say, quotas on political representation, self-authorised representatives, or introduction of advanced deliberative mechanisms (Dryzek et al. 2019). In fact, parliaments themselves are hot candidates for deliberative experiments, for example by reworking and extending certain classes of in-house deliberations – such as those taking place in committees – to carefully (or perhaps randomly) selected representatives of the broader public. Also, if mutual trust is required for assurance mechanisms to work properly, then society-wide conditions of building and maintaining social trust, as explored by numerous social sciences and also political philosophy (Vallier 2019: chs. 1–3), need to become a point of focus as well. The social-morality centred approach of convergence PJ liberalism however seems to have distinct advantage in this regard, as hinted in 4.1 and 5.3 with respect to internalisation of social norms.

As with the rest of public justification theory, however, such reforms and transformations ought not to be imposed "from above" (unless there is some publicly justifiable urgent need), just because a political philosopher and his/her fans think this or that innovation would make the society a lot more just, a lot more democratic, a lot more agonistic, or what have you.[204] Because parliaments necessarily engage in all modalities of justification – deliberation, universalising arguments, bargaining, and (inadvertently) social evolution –, employing all kinds of justificatory reasons and metaethical stances, they are difficult to *replace*, although they may be open to upgrading.

Similarly, this theoretical framework remains essentially open to a wide range of *policy content*, as regards health, education, security, environment etc. In contrast to the common charge against "minimalist liberalism", I cannot see why a society could not evolve towards, say, predominantly public funding of higher education (or the other way

[204] In this sense, it may be sometimes a blessing that academic democratic theory is largely irrelevant to policy-making and constitutional engineering, as argued in chapter 2.

round), or fossil fuels-free energy production (probably no other way round in this case). In fact, Michael Moehler (2018: ch. 6) who departs from distinctively non-moral, Hobbesian-like prudential assumptions about conflict of deeply opposing worldviews thinks a basic welfare state-like social and economic policies are publicly justified, including a universal *basic subsistence income* which he believes would actually increase social productivity. But all this is just a more technical way of rephrasing the lofty journalistic truism that momentous political decisions need to be preceded by a "society-wide discussion" which helps ensure that the number of citizens who feel simply coerced into benefitting others is minimised (in practice, it can probably never be reduced to zero).[205] Recall, however, what I said about human rights philosophy in 5.3: discussion with a pre-determined outcome is no discussion at all.[206]

Still, it cannot be denied that due to strict priority of liberal principles justified at the highest-order stage, many controversial policy issues will be removed out of the reach of democratic majorities, or even supermajorities, at least on the society-wide level (decentralised – regional, municipal etc. decision-making may be a different matter). This is because democracy induces people to keep inquiring about what others do and how they do it, and perhaps whether they could not do it better or in some other way, or stop doing it at all. The virtue of *minding one's own business* is actually a fairly difficult one, but it is necessary if an *Open Society* is to be maintained. Let me conclude with a charming quote illustrating how personally demanding it would be to eradicate negative, "dismissive" (mis)conceptions of one's fellow citizens, most likely via legislative means:[207]

> But this multiculturalist ideal is only plausible if we restrict the range of acceptable ideas, giving a less than equal freedom to undesirables – those who demean their fellow citizens. This list of demeaners is extensive, including racists, women-haters, men-haters, many fundamentalist Christians, militant atheists, Nietzscheans militant vegetarians ("disgusting flesh eater!"), animal rights activists ("disgusting fur wearer!"), anti-abortionists ("murderers!"), right-to-lifers ("religious nuts!"), anti-gun lobbyists ("gun freaks!"), right-wing survivalists, anti-papists, anti-Semites, anti-gays, communists, deep ecologists who believe the human race is a blight on the face of the earth and developers are Satan's children, Labor Party members who insist the Liberal Party is a CIA puppet aiming at exploiting the workers, Liberal Party members who insist that the Labor Party is an organ of world communism aiming at world domination, the unemployed who blame their problems on "unwashed immigrants who work for nothing," Australians who believe that those who are not patriotic are inferior to true blue Aussies, those who insist that philosophers are social parasitic eggheads, those who think sociologists are, and on and on (Gaus 1997: 4).

[205] Gaus (2011: 538ff.) speaks about "practical Paretianism".
[206] I am aware that introducing "discussion" and "deliberation" into the theoretical picture opens a huge topic of the conditions of such exchange, including issues of rhetoric, manipulation, or access.
[207] The author was located in Australia at the time, hence the political references.

Bibliography

Abizadeh, Arash. 2008. "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders." *Political Theory* 36(1): 37–65

Ackerman, Bruce. 1980. *Social Justice in the Liberal State*. New Haven: Yale UP.

Adcock, Robert and David Collier. 2001. "Measurement Validity: A Shared Standard for Quantitative and Qualitative Research." *American Political Science Review* 95(3): 529–546

Alexander, Amy, Roland Inglehart and Christian Welzel. 2012. "Measuring effective democracy: A defense." *International Political Science Review* 33(1): 41–62

Alexy, Robert. 2002. A theory of constitutional rights. Oxford: Oxford University Press

Alexy, Robert. 2005. "Balancing, constitutional review, and representation". *International Journal of Constitutional Law* 3(4): 572–581.

Alexy, Robert. 2006. "Discourse Theory and Fundamental Rights." In: Augustín J. Menéndez and Erik O. Eriksen (eds.), *Arguing Fundamental Rights*. Dordrecht: Spinger, 15–29

Alexy, Robert. 2009. The Reasonableness of Law. In: Bongiovanni, Sartor, Valentini (eds.), *Reasonableness and Law*. Dordrecht: Springer, 5–15

Alexy, Robert. 2012. "Law, Morality and the Existence of Human Rights." *Ratio Juris* 25(1): 2–14

Alston, Philip and Ryan Goodman. 2013. *International Human Rights*. Oxford: Oxford UP

Althaus, Scott L. 2012. "What's Good and Bad in Political Communication Research? Normative Standards for Evaluating Media and Citizen Performance." In *Sage Handbook of Political Communication*, ed. Holli A. Semetko and Margaret Scammell. London: Sage.

Ancell, Aaron. 2017. "Democracy Isn't *That* Smart (But We Can Make It Smarter): On Landemore's *Democratic Reason*." *Episteme* 14(2): 161–75.

Anderson, Elizabeth. 2009. "Democracy: Instrumental vs. Non-Instrumental Value". In: Thomas Christiano and John Christman (eds.), Contemporary Debates in Political Philosophy. Chichester: Wiley-Blackwell, 213–227

Ankersmit, Frank R. 2002. *Political Representation. Stanford: Stanford UP*

Arrow, Kenneth. 1963. Social Choice and Individual Values. 2nd ed. London: John Wiley.

Audi, Robert. 2000. *Religious Commitment and Secular Reason*. Cambridge: Cambridge UP

Azevedo, Jane. 1997. *Mapping Reality: An Evolutionary Realist Methodology for the Natural and Social Science*. New York: SUNY Press

Bajaj, Sameer. 2017. "Self-defeat and the foundations of public reason". *Philosophical studies* 174(12): 3133–3151

Balinski, Michel a Rida Laraki. 2014. "What should 'majority decision' mean?" In: Stéphanie Novak a Jon Elster (eds.), *Majority Decisons: Principles and Practice*. Cambridge: Cambridge UP, 103–131.

Barak, Aharon. 2012. *Proportionality: Constitutional Rights and their Limitations*. Cambridge: Cambridge UP

Barber, Nicholas W. 2018. *The Principles of Constitutionalism*. Oxford: Oxford UP

Baroš, Jiří and Pavel Dufek. 2014. "Lidská práva: základní pojmosloví." In: Pavel Dufek, Hubert Smekal et al., *Lidská práva v mezinárodní politice*. Praha: Wolters Kluwer, 57–86

Baroš, Jiří, Pavel Dufek and David Kosař. "Unpacking the Separation of Powers". In: Antonia Baraggia and Luca Vanoni (eds.), *New Challenges to the Separation of Powers*. Cheltenham: Edward Elgar, forthcoming

Baroš, Jiří. 2018. "Krize liberální demokracie a pojem společného dobra." *Studia Theologica* 20(2): 129–149

Barrett, Jacob and Gerald Gaus. 2020. "Laws, Norms, and Public Justification: The Limits of Law as an Instrument of Reform." Forthcoming in Langvatn, Silje, Matthias Kumm and Wojciech Sadurski (eds.), *Public Reason and Courts*. Cambridge: Cambridge UP, manuscript available at http://gaus.biz/Barrett-Gaus.pdf.

Barša, Pavel et al. 2010. *Kritika depolitizovaného rozumu: úvahy (nejen) o nové normalizaci*. Všeň: Grimmus

Barša, Pavel. 2017. "Democracy Without the Demos: Rosanvallon's Decentering of Democratic Theory". In: Jan Bíba and Milan Znoj (eds.), *A Crisis of Democracy and Representation*. Praha: Czech Academy of Sciences, 41–50.

Bartolini, Stefano and Peter Mair. 2001. "Challenges to Contemporary Political Parties". In: Larry Diamond and Klaus Günther (eds.), *Political Parties and Democracy*. Baltimore: Johns Hopkins UP, 327–343.

Bauböck, Rainer. 2008. "Normative political theory and empirical research." In Donatella della Porta and Michael Keating (eds.), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective*. Cambridge: Cambridge UP, 40–60

Beatty, John and Alfred Moore. 2010. "Should We Aim for Consensus?" *Episteme* 7(3): 198-–214

Beck, Ulrich. 1986. *Risikogesellschaft: Auf dem Weg in eine andere Moderne*. Frankfurt a. M.: Suhrkamp.

Beerbohm, Eric. 2011. "Democracy as an Inflationary Concept." *Representation* 47(1): 19–28

Beetham, David. 1999. *Democracy and Human Rights.* Cambridge: Polity Press

Beitz, Charles. 1989. *Political Equality: An Essay in Democratic Theory*. Princeton: Princeton UP.

