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***Special Double Volume
in Memory of Glen Newey
edited by Glyn Morgan***

Glyn Morgan

Introduction

Anna Elisabetta Galeotti

Glen Newey's Critique of Political Toleration

Rainer Forst

Toleration, Power and Reason:
Continuing a Dialogue with a Political Realist Friend

Federica Liveriero

Newey and Rawls in Dialogue: The Limits
of Justification and the Conditions of Toleration

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Lies, Deception, and Democracy

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Glen Newey's Critique of Legitimacy. An Assessment

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An Imaginary Conversation with Glen Newey
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Biblioteca della libertà

Corso Re Umberto, 1 • 10121 Torino

Telefono 011 5591611 (cinque linee)

segreteria@centroeinaudi.it

<http://www.centroeinaudi.it>

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Glen Newey was one of the most interesting and provocative political thinkers of his generation. By the time of his sudden death (at the age of 56), he had made important contributions to a wide range of topics in contemporary political theory, including value pluralism, toleration, liberalism, security, and Thomas Hobbes. Newey was also well-known to a wider public through his role as a regular reviewer and blogger for the *London Review of Books*. In this latter capacity, Newey commented – often with a satirist’s eye for human foible, and a poet’s ear for language – on the political controversies of the day: the marital difficulties of the heir to the British monarchy providing the occasion for one of his more infamous essays, a former British Prime Minister’s brief encounter with a pig another (Newey 2003, 2015a).¹

Glen Newey’s writings abound with paradoxes. He loved to point out how Plato’s Ideal City, a shrine to wisdom and truth, requires the Guardians to use a lot of drugs and practice deception to sustain it. Newey himself was a brilliant analytical philosopher who poo-pooed philosophy’s pretensions to political understanding. He valued freedom, but advanced withering criticisms of all extant forms of philosophical liberalism. He wrote with great insight about toleration; and yet he believed that the concept of liberal-dem-

¹ As an editor of the *London Review of Books* later reported: “A subscriber showed up at our office almost speechless with rage when we published the Newey essay [on the monarchy] [...] ‘About as Useful as a String Condom’. Did we realise that his wife read the paper?” (<https://www.lrbstore.co.uk/products/lrb-collections-1-royal-bodies-writing-about-the-windsors-from-the-london-review-of-books>).

ocratic toleration was politically incoherent, and philosophy could offer little guidance in distinguishing the practices that ought to be tolerated from those that ought not. He hated moralism and rejected the idea that moral reasons had any claim to priority over non-moral reasons for action. Yet his own journalistic writings were highly judgmental, savaging the powerful and sympathizing with the weak.

As a political theorist, Glen Newey was a man before his time. His book *After Politics*, published in 2001, provides an early statement of the realist approach to political theory that draws so much attention today. The aim of realists is to break free from the philosophical framework that has dominated the field of political theory since the work of Rawls, Dworkin, and Nozick in the 1970s, a framework that emphasizes the priority of morality to politics, and justice to other political values (such as security, stability, and compromise). Realism, which has always been a theme in the western political tradition – a theme present in the writings of such canonical figures as Machiavelli and Hobbes, Weber and Schmitt – was given fresh impetus in the 2000s with publications on the topic by Raymond Geuss (2008) and Bernard Williams (2005). But it was only in 2010 with the publication of an influential review article that scholars began to take note of realism as a new (or re-newed) approach to political theory (Galston 2010).

There are various ways of conceptualizing political realism. Simply stated, this approach has three elements: one, a focus on the tragic nature of politics, a realm of human activity rarely free of conflict, disagreement, and power; two, a thoroughgoing skepticism of morality's pretensions to resolve – even at a theoretical level – the problems posed by conflict, disagreement, and power; and three, a turn towards political institutions as a means of tempering those problems.² These three elements have prompted a lively debate both between realists and moralists and within the realist camp. Many of the key issues raised in these current debates (especially that between realists and moralists) had already been covered by Newey in his *After Politics*, which might plausibly claim to be the urtext of contemporary political realism. For Newey, the Rawlsian revival of political philosophy in the 1970s had achieved nothing so much as a neglect of the real world of politics and an ill-judged aspiration for a post-political order founded on justice (Newey 2001, 2).

² For an alternative conceptualization, see Rossi's contribution to this volume (137-145).

Newey's *After Politics* defends a bracing form of anti-moralist realism. He attacks all attempts to define and defend a neutral or public standard of political justification. And he presses with great vigor the claim that liberal political philosophy seeks the suppression of politics. Newey develops these positions through close, eviscerating readings of leading political thinkers, including Rawls, Habermas, Gray, and Rorty. It would be fair to say, however, that in that work Newey never fully developed his own position. The few critics that discussed the book lamented Newey's reluctance to come clean about his own preferred conception of politics (Chambers 2002; Gunnell 2002; Kelly 2005). Newey was acutely aware of this failing. Over the course of the next nearly two decades, he has steadily, article by article, sought to construct his own distinctive statement of political realism. He died leaving two major completed works unpublished. The essays gathered in this edition of *Biblioteca della libertà* represent the first sustained attempt to assess Glen Newey's work as a political theorist.

Although Newey's name has now become closely tied to political realism, the bulk of his scholarly publications – and his PhD thesis, supervised by John Horton – were on the topic of toleration. Yet even in these early works, it is possible to smell the spirit of skepticism that developed into the fuller realism of his later works, including his misgivings about the effort to find philosophical justifications for our political ideals. Toleration served for him as something of a case study of the way that concepts were deployed – and manipulated – in real-life political battles to serve ideological ends.

The monograph that appeared out of Newey's PhD thesis, *Virtue, Reason, and Toleration* (Newey 1999) explores the paradoxes of the concept of toleration, which, as Newey emphasizes, is widely thought to be both admirable, the mark of good character, but nonetheless addressed towards practices that the tolerator would ideally like to see disappear. This yields the paradox that “being disposed to be motivated by moral disapproval is a necessary condition of acting tolerantly” (*ibidem*, 107). Newey's focus in this first book is on, what he terms, “the possibility conditions of toleration” – conditions which are far less common than we might ordinarily think. One of these possibility-conditions concerns the balance of power between tolerators and the tolerated. In order to be capable of toleration, so Newey argues, the tolerators must have the power to prevent the disapproved of practice. No power; no toleration. Newey went on to explore the role of power in greater detail in a later monograph, *Toleration and Political Conflict* (Newey 2013).

Viewed from the perspective of his later realist writings, perhaps one of the most surprising features of Newey's earliest writings on toleration is the extent to which he relies upon the idea of toleration as a personal virtue. Indeed, Newey's first monograph contains a detailed analytical treatment of Aristotelian virtue (Newey 1999, ch. 4). This dimension of Newey's early work is noticed by the first two contributions in the present volume that get to grips with Newey's theory of toleration. Elisabetta Galeotti and Rainer Forst have long been recognized – like Newey himself – as leading theorists in the field of toleration. In her chapter, Galeotti continues her long-standing debate with Newey concerning the possibility of political toleration, especially liberal political toleration. For Newey, a liberal state could not be tolerant, because the initial expression of moral disapproval – a prerequisite of toleration – was at odds with the liberal state's commitments to neutrality and equal respect. Galeotti, in contrast, seeks to show that a suitably re-worked conception of toleration is quite compatible with liberal ideals.

In his contribution, Rainer Forst also continues his long-standing debate with Newey on toleration. Forst acknowledges that he and Newey are largely in agreement about the conceptual dimensions of toleration, but they disagree quite fundamentally about wider issues of political justification. Forst is one of the leading scholars in the Frankfurt School, and retains a strong commitment to the idea of a critical theory grounded in Reason. Newey could not be more at odds with this approach. "Not unlike Thrasymachus", as Forst puts it, "[Newey] doubted that there could be any normative factor – of morality, of reason, or what have you – that could elevate us above the power struggles and normative arbitrariness of political life. (Forst, this issue, 42)." Forst, like a number of other contributors to the volume, is clearly uncomfortable with some of the implications of Newey's political realism. Thrasymachus is after all one of the "bad boys" of the western philosophical tradition. For those like Forst who think that a normative political theory can be grounded on some conception of reason, Newey's writings pose an important challenge.³ This challenge, however, cuts deeper than merely doubting the possibility of a rational grounding for political theory. In some of his later writings, Newey questions whether the very idea of political normativity – the provision of action-guiding prescrip-

³ For a further exploration of the disagreement, see Wolthuis (2016).

tions – even makes sense (Newey 2018).⁴ I will return to this dimension of Newey’s thought below.

Federica Liveriero also tackles Newey’s theory of toleration but does so by way of a discussion of his critique of John Rawls’s Political Liberalism. Unlike some other realists, Newey was a generous and careful reader of the political theorists that he discussed. He didn’t waste his time battling straw men. Rawls was a frequent target both in *After Politics* (2001) and in a brilliant but barely noticed article that examined Rawls’s various approaches to political toleration (2009b). Liveriero quite rightly perceives that Newey’s principal line of attack on Rawls involves an appeal to, what Newey terms, “the facticity of motivation”, the notion that the motivations of real-life political agents constitute “an empirical and independent check on the force of the justificatory setting laid out by Rawls” (Liveriero, this issue, 51). For Liveriero, this line of attack reflects Newey’s realist rejection of the entire Rawlsian project. Anyone wanting to rescue that project will need to find a response to Newey’s arguments.

In their contributions, Richard Bellamy and Dimitrios Efthymiou discuss an early Newey essay on political lying (Newey 1997). In that essay, Newey saw an irreconcilable tension between democracy and truthfulness (on the part of political leaders). Newey’s account of this tension was premised on the idea that democracy rested upon the consent of the governed – an expression of their collective autonomy. Bellamy complains that such a conception of autonomy is overly demanding and defends instead a conception of democratic equality as the basis for political legitimacy. For Bellamy, the tension between democracy and lies is not as irreconcilable as Newey suggests. Efthymiou responds to Bellamy by defending a modified version of Newey’s thesis. The lies of politicians were a favorite topic of Newey not merely in his philosophical writings but also in his writings as a journalist and blogger. The Blair governments misrepresentations of the facts in the lead-up to the Iraq War – the “Mesopotamian Misadventure”, as he calls it – was a recurrent topic (Newey 2009a).

Kenneth Baynes’s essay tackles another of Newey’s recurrent topics: the clash between secular and religious doctrines. Baynes focuses on debates by

⁴ This issue was central even in Newey’s early work on realism. For the liberal moralists’ response to realism, see Erman, Moller (2015a; 2015b; 2018).

legal and political philosophers, primarily in the United States, who struggle to reconcile the obvious contradiction between the Establishment and Free Exercise clauses of the US constitution – the former requiring governments to ignore religion, the latter requiring them to give it special consideration. Newey himself was skeptical of the ability of philosophers – or normative theory – to reconcile the tensions between religious or ethnic groups. He sometimes liked to suggest that description, an account of the possibilities – such as that undertaken here by Baynes – was the most that could be hoped for in this area.

Newey's skepticism towards normativity is very much in evidence in Newey's own contribution to the present volume, an important essay on political legitimacy which was delivered in Milan in 2016 but is published here for the first time (Newey, this issue, 117-135). Like a number of the essays that Newey wrote in the 2010s, this essay marks a turn towards an even more skeptical thesis concerning political normativity than the one he had defended in *After Politics*.⁵ Political realists have always tended to equivocate on the topic of political normativity. They all agree – almost the very precondition for being counted a political realist – that political normativity (i.e. the action-guiding prescriptions that inform any political theory) must be different from (and cannot be reduced to) moral normativity. The justice business established by Rawls in the 1970s is, they all agree, something to avoid. Yet beyond this point, political realists tend to disagree. Some political realists – most notably Bernard Williams (2005) – want to extract a conception of political normativity from distinctively political values. Williams's "basic legitimation demand" represents an attempt to ground political legitimacy on something thinner, less contestable, than justice, human rights, or liberalism. Other realists – "hyper-realists", as they have been called (Miller 2016, 157) – reject the very idea of political normativity on the grounds that politics is nothing but a field of conflict, disagreement, and power. The troubling implication of the hyper-realist view is that nothing very significant separates legitimate political authority from illegitimate political authority, a distinction effaced by the Weberian fact of successful domination. Hyper-realism results, in short, in a form of relativism.⁶

⁵ See especially Newey (2010; 2018).

⁶ For a discussion of the relativist implications of political realism in general see Erman, Möller (2018).

On the face of it, Newey (like Raymond Guess [2008]) is a hyper-realist. His essay published here deploys the idea of, what he terms, “a power loop” to cast doubt on the appeal to a counterfactual realm of genuinely free and equal citizens that we might imagine to construct our ideas of justice, fairness, or legitimate political authority. For Newey, power can never be expunged. “Justification cannot be what marks the distinction between politics and non-politics”, he argues, “because political life constantly and predictably calls into question, without definitively deciding, whether submitted justifications are indeed legitimating” (Newey, this issue, 118). Newey defends this hyper-realist claim by way of a scintillating dismantling of Bernard Williams’s theory of legitimacy.

It would be easy to come away from a reading of this essay with the view that Newey’s political realism now occupies a barren, valueless terrain where nothing survives but power, conflict, and disagreement. In such a world, politics itself scarcely seems possible. But Newey quite sensibly shrinks away from such a vista. Elsewhere in his writing, he tells us that Hobbes’s state of nature describes a society without politics (Newey 2013, ch. 2). Newey also constantly reminds us that life without coordinating action with strangers is impossible. And he precedes the passage quoted in the paragraph above with the important qualification: “The aim is not to usurp the dominant liberal paradigm with a pallid version of relativism” (Newey, this issue, 118)”. In a sense that qualification will hover over much of his later writings. In my contribution to the present volume, I argue that Newey ultimately avoids full relativism in favor of a conception of politics involving “freedom as undetermination”, which itself seems to presuppose a cluster of substantial liberal rights.

All the contributors that follow Newey’s essay wrestle, in one way or another, with the challenge posed by the hyper-realist strains of his later writings. Enzo Rossi, who is more favorably disposed to realism than many other contributors, sets Newey’s realism in a broader context. Rossi notes that the realist themes of Newey’s later works can be detected in his earliest work, which supports the claim that Newey was one of the first to get the realist ball rolling. On a more substantive note, Rossi takes Newey to task for his skepticism towards anarchism, which Newey alternatively dismisses as either a form of moralism or not a political position at all (since, on Newey’s view, anarchism cannot fulfill the basic political desideratum of coordinating collective action). Rossi argues that there are resources in Newey’s own work for a position that is less dismissive of alternatives to the Weberian state.

Like Rossi, Bistagnino is also interested in the broader context of Newey's political realism. She highlights Newey's contention that the basic political question is not (as Williams claimed) a demand for legitimation, but a question – *what do we do?* Bistagnino notices that this understanding of the political domain had appeared before both in the writings of Carl Schmitt, Hannah Arendt, and – to cite a more recent example – Hanna Pitkin. Understood in its phenomenological context, a description of the political domain in terms of an open-ended question makes a lot of sense. Although neither Bistagnino nor Newey mention it, a similar open-ended conception of politics informs the perspective of the British conservative political theorist, Michael Oakeshott.⁷ In Oakeshott's poetic description of political activity,

men sail a boundless and bottomless sea; there is neither harbour for shelter nor floor for anchorage, neither starting-place nor appointed destination. The enterprise is to keep afloat on an even keel; the sea is both friend and enemy, and the seamanship consists in using the resources of a traditional manner of behaviour in order to make a friend of every hostile occasion (Oakeshott 2010, 234).

The difficulty with all these phenomenological accounts of politics, however, is how to derive any normative position, any critical standpoint, from them. Oakeshott, the conservative, is quite content to reply upon “the resources of a traditional manner of behaviour” to answer Newey's political question about what to do. It is doubtful, however, that Newey himself, not a conservative, would be content to rely upon such resources. Bistagnino complains, quite understandably, that Newey's open-ended question is too open-ended, too underdeveloped, for its own good.

Favara's contribution focuses more specifically on Newey's argument in the Power Loops essay included here. Favara subjects Newey's argument to a close analytical dissection of the sort that Newey himself employed against Williams. She finds implausible his claim that both politics and war are similar, despite their reliance upon force, and calls into question some of his claims about the appropriate relationship between theory and practice. Newey too easily seems to think that clashes of ideology, the life blood of politics

⁷ For a discussion of some similarities between Newey and Oakeshott, see Kelly (2005, 104-105).

as he understands it, are beyond the adjudication of normative theories. Farvava's paper chips away at Newey's position here.

Detlef van Daniels interprets Newey's political positions somewhat more sympathetically than most other contributors. Van Daniels recognizes that Newey's analytical critiques of modern liberal theory tend to focus not solely on their internal contradictions, but their remainders, the people, "the free spirits", left-out. This point leads van Daniels to explore one of Newey's pre-occupations: the tension between a theoretical account of human behavior and human free-will. Free spirits tend to act in ways that are theoretically proscribed. This topic forms a central concern for Newey in his *Rogue Theodicy* (Newey [2015b]). This (as yet) unpublished manuscript includes illuminating engagements with Sophocles' *Antigone*, Plato's *Republic*, and the Biblical Book of Job. Evident in this manuscript, as in much of Newey's work, is an effort to find space for a form of wild freedom – a freedom that, as von Daniels notes, perhaps lies beyond good and evil.

Michael Mosher also notes the presence in Newey's later writings of this wild freedom but thinks that the master concept behind Newey's political theory is a conception of security. Newey certainly wrote a great deal on this topic and lamented the fact that political theorists had never given this concept the attention they had given to liberty and equality.⁸ Like von Daniels, Mosher suggests that the key to unraveling Newey's thought is to situate him in the context of other figures in the history of political thought. Mosher, for example, sees echoes of Foucault and Kuhn in Newey's account of "power loops". Mosher concludes his piece with a meditation on Newey's unpublished *Rogue Theodicy*. Traditional theodicies, Mosher notes, celebrated freedom. Contemporary political theory, in contrast, provides us with secular theodicies gone 'rogue'. Thus in the Rawlsian tradition, political theorists, if we accept Newey's argument, expunge freedom and politics in the name of justice.

My concluding contribution tries to rescue liberalism from some of the charges that Newey has leveled. I focus in particular on Newey's claim – a claim made by other realists too – that liberals seek to suppress politics in the name of morality. Continuing an argument we had many times in person, I

⁸ Much of what Newey wrote on security remains unpublished, but see Newey (2012; 2013, ch. 5).

try to show that Newey is wrong. My argument – the liberal provenance of which I fully concede Newey would hate – takes three forms. First, I argue that Newey himself, notwithstanding some fluttery-eyed flirtations with relativism, is more of a liberal than he likes to acknowledge. This is evident not merely in his celebration of wild freedom but his commitment to freedom as undetermination, a form of negative liberty. Second, I dispute the claim that liberal theories of justice leave insufficient space for politics. And third, I argue that to the extent that politics is suppressed in modern society, this suppression is more likely to take place at the hands of anti-majoritarian institutions, a feature of any complex society, rather than morality.

Let me conclude by way of noting that the contributions gathered here cover a wide range of topics prompted by Newey's voluminous political writings. There is much more that could have been said. Noone, for example, gets to grips with Newey's reading of Hobbes. Nor does anyone take up in any detail his account of security. At the time of his death, Newey left two unpublished manuscripts, a thirty thousand word essay called *Rogue Theodicy* – which some of the contributors here do discuss – and a book-length manuscript called *Eleutheria: Politics as Transformation* (Newey [2015b]; 2017). Hopefully, these and other unpublished essays will soon see the light of day. When all this material comes out, it will become even clearer that Glen Newey's writings contain the strongest defense of political realism currently available. His voice in the continuing conversation of political theory is already much missed.⁹

⁹ I speak for all the contributors in thanking Federica Liveriero, Chiara Bianco and Adriano Boano for their work in putting this volume together. I would also like to thank Ken Baynes and Enzo Rossi for comments and conversations that helped in writing both this introduction and my own contribution to the present volume.