Beitz, Charles. 2009. *The Idea of Human Rights*. Oxford: Oxford UP

Bellamy, Richard and Sandra Kröger. 2016. "Beyond a constraining dissensus: The role of national parliaments in domesticating and normalising the politicization of European integration". *Comparative European Politics* 14(2): 131–153

Bellamy, Richard. 2007. *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy*. Cambridge: Cambridge UP

Bellamy, Richard. 1999. *Liberalism and Pluralism: Towards a Politics of Compromise*. London, Routledge

Belling, Vojtěch. 2009. *Legitimita v postmoderní době: proč potřebuje Evropská unie členské státy?* Brno? MPÚ

Belling, Vojtěch. 2019. *Smrt suveréna? Eroze státnosti a krize suverenity v éře postnacionálního vládnutí*. Brno: CDK

Bellolio Badiola, Cristóbal. 2018. "Science as Public Reason: A Restatement." *Res Publica* 24(4): 415–432

Bergman, Torbjörn, Wolfgang Müller and Kaare Strøm. 2000. "Introduction: Parliamentary democracy and the chain of delegation". *European Journal for Political Research* 37(3): 255–260.

Berlin, Isaiah. 2013. *The Hedgehog and the Fox: An Essay on Tolstoy's View of History*. 2nd Ed. Princeton: Princeton UP

Besson, Samantha. 2005. *The Morality of Conflict. Reasonable Disagreement and the Law.* Oxford: Hart Publishing

Besson, Samantha. 2005. *The Morality of Conflict: Reasonable Disagreement and the Law*. Oxford: Hart Publishing

Bíba, Jan and Milan Znoj (eds.). 2017a. A *Crisis* of Democracy and Representation. Special issue of the Czech Philosophical Journal. Praha: Czech Academy of Sciences.

Bíba, Jan and Milan Znoj. 2017b. "Editorial". In: Jan Bíba and Milan Znoj (eds.), A *Crisis* of Democracy and Representation. Praha: Czech Academy of Sciences, 7–16.

Bíba, Jan. 2014. "Postliberální demokracie: liberalismus a demokracie podle C. B. Macphersona a Norberta Bobbia". In: Milan Znoj, Jan Bíba and Jana Vargovčíková, *Demokracie v postliberální konstelaci*. Praha: Karolinum, 133–182.

Bicchieri, Cristina. 2006. *The Grammar of Society: The Nature and Dynamics of Social Norms*. Cambridge: Cambridge UP

Bicchieri, Cristina. 2017. *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms.* Oxford: Oxford UP

Billingham, Paul. 2017. "Convergence liberalism and the problem of disagreement concerning public justification". *Canadian Journal of Philosophy* 47(4): 541–564

Bird, Colin. 2014. "Coercion and Public Justification". *Politics, Philosophy&Economics* 13(3): 189–214

Blokker, Paul. 2013. *New Democracies in Crisis? A Comparative Constitutional Study of the Czech Republic, Hungary, Poland, Romania and Slovakia*. London: Routledge.

Bloom, Allan. 1987. *The Closing of the American Mind*. New York: Simon and Schuster.

Bobbio, Norberto. 1987. *The Future of Democracy: A Defence of the Rules of the Game*. Minneapolis: University of Minnesota Press.

Bobek, Michal. 2009. "Reasonableness in Administrative Law: A Comparative Reflection on Functional Equivalence." In: Bongiovanni, Sartor, Valentini (eds.), *Reasonableness and Law*. Dordrecht: Springer, 311–326

Boettcher, James. 2017. “Coercion and the Subject Matter of Public Justification”. *Public Reason* 8(1–2): 15–30

Bognetti, Giovanni. 2017. *Dividing Powers: A Theory of the Separation of Powers*. Wolters Kluwer

Bohman, James. 2007. *Democracy across Borders. From Dêmos to Dêmoi*. Cambridge, MA: MIT Press.

Bongiovanni, Giorgio, Giovanni Sartor and Chiara Valentini. 2009. “Introduction.” In: Bongiovanni, Sartor, Valentini (eds.), *Reasonableness and Law*. Dordrecht: Springer, xi–xvii

Bonotti, Matteo. 2017. *Partisanship and Political Liberalism in Diverse Societies*. Oxford: Oxford UP

Boot, Martijn. 2017. “Problems of Incommensurability”, *Social Theory and Practice* 43(2): 313–342.

Brennan, Jason. 2014. “How Smart is Democracy? You Can't Answer that Question a Priori.” *Critical Review* 26(1–2): 33–58

Brighouse, Harry a Marc Fleurbaey. 2010. “Democracy and Proportionality.” *Journal of Political Philosophy* 18(2): 137–155.

Brito Vieira, Mónica. 2015. “Founders and Re-founders. Struggles of Self-authorized Representation”. *Constellations* 22(4): 500–513.

Brown, Chis. 1999. “Universal Human Rights: A Critique.” In: Tim Dunne a Nicholas J. Wheeler (eds.), *Human Rights in Global Politics*. Cambridge: Cambridge UP, 103–127

Brown, Wendy. 2002. “At the edge.” *Political Theory* 30(4), 556–576.

Brown, Wendy. 2010. “Political Theory Is Not a Luxury. A Response to Timothy Kaufman-Osborn’s ‘Political Theory as a Profession’”. *Political Research Quarterly* 63(3): 681–685

Broz, Jan. 2015. “Přezkum obecně závazných vyhlášek obcí a princip proporcionality.” *Právník* 154(10): 821–842

Buchstein, Hubertus and Dirk Jörke. 2007. “Redescribing Democracy.” *Redescriptions: Yearbook of Political Thought and Conceptual History* 11(1): 178–200.

Buchstein, Hubertus and Dirk Jörke. 2013. “Political Science and Political Thought.” In: Gregory Claeys (ed.), *Encyclopedia of Modern Political Thought*. London, SAGE, 636–639

Buchstein, Hubertus. 2010. “Reviving Randomness for Political Rationality: Elements of a Theory of Aleatory Democracy”. *Constellations* 17(3): 435–454.

Burks, Deven. 2019. “The Real Problem with Rawlsian Resonablenes”, *manuscript*

Busen, Andreas. 2015. “Non-domination, non-normativity and neo-republican politics.” *Critical Review of International Social and Political Philosophy* 18(4), 407–423

Cameron, Maxwell A. 2013. *Strong Constitutions: Social-Cognitive Origins of the Separation of Powers*. Oxford: Oxford UP

Campbell, Tom. *Prescriptive Legal Positivism: Law, Rights and Democracy*. London: UCL Press, 2004

Caramani, Danielle. 2017. "Will vs. Reason. The Populist and Technocratic Forms of Political Representation and Their Critique to Party Government." *American Political Science Review* 111(1): 54–67

Carolan, Eoin. 2009. *The New Separation of Powers: A Theory for the Modern State*. Oxford: Oxford UP

Carpentier, Nico. 2011. *Media and Participation: A site of ideological-democratic struggle*. Bristol: Intellect

Carter, Ian. 2015. "Value-freeness and Value-neutrality in the Analysis of Political Concepts." In: David Sobel et al. (eds.), *Oxford Studies in Political Philosophy 1*. Oxford: Oxford UP, 279–306

Carter, Neil. 2006. "Political participation and the workplace: The spillover thesis revisited". *British Journal of Politics and International Relations* 8(3): 410–426

Chalmers, David J. 1996. *The Conscious Mind: In Search of a Fundamental Theory.* Oxford: Oxford UP

Chambers, Simone and Jeffrey Kopstein. 2001. "Bad Civil Society". Political Theory 26(9): 837–865

Chang, Ruth. 1997. "Introduction." In: Chang (ed.), Incommensurability, Incomparability, and Practical Reason. Cambridge, MA: Harvard UP, 1–34

Charles Beitz. 1999. "International Liberalism and Distributive Justice: A Survey of Recent Thought." *World Politics* 51(2): 269–296

Charvet, John and Elisa Kaczynska-Nay, *The Liberal Project and Human Rights*. Cambridge: Cambridge UP, 2008

Cheibub, José Antonio, Adam Przeworski, Fernando Limongi and Michael Alvarez. 1996. "What Makes Democracies Endure?" *Journal of Democracy* 7(1): 39–55

Christiano, Thomas. 1996. *The Rule of the Many: Fundamental Issues in Democratic Theory.* Boulder: Westview Press.

Christiano, Thomas. 2003. "Introduction". In: Christiano (ed.), *Philosophy of Democracy: An Anthology*. Oxford: Oxford UP, 3–15

Christiano, Thomas. 2006. "Democracy". In: Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, https://plato.stanford.edu/entries/democracy/

Christiano, Thomas. 2008. *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford: Oxford UP.

Chung, Hun. 2020. "The Well-Ordered Society under Crisis. A Formal Analysis of Public Reason vs. Convergence Discourse". *American Journal of Political Science* 64(1): 82–101

Cohen, Gerald A. 2000. *If You're an Egalitarian, How Come You're So Rich?* Cambridge, MA: Harvard UP

Cohen, Gerald A. 2003. "Facts and Principles." *Philosophy&Public Affairs* 31(3): 211–245.

Cohen, Gerald A. 2009. *Why Not Socialism?* Princeton: Princeton UP

Cohen, Joshua. 1986. "An Epistemic Conception of Democracy." *Ethics* 97(1): 26–38

Cohen, Joshua. 2003. “Procedure and Substance in Deliberative Democracy.” In Thomas Christiano (ed.). *Philosophy and Democracy: An Anthology*. Oxford: Oxford UP, 17–38

Cohen-Elyia, Moshe and Iddo Porat. 2011. “Proportionality and the Culture of Justification”. *The Americal Journal of Comparative Law* 59(2): 463–490

Cohen-Elyia, Moshe and Iddo Porat. 2014. “Proportionaliy and Justification”. *The University of Toronto Law Journal* 64(3): 458–477

Coleman, Jules L. Negative and Positive Positivism. *The Journal of Legal Studies*. 1982. Vol. 11, No. 1, s. 139–164

Collier, David and Steven Levitsky. 1997. “Democracy with Adjectives: Conceptual Innovation in Comparative Research.” *World Politics* 49(3): 430–451

Connolly, William. 1983. *The Terms of Political Discourse*, 2nd Ed. Princeton, Princeton UP

Connolly, William. 2002. *Identity\Difference. Democratic Negotiations of Political Paradox*, Expanded ed. Minneapolis: University of Minnesota Press

Corradetti, Claudio. 2009. *Relativism and Human Rights: A Theory of Epistemic Universalism*. Dordrecht: Springer

Crouch, Colin. 2004. Post-democracy. Malden, MA: Polity.