REFERENCES

- Chambers S. (2002), Review of *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy* by G. Newey, *The American Political Science Review*, vol. 96, n. 4, pp. 808-809.
- Erman N., Möller E. (2015a), "Why Political Realists Should Not be Afraid of Moral Values", *Journal of Philosophical Research*, vol. 40, pp. 459-464.
- (2015b), "Political Legitimacy in the Real Normative World: The Priority of Morality and the Autonomy of the Political", *British Journal of Political Science*, vol. 45, n. 1, pp. 215-233.
- (2018), "Political Legitimacy for Our World: Where is Political Realism Going?", *Journal of Politics*, vol. 80, n. 2, pp. 525-538.
- Galston W. (2010), "Realism in Political Theory", *European Journal of Political Theory*, vol. 9, n. 4, pp. 385-411.
- Guess R. (2008), *Philosophy and Real Politics*, Princeton, Princeton University Press.
- Gunnell J.G. (2002), Review of *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy* by G. Newey, *The Journal of Politics*, vol. 64, n. 2, pp. 683-684.
- Kelly P. (2005), *Liberalism*, London, Polity Press.
- Miller D. (2016), "In what Sense Must Political Philosophy be Political?", *Social Policy and Philosophy*, vol. 33, nn. 1-2, pp. 155-174.
- Newey G. (1997), "Political Lying: A Defense", *Public Affairs Quarterly*, vol. 11, n. 2, pp. 93-116.
- (1999), *Virtue, Reason, and Toleration*, Edinburgh, Edinburgh University Press.
- (2001), *After Politics, The Rejection of Politics in Contemporary Liberal Philosophy*, London, Palgrave.
- (2003), "About as Useful as a String Condom", *London Review of Books*, vol. 25, n. 3.
- (2009a), "More Out than on", *London Review of Books*, vol. 31, n. 16.
- (2009b), "John Rawls, Liberalism at the Limits of Intolerance", in S.P. Young (ed.), *Reflections on Rawls. An Assessment of his Legacy*, Routledge, Ashgate, pp. 131-152.
- (2010), "Two Dogmas of Liberalism", *European Journal of Political Theory*, vol. 9, n. 4, pp. 449-465.
- (2012), "Liberty, Security, Notwithstanding", in C. Huskisson (ed.), *Social Cohesion, Securitization, and Counter-Terrorism*, Helsinki, Helsinki Collegium of Advanced Study.
- (2013), *Toleration in Political Conflict*, Cambridge, Cambridge University Press.
- (2015a), "Distinct British Institutions," *London Review of Books*, blog (<https://www.lrb.co.uk/blog/2015/september/distinct-british-institutions>).

- (2015b), *Rogue Theodicy*, Unpublished Manuscript.
 - (2017), *Eleutheria, Politics as Transformation*, Unpublished Manuscript.
 - (2018), “Realism and Surrealism in Political Philosophy”, in M. Sleat (ed.), *Politics Recovered, Realism Thought in Theory and Practice*, New York, Columbia University Press.
 - (2019), “Real Legitimation, Anarchism, and Power Loops”, *Biblioteca della Libertà*, vol. LIV, nn. 225-226, pp. 117-135.
- Oakeshott M. (2010), *Rationalism in Politics*, Indianapolis, Liberty Fund.
- Williams B. (2005), *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, ed. by G. Hawthorn, Princeton, Princeton University Press.
- Wolthuis B. (2016), “Rainer Forst: The Justification of Basic Rights”, *Netherlands Journal of Legal Philosophy*, n. 3.

PRELIMINARY

A relevant part of Glen Newey's work has been devoted to toleration, which is not surprising, given that he studied for his Master degree and PhD at York University where the Morell Project on Toleration was going full speed and where many researches and books were produced, and seminars on the topic organized. *Virtue, Reason, Toleration* (Edinburgh University Press 1999) was his first book, while *Toleration in Political Conflict* (Cambridge University Press 2013) was one of his last. Even in his first book, Newey took a stance on toleration, mainly in the context of moral theory, that was not simply original, but decidedly against the mainstream view. It is however in his second work that Newey confirmed himself as *l'enfant terrible* of political philosophy, starting with his style of reasoning, arguing that when circumstances of political toleration arise, and political decisions are called for, then toleration is already done away and the decisions are all but tolerant. In the last decades, many political philosophers have been engaged in showing how the moral virtue of toleration could be translated into the political virtue (Heyd 1996; Horton, Mendus 1985; Mendus, Edwards 1987; Mendus 1988); others have produced arguments justifying political toleration within liberal theory (Mendus 1989). In such a context, Newey's position stands apart. He contends that a) the move from the interpersonal level to the political is awkward under any political conceptions in the liberal range, b) no general justification for political toleration is tenable and c) political actions concerning matters of toleration result in the substitution of toleration with coercion.

In this paper, I would like to rescue political toleration from the corrosive force of Newey's reasoning, while honoring his memory by engaging in a thorough discussion on his challenging views. Though our respective positions differ widely, we share some insights relative to the conditions for toleration, on the one side, and on the understanding of the circumstances of political toleration, on the other, which are crucial for our respective views, though leading to divergent conclusions. In the first section of this paper, I shall briefly rehearse Newey's view on toleration both as a moral virtue and as a political issue, focusing especially on the problems that toleration encounters in the political realm of liberal democracy. I shall then highlight what I take to be the critical aspects of his view, and in the third part of the article, I shall argue for my response to Newey's challenge.

I.

In *Virtue, Reason and Toleration*, Newey intends to understand how toleration is possible, and how it can be made sense of within moral philosophy, on the one hand, and within political theory, on the other, given the different circumstances giving rise to questions of toleration in the moral life and in the political domain. In a highly analytical style, his inquiry starts with singling out three sets of necessary reasons for toleration to be the case, namely:

"(T¹) T has a reason M¹ for disapproving of R's doing of P" (Newey 1999, 21)

Where T is the tolerator, R the prospective tolerated and P the practice to be tolerated.

"(T²) T has a reason M² for not taking action to prevent R from doing P" (27)

"(T³) T has a reason M³ which in other circumstances justifies preventing actions of which T disapproves" (32).

Such conditions are in line with most analyses of the concept of toleration, and not by chance, Newey says that this structure of toleration is articulated from the *endoxa*, that is from the most common opinions shared by scholars on the theme. (T¹) expresses the primary condition of disapproval for engendering the case for toleration. Here Newey leaves it open what the reasons for disapproval might be, whether moral or not. Also, the formulation of (T¹), does not take a definite side about whether the object of disapproval is

just the practice or also the agent of the practice, an issue which will become relevant in reconciling toleration with equal respect in *Toleration in Political Conflict*. (T²) expresses the reasons for tolerating P despite the disapproval, while (T³) expresses the limits that toleration has, that is the reason why under certain circumstances not tolerating P is required in order to avoid turning toleration from a good thing into a culpable indulgence. Although on (T³) there is disagreement among students of toleration, Newey thinks that it is important to add the constraint to the conditions of toleration for making sense of the fact that no one could reasonably be thought to tolerate the St. Bartholomew's Day massacre (34). After singling out the possibility conditions of toleration, he proceeds to ask in which sense toleration can be morally valuable, and comes up with a view of toleration as a form of supererogation meant to reconcile the two contrasting sets of reason in (T¹) and in (T²) and its non-obligatory, and yet morally admirable, character. In turn, the special value of toleration must render the distinction between an act of toleration whose good is instrumental to other values such as peace, liberty, autonomy, equal respect, and the intrinsic good of tolerance as displayed by someone having the virtue in character of tolerance. In a complex argument criticizing reductionist views on motivations, Newey affirms tolerance as an aretaic virtue, which he argues would dispel the issue of the censorious tolerator that is of the person who disapproves greatly and vehemently, and failing to prevent the disapproved things, results to be more tolerant than less disapproving people are. Conceiving of toleration as an aretaic virtue, Newey can say that the censorious tolerator's motivational states are not in line with the motivations of the virtue in character of tolerance, which implies to be well disposed toward others.

I think that Newey's distinction of tolerance as a virtue in character, as a virtue in action, and of acts of toleration, which may not correspond to the character dispositions of the agent, is a subtle moral distinction, capable of addressing the issue of the tolerant racist or the censorious tolerator, as Newey has it. I find instead less persuasive his idea of tolerance as supererogation. For if acts of toleration were morally admirable and yet not obligatory, it would imply that failing to be tolerant, that is to be intolerant, would be morally neutral, like failing to contribute to a charity or to one's local theater. Yet, intolerance does not seem to be morally neutral but decidedly bad, unless the practice in question trespass on the intolerable, hence M³ reasons kick in as in (T³). True, if the reasons for disapproval are only conceived of as moral

reasons, then the agent has moral reasons to prevent P, which would appear *pro tanto* to be good. The idea is that if the agent acts according to M¹, her not being tolerant is however acting according to one's moral *pro tanto* reasons, and not arbitrarily or wantonly. Yet, I would stress that she has even stronger or exclusionary reasons to suspend interference, so that tolerance is the right thing to do. I hold that Newey's supererogatory thesis, meant to capture the specific moral value intrinsic to tolerance, puts forward a highly moralized view of tolerance, which does not correspond with the garden variety of toleration and intolerance, and does not correspond to Newey's own stress to focus on the social and political pragmatic problems of toleration. If, as I contend, the reasons of disapproval (M¹) can be non-moral as well, and if the reasons for suspending the interference (M²) are thought as either stronger than or, as I would prefer, exclusionary of M¹, then, unless there are M³ reasons in the circumstances defining P as intolerable, toleration is the moral thing to do, and intolerance is morally bad.¹ It may be that toleration is only an instrumental good, if the agent does not display the virtue in character of tolerance, while if she does, then toleration is also an intrinsic moral value. But if we want to characterize tolerance as a social virtue, the latter cannot be understood as a supererogatory act.

Moving now to Newey's analysis of political toleration, a first striking feature is the difference of his reasoning style. Considering toleration in the context of moral philosophy, Newey resorts to a highly analytical style in order to capture the specific value of toleration in contrast with the prevalent moral views (which according to his analysis are reductionist of motivations), and to single out tolerance as a specific moral virtue in character and action. When he moves to politics, he seems to prefer more pragmatic arguments aimed at a) analyzing the specific circumstances for toleration in politics and b) viewing toleration as subject to the many political pressures that, eventually, tend to eradicate toleration either in favor of some other values or in favor of coercion directly. The first important point made by Newey in this respect is that the circumstances of toleration in the political realm of contemporary democracy cannot be equated to those of interpersonal life. For in political

¹ I have argued that reasons overcoming disapproval and yielding to toleration are "exclusionary reasons", as in the definition provided by Joseph Raz (Galeotti 2015, 94; Raz 1990, 35-48).

life the agents, individual or corporate, are not two, the tolerator and the tolerated, but three, for the closing political decision is up to the State. Hence, circumstances of toleration in politics arise when: 1) a party A disapproves of P of a party B. 2) A would like to censor or eradicate P. 3) B opposes A's attempt to suppress P. 4) According to A, P is intolerable, while according to B, A is intolerant. In other words, Newey here remarks that toleration is exposed to the principle of replication, and that the accusations of intolerance are actually circular. 5) If the conflict is not solved deliberatively by the two parties, ending with one of the two tolerating the other, then the state steps in to solve the standoff.

In such circumstances, whatever action the state chooses to take, it is not an action of toleration, for one of the two parties is coerced to give in and either tolerate the disapproved P, or tolerate the suppression of P (Newey 2013, 44). In the end, the coercive power of the state supplants toleration, and the switch from toleration to coercion is inherent to the political circumstances of toleration where the State plays the third party. Toleration cannot go both ways, and, given the replication principle according to which each party sees itself as the victim of the other's intolerance, one of the party will be coerced to tolerate the other. Even if the political action is in favor of self-restraint concerning the contested practice P, it will not be grounded on reasons of toleration but on different values such as social peace, security, public good, etc. Finally, the state, as a third party, cannot be tolerant, for it is not the disapproving party, and disapproval is a necessary condition to endorse toleration.² In order to be tolerant, at all, the State should act as the disapproving party, as it happened at the origin of the history of toleration when absolute sovereigns, disapproving of religious dissenters, had the power to suppress or to tolerate religious dissent. As long as the liberal democratic state acts as a referee, toleration is past its own possible courses of action. A further consideration showing political

² As a matter of fact, Newey speaks both of intransitive and transitive toleration. While transitive toleration implies disapproval, intransitive toleration dispenses with disapproval. Intransitive toleration has been recently argued for by Peter Balint (2016). Newey states instead that his analysis is basically confined to transitive toleration. However, the fact that the possibility of intransitive toleration is also acknowledged could be used to characterize political toleration vs. interpersonal toleration.

toleration as “awkward”³ lies in its potential clashes with other liberal values such as equal respect, autonomy, justice and so on. Equal respect does not sit well with disapproval, which according to Newey is a sign of disrespect. This remark is however problematic for at least two reasons. First, as he acknowledged in the 1999 book, equal respect is often cited as the reason to suspend the disapproval in favor of toleration. The equal respect for the agent leads to toleration of the disapproved practice; in order to work, this argument must rely on the distinction between agents and acts, distinction which is not uncontroversial. Second, even if the distinction between acts and agents is rejected, toleration and respect can easily be reconciled taking into account the two concepts of respect as drawn by Stephen Darwall (1977, 2006) which, instead, Newey does not consider. According to Darwall's distinction, recognition respect is attributed unconditionally to persons as persons independently of consideration of their actual moral contributions and worth, of their moral failure or moral excellence (which are instead objects of appraisal respect). Hence disapproving of someone is compatible with attributing equal respect to her. A further point worth noting of Newey's criticism of political toleration concerns the attempt of many political philosophers to bring toleration into the justificatory structure of liberalism. Such attempt is doomed to failure as well, as Newey argues at length both in his first and in his second book. His main critical target is John Rawls's *Political Liberalism* (1993) whose conception of the political as neutral among the pluralism of the comprehensive conceptions held by citizens is, on the one hand, not neutral about what political matters are, and inimical to toleration for it does away with disapproval.

Summarizing the criticisms that Newey raises against political theorizing on toleration, he picks out: a) a methodological error in downplaying the situatedness of political toleration, in favor of fixing general norms and general justification for toleration in the abstract. b) A general misrepresentation of

³ Newey uses ‘awkward’ instead of ‘impossible’ for two reasons: 1) because ‘impossible’ had been used by other philosophers, most notably by Bernard Williams (1996), and he wants to stress the difference between his and Williams's argument; 2) because ‘impossible’ seems to hint at a theoretical problem, while he wants to stress the pragmatic problems of political toleration. In that sense, there might be instances of political toleration, such as with a permissive policy about drugs, but in that case, toleration is at odds with other liberal values, and with conceptions of the political according to liberal theory.

politics as something defined and circumscribed in advanced, while political becomes any matter which cannot be decided among social parties. c) A too little consideration to the issue of power which is crucial for understanding why a certain issue becomes a political issue of toleration and for understanding the solution to conflicts over toleration. d) Given that political toleration is altogether awkward, and not well reconciled with other liberal values, political philosophers often attempt "to domesticate or tame a value [toleration] that is awkward in the same way that political life is awkward" (Newey 2013, 32) by transforming it in something different such as equal respect, neutrality, justice, democracy.⁴

Even if Newey's analysis seems to suggest that there is no political toleration in proper terms, given that the condition of disapproval does not often apply at the political level, and when it does, political action is rarely guided by proper reasons of toleration, nevertheless he concludes that toleration is politically unavoidable. Yet the toleration surfacing in political realm is not the founding or one of the founding values of liberalism, and does not rely on a stable justification. Rather, it is a value appearing at the interstices of political life, when the state dispenses with using its sovereign power to prevent practices like prostitution or drug use of which it disapproves. And often, in such cases, the reasons prompting political toleration are not reasons of toleration, but pragmatic considerations. Here it is not clear to me why a pragmatic and realistic approach such as Newey's on toleration should draw a distinction between "proper reasons of toleration" and spurious reasons of toleration. First of all, though he often refers to the proper reasons of toleration, he never specifies what they should be, if not the reasons that motivates the person displaying the virtue of toleration in character. Yet, as Newey himself has repeatedly argued, the circumstances of political toleration cannot be equated with that of interpersonal toleration, and, specifically, it is not clear how a corporate agent such as the state can display any virtuous dispositions at all. One thing are the possibility conditions of toleration, which are independent from the circumstances, and which do not establish what M^2 should consist in; quite another is the specific moral value instantiated by toleration, when it is considered as a moral virtue. If the point of Newey's criticism of

⁴ One of the political philosophers attempting to bypass the intrinsic awkwardness of toleration by transforming it in something else is actually me, as noted by Newey (2013, 32).

political toleration is to state that the specific virtue of tolerance does not play any role in the political conflicts over toleration, he is right, but that does not exclude the possibility of toleration under a different, political understanding. At the political level, for example, it is the political value of toleration to be singled out, which I take to be the peaceful and respectful coexistence of different and potentially conflicting practices. Thus, I do not see why a political tolerant stance should be dismissed as tolerant if grounded on pragmatic reasons, or even on *modus vivendi*. When setting down the possibility conditions of toleration, in the first chapter of *Virtue, Reason and Toleration*, Newey acknowledges that both reasons for disapproval and reasons for toleration need not be moral. Then, certainly, when toleration is to be characterized as a moral virtue, such reasons ought to be such that the disposition and the act of toleration can be defined as morally good. Yet, once we move from morality to politics, toleration can be socially and politically good even if grounded on pragmatic reasons and not morally virtuous. In case, it may be less stable. And, once the possibility conditions are fulfilled, we are confronting a case of toleration, no matter how the reasons M^1 and M^2 are filled, as long as they are reasons and not whims or idiosyncrasies.

2.

Newey's reasoning on toleration has a refreshing style and tone, and certainly stands out among the many articles and essays published on the theme in the same span of time. I think that he is right in criticizing the attempt to provide a general justification of toleration from a normative framework of liberal politics, for such attempts usually do not consider the different circumstances of political toleration, and do not attend the tension of toleration with other liberal values. Nevertheless, Newey's approach is much less realistic and pragmatic than he would like to be, for his criticisms stem from a moralized view of toleration, the one he provided in his first book, describing toleration as a moral supererogatory virtue of character. Then he has an easy game to show that such view is at odds in political circumstances, and that the virtue of tolerance cannot be found in state's decisions.