Crozier, Michel J., Samuel P. Huntington and Joji Watanuki. 1975. *The Crisis of Democracy*. New York: NYU Press.

Cruft, Rowan, Matthew S. Liao and Massimo Renzo. 2015. “The Philosophical Foundations of Human Rights: An Overview.” In: Cruft, Liao, Renzo (eds.), *Philosophical Foundations of Human Rights.* Oxford: Oxford UP, 1–41

D’Agostino, Fred. 2013. “Critical Notice: The Orders of Public Reason.” *Analytic Philosophy* 54(1): 129–155

Dahl, Robert. 1956. *A Preface to Democratic Theory*. Chicago: University of Chicago Press.

Dahl, Robert. 1989. *Democracy and Its Critics*. New Haven: Yale UP

Dahl, Robert. 2019. “Democracy” In: *Encyclopedia Brittanica*, https://www.britannica.com/topic/democracy

Dalton, Russell J. 2004. *Democratic Challenges, Democratic Choices*. Oxford: Oxford UP.

Dalton, Russell, David Farrell and Ian McAllister. 2012. *Political Parties and Democratic Linkage.* Oxford: Oxford UP.

Dasgupta, Partha a Eric Maskin. 2008. “On the robustness of majority rule.” *Journal of European Economic Association* 6(5): 949–973.

De Marneffe, Peter. 1994. “Rawls’s Idea of Public Reason.” *Pacific Philosophical Quarterly* 75(3–4): 232–250

della Porta, Donatella and Michael Keating. 2008. “How many approaches in the social sciences? An epistemological introduction.” In: della Porta and Keating (eds.), *Approaches and Methodologies in the Social Sciences. A Pluralist Perspective*. Cambridge: Cambridge UP, 19–39

della Porta, Donatella. 2013. *Can Democracy be Saved? Participation, Deliberation and Social movements*. Cambridge: Polity Press

Den Otter, Ronald C. 2009. *Judicial Review in an Age of Moral Pluralism*. Cambridge: Cambridge UP

Deneen, Patrick J. 2018. *Why Liberalism Failed*. New Haven: Yale UP.

Deutsch, Kenneth L. and Walter Soffer. 1987. *The Crisis of Liberal Democracy: A Straussian Perspective*. New York: SUNY Press

Deveaux, Monique. 1999. "Agonism and Pluralism." *Philosophy & Social Criticism* 25(4): 1–22

Diamond, Larry and Leonardo Morlino. 2005. "Introduction." In: Diamond and Morlino (eds.), *Assessing The Quality Of Democracy*. Baltimore: Johns Hopkins UP, ix–xliii

Diamond, Larry. 2017. "Is There a Crisis of Liberal Democracy?" *The American Interest,* October 13, on-line (https://www.the-american-interest.com/2017/10/13/is-there-crisis-liberal-democracy/), [ověřeno 30. října 2018]

Disch, Lisa, Mathijs de Sande and Nadia Urbinati (eds.). 2019. *The Constructivist Turn in Political Representation*. Edinburgh: Edinburgh UP

Disch, Lisa. 2011. "Toward a Mobilization Conception of Democratic Representation". *American Political Science Review* 105(1): 100–114.

Disch, Lisa. 2015. "The 'Constructivist Turn' in Democratic Representation: A Normative Dead-End?" *Constellations* 22(4): 487–499.

Donnelly, Jack. 2007. "The Relative Universality of Human Rights." *Human Rights Quarterly* 29(2): 281–306

Donnelly, Jack. 2013. *Universal Human Rights in Theory and Practice*. 3rd Ed., Ithaca: Cornell UP

Douzinas, Costas. 2000. *The End of Human Rights*. Oxford: Hart Publishing

Douzinas, Costas. 2007. *Human Rights and Empire. The Political Philosophy of Cosmopolitanism*. Abingdon: Routledge-Cavendish

Dovi, Susanne. 2017. "Political Representation". In: Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, on-line (plato.stanford.edu/entries/political-representation/) [ověřeno 30. 10. 2018].

Dowding, Keith and William Bosworth. 2018. "Ambiguity and vagueness in political terminology: On coding and referential imprecision." *European Journal of Political Theory,* OnlineFirst, 1–30

Dowlen, Oliver. 2008. *The Political Potential of Sortition: A study of the random selection of citizens for public office*. Exeter: Imprint Academic.

Dryzek, John a Christian List. 2003. "Social Choice Theory and Deliberative Democracy: A Reconciliation". *British Journal of Political Science* 33(1): 1–28.

Dryzek, John and Simon Niemeyer. 2006. "Reconciling Pluralism and Consensus as Political Ideals." *American Journal of Political Science* 50(3): 634–649

Dryzek, John et al. 2019. "The crisis of democracy and the science of deliberation". *Science 6432:* 1144–1146

Dryzek, John, Bonnie Honig and Anne Phillips. 2006. "Introduction." In: Dryzek, Honig and Phillips (eds.), *The Oxford Handbook of Political Theory.* Oxford: Oxford UP, 3–41

Dryzek, John. 2004. "Democratic Political Theory." In: Gerald Gaus and Chandran Kukathas (eds.), *Handbook of Political Theory.* London, Sage, 143–154.

Dufek, Pavel and Jan Holzer. 2013. "Democratisation of Democracy? On the Discontinuity Between Empirical and Normative Theories of Democracy." *Representation* 49(2): 117–134

Dufek, Pavel and Jan Holzer. 2016. "Debating democracy in East Central Europe: the issues and their origins." In: Jan Holzer, Miroslav Mareš et al., *Challenges To Democracies in East Central Europe*. Abingdon: Routledge, 15–35.

Dufek, Pavel, David Kosař and Jiří Baroš. "Rise of the Unelected and the Separation of Powers: Rescuing the Legislature through Political Representation and Public Justification". *Unpublished manuscript*

Dufek, Pavel. 2018b. "Lidská práva, ideologie a veřejné ospravedlnění: Co obnáší brát pluralismus vážně." *Právník* 157(1): 50–70

Duxbury, Neil. 2008. *The Nature and Authority of Precedent*. Cambridge: Cambridge UP

Dworkin, Ronald. 1985. A Matter of Principle. Oxford: Clarendon Press

Dworkin, Ronald. 2002. *Sovereign Virtue: The theory and practice of equality.* Cambridge, MA: Harvard UP.

Dworkin, Ronald. 2011. *Justice for Hedgehoghs.* Cambridge: MA, Belknap Press

Earnest, David. 2003a. "Noncitizen Voting Rights. A Survey of an Emerging Democratic Norm". *Paper Presented for the 2003 APSA convention*, available at http://www.odu.edu/~dearnest/pdfs/earnest_apsa_2003.pdf

Earnest, David. 2003b. "Voting Rights for Resident Aliens. A Comparison of 25 Democracies ". *Paper presented for the 2003 NPSA meeting*, available at http://www.odu.edu/~dearnest/pdfs/earnest_isane_2003.pdf

Ebeling, Martin. 2017a. "Is moral deference reasonably acceptable?" *Social Epistemology* 31(3): 296–309

Ebeling, Martin. 2017b. *Conciliatory Democracy: From Deliberation Toward a New Politics of Disagreement*. London: Palgrave Macmillan

Edmundson, William. 2013. "Why Legal Theory Is Political Philosophy." *Legal Theory* 19(4): 331–346

Edwards, Michael (ed.). 2011. *The Oxford Handbook of Civil Society*. Oxford: Oxford UP

Elga, Adam. 2011. "Reflection and Disagreement." In: Goldman, Alvin and Dennis Whitcomb, *Social Epistemology, Essential Readings.* Oxford: Oxford UP, 158 – 182.

Elster, Jon a John Roemer (eds.). 1993. *Interpersonal Comparisons of Well-Being*. Cambridge: Cambridge UP.

Emerson, Peter. 2012. De*fining Democracy: Voting Procedures in Decision-Making, Elections and Governance*. Dordrecht: Springer.

Endicott, Timothy. 2000. *Vagueness in Law.* Oxford: Oxford UP

Enoch, David. 2011. *Taking Morality Seriously: A Defense of Robust Realism*. Oxford: Oxford UP

Enoch, David. 2013. "The Disorder of Public Reason". *Ethics* 124(1): 141–176

Enoch, David. 2015. "Against Public Reason". In: David Sobel (ed.), Oxford Studies in Political Philosophy. Oxford: Oxford UP, 112–142

Erman, Eva. 2009. "What is wrong with agonistic pluralism? Reflections on conflict in democratic theory." *Philosophy & Social Criticism* 35(9): 1039–1062

Estlund, David. 2008. *Democratic Authority, A Philosophical Framework*. Princeton, Princeton UP

Feldman, Richard. 2006. "Epistemological Puzzles about Disagreement." In: Stephen Hetherington (ed.), *Epistemology Futures.* Oxford: Oxford UP, 216–236

Ferrara, Alessandro. 2003. "Two Notions of Humanity and the Judgment Argument for Human Rights." *Political Theory* 31(3): 392–420

Ferreres-Comela, Victor. 2009. Constitutional courts and democratic values: A European perspective. New Haven: Yale UP

Ferretti, Maria Paola. 2019. *The Public Perspective: Public Justification and the Ethics of Belief*. London: Rowman&Littlefield

Fiala, Petr. 2010. *Politika, jaká nemá být*. Brno: CDK.

Finnis, John. 2011a. *Reason in Action: Collected Essays, Vol, 1*. Oxford: Oxford UP

Finnis, John. 2011b. *Religion and Public Reason: Collected Essays Vol. V.* Oxford: Oxford UP

Floyd, Jonathan. 2017. *Is Political Philosophy Impossible? Thoughts and Behaviour in Normative Political Theory*. Cambridge: Cambridge UP

Foa, Roberto S. and Yascha Mounk. 2016. "The Democratic Disconnect." *Journal of Democracy* 27(3): 5–17.

Foa, Roberto S. and Yascha Mounk. 2017. "The Signs of Deconsolidation." *Journal of Democracy* 28(1): 5–15.