That his underlying view of toleration is, despite himself, a moralized one is proved a) by repeating that only certain kind of reasons count as tolerant reasons, as we have seen just above, and b) his definition of the conditions for

toleration. They include not just the reasons for disapproval and the reasons for not acting on one's disapproval, but also the constraints or the limits that toleration must have to avoid overstepping into culpable indulgence. I could not agree more with him, but adding the constraints to the possibility of toleration implies prospecting a view of toleration as a good thing, for constraints on toleration exclude that preventing criminal acts be considered an instance of toleration. Hence, his third condition implies a normative view of toleration. There is nothing wrong with a normative view of toleration, which I in fact endorse, but Newey seems to reject it along with some other thinkers (Balint 2017). They have recently criticized the moralized view of toleration as a useless theoretical exercise and proposed a purely descriptive concept as an alternative. A moralized view of toleration holds that either or both the *objects* of toleration and the *reasons* for objecting to them and then tolerating them are of moral nature so as to grant the moral quality of toleration as a virtue. I think that, in the moralized view, toleration turns out too restricted, for it does not include objects of mere dislike such as cultural differences, and carries an unpleasant tone of moral condescension toward the tolerated (Galeotti 2001). However, the alternative to a moralized concept of toleration is not necessarily a purely descriptive account. I hold that a normative account is in order to make sense of toleration as a valuable thing, setting it apart from forbearance of what cannot be tolerated, without relying on an unduly restricted moral view. This view seems to be shared by Newey who states: "Toleration is a *prima facie* good, and the lack of toleration is the lack of this *prima facie* good" (2013, 22). Hence I think that the definition should include the (normative) conditions under which toleration *as valuable* is the case, keeping agnostical concerning the reasons why it is a value. Putting up with murder, for example, is not an instance of toleration. Yet, under a purely descriptive definition, there is no way to set apart toleration of the hijab, for example, and connivance with crime. Therefore, the definition of toleration should not only specify what toleration consists in, in terms of attitudes and actions, but also circumscribe the area within which toleration is a value. For outside that area, the same kind of attitude and action is no more 'tolerant' in the proper sense I want to defend, but just 'permissive' and more precisely culpably indulgent. If we do not want to equate toleration with permissiveness or forbearance in general, then the limits for toleration to be a value are constitutive of the concept, which has a descriptive content but which is also inherently normative, though not moralized for neither the objects nor the

reasons of toleration need to be of moral nature. Newey's possibility conditions come close to my view, given that he adds (T^3) that is the reasons M^3 , to suspend toleration under certain circumstances. However, he also thinks that only certain reasons can count as tolerant reasons, excluding pragmatic and prudential reasons. Hence, he seems implicitly to rely on a moralized concept of toleration, despite his intention to the opposite, and I think that it is precisely the reference to a moralized view of toleration that makes him conclude that proper toleration has no definite room in politics.

A crucial aspect of Newey's discussion of toleration in politics is the distinctiveness of the political circumstances of toleration compared to the social intercourse between two social parties. The structure of the problem change moving from the horizontal, two-party dimension, to the vertical dimension: the dislike between two social parties ends up to the state-referee which has to make the final decision settling the conflict. Newey is right in stressing the specificity of the political circumstances of toleration, which prevents from applying the virtue of toleration to political issues. Moreover, he is also right in saying that circumstances of toleration become political if the horizontal toleration between two social agents has failed, and the disapproving party would like to have the practice of the other suppressed, while the other does not intend to practice self-restraint. However, it does not follow from such different circumstances that when the issue become political, and the state is acting 'as a referee' between two social parties, (political) toleration cannot be delivered because the state's decision will be the opposite of toleration, namely coercion. Here Newey is making two different contentions: the first is that the state 'as referee' cannot be tolerant, for its decision will not proceed from disapproval, which is the primary condition for toleration. The second is that whether the state decision is to prohibit the disapproved practice or not, its decision is coercive and will be forced either on the party that claimed intolerance of the practice, or on the other claiming tolerance instead. Thus, political toleration is doubly impossible in the case the state is acting as a referee. In case, political toleration can surface if a) the state is acting as one of the two agents, the disapproving one; b) if neither a prohibition nor a permission of the contested practice is issued, but rather the outcome is an omission to decide, or to put it more clearly, is turning a blind eye (for example on prostitution or drug use). I disagree on both contentions relative to the impossibility of political toleration.

First, I do not see why, if the structure of the question changes from two-party to three-party, toleration should be automatically excluded. Cer-

tainly, the disapproving party could tolerate the contested practice, and that would pre-empt the issue of political toleration. But in case he does not, he must refer to the state to prohibit the practice, for, given the state's monopoly of coercion, no social agent has the power to prohibit or suppress any practice. The state has then to consider whether the disapproval is well grounded, whether the practice is in fact intolerable and, on that basis, whether it deserves toleration or prohibition. The original disapproval of a social party must thus be scrutinized by the state and see whether it is sufficient to define the practice as intolerable or not. Thus, the disapproval is still at the origin of the circumstances of toleration; only in this case, the disapproving agent and the agent who has the power to settle the issue are distinct, and the latter, the state, has to reason from the disapproval and see whether its backing reasons are sufficient for prohibition or not. In the absence of the first party's original disapproval of the practice, the issue would not arise. Certainly, the structure of the problem has changed with the different political circumstances, yet the conditions for toleration – reasons for disapproval, power of interference, reasons for suspension of interference, and limits of toleration – are in place though adjusted to the new three-party structure. This also explains why we all recognize these issues as of questions of political toleration.

Second, obviously the state decisions are coercive, for coercion is entailed by the very definition of political authoritative decisions, backed by the monopoly of force. However, if this very fact would be sufficient to supplant political toleration, then how would we call all the Acts of Toleration issued by the absolute sovereigns in the seventeenth and eighteenth century? They certainly possessed legal force, nevertheless, they granted toleration, that is non-interference with certain religions and their rituals, letting the believers free to practice their faith. In fact, Newey maintains that if the state decides in favor of permission of a certain practice, this practice is no more tolerated, for it has been recognized as having value or embodying universal civic entitlement (2013, 81). Yet, this does not follow: the fact that a practice becomes legally permitted does not imply that any value has been recognized to the practice itself; it is sufficient that it does not infringe on the harm principle.

In sum, I hold not only that political toleration, and conversely political intolerance, are possible, but also that the fights over the public toleration of certain practices have made toleration a newly hot political issue in the public forum and in political theory. If toleration were just a moral virtue, it

would not be discussed outside the community of moral philosophers. Yet, the same conception of toleration cannot work for morality and for politics, and political theorists must provide specific political conceptions, given that toleration is such a relevant political issue.

Newey adds two more claims to his interpretation of political toleration as awkward: a) even if the state's decision is against the suppression or the interference with the contested power, the reasons backing such decision are not tolerant reasons, but reasons of different kind, for public security or public good, for example. b) The intolerance displayed by the disapproving social party is replicated by the intolerance of the targets of the disapproval who do not tolerate the suppression of their practice. In Newey's view, issues of political toleration imply circular accusations of intolerance, given that toleration is subject to the replication problem. In this sense, he states that cases of political toleration are always carrying along the issue of the toleration of the intolerant, which far from being an extreme case is the rule when circumstances of toleration arise in politics. Concerning the claim sub a), I would simply rehearse the argument made earlier relative to the reasons for toleration. If one does not adopt a moralized view of toleration, any kind of reason can ground toleration, from prudential to moral. In case of a standoff between two positions over the toleration of a certain practice, certainly the public authority has the wish to settle the question and regain social peace. Yet the solution cannot be derived by this motivation alone, for the decision in one direction or in the other must be publicly justified and with arguments from toleration. In the political decision, very likely considerations of power, of the relative power of the two parties, will be present, yet the public presentation should refer to the reasons for interference or non-interference, that is reasons for or against toleration, and the public phrasing constrains the possibilities of the coercive power of the state. Besides, in a democratic regime, the political decision will be subject to public discussion, and many critical arguments will be advanced in the public forum and in the academic milieu, so that at the end the decision may be reversed, thanks to the successful arguments in the public forum. Even though the reasons backing a political decision on questions of toleration are usually mixed, as all political decisions are, reasons for or against toleration play definitely a crucial role, and go on playing a role in the following public debate if the political decision is not capable to settle the issue. It seems to me that Newey's insistence that political decisions for non-interference with a certain contested practice are not tolerant reasons

and that the state action or omission is not toleration follows from his view of toleration as a distinctive moral virtue. In the political reality, though, if the state decides to refrain to act on the disapproval of a social party for whatever reasons, it acts or omits to act in a tolerant way, especially if compared with the alternative, though it may not be a display of the virtue of tolerance. I think it strange that a supporter of political realism insists on the purity of tolerant reasons for a political outcome to count as tolerant.

Concerning the claim sub b), this seems to me the most corrosive argument advanced by Newey for if true, it would make toleration hostage of partisan politics, to be settled only by contingent political decision, but useless as a theoretical concept and a normative ideal in politics. If toleration, as Newey contends, is subject to the replication problem, then the accusations of intolerance are necessarily circular, making political toleration, as far as it is possible, always a case of toleration of the intolerant, for both parties involved in a conflict of toleration are intolerant of the other. At that point, political toleration is not awkward, as Newey has repeatedly affirmed, but rather a rhetorical appeal to an utterly useless ideal. If the possibility conditions of toleration are not symmetrically matched by the possibility condition for intolerance, then toleration may remain a virtue of the character, but should be given up in the social and political realm, and substituted by some concept free from the circularity allegedly attached to toleration. To this allegation, I shall respond in the next section, with an analysis of intolerance, intolerable and response to intolerance, which are meant to break up the circularity pointed out by Newey. Here I like to make some final remarks on his view, starting with pointing out that the corrosiveness of Newey's critique of political toleration specifically derives assuming a moralized view of toleration, at odds with the circumstances of political toleration, as he rightly acknowledges. The fact is that the latter would require developing a specific political conception of toleration where the conditions for toleration match the appropriate circumstances, making sense of judgements such as "the French Stasi ruling is not a tolerant one".⁵ Adopting a less demanding view of toleration in politics, one needs not do away with toleration altogether.

⁵ I am here referring to the disposition enacted in France in 2004 relative to the banning of ostentatious religious symbols in public place and specifically in state schools, which settled a long controversy over the use of hijab at school, erupted back in 1989 (Galeotti 1993).

A final remark on the issue of power. Newey is very keen of underlining the power condition and the circumstances of power for toleration, which he holds have been downplayed in the liberal literature on toleration. However, he does not consider the asymmetrical power of social parties, as an important circumstance of political toleration. First, when we move from the interpersonal level to the social and political domain, issues of toleration erupts and becomes political issues only if groups are involved, not individuals, usually groups asymmetrically situated (Galeotti 2002). If the disapproving social party has the power to contain the other group, concerning the disliked practice, then the issue of toleration does not arise; in turn, the other group must be willing and capable to resist the imposition in order for a conflict to arise calling for political settlement. If the relative power of social groups involved in issues of toleration is duly taken into account, toleration conflicts appear to concern not just the disapproval of different practices, but also the relative public standing of the two parties, and the control of the disapproving party over social standards (Galeotti 2017). The consideration of the different stakes in the standoff between the two social parties provides an interpretation of the issue of political toleration less idealized, and closer to the actual real complexity, making sense of the disapproval outside morality and in the language of power. That does not imply that the solution of the standoff must dispense with using the normative guidelines of a theory of toleration.

3.

In this last section, I shall try to respond to Newey's most formidable criticism, naming the replication problem of toleration and the consequent circularity of accusation of intolerance. I shall argue that drawing theoretical distinctions between toleration, intolerance, responses to intolerance and intolerable will help breaking down the vicious circle and reinstating toleration as an analytical and normative category. I shall start with a brief rehearsal of the core concept of toleration and of its main conceptions.

I hold that toleration is a concept articulated in different conceptions. While there is an ongoing debate about which conception is the most suitable for addressing certain issues, there is basic agreement on the concept of toleration despite the fact that it is spelled out differently by different authors

(King 1976; Newey 1999; Cohen 2004; Forst 2013). Briefly, the core features of the concept of toleration are: 1) agent A's dislike of agent B's views, codes, or convictions. 2) A's wielding of some power of interference with the difference in question. 3) A's withholding of such power in favor of leaving B free to live by and pursue her ideals, 4) within the limits of self-defense and of harming others.⁶ Toleration, as a relevant social and political category, applies in a context of religious, moral and cultural pluralism where social differences do not harmoniously combine and social groups disagree about what counts in life and how one should live. There is no toleration if there is no original dislike, be it moral disapproval or non-moral objection, and if such dislike is not eventually overcome in favor of non-interference, despite the possibility of intervention. Yet, overcoming one's dislike and not acting out of it can be said 'tolerant' only within the limits fixed by the principle of self-defense and of harm to third party.

The different conceptions of toleration then organize, and partly readjust, these core features according to two criteria. The first criterion pertains to the reasons justifying toleration, which can vary from *modus vivendi* to equal liberty, and equal respect. The second concerns whether toleration applies horizontally, among individuals and groups, or vertically, directed by the state or political institutions at certain groups of citizens. While the concept of toleration spells out the general features that any instantiation should have in order to be recognized as toleration, set apart from indifference, acquiescence and culpable indulgence, the conceptions of toleration specify why toleration is a value, for what reasons, and in what setting. I am now going to consider three conceptions of toleration as illustration of how the varying justifying reasons and the horizontal or vertical dimension affect the resulting conception (Galeotti 2015). I shall start with the social virtue of toleration, and then proceed to the liberal model of toleration and to toleration as recognition.

The conception of toleration as a *social virtue* articulates the core concept in the horizontal relationship of two social parties, one of which objects to the other's conduct (or convictions, or lifestyle), but withholds the possibility of interfering, choosing to tolerate the disapproved or disliked conduct.

⁶ Although Glen Newey acknowledges the limits of toleration as part of the possibility conditions for toleration, he never mentions, let alone discusses, the harm principle, which may represent one of the tool to break down the circularity of accusation of intolerance.

The reasons why the tolerator decides to withhold his power of interference, then, characterize the social virtue of toleration either as negative, if based on instrumental and pragmatic reasons, or positive, if backed by moral considerations.⁷ The social virtue thus bifurcates in two further conceptions according to the type of justification for toleration.

While toleration as a social virtue applies horizontally, the liberal conception of toleration is vertical and addresses the relationship between the political authority and citizens. The move from the horizontal to the vertical dimension changes the structure of the problem and implies a readjustment of the core features: the problem still originates in the dislikes among different social parties, but, in this case, the decision to intervene or tolerate the object of dislike resides with the political authority, which has the monopoly of coercion. Hence, a horizontal dislike between two social parties gives rise to a vertical decision for or against toleration. In this way, the parties involved are at least three: the objecting party, the objected party and the political authority, which has the power and will settle the question in favor or against toleration. The core features – dislike, power to interfere, suspension of interference, within the limits of toleration – are all in place, but it is the state which has the capacity to intervene or not on the ground of agent A's dislike.

Within liberalism, the principle of political toleration recommending political non-interference with religious and moral convictions of people, if there is no disruption for law and order, is generalized in equal liberty rights. Accordingly, liberal toleration is justified by the principle of liberal neutrality. The ideal of neutrality addresses disagreement and dislike over religious, moral and cultural difference by granting equal liberty to all, without judging the content of the dispute, as long as the harm principle is not violated. The state thus requires toleration of its citizens in their reciprocal relations, that is, it requires that citizens withhold their disagreement and respect each other's liberty. The political duty to tolerate each other is compatible with either social tolerance or with acquiescence with the state requirements, according

⁷ Within the discussion on toleration, negative tolerance as forbearance and non-interference has been opposed to positive or affirmative tolerance as acceptance (see for example Apel 1997 and Zolo 1997). I have instead argued that toleration is always non-interference, but that the varying reasons for non-interference confer a negative or positive meaning to the act respectively (Galeotti 2015).

to whether citizens adjust their internal dispositions with the civic duty to tolerate disliked practices.

Newey contends that neutrality cannot ground toleration, because the condition of dislike is precisely absent in the neutral attitude of the liberal state (Newey 1999, 123-127). Yet, he does not consider that neutrality of the state is the response to the conflict among social differences and to the dislike of one group toward another. In the circumstances of political toleration, the disapproving agent is not the agent choosing non-interference, because only political authority possesses the power to prohibit any practice. Neutrality is rather the reason backing political toleration in the form of equal liberty rights. Political toleration implies precisely that a social dislike is dealt with by a political decision to withhold the dislike, within the boundary of the harm principle, because of the principle of neutrality.

Lastly, toleration as recognition relates both to the vertical dimension and to the horizontal dimension, and in the vertical dimension is meant to supplement liberal toleration in the circumstances of contemporary pluralism (Galeotti 2002). In contemporary democracy, where liberty rights are enshrined in constitutions, it would seem that significant questions of toleration were preempted. Yet they still arise, from veil wearing to places of worship, from gay marriage to religiously dietary restrictions. These contemporary issues are special because a) they explicitly concern *public* toleration and b) they imply a claim to recognition of the contested differences. The standoff is usually produced by social majorities demanding that practices perceived as being at odds with the host society's principles and customs be restricted, contained, and rendered invisible, and symmetrically, by minorities claiming public toleration of their practices and political protection against offenses, humiliation, and discrimination. There is more than equal freedom at stake: there are asymmetries of power deriving from the social standing of different groups and defining inclusion in, or exclusion from, society, with significant political implications. The principle of neutrality is not sufficiently sensitive to perceive the struggle over exclusion/inclusion underlying issues of toleration. Neutrality does not see that the public space is not difference-free, but populated by the majority's customs and conventions, and that difference-blind politics runs the risk of reproducing existing exclusion, for not all members of society enjoy the same freedom to follow their convictions and lifestyles, and such asymmetries in freedom correspond to asymmetries in inclusion. Beyond toleration in the sense of equal liberty for minorities, here at stake

there is the recognition of minority members, with their different practices and customs, as equal members of the polity worthy of the same respect as members of the majority. In this sense, it is important that the difference in question not only is not prohibited, but also receives *public* toleration, and for the *right reasons*, meaning the recognition of its legitimate presence in the public space. Liberal neutrality tends to bracket all social differences together as equally irrelevant politically, thus obscuring the asymmetries among social differences and their implications in terms of inclusion in the polity. Toleration as recognition intends to overcome this specific blindness, by making room for all social differences (within the bounds of the harm principle), while yet reaffirming the principles underlying liberal neutrality, that is non-perfectionism and impartiality.⁸ For the public recognition of a social difference implies its recognition as a legitimate option of the pluralist society. But it does not imply a substantive evaluation of that difference as good and worthwhile; liberal institutions must not abdicate from their non-judgmental, non-evaluative, impartial stance: toleration as recognition does not imply taking sides. In this respect, toleration as recognition is neither *permission* nor *acceptance*, since liberal institutions are not entitled to forbid or accept, let alone embrace, anything within the bounds of the law, but *legitimization*: a public declaration that a given practice, if it does not infringe any right, is a legitimate option among others. The literal meaning of toleration does not change from liberal toleration to toleration as recognition, but the symbolic meaning does, for the reasons in favor of toleration are not negative, but positive. The difference in question is tolerated not because it does not infringe the harm principle, but because it contributes to fully include the bearers of that difference. The legitimization of the public presence of a difference then brings along an accommodation in the social practices and a revision in social standards so as to make room for the difference in question and for its bearers (Galeotti 2008). Newey would say that toleration as recognition is turning the awkwardness of toleration into a neater principle than toleration

⁸ I like to stress that toleration as recognition is an extension of liberal toleration, within the same normative framework of liberalism. In that respect, it may sound misleading to talk of the conception of liberal toleration. I use such label for that is the standard view in the liberal tradition, while toleration as recognition is not. I would add that the standard view, focused on the principle of neutrality, is not uncontroversially acknowledged as a conception of toleration, which is instead my position.

itself. Yet, I think that social conflicts over disagreement are what characterizes political toleration, and whatever the backing reasons are – equal liberty, equal respect, public recognition of differences or prudential motivations – if the political decision is for non-interference, then we are confronting a case of political toleration.

To sum up, the three conceptions of toleration supplement each other, depending on the circumstances of their application and the issue at hand. The social virtue of toleration applies horizontally among social agents, and according to the reasons backing the choice for toleration may mean either 'putting up' or 'accept out of respect'. This conception however is inadequate as a political principle because in politics the primary condition of dislike or disapproval pertains to a social party, while the decision to refrain from interference or not is up to democratic authority. In other words, political toleration, either according to the traditional liberal model or to toleration as recognition, resolves a social conflict engendered by the objection of one social group toward the difference of another. The two vertical conceptions differ concerning their backing reasons and their symbolic meaning. Which is the most adequate depends on the issue at hand: whether it has to do just with equal liberty or whether it has to do with equal respect and equal standing in the polity as well.