Forst, Rainer. 2007. *The Right to Justification: Elements of a Constructivist Theory of Justice*. New York: Columbia UP

Forst, Rainer. 2014. "The Justifcation of Human Rights and the Basic Right to Justifcation: A Reflexive Approach." in: Forst, *Justification and Critique: Towards a Critical Theory of Politics*. Cambridge: Polity Press, 38–70

Forst, Rainer. 2017. *Normativity and Power: Analyzing Social Orders of Justification*. Oxford: Oxford UP

Foucault, Michel. 2009. *The Birth of Biopolitics: Lectures at the College de France, 1978-1979*. Basingstoke: Palgrave Macmillan

Frazer, Elizabeth. 2008. "Political Theory and the Boundaries of Politics." In: David Leopold and Marc Stears (eds.), *Political Theory, Methods and Approaches*, Oxford: Oxford UP, 171–193

Freeden, Michael. 1996. *Ideologies and Political Theory: A Conceptual Approach*. Oxford: Oxford UP

Freeden, Michael. 2005. "What Should the "Political" in Political Theory Explore?" *Journal of Political Philosophy* 13(2), 113–134

Freeden, Michael. 2013. *The Political Theory of Political Thinking: The Anatomy of a Practice*. Oxford: Oxford UP

Freeman, Michael. 1994. "The Philosophical Foundations of Human Rights." *Human Rights Quarterly* 16(3): 491–514

Freyenhagen, Fabian. 2011. "Taking reasonable pluralism seriously. An internal critique of political liberalism." *Politics, Philosophy&Economics* 10(3), 323–342

Friedman, Jeffrey. 2014. "Political Epistemology." *Critical Review* 26(1–2), i–xiv

Friedman, Jeffrey. 2019. *Power Without Knowledge: A Critique of Technocracy*. forthcoming

Fuchs, Dieter a Edeltraud Roller. 2008. „Die Konzeptualisierung der Qualität von Demokratie." In: André Brodocz, Marcus Llanque a Gary S. Schaal (eds.), *Bedrohungen der Demokratie*. Wiesbaden: VS Verlag, 77–96.

Fuller, Lon. 1975. "Law as an Instrument of Social Control and Law as a Facilitation of Human Interaction". *Brigham Young University Law Review* 1: 89–96

Gaus, Gerald. 1996. *Justificatory Liberalism*, Oxford: Oxford UP

Gaus, Gerald. 1997. "On the Difficult Virtue of Minding One's Own Business: Towards the Political Rehabilitation of Ebenezer Scrooge". *The Philosopher* 85(5): 24–28

Gaus, Gerald. 2007. "On Justifying the Moral Rights of the Moderns. A Case of Old Wine in New Bottles". *Social Philosophy and Policy* 25(1): 84–119

Gaus, Gerald. 2008. *On Philosophy, Politics, and Economics.* Belmont: Thomson Wadsworth.

Gaus, Gerald. 2011. *The Order of Public Reason, A Theory of Freedom and Morality in a Diverse and Bounded World*. Cambridge: Cambridge UP

Gaus, Gerald. 2012. "Sectarianism Without Perfection: Quong's Political Liberalism". *Philosophy and Public Issues* 2(1): 7–15

Gaus, Gerald. 2013. "Moral Constitutions." *Harvard Review of Philosophy* XIX: 4–22

Gaus, Gerald. 2015a. "Public Reason Liberalism". In: Steven Wall (ed.), The *Cambridge Companion to Liberalism. Cambridge: Cambridge UP, 112–140.*

Gaus, Gerald. 2015b. "On Dissing Public Reason: A Reply to Enoch". *Ethics* 125(4): 1078–1095

Gaus, Gerald. 2016a. *The tyranny of the ideal, justice in a diverse society*. Princeton, Princeton UP

Gaus, Gerald. 2016b. "The role of conservatism in securing and maintaining just moral constitutions: toward a theory of complex normative systems". In: Sanford Levinson et al. (eds.), *American Conservatism: NOMOS XVI*. New York: NYU Press, 256–291

Gaus, Gerald. 2017a. Open Society and Its Friends. *The Critique*. January/February 2017, http://www.thecritique.com/articles/open-society-and-its-friends

Gaus, Gerald. 2017b. "Is Public Reason a Normalization Project? Deep Diversity and the Open Society". *Social Philosophy Today* 33: 27–52

Gauthier, David. 1986. *Morals by Agreement*. Oxford: Clarendon Press

Gewirth, *The Community of Rights.* Chicago: Chicago UP, 1996, kap. 1

Gibbard, Allan. 2008. "Reconciling Our Aims." In: Barry Strout, Allan Gibbard et al., *Reconciling Our Aims: In Search of Bases of Ethics*. Oxford: Oxford UP, 11–88

Goodin, Robert and Kai Sipekermann. 2018. *An Epistemic Theory of Democracy*. Oxford: Oxford UP

Goodin, Robert. 2004. "Representing Diversity". *British Journal of Political Science* 34(3): 453–468.

Goodin, Robert. 2007. "Enfranchising All Affected Interests, and its Alternatives." *Philosophy & Public Affairs* 35(1): 40–68.

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

Gray, John. 2000. *Two Faces of Liberalism*. Cambridge: Polity Press

Gray, John. 2016. "The Closing of the Liberal Mind." *New Statesman*, October 7, on-line (https://www.newstatesman.com/politics/uk/2016/11/closing-liberal-mind)

Green, Jeffrey E. 2010. *The eyes of the people: democracy in an age of spectatorship*. Oxford: Oxford UP

Griffin, James. 2008. *On Human Rights.* Oxford: Oxford UP

Guerrero, Alexander A. 2014. "Against Elections: The Lottocratic Alternative". *Philosophy&Public Affairs* 42(2): 135–178

Habermas, Jürgen. 1973. *Legitimation Crisis*. Cambridge: Polity Press

Habermas, Jürgen. 1994a. "Three Normative Models of Democracy." *Constellations* 1(1), 1–10

Habermas, Jürgen. 1994b. *Justification and Application: Remarks on Discourse Ethics*. Cambridge: MIT Press

Habermas, Jürgen. 1995. "Reconciliation Through the Use of Public Reason: Remarks on John Rawls's Political Liberalism". *The Journal of Philosophy* 92(3): 119–122

Habermas, Jürgen. 1996. *Between Facts and Norms*. Cambridge, MA: MIT Press

Habermas, Jürgen. 1998. "Zur Legitimation durch Menschenrechte." In: Habermas, *Die Postnationale Konstellation: Politische Essays*. Frankfurt a.M: Suhrkamp, 170–192

Hadenius, Axel. 1992. *Democracy and Development*, Cambridge: Cambridge UP

Hapla, Martin. 2018. "Lidska prava a základní potřeby." *Právník* 157(1): 31–49

Hardin, Russel. 2005. “From order to justice”. *Politics, Philosophy & Economics* 4(2): 175–194

Hardin, Russel. 2008. “Normative Methodology.” In: Janet M. Box-Steffensmeier, Henry Brady and David Collier (eds.), *The Oxford Handbook of Political Methodology.* Oxford: Oxford UP, 35–47

Hart, H.L.A. 1961. *The Concept of Law* 2nd Ed. Oxford: Clarendon Press

Havlík, Vlastimil. 2019. “Technocratic Populism and Political Illiberalism in Central Europe”. *Problems of Post-Communism* 66(6): 369–384

Hawkesworth, Mary. 2011. “Feminist Theories of Power.” In: Dowding, Keith (ed.). *Encyclopedia of Power*. London, Sage, 251–257

Held, David. 2006. *Models of Democracy*, 3rd ed., Cambridge: Cambridge UP

Herman, Barbara. 2008. “Contingency in Obligation”. In: Henry S. Richardson and Melissa S. Williams (eds.), *Moral Universalism and Pluralism. NOMOS XLIX*. New York: NYU Press, 17–53

Hertzberg, Benjamin. 2018. “Convergence's Democracy Problem: A Critique of Kogelmann and Stich”. American Political Science Review 112(2): 423–427

Hill, Lisa. 2011. “Increasing Turnout Using Compulsory Voting”. *Political Studies* 31(1): 27–36

Himma, Kenneth Einar. Inclusive Legal Positivism. In COLEMAN, Jules L., Kenneth Einar HIMMA a Scott J. SHAPIRO. *The Oxford Handbook of Jurisprudence and Philosophy of Law*. Oxford: Oxford UP, 2002, s. 125–165

Hloušek, Vít and Lubomír Kopeček. 2017. “Entrepreneurial Parties: A Basic Conceptual Framework.” *Czech Journal of Political Science* 24(2): 83–91

Hobbes, Thomas. 1996 [1651]. *Leviathan*. Ed. Richard Tuck. Cambridge: Cambridge UP

Holzer, Jan, Miroslav Mareš et al. 2016. *Challenges To Democracies in East Central Europe*. Abingdon: Routledge

Hong, Lu and Scott Page. 2004. “Groups of Diverse Problem Solvers Can Outperform Groups of High-Ability Problem Solvers.” *Proceedings of the National Academy of Sciences of the United States* 101(46): 16385–16389

Horton, John. 2003. “Rawls, Public Reason and the Limits of Liberal Justification.” *Contemporary Political Theory* 2(1): 5–23

Howarth, David. 2008. “Ethos, Agonism and Populism. William Connolly and the Case for Radical Democracy”. *British Journal of Politics and International Relations* 10(2): 171–193

Huemer, Michael. 2013. The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey. Basingstoke: Palgrave Macmillan

Hunt, Ronald J. 1980. “The Crisis of Liberal Democracy”. Polity 13(2): 312–326.

Huscroft, Grant, Bradley W. Miller and Grégoire Webber. 2014. “Introduction.” In: Huscroft, Miller and Webber (eds.), *Proportionality and the Rule of Law: Rights, Justification, Reasoning*. Cambridge: Cambridge UP, 1–17

Hyland, James E. 1995. *Democratic Theory: The Philosophical Foundations*. Manchester: Manchester UP

Ingham, Sean. 2012. "Disagreement and Epistemic Arguments for Democracy." *Politics, Philosophy&Economics* 12(2): 136–155

Jackman, Henry. 2014. "Meaning Holism." In: Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, at https,//plato.stanford.edu/entries/meaning-holism/

Jensen, Steven. 2016. *The making of international human rights: the 1960s, decolonization and the reconstruction of global values*. Cambridge: Cambridge UP

Jörke, Dirk and Hubertus Buchstein. 2003. "Das Unbehagen an der Demokratietheorie." *Leviathan* 31(4): 470–495

Katz, Richard S. and Peter Mair. 2002. "The Ascendancy of the Party in Public Office: Party Organizational Change in Twentieth-Century Democracies". In: Richard Gunther (ed.), *Political Parties. Old Concepts and New Challenges*. Oxford: Oxford UP, 113–135.

Katz, Richard S. and Peter Mair. 2009. "The Cartel Party Thesis: A Restatement". *Perspectives on Politics* 7(4): 753–766.

Kaufman-Osborn, Timothy. 2010. "Political Theory as Profession and as Subfield." *Political Research Quarterly* 63(3): 655–673

Kavanagh, Aileen. 2016. The Constitutional Separation of Powers. In Dyzenhaus, David and Malcolm Thorburn (eds.), *Philosophical Foundations of Constitutional Law*. Oxford: Oxford UP, 221–239

Kelly, Erin and Lionel McPherson. 2001. "On Tolerating the Unreasonable". *The Journal of Political Philosophy* 9(1): 38–55

Kelly, Thomas. 2010. "Peer Disagreement and Higher-Order Evidence." In: Feldman, Richard and Ted Warfield (eds.), *Disagreement*. Oxford: Oxford UP, 111–174

Kelsen, Hans. 2013 [1929]. *The Essence and Value of Democracy*. Lanham: Rowan&Littlefield

Kiel, Geert and Ralf Poscher (eds.). 2017. *Vagueness in the Law: Philosophical and Legal Perspectives*. Oxford: Oxford UP

Knight, Jack and James Johnson. 2011. *The Priority of Democracy, Political Consequences of Pragmatism*. Princeton, Princeton UP

Knight, Jack, Hélène Landemore, Nadia Urbinati, and Daniel Viehoff. 2016. "Roundtable on Epistemic Democracy and Its Critics." *Critical Review* 28(2): 137–170

Kogelmann, Brian and Stephen W. Stich. 2016. "When Public Reason Fails Us: Convergence Discourse as Blood Oath". *American Political Science Review* 110(4): 771–730

Kogelmann, Brian. 2018. "The Supreme Court as the Fountain of Public Reason". Legal Theory 24(4): 345–369

Kopeček, Lubomír and Petra Svačinová. 2015. "Kdo rozhoduje v českých politických stranách? Vzestup nových politických podnikatelů ve srovnávací perspektivě". *Středoevropské politické studie 17*(2): 178–211

Kornmesser, Stephan and Gerhard Schurz. 2014. "Die multiparadigmatische Struktur der Wissenschaften, Einleitung und Übersicht." In: Kornmensser and Schurz (eds.), *Die multiparadigmatische Struktur der Wissenschaft*. Wiesbaden, Springer, 11–46

Kosař, David, Jiří Baroš and Pavel Dufek. 2019. "The Twin Challenges to Separation of Powers in Central Europe: Technocratic Governance and Populism". *European Constitutional Law Review* 15(3): 427–461

Koudelka, Josef. 2016. "The refugee regime and its weaknesses. Prospects for human rights and Kant's ethic." *Human Affairs* 26 (3): 356–370

Kramer, Matthew. 2004. *Where Law and Morality Meet*. Oxford: Oxford UP

Kramer, Matthew. 2017. *Liberalism with Excellence*. Oxford: Oxford UP

Kuhn. Thomas. 1962. *The structure of scientific revolutions*. Chicago: University of Chicago Press.

Kukathas, Chandran. 2003. *The liberal archipelago: A theory of diversity and freedom*. Oxford: Oxford UP

Kumm, Mattias. 2007. "Institutionalising Socratic Contestation: The Rationalist Human Rights Paradigm, Legitimate Authority and the Point of Judicial Review". *European Journal of Legal Studies* 1(2): 153–183

Kumm, Mattias. 2010. "The Idea of Socratic Contestation and the Right to Justification: The Point of Rights-Based Proportionality Review." *Law & Ethics of Human Rights* 4(2): 141–175

Kurki, Milja. 2013. *Democratic Futures: Re-Visioning Democracy Promotion*. Abingdon: Routledge

Kymlicka, Will. 2002. *Contemporary Political Philosophy*, 2nd Ed. Oxford: Oxford UP

Kyritsis, Dimitrios, 2015. *Shared Authority: Courts and Legislatures in Legal Theory*. Oxford: Hart

Kyritsis, Dimitrios. 2017. *Where Our Protection Lies: Separation of Powers and Constitutional Review*. Oxford: Oxford UP

Kysela, Jan (ed.). 2014. *State as a Giant with Feet of Clay*. Frankfurt am Main: Peter Lang

Laclau, Ernesto and Chantal Mouffe. 2001. *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. 2nd. Ed. London, Verso

Laclau, Ernesto. 2005. *On populist reason*. New York: Verso

Laden, Anthony. 2012. *Reasoning: A Social Picture*. Oxford: Oxford UP

Laden, Anthony. 2014. "The Practice of Equality." In: Rainer Forst et al., *Justice, Democracy, and the Right to Justification, Rainer Forst in Dialogue*. London, Bloomsbury, 103–126

Lagerspetz, Eerik. 2017. "Kelsen on Democracy and Majority Decision." *Archiv für Rechts- und Sozialphilosophie* 103(2): 155–179.

Lake, David. 2011. "Why 'isms' Are Evil. Theory, Epistemology, and Academic Sects as Impediments to Understanding and Progress". *International Studies Quarterly* 55(2): 465–480

Landemore, Hélène and Jon Elster (eds.) 2012. *Collective Wisdom, Principles and Mechanisms*. Cambridge: Cambridge UP

Landemore, Hélène and Scott Page. 2015. "Deliberation and disagreement. Problem solving, prediction, and positive dissensus." *Politics, Philosophy&Economics* 14(3): 229–254

Landemore, Hélène. 2012. "Collective Wisdom, Old and New." In: Landemore, Hélène and Jon Elster (eds.). *Collective Wisdom, Principles and Mechanisms*. Cambridge: Cambridge UP, 1–20

Landemore, Hélène. 2013. *Democratic Reason, Politics, Collective Intelligence, and the Rule of the Many*. Princeton, Princeton UP

Landemore, Hélène. 2014. "Yes, We Can (Make it Up on Volume), Answer to Critics." *Critical Review* 26(1–2): 184–237

Landemore, Hélène. 2017. "Beyond the Fact of Disagreement. The Epistemic Turn in Deliberative Democracy." *Social Epistemology* 31(3): 277–295

Lane, Jan-Erik. 2009. "Political representation from the principal–agent perspective". *Representation* 45(4): 369–378.

Lasch, Christopher. 1991 [1979]. *The Culture of Narcissism: American Life in an Age of Diminishing Expectations.* New York: W. W. Norton

Latsis, Spiro J. 1976. "Preface." In: Spiro j. Latsis (ed.), *Method and Appraisal in Economics*. Cambridge: Cambridge UP, vii–viii.

Leca, Jean. 2011. "Political Philosophy In: Political Science, Sixty Years on. Part II, Current Features of Contemporary Political Philosophy." *International Political Science Review* 32(1): 95–113

Lefort, Claude. 1988. *Democracy and Political Theory*. Cambridge: Polity Press

Leiter, Brian. 2009. "Explaining Theoretical Disagreement." *The University of Chicago Law Review* 76(3): 1215–1250

Leland RJ and Han van Wietmarschen. 2012. "Reasonableness, Intellectual Modesty, and Reciprocity in Political Justification." Ethics 122(4): 721–747

Lembcke, Oliver, Claudia Ritzi a Gary S. Schaal. 2012. "Zwischen Konkurrenz und Konvergenz**:** Eine Einführung in die normative Demokratietheorie". In: Oliver Lembcke (ed.), *Zeitgenössische Demokratietheorie, Band 1: Normative Demokratietheorien*. Springer VS, 9–32.

Lemke, Matthias and Gary S. Schaal. 2014. "Paradigmenpluralität in der Politikwissenschaft.Eine Bestandsaufnahme des Faches in Deutschland." In: Stephan Kornmensser and Gerhard Schurz (eds.), *Die multiparadigmatische Struktur der Wissenschaft*. Wiesbaden, Springer, 63–102

Lever, Anabelle. 2009. "Democracy and Judicial Review: Are They Really Incompatible?" Perspectives on Politics 7(4): 805–822

Levitsky, Steven a Lucan Way. 2015. "The Myth of Democratic Recession." In: Larry Diamond a Marc F. Plattner (eds.), *Democracy in Decline?* Baltimore: Johns Hopkins UP, 58–76.

Lijphart, Arend. 2008a. "Majority rule in theory and practice: the tenacity of a flawed paradigm". In: Arend Lijphart, *Thinking about Democracy: Power sharing and majority rule in theory and practice*. Abingdon: Routledge, 111–124.

Lijphart, Arend. 2008b. *Thinking about Democracy: Power sharing and majority rule in theory and practice*. Abingdon: Routledge.

List, Christian and Philip Pettit. 2011. *Group Agency: The Possibility, Design, and Status of Corporate Agents*. Oxford: Oxford UP

List, Christian. 2002. "Two Concepts of Agreement." *The Good Society* 11(1): 72–79

List, Christian. 2006. "The Discursive Dilemma and Public Reason". *Ethics* 116(2): 362–402

List, Christian. 2007. "Deliberation and agreement." In: Shawn Rosenberg (ed.), *Deliberation, Participation and Democracy, Can the People Govern?* New York, Palgrave, 64–81

List, Christian. 2012. "The Theory of Judgment Aggregation: An Introductory Review." *Synthese* 187(1): 179–207

List, Christian. 2013. "Social Choice Theory". In: Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, on-line (https://plato.stanford.edu/entries/social-choice/), [ověřeno 30. 10. 2018].

Lister, Andrew. 2013. *Public Reason and Political Community*. London: Bloomsbury

Liveriero, Federica and Daniele Santoro. 2017. "Proceduralism and the epistemic dilemma of Supreme Courts". *Social Epistemology* 31(3): 310–323

Lord, Christopher and Johannes Pollak. 2013. "The Pitfalls of Representation as Claims-Making in the European Union". *Journal of European Integration* 35(5): 517–530.