Let us now move to what is intolerable and what is intolerance. As said, toleration is a value, both as a virtue and as a political principle, only within limits, as generally acknowledged, for 'toleration' of murder or rape is certainly not a value. Beyond its limits, toleration turns into culpable indulgence of conducts and practices that are 'intolerable'. In the doctrine of toleration, the self-defense of the political and social order, coming from Locke ([1685] 1991), and the harm principle, coming from Mill ([1859] 1972) represent the two, widely shared boundaries separating objects for toleration from what is intolerable. While the two principles are uncontentious, what counts as a threat to the social and political order, as well as what counts as harm is a matter of ongoing controversy (Forst 2013, 369-370; Cohen 2014, 36-54). Without getting into this discussion, I here assume the two limits in their bottom-line definition, which no one can reasonably rejects. That is to say, I take that harm is any violation of other people's bodily integrity, their liberty and their property. Similarly, I take that self-defense kicks in when actual threats to law and order are the case, such as terrorist attacks. The two limits of self-defense and harm to others qualify acts trespassing on

them as 'intolerable'. Consequently, the response to the intolerable should be non-toleration of those very acts. The non-toleration of murder or rape, however, is not 'intolerant', for the prosecution of crime is mandated by the rule of law, and not ascribed to disapproval or disagreement between social parties. The response to the 'intolerable', to whatever has infringed the limits of toleration, is therefore not an intolerant act even though it implies the non-toleration of the 'intolerable'.

What is then intolerance? First, intolerance properly applies to the same domain of objects for which toleration is in order. Intolerance is to be detected within the scope of what can be tolerated, and it is a value to tolerate. It does not apply to what trespasses on the limits of toleration: thus one can be tolerant or intolerant of vegetarianism, but she cannot be said to be tolerant or intolerant of rape. Imposing a meat-based menu in a cafeteria is an intolerant act towards vegetarians, while prosecuting rape is the proper response to the intolerable. In this way, we have in principle drawn a clear line between intolerant acts and proper responses to intolerable acts. This distinction is important descriptively, but it has also very important political implications. Since in liberal democracy, being tolerant is generally considered a value, while being intolerant is generally disapproved, then agents tend to present their intolerant attitudes as responses to the intolerable, for in that case they would be justified and not at all intolerant. Yet, such justification is valid only if the object in question oversteps the limits of toleration, hence it is justifiably defined as intolerable. In this case, I think that conceptual analysis can help dispelling the fog of political rhetoric.

What constitutes an intolerant act within the boundaries of the tolerable? The answer is not obvious for lack of toleration may depend on indifference or acquiescence, and requires going back to the concept of toleration. The core concept of toleration comprises both an *original objection* by a social agent with some power of interference and the *suspension of that objection*. If there is no original objection, there is no case for either toleration or intolerance. Intolerance follows from the original objection. More precisely, intolerance is the case when social party A, endowed with some power of interference, objects to some difference x of party B and, instead of suspending the objection in favor of toleration, *chooses to act on that very objection*, even if x does not infringe the limits of toleration.

Contrary to what Newey maintains, toleration is not subject to the replication problem for we have the theoretical means to set apart accusations

of intolerance from responses to intolerance, beyond the contentions of the involved parties. Attitudes and behavior that are intolerant, implying the *non-suspension* of the *original objection*, can be set apart from attitudes and behavior that are *responses to intolerance*, that is, acts of resistance to the interference with one's convictions and lifestyles by another party. If the KKK, out of its dislike of non-white people, organizes a racist demonstration, displaying all the symbols of white supremacy and exercising its power of intimidation, this is a display of intolerance, of a dislike openly exhibited with the purpose of intimidating. If African-Americans protest against such a demonstration, which targets them as a racial group, their claim to stop such racist displays is not intolerant, but, more properly, is the response to intolerance. Similarly, those who object to the construction of mosques, and pour pig's blood on the building site, are acting intolerantly, whereas Muslims protesting against such behavior are resisting the intolerance directed at them. The line between intolerance and response to intolerance is thus based: a) on the decision to act on the original objection instead of withholding it, on the one hand, and on the response to the interference with one's convictions and customs on the other; b) on the content of the objection, whether it concerns the convictions, way of life, and customs *of the other party*, or whether it concerns the rebuttal of the attack on *one's own* convictions, customs, and way of life. Resistance to the attack and defense of one's convictions and lifestyle cannot be equated with the intolerance of those who, disliking those convictions and lifestyle, act in order to penalize them. For example, the aggressive display of homophobic attitudes is intolerant of the sexual orientation of gays and lesbians; in contrast, the gay pride parade is an affirmation of the legitimacy of homosexual orientation, and not an attack on the heterosexual lifestyle. Those who protest against the gay pride in fact claim that the gay display in the parade offends, hence harms, their convictions and pollutes the moral fabric of society, hence it is *intolerable*.⁹ Yet, if we allow such a stretching of the limits of toleration, the room for personal liberty of minority groups would be unduly reduced and equal liberty of all would be undermined. For, heterosexuals would be free not only to follow their sexual orientation, but

⁹ A well-known debate over the intolerability of homosexuality and the problematic consideration of offences as harm took place in the sixties between Lord Devlin (1959) and Herbert Hart (1962).

also to limit the correlative freedom, and hence the public consideration of homosexuals. Thus, there are good reasons to stick to the bottom-line definition of the limits of toleration provided above. Summarizing, there seem to be two conditions for intolerance: a) the original and non-suspended objection; b) the other-regarding nature of the objection. By contrast, the response to intolerance is characterized by a) being the counter-objection to a previous objection targeting the respondents, b) being self-regarding.

In sum, when we are confronting acts harming other people or threatening the security of the political order, we are confronting the 'intolerable' and toleration and intolerance are likewise beside the point. If we consider instead practices, conducts, convictions, which are not violating any right, but are the object of moral and social disagreement, this is the area where indifference, acquiescence, toleration, intolerance and, lastly, response to intolerance are all possible attitudes and types of conduct. Displays of social intolerance are often translated into political claims for the prohibition of the contested practice or conduct, for a social party can socially sanction a disliked practice, but has no power to prohibit it. Such a claim is usually phrased presenting the disliked practice as intolerable, overstepping the limits of toleration, given that no social party likes to be defined as intolerant, by means of a stretching of the notion of harm. Symmetrically, responses to intolerance usually lead to claims for the public toleration of the practice. A horizontal issue is thus translated into a vertical issue of toleration requiring political settlement, and usually the public controversy revolves on whether the conduct or practice that is the object of dislike or disapproval can be defined as intolerable or not. The almost exclusive focus on the intolerable, on the one hand, has induced an excessive stretching of the notion of harm and self-defense, while, on the other, it has prevented from seeing certain claims as bluntly intolerant. The solution of such conflicts over toleration may be difficult in practice for a variety of contingent reasons; yet, theoretically it is not difficult to draw a line between, say, those who are intolerant of homosexuality and would like it to be legally proscribed, and those who resist and respond to this claim. If the political decision is against prohibiting homosexuality, that decision cannot be interpreted as intolerant of the disapproving party, nor as a case of tolerance of the intolerant, as Newey contends. For both his contentions rely on the idea that intolerance is displayed by both parties involved in a conflict over toleration, both the original disapproving party and the party that is the target of disapproval. His reading does not seem right in more

than one respect. First, it does not consider that the target of disapproval and of social sanctions would not have anything to disapprove had it been left alone. Second, it does not take into account that if the object of either tolerance or intolerance is practice P, toleration implies a basically asymmetrical relationship between those who object to P and those who practice P. Finally, it does not consider the other-regarding nature of the original objection versus the self-regarding nature of the resistance to intolerance. In sum, the supposed circularity can easily be broken down by available and clear criteria establishing who is being intolerant and who is resisting intolerance.

CONCLUSION

Newey contends that political toleration is awkward and that its room is just in the interstices of democratic states' action. His position depends on his argument on political circumstances of toleration, which are different from those of interpersonal relations and makes political toleration as a general policy of democracy impossible. I have argued that Newey is right in drawing a clear distinction between the circumstances of toleration in social intercourse and in political relations. Yet, contrary to what he thinks, I argue that this difference should lead to different conceptions of toleration, according to whether it applies horizontally or vertically. The core features of the concept of toleration are present in either case, though they require some adjustments when moving to the three party circumstances proper of the vertical dimension. He moreover contends that political decision settling issues over toleration of a contested practice are never tolerant, grounded on tolerant reasons, but coercive and grounded on some other reasons. No one denies that state decision are coercive, and yet a clear distinction can be traced between decisions in favor of permitting the contested practice and decisions prohibiting the same very practice. Adopting Newey's perspective, both kinds of decision are coercion, and yet they are not the same and impact citizens in a very different way. Lastly, he claims that in a political conflict over toleration, the accusations of intolerance are circular, and in fact both parties are intolerant, so that the toleration of the intolerant represents the usual political issue over toleration. I have rebutted this claim, by showing that, in principle, clear criteria for setting apart toleration from intolerance and intolerable are available through conceptual analysis. Such criteria enable us to understand

the standoff over toleration: the claim for intolerance, usually phrased in terms of the intolerable, on the one side, and the resistance to intolerance on the other, usually phrased as a claim for toleration. Conceptual clarification and clear criteria help making sense of conflicts even if they do not dispel the messiness of political reality, and do not provide clear-cut responses for any actual issue over political toleration. Yet, doing away with any political theory of toleration leaves room only to power struggle, depriving one of any capacity for justified criticisms and alternative perspectives.