Loughlin, Martin. 2016. "The Erosion of Sovereignty". *Netherlands Journal of Legal Philosophy* 45(2): 57–81

MacCormick, Neil. 2005. *Rhetoric and the Rule of Law: A Theory of Legal Reasoning*. Oxford: Oxford UP, 2005

Macedo, Stephen. 2000. "In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases?" In: George, Robert P. and Christopher Wolfe (eds.), *Natural Law and Public Reason*. Washington: Georgetown UP, 11–49

Mack. Eric. 2009. "Individualism and Libertarian Rights". In: Thomas Christiano, John Christman (eds.)., *Contemporary Debates in Political Philosophy*. Oxford: Wiley-Blackwell, 119–136

Mackie, Gerry. 2003. *Democracy Defended*. Cambridge: Cambridge UP

Mair, Peter. 2008. "Concepts and concept formation." In: della Porta, Donatella and Michael Keating (eds.). *Approaches and Methodologies in the Social Sciences. A Pluralist Perspective*. Cambridge: Cambridge UP, 177–197

Mair, Peter. 2013. *Ruling* the Void: The Hollowing of Western Democracy. London: Verso.

Manent, Pierre. 1998. *The City of Man*. Princeton: Princeton UP

Manent, Pierre. 2016. *Beyond radical Secularism*. South Bend: St. Augustine's Press

Mangini, Michele. 2019. Is the Reasonable Person a Person of Virtue? *Res Publica*, First Online, https://doi.org/10.1007/s11158-019-09432-5, 1–23

Manin, Bernard. 1997. *The Principles of Representative Government*. Cambridge: Cambridge UP.

Mansbridge, Jane. 2003. "Rethinking Representation". *American Political Science Review* 97(4): 515–528.

Mansbridge, Jane. 2009. "A 'Selection Model' of Political Representation". *Journal of Political Philosophy* 17(4): 369–398.

Mansbridge, Jane. 2011. "Clarifying the Concept of Representation". *American Political Science Review* 105(3): 621–630.

Marmor, Andrei. 2011. *Philosophy of Law*. Princeton, Princeton UP

Martí, José Luis. 2017. "Pluralism and consensus in deliberative democracy." *Critical Review of International Social and Political Philosophy* 20(5): 556–579

Mastropaolo, Alfio. 2012. *Is Democracy a Lost Cause? Paradoxes of an Imperfect Invention*. Colchester: ECPR Press.

May, Kenneth. 1952. "Set of Independent Necessary and Sufficient Conditions for Simple Majority Decision". *Econometrica* 20(4): 680–684.

McGann, Anthony. 2006. *The Logic of Democracy: Reconciling Equality, Deliberation, and Minority Protection*. Ann Arbor: University of Michigan Press.

McMahon, Christopher. 2009. *Reasonable Disagreement: A Theory of Political Morality*. Cambridge: Cambridge UP

Mendes, Conrado H. 2013. *Constitutional Courts and Deliberative Democracy*. Oxford: Oxford UP

Merkel, Wolfgang. 2014. "Is There a Crisis of Democracy?" *Democratic Theory* 1(2): 11–25

Miller, David. 2012. "Grounding human rights." *Critical Review of International Social and Political Philosophy* 15(4): 407–427

Mills, Charles W. 1956. *The Power Elite.* Oxford: Oxford UP

Mlsna, Petr. 2015a. "Čl. 23: Slib zákonodárce". In: Pavel Rychetský et al., *Ústava České republiky: ústavní zákon o bezpečnosti České republiky: komentář*. Praha: Wolters Kluwer, 266–270

Mlsna, Petr. 2015b. "Čl. 26: Volný mandát". In: Pavel Rychetský et al., *Ústava České republiky: ústavní zákon o bezpečnosti České republiky: komentář*. Praha: Wolters Kluwer, 283–289.

Moehler, Michael. 2018. *Minimal Morality: A Multilevel Social Theory.* Oxford: Oxford UP

Moffett, Marc. 2007. "Reasonable Disagreement and Rational Group Inquiry." *Episteme* 4(3): 356–367

Möllers, Christoph. 2012. *Demokratie, Zumutungen und Versprechen*. 3. Auflage. Berlin, Wagenbach

Montanaro, Laura. 2011. "The Democratic Legitimacy of Self-Appointed Representatives". *The Journal of Politics* 74(4): 1094–1107.

Moon, J. Donald. 2004. "The Current State of Political Theory, Pluralism and Reconciliation." In: Stephen K. White and J. Donald Moon (eds.), *What is Political Theory?* London, SAGE, 12–29

Morlino, Leonardo and Mario Quaranta. 2016. "What is the impact of the economic crisis on democracy? Evidence from Europe." *International Political Science Review* 37(5): 618–633

Morlino, Leonardo. 2012. *Changes for democracy: actors, structures, processes*. Oxford: Oxford UP.

Mounk, Yascha. 2017. *The Age of Responsibility: Luck, Choice, and the Welfare State*. Cambridge: Harvard UP

Moyn, Samuel. 2010. *The Last Utopia: Human Rights in History*. Cambridge, MA: Belknap Press

Muldoon, Ryan. 2016. *Social Contract Theory for a Diverse World, Beyond Tolerance*. Abingdon: Routledge

Müller, Jan-Werner. 2016. *What Is Populism*? Philadephia: University of Pennsylvania Press.

Müller, Karel B. 2006. "The Civil Society-State Relationship in Contemporary Discourse: A Complementary Account from Giddens Perspective." *The British Journal of Politics & International Relations*. 8(2): 311–330

Müller, Karel B. 2016. "K čemu instituce? Jsme přeci samí slušní lidé! Příčiny, důsledky a řešení nedůvěry v zastupitelských sborech v Česku". *Politologická revue* 22(1): 5–39

Munck, Geraldo and Jay Verkuilen. 2002. "Conceptualizing and Measuring Democracy: Evaluating Alternative Indices." *Comparative Political Studies* 35(1): 5–34

Normand, Roger and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice.* Bloomingtom: Indiana UP

Norris, Pippa. 2011. Democratic Deficit: Critical Citizens Revisited. Cambridge: Cambridge UP

Norval, Aletta. 2007. *Aversive Democracy: Inheritance and Originality in the Democratic Tradition*. Cambridge: Cambridge UP

Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York, Basic Books

Nussbaum, Martha. 2011. "Perfectionist Liberalism and Political Liberalism". *Philosophy&Public Affairs* 39(1): 3–45

O'Donnell, Guillermo. 2010. *Democracy, Agency, and the State: Theory with Comparative Intent*, Oxford: Oxford University Press.

Offe, Claus. 1984. *Contradictions of the Capitalist State*. London: Hutchinson&Co.

Öniş, Ziya. 2017. "The Age of Anxiety. The Crisis of Liberal Democracy in a Post Hegemonic Global Order." *The International Spectator* 52(3): 18–35

Orbán, Viktor. 2014. "Speech at the XXV. Bálványos Free Summer University and Youth Camp". 26th July, 2014, Băile Tuşnad, on-line (https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/?_sf_s=orb%C3%A1n+baile+tusnad&sf_paged=4)

Ottonelli, Valeria and Danielle Porello. 2013. "On the elusive notion of meta-agreement." *Politics, Philosophy&Economics* 12(1): 68–92

Page, Scott. 2007. *The Difference, How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*. Princeton, Princeton UP

Parkinson, John and Jane Mansbridge (eds.). 2012. *Deliberative Systems: Deliberative Democracy at the Large Scale*. Cambridge: Cambridge UP

Pateman, Carole. 1970. *Participation and Democratic Theory*. Cambridge: Cambridge UP

Patterson, Dennis. 2018. "Theoretical Disagreement, Legal Positivism, and Interpretation". *Ratio Juris* 31(3): 260–275

Peter, Fabienne. 2009. *Democratic Legitimacy.* Abingdon: Routledge.

Peter, Fabienne. 2013. "Epistemic Foundations of Political Liberalism." *Journal of Moral Philosophy* 10: 598–620

Pettit, Philip. 2009. "Varieties of Public Representation". In: Ian Shapiro (ed.), *Political Representation*. Cambridge: Cambridge UP, 61–89.

Pettit, Philip. 2010. "Representation, Responsive and Indicative". *Constellations* 17(3): 426–434.

Pettit, Philip. 2013. *On the People's Terms: A Republican Theory and Model of Democracy*. Cambridge: Cambridge UP

Pettit, Philip. 2015. "Justice, Social and Political." In: David Sobel et al. (eds.), *Oxford Studies in Political Philosophy 1*. Oxford: Oxford UP, 9–35

Phillips, Anne. 1995. *The Politics of Presence*. Oxford: Clarendon Press.

Phillips, Anne. 1998. "Democracy and Representation. Or, Why Should It Matter Who our Representatives Are?" In: Anne Phillips (ed.), *Feminism and Politics.* Oxford: Oxford UP, 224–240.

Philp, Mark. 2008. "Political Theory and History." In: David Leopold and Marc Stears (eds.), Political Theory: Methods and Approaches. Oxford: Oxford UP, 128–149

Pitkin, Hanna F. 1967. *The Concept of Representation*. Berkeley: University of California Press.

Plattner, Mark. 2008. *Democracy Without Borders? Global Challenges to Liberal Democracy*. Lanham, MD: Rowman.

Plunkett, David and Scott Shapiro. 2017. "Law, Morality, and Everything Else: General Jurisprudence as a Branch of Metanormative Inquiry". *Ethics* 128(1): 37–68

Pollak, Johannes. 2007. "Contested Meanings of Representation". *Comparative European Politics* 5(1): 87–103.

Porat, Iddo. 2009. "Some Critical Thoughts on Proportionality". In: Bongiovanni, Sartor, Valentini (eds.), *Reasonableness and Law*. Dordrecht: Springer, 243–250

Přibáň, Jiří. 2013. *Tyranizovaná spravedlnost. Rozhovor s Karlem Hvížďalou*. Praha: Portál.

Przeworski, Adam. 2010. *Democracy and the Limits of Self-Government*. Cambridge: Cambridge UP.

Putnam, Robert D. 2000. *Bowling Alone: The Collapse and Revival of American Community.* New York: Simon & Schuster.

Quirk. Paul. 2014. "Making it up on Volume: Are Larger Groups Really Smarter?" *Critical Review* 26(1–2): 129–150

Quong, Jonathan. 2011. *Liberalism Without Perfection*. Oxford: Oxford UP

Quong, Jonathan. 2013. "What is the Point of Public Reason?" *Philosophical Studies* 170: 545–553

Quong, Jonathan. 2017. "Public Reason". In: Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, at https://plato.stanford.edu/entries/public-reason/

Rae, Douglas. 1969. „Decision Rules and Individual Values in Constitutional Choice." *American Political Science Review* 61(1): 40–56.

Rawls, John. 1995. "Political Liberalism: Reply to Habermas." *The Journal of Philosophy* 92(3): 132–180

Rawls, John. 1997. "The Idea of Public Reason Revisited." *The University of Chicago Law Review*. 64(3): 765–807

Rawls, John. 1999. *A Theory of Justice: Revised Edition.* Cambridge: Harvard UP.

Rawls, John. 2005. *Political Liberalism*, Expanded Ed. New York, Columbia UP

Raz, Joseph. 1979. *The Authority of Law: Essays on Law and Morality*. Oxford: Oxford UP

Raz, Joseph. 1986. *The Morality of Freedom.* New York: Clarendon Press.

Raz, Joseph. 2010. "Human Rights without Foundations." In: John Tasioulas and Samantha Besson (eds.), *The Philosophy of International Law*. Oxford: Oxford UP, 321–337

Rehfeld, Andrew. 2017. "What is Representation? On Being and Becoming a Representative". In: Mónica Brito Vieira (ed.), *Reclaiming Representation: Contemporary Advances in the Theory of Political Representation*. Abingdon: Routledge, 51–74.

Reidy, David. 2000. "Rawls's Wide View of Public Reason: Not Wide Enough." *Res Publica* 6(1): 49–72

Reidy, David. 2011. "Philosophy and Human Rights: Contemporary Perspectives." In: Claudio Corradetti (ed.), *Philosophical Dimensions of Human Rights: Some Contemporary Perspectives*. Dordrecht: Springer, 23–44

Riker, William. 1982. *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice*. Prospect Heights: Waveland Press.

Ripstein, Arthur. 2009. “Reasonable Persons in Private Law.” In: Bongiovanni, Sartor, Valentini (eds.), *Reasonableness and Law*. Dordrecht: Springer, 255–281.

Risse, Mathias. 2004. “Arguing for Majority Rule”. *Journal of Political Philosophy* 12(1): 41–64.

Risse, Mathias. 2009a. “On the Philosophy of Group Decision Methods I: The Nonobviousness of Majority Rule”. *Philosophy Compass* 4(5): 793–802.

Risse, Mathias. 2009b. “On the Philosophy of Group Decision Methods II: Alternatives to Majority Rule”. *Philosophy Compass* 4(5): 803–812.

Rosanvallon, Pierre. 2006. *Democracy, Past and Future*. New York, Columbia UP

Rosanvallon, Pierre. 2008. *Counter-Democracy: Politics in an Age of Distrust*. Cambridge: Cambridge UP.

Rosanvallon, Pierre. 2011. *Democratic Legitimacy: Impartiality, Reflexivity, Proxim*ity. Princeton: Princeton UP

Rosanvallon, Pierre. 2018. *Good Government: Democracy beyond Elections*. Cambridge, MA: Harvard UP.

Rosenblum, Nancy. 2008. *On the Side of the Angels: An Appreciation of Parties and Partisanship*. Princeton: Princeton UP

Rosenfeld, Michel. 2008. “Rethinking constitutional ordering in an era of legal and ideological pluralism.” *International Journal of Constitutional Law* 6(3–4): 415–455

Rostbøll, Christian. 2017. “Democratic respect and compromise.” *Critical Review of International Social and Political Philosophy* 20(5): 619–635

Rummens, Stefan. 2012. “Staging Deliberation: The Role of Representative Institutions in the Deliberative Democratic Process”. *The Journal of Political Philosophy* 20(1): 23–44

Runciman, David and Mónica Brito Vieira. 2008. *Representation*. Cambridge: Polity.

Runciman, David. 2009. “Hobbes’s theory of representation: anti-democratic or proto-democratic?” In: Ian Shapiro (ed.), *Political Representation*. Cambridge: Cambridge UP, 15–34.

Sadurski, Wojciech. 2006. Law’s Legitimacy and ‘Democracy-Plus’. *Oxford Journal of Legal Studies* 26(2): 377–409

Sadurski, Wojciech. 2008. “Legitimacy, Political Equality, and Majority Rule.” *Ratio Juris* 21(1): 39–65

Sadurski, Wojciech. 2009. “Reasonableness and Value Pluralism in Law and Politics.” In: Bongiovanni, Sartor, Valentini (eds.), *Reasonableness and Law*. Dordrecht: Springer, 129–146

Sadurski, Wojciech. 2011. “It All Depends: The Universal and the Contingent in Human Rights.” In: Claudio Corradetti (ed.), *Philosophical Dimensions of Human Rights: Some Contemporary Perspectives*. Dordrecht: Springer, 125–156

Sadurski, Wojciech. 2014. “Reasons of State and Public Reason.” *Ratio J*uris 27(1): 21–46

Sadurski, Wojciech. 2018. “Judicial Review and Public Reason.” In Delaney, Erin F. and Rosalind Dixon (eds.), *Comparative Judicial Review*. Cheltenham: Edward Elgar, 337–356

Sadurski, Wojciech. 2019. “Public Reason in the Universe of Reasons”. Jus Cogens 1(1): 41–58

Sajó, András and Renáta Uitz. 2017. *The constitution of freedom: An introduction to legal constitutionalism*. Oxford: Oxford UP

Sandefur, Timothy et al. 2009. “Hayek and the Common Law.” *Cato Unbound*, December 2009, https://www.cato-unbound.org/print-issue/612

Sandkühler, Hans Jörg. 2010. “Menschenrechte”. In: Hans Jörg Sandkühler et al. (eds.). *Enzyklopädie Philosophie: in drei Bänden mit einer CD-ROM*. Band 2, I-P. Hamburg: Felix Meiner Verlag, 2010

Sartori, Giovanni. 1987. *Theory of Democracy Revisited, Part I: The Contemporary Debate*. Chatham: Chatham House Publishers

Sartori, Giovanni. 2005 [1976]. *Parties and party systems: a framework for analysis*. Colchester: ECPR Press

Saunders, Ben. 2010a. “Why Majority Rule Cannot be Based only on Procedural Equality.” *Ratio Juris* 23(1): 113–122.

Saunders, Ben. 2010b. “Democracy, Political Equality, and Majority Rule.” *Ethics* 121(1): 148–177.

Saunders, Ben. 2010c. “Increasing Turnout: A Compelling Case?” *Political Studies* 30(1): 70–77

Saward, Michael. 1998. *The Terms of Democracy*. Cambridge: Polity Press

Saward, Michael. 1998. *The Terms of Democracy*. Cambridge: Polity.

Saward, Michael. 2003. *Democracy*. Cambridge: Polity Press

Saward, Michael. 2009. “Representation and the Unelected: Authorization and Authenticity.” *The Journal of Political Philosophy* 17(1): 1–22

Schattschneider, Elmer E. 1942. *Party Government.* New York: Holt, Rinehart and Winston.

Schauer, Frederick. 2004. “The Limited Domain of the Law.” *Virginia Law Review* 90(9): 1909–1956

Schauer, Frederick. 2010. “The Best Laid Plans”. *Yale Law Journal* 120: 586–621

Schlosberg, David. 2006. “The Pluralist Imagination.” In: John Dryzek et al. (eds.), *The Oxford Handbook of Political Theory.* Oxford: Oxford UP, 142–160

Schmidt, Manfred G. 2008. *Demokratietheorien, Eine Einführung*, 4. Aufl., Wiesbaden, VS Verlag

Schurz, Gerhard and Stephan Kornmensser (eds.). 2014. *Die multiparadigmatische Struktur der Wissenschaft*. Wiesbaden, Springer

Schurz, Gerhard. 2014. “Koexistenz und Komplementarität rivalisierender Paradigmen, Analyse, Diagnose und kulturwissenschaft liches Fallbeispiel.” In: Gerhard Schurz and

Stephan Kornmensser (eds.), *Die multiparadigmatische Struktur der Wissenschaft*. Wiesbaden, Springer, 47–62

Schüssler, Rudolf. 2012. "The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World (book review)." *Rationality. Markets and Morals* 3: 123–129

Schwartzberg, Melissa. 2014. *Counting the Many: The Origins and Limits of the Supermajority Rule.* Cambridge: Cambridge UP.

Schwartzberg, Melissa. 2015. "Epistemic Democracy and its Challenges." *Annual Review of Political Science* 18: 19.1–19.17.

Schwartzman, Micah. 2004. "The Completeness of Public Reason". *Politics, Philosophy & Economics* 3(2): 191–220

Schwartzman, Micah. 2011. "The Sincerity of Public Reason." *The Journal of Political Philosophy* 19(4): 375–398

Schwartzman, Micah. 2020. "Must Laws Be Motivated By Public Reason?" Forthcoming in Langvatn, Silje, Matthias Kumm and Wojciech Sadurski (eds.). *Public Reason and Courts*. Cambridge: Cambridge UP, manuscript available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3432637

Sekerák,Marián. 2017. "Koncepty občianskej participácie a participatívnej demokracie nazerané teoretickou optikou". *Sociológia* 49(2): 179–202

Sen, Amartya. 1984. *Collective Choice and Social Welfare.* Amsterdam: North Holland

Severs. Eline. 2010. "Representation as claims-making. Quid responsiveness?" *Representation* 46(4): 411–423.

Shklar, Judith N. 1989. "The Liberalism of Fear". In: Nancy Rosenblum (ed.), *Liberalism and the Moral Life.* Cambridge: MA: Harvard UP, 21–39

Simmons, A. John. 2001. "Philosophical Anarchism." In: A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations*. Cambridge: Cambridge UP, 102–121.

Simmons, A. John. 2007. *Political Philosophy*. Oxford: Oxford UP

Skorupski, John. 2017. "Rawls, Liberalism, and Democracy". *Ethics* 128(1): 173–198

Sobek, Tomáš. 2011. *Právní myšlení: kritika moralismu*. Praha – Plzeň: Ústav státu a práva AV ČR – Aleš Čeněk

Sobek, Tomáš. 2019. "Etika svobody". In: Tomáš Sobek (ed.), *Právní etika*. Praha: Leges, 37–80

Solum, Lawrence. 2006a. "Public Legal Reason." *Virginia Law Review* 92: 1449–1501

Solum, Lawrence. 2006b. "Pluralism and Public Legal Reason." *William&Mary Bill of Rights Journal* 15(7): 7–23

Somin, Ilya. 2014. "Why Political Ignorance Undermines the Wisdom of the Many." *Critical Review* 26(1–2): 151–169

Stamos, David. 2016. *The Myth of Universal Human Rights: Its Origin, History, and Explanation, Along with a More Humane Way*. Abingdon: Routledge

Stich, Stephen. 2014. "When Democracy Meets Pluralism. Landemore"s Epistemic Argument for Democracy and the Problem of Value Diversity." *Critical Review* 26(1–2): 170–183

Sunstein, Cass S. 1996. *Legal Reasoning and Political Conflict*. Oxford: Oxford UP

Sunstein, Cass. 2007. "Beyond Judicial Minimalism." *Tulsa Law Review* 43(4): 825–841

Talbott, William. 2005. *Which Human Rights Should Be Universal?* Oxford: Oxford UP

Talbott, William. 2010. *Human Rights and Human Well-Being*, Oxford: Oxford UP

Talisse, Robert. 2009. *Democracy and Moral Conflict*. Cambridge: Cambridge UP

Talisse, Robert. 2009. *Democracy and Moral Conflict*. Cambridge: Cambridge UP.

Talisse, Robert. 2016. Engaging Political Philosophy: An Introduction. Abingdon: Routledge

Talshir, Gayil. 2013. "Civil society and the reconstruction of the public sphere: ideologies between theory and politics." In: Liberalism as Ideology: Essays in Honour of Michael Freeden. Oxford: Oxford UP, 199–220

Tasioulas, "On the Foundations of Human Rights." In: Cruft, Liao, Renzo (eds.), *Philosophical Foundations of Human Rights.* 45–7

Taylor, Alan D. 2005. *Social Choice and the Mathematics of Manipulation*. Cambridge: Cambridge UP.

Taylor, Charles. 1967. "Neutrality in Political Science." In: Peter Laslett and Walter Runciman (eds.), *Philosophy, Politics, and Society,* Third Series. Oxford: Blackwell, 25–57

Thompson, Dennis. 2001. "Public Reason and Precluded Reasons". *Fordham Law Review* 72(5): 2073–2088

Thompson, Simon and Majid Yar (eds.). 2011. *The Politics of Misrecognition*. Farnham: Ashgate

Thrasher, John and Kevin Vallier. 2015. "The Fragility of Consensus. Public Reason, Diversity and Stability". *European Journal of Philosophy* 23(4): 933–954

Tiedemann, Paul. 2014. "The Rechtsstaat-Principle in Germany: The Development from the Beginning Until Now". In: James L. Silkenat et al. (eds.), The Legal Doctrines of the Rule of Law and the Legal State. Springer, 171–192

Tilly, Charles. 2007. *Democracy*. New York: Cambridge UP.

Urbinati, Nadia. 2000. "Representation as Advocacy: A Study of Democratic Deliberation". *Political Theory* 28(6): 758–786.

Urbinati, Nadia. 2006. *Representative Democracy: Principles and Genealogy*. Chicago: Chicago UP.

Urbinati, Nadia. 2018. *Democracy Disfigured: Opinion, Truth, and the People.* Cambridge, MA: Harvard UP

Vadi, Valentina. 2018. *Proportionality, reasonableness and standards of review in international investment law and arbitration*. Cheltenham: Edward Elgar

Valentini, Laura. 2013. "Justice, Disagreement and Democracy." *British Journal of Political Science* 43: 177–199

Vallier, Kevin. 2016. "In Defence of Intelligible Reasons in Public Justification." *The Philosophical Quarterly* 66: 599–616

Vallier, Kevin. 2018. "Public Justification". In: Zalta EN (ed.), *Stanford Encyclopedia of Philosophy*. https://plato.stanford.edu/entries/justification-public/

Vallier, Kevin. 2019a. *Must Politics Be War? Restoring Our Trust in the Open Society*. Oxford: Oxford UP

Vallier, Kevin. 2019b. "Political Liberalism and the Radical Consequences of Justice Pluralism". *Journal of Social Philosophy* 50(2): 212–231

van Biezen, Ingrid and Michael Saward. 2008. "Democratic Theorists and Party Scholars: Why They Don't Talk to Each Other, and Why They Should." *Perspectives on Politics* 6(1): 21–35

Van Parijs, Philippe. 2011. *Just Democracy: The Rawls-Machiavelli Programme*. London: ECPR Press.

Van Schoelandt, Chad. 2015. "Justification, coercion, and the place of public reason". Philosophical Studies 172(4): 1031–1050

Vibert, Frank. 2007. The Rise of the Unelected: Democracy and the New Separation of Powers. Cambridge: Cambridge UP

Vincent, Andrew. 2004. *The Nature of Political Theory.* Oxford: Oxford UP

Vincent, Andrew. 2012. "Political Ideology and Political Theory, Reflections on an Awkward Partnership." In: Ben Jackson and Marc Stears (eds.). *Liberalism as ideology, essays in honour of Michael Freeden*. Oxford: Oxford UP, 159–177.

von Beyme, Klaus. 2013. *Von der Postdemokratie zur Neodemokratie*. Wiesbaden: Springer

Vráblíková, Kateřina. 2017. *What Kind of Democracy? Participation, Inclusiveness and Contestation*. Abingdon: Routledge.

Waldron, Jeremy. 1999a. *Law and Disagreement*. Oxford: Oxford UP

Waldron, Jeremy. 1999b. *The Dignity of Legislation*. Cambridge: Cambridge UP

Waldron, Jeremy. 2010. "A Majority in the Lifeboat". *Boston* University Law Review 90: 1043–1057.

Waldron, Jeremy. 2016. *Political Political Theory: Essays on Institutions*. Cambridge, MA: Harvard UP

Wall, Stephen. 2013. "Public Reason and Moral Authoritarianism". *The Philosophical Quarterly* 250: 160–169

Waluchow, W. J. *Inclusive Legal Positivism*. Oxford: Clarendon Press, 1994

Warren, Mark. 1996. "Deliberative Democracy and Authority." *American Political Science Review* 90(1): 46–60.

Wass, Hanna and André Blais. 2017. "Turnout". In: Kai Arzheimer, Jocelyn Evans, and Lewis-Beck (eds.), The SAGE Handbook of Electoral Behaviour. London: SAGE, 459–487

Weale, Albert. 2007. *Democracy*. Basingstoke: Palgrave MacMillan.

Weale, Albert. 2013. *Democratic Justice and the Social Contract*. Oxford: Oxford UP.

Weber, Max. 1994. *Political Writings*. Ed. Peter Lassman and Edward Spier. Cambridge: Cambridge UP, 309–369

Wedgwood, Ralph. 2010. "The Moral Evil Demon." In: Feldman, Richard and Ted Warfield (eds.), *Disagreement*. Oxford: Oxford UP, 216–246

Weinstock, Daniel. 2017. "Compromise, pluralism, and deliberation." *Critical Review of Social and Political Philosophy* 20(5): 636–655

Weisberg, Michael and Ryan Muldoon. 2009. "Epistemic Landscapes and the Division of Cognitive Labor." *Philosophy of Science* 76(2): 225–252.

Weithman, Paul J. 2010. *Why political liberalism? On John Rawls's political turn*. Oxford: Oxford UP

Wenar, Leif. 1995. "Political Liberalism: An Internal Critique". *Ethics* 106(1): 32–62.

Wendt, Fabian. 2019. "Rescuing Public Justification from Public Reason Liberalism". In: Steven Wall, Peter Vallentyne and David Sobel (eds.), *Oxford Studies in Political Philosophy Vol. 5*. Oxford: Oxford UP, 39–64

Wenner, Jan. 2005. "The Rolling Stone Interview: Bono". *Rolling Stone 986*, November 3, 2005, on-line (http://www.jannswenner.com/archives/Bono.aspx)

White, Jonathan and Lea Ypi. 2016. *The Meaning of Partisanship*. Oxford: Oxford UP

White, Stephen K. 2004. "Pluralism, Platitudes and Paradoxes, Western Political Thought at the Beginning of a New Century." In: Stephen K. White and J. Donald *Moon* (eds.), *What is Political Theory?* London, SAGE, 1–11

Williams, Bernard. 1981. *Moral Luck*. Cambridge: Cambridge UP

Wolin, Sheldon S. 2004. *Politics and Vision*: *Continuity and Innovation in Western Political Thought*. Princeton: Princeton UP.

Wolin, Sheldon S. 2008. *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism.* Princeton: Princeton UP.

Wolterstorff, Nicholas. 2012. *Understanding Liberal Democracy. Essays in Political Philosophy*. Oxford: Oxford UP

World Bank. 2017. *World Development Record 2017*. Available at https://openknowledge.worldbank.org/handle/10986/25880

Yeo, Andrew and Matthew N. Green (eds.). 2017. *Living in an age of mistrust: An interdisciplinary study of declining trust and how to get it back*. Abingdon: Routledge

Young, Iris M. 2000. *Inclusion and Justice*. Oxford: Oxford UP

Young, Shaun P. 2006. "Rawlsian Reasonableness: A Problematic Presumption." *Canadian Journal of Political Science* 39(1): 164–175

Young, Shaun. 2014. "Introduction." In: Shaun Young (ed.), *Reasonableness in Liberal Political Philosophy*. Abingdon: Routledge, 1–6

Zimmerman, David. 2001. “Review Article, Perils of Value-Ladenness in Politics, Science and Philosophy.” *The Journal of Political Philosophy* 9(2): 217–247

Zurn, Christopher. 2007. *Deliberative Democracy and the Institutions of Judicial Review*. Cambridge: Cambridge UP