REFERENCES

- Apel K.O. (1997), "Plurality of the Good? The Problem of Affirmative Tolerance in a Multicultural Society from an Ethical Point of View", *Ratio Juris*, n. 10, pp. 199-212.
- Balint P. (2017), *Respecting Toleration*, Oxford, Oxford University Press.
- Cohen A.J. (2004), "What Toleration is", *Ethics*, n. 115, pp. 68-95.
- (2014), *Toleration*, Cambridge, Polity Press.
- Darwall S. (1977), "Two Kinds of respect", *Ethics*, n. 88, pp. 39-49.
- (2006), *Respect and the Second-Person Standpoint: Respect, Morality and Accountability*, Cambridge (MA), Harvard University Press.
- Devlin P. (1959), *The Enforcement of Morals*, Oxford, Oxford University Press.
- Forst R. (2013), *Toleration in Conflict. Past and Present*, Cambridge, Cambridge University Press.
- Galeotti A.E. (1993), "Citizenship and Equality: The Place for Toleration", *Political Theory*, n. 21, pp. 585-605.
- (2001), "Do we Need Toleration as a Moral Virtue?", *Res Publica*, n. 7, pp. 273-292.
- (2002), *Toleration as Recognition*, Cambridge, Cambridge University Press.
- (2008), "Toleration as Recognition: The Case of SameSex Marriage", in I. Creppell, R. Hardin, S. Macedo (eds), *Toleration on Trial*, Lanham, Lexington Books, pp. 111-129.
- (2015), "The Range of Toleration: From Toleration as Recognition back to Disrespectful Tolerance", *Philosophy and Social Criticism*, n. 41, pp. 91-110.
- (2017), "Cultural Conflicts: A Deflationary Approach", *Critical Review of International Social and Political Philosophy*, n. 20, pp. 537-555.
- Hart H.H. (1962), *Law, Liberty and Morality*, Oxford, Oxford University Press.
- Heyd D. (ed.) (1996), *Toleration: An Elusive Virtue*, Princeton, Princeton University Press.

- Horton J., Mendus S. (eds) (1985), *Aspects of Toleration: Philosophical Studies*, London, Methuen.
- King P. (1976), *Toleration*, London, Allen & Unwin.
- Locke J. (1991) [1685], *A Letter Concerning Toleration*, ed. by J. Horton, S. Mendus, London, Routledge.
- Mendus S. (ed.) (1988), *Justifying Toleration: Conceptual and Historical Perspectives*, Cambridge, Cambridge University Press.
- (1989), *Toleration and the Limits of Liberalism*, London, Macmillan.
- Mendus S., Edwards D. (eds) (1987), *On Toleration*, Oxford, Oxford University Press.
- Mill J.S. (1972) [1859], *On Liberty*, London, Dent.
- Newey G. (1999), *Virtue, Reason and Toleration*, Edinburgh, Edinburgh University Press.
- (2013), *Toleration in Political Conflict*, Cambridge, Cambridge University Press.
- Rawls J. (1993), *Political Liberalism*, New York, Columbia University Press.
- Raz J. (1990), *Practical Reason and Norms*, Princeton, Princeton University Press.
- Williams B. (1996), “Toleration: An Impossible Virtue?”, in D. Heyd (ed.) (1996), *Toleration: An Elusive Virtue*, Princeton, Princeton University Press, pp. 18-27.
- Zolo D. (1997), “Positive Tolerance: An Oxymoron”, *Ratio Juris*, n. 10, pp. 247-251.

Rainer Forst

**Toleration, Power and Reason:
Continuing a Dialogue with a
Political Realist Friend¹**

Glen Newey is greatly missed in today's world of political theory, since his voice was one of the strongest, most original and brilliant (and wittiest) in the discipline. I miss him especially as a dear friend endowed with a great sense of humor and a taste for irony and occasional sarcasm, and as a partner in philosophical dialogue, especially when it comes to the topic of toleration which was an interest we shared and often brought us together (and divided us philosophically). Over the years, ever since his first book on toleration, *Virtue, Reason and Toleration*, appeared in 1999, we had endless debates about this topic, and the trajectory of his thought between that book and the more recent (2013) one, *Toleration in Political Conflict*, would be a topic for a whole article. Glen did not start out as the realist Hobbesian-Schmittian he became over the years. His first book is heavily Aristotelian, arguing for toleration as a virtue of character stressing supererogation, although one can already see the later Newey, with his skepticism concerning political justification, glimpsing through.

In my following (very) brief remarks, I would like to address what I consider the fundamental issue at stake between Newey's and my own approach – namely, assuming we agree (as we did) that toleration is a concept that cannot rise above political struggles and power plays, how should we react to this as theorists?

¹ I presented these thoughts at the Memorial Symposium for Glen Newey in Leiden in August of 2018. I have not changed their dialogical character, in honor of a friend who loved fast and sharp conversation.

Glen held a clear view on this question. Not unlike Thrasymachus, he doubted that there could be any normative factor – of morality, of reason, or what have you – that could elevate us above the power struggles and normative arbitrariness of political life. As he writes in *Toleration in Political Conflict*: “Perhaps political actors can be brought within some entirely general scheme of justification. But it will not be adequately supported by norms that abstract from the actors’ circumstances and then pronounce what they should accept, or would accept in some extravagantly contrary-to-fact situation”.²

In my own book with almost the same title, *Toleration in Conflict*, I agree with this to a certain extent.³ Considering the struggles over toleration that have taken place since antiquity, I agree that they are part and parcel of highly contextual power and language games. But I pursue Frankfurt-style critical theory, and thus for me the historicist emphasis on contingency and the relativist stress on the normative arbitrariness of politically defined terms are just variants of a view that I call positivist, namely, one which need not completely abstain from taking an evaluative stance toward its subject (as extreme positivism advocates), but cannot provide a sufficient normative rationale for that very stance (what I call “normative positivism”, sometimes referred to as “realism”). In short, it cannot explain how its own perspective can be justified. And this is where my theory comes in, because it both reconstructs the historical justifications that have been given for toleration (25 in many variations) and takes the principle and right of justification itself as the ground for a conception of toleration that I regard as superior to the others.

Let me begin by explaining the points on which Glen and I agreed. We agreed that the concept of toleration, which involves the promise of being able to live with deep ethical differences without being able to resolve them, is itself part of such conflicts and not their neutral counterpart – descriptively speaking, as I would have added, though Glen would not. While some consider a ban on right-wing political activities to be a legitimate reflection of the limits of democratic toleration, others regard this as intolerant. While some people tolerate burqas, others consider them to be intolerable for different reasons. Some are in favor of tolerance toward same-sex partnerships, but do not think that they should be accorded equal rights – others see this as intolerant and repressive.

² Newey 2013, 6.

³ Forst 2013.

Thus, it is not only a matter of controversy how far toleration should go. Some of the examples cited also raise the question of whether toleration is even a good thing, because, on the one hand, it can go too far and, on the other, it can legitimize the denial of equal rights. Is toleration even the mark of an asymmetrical policy or a refined form of domination involving the disciplining of minorities, following Kant's dictum that the name of tolerance is "arrogant," or Goethe's saying: "Tolerance should be a temporary attitude only; it must lead to recognition. To tolerate means to insult"?⁴ Such entanglements of toleration and power are some of the themes that interested both Glen and myself.

We also agreed that, conceptually speaking, toleration involves three components (following Preston King): objection, acceptance and rejection.⁵ We disagreed over whether the tolerating agent necessarily needs to be in a position of power, as Glen thought, or whether, as I believe, one can also be intolerant without being in a position of power (as, for example, Ayatollah Khomeini was before the revolution in Iran). The task of toleration, as a reflexive social practice, is to establish the correct normative order among these three components. The associated reasons can have different origins. All three can have religious sources, such as when one objects to a different religion as false, but tolerates it in the spirit of peace until it leads to blasphemy. The reasons in question can also be of different kinds, however, such as when a religious objection speaks against a certain practice while acceptance as well as rejection reasons appeal to human rights (of religious liberty for acceptance and bodily integrity for drawing the limits, for example). To be sure, these reasons do not reside in the concept of toleration itself; tolerance is a virtue that is dependent on other normative resources. This was also a point of agreement between Glen and me.

But then we parted company. For while I suggested that we should distinguish between various conceptions of toleration, Glen was skeptical, because he thought that I was trying to make room for a conception he took to be chimerical in the sense of the above quotation, namely, one which assumes a normative level of justification to some extent above the conflicts over justification. This is a charge to which I plead guilty because I see no alternative if

⁴ Kant 1996, 21; Goethe 1999, 116 (tr. altered).

⁵ Forst 2013, §1.

our aim is to argue for a conception of toleration that is normatively justifiable in an impartial or rational way. In my view, this is what the whole critical project of a philosophy of toleration is about.

The first conception of toleration I call the permission conception.⁶ It can be found in the classical toleration laws, such as in the Edict of Nantes (1598) or the English Toleration Act (1689). Toleration on this conception is a generous, but also an authoritarian, attitude and practice that permits minorities to live according to their faith – albeit within a framework prescribed unilaterally by the permission-granting side. The tolerated are marked and indulged as second-class citizens, and hence rely on the protection by the monarch (and the dominant church). This is the (vertical) notion of toleration that Goethe and Kant have in mind in their critiques.

But there is more to the story. In modern times, a contrasting horizontal conception of toleration develops in the course of the long history of democratic revolutions – the respect conception. The key idea underlying this conception is that toleration is an attitude of democratic citizens toward each other, which means that “the state” is no longer the agent of toleration, as Glen noted in his discussion of my view.⁷ Democratic citizens are aware that they disagree on central issues of the good and proper life, yet still accept that their shared institutions must be based on norms that all can share as free and equal persons and are not simply stipulated and legislated by the system of values of one group that the others can reasonably reject. The objection components remain part of the space of definitions of individuals or their communities, but the components of acceptance and rejection are defined in a reciprocal and general process of public justification. Tolerance is the virtue of tolerating beliefs and practices with which one does not agree, but which do not violate any principles that reflect the equality and freedom of all. The person of the other is respected; his or her convictions and actions are tolerated. The state aims to be neutral with respect to reasonably rejectable values (though not with respect to general moral norms) and it requires the citizens to be tolerant in that sense.

It was one of the greatest seventeenth-century thinkers, Pierre Bayle, who captured this normative logic of toleration best. According to Bayle, if both

⁶ See Forst 2013, §2.

⁷ Newey 2013, 99.

parties to the internecine religious conflicts in France of his time insisted that their ideas should apply to everyone and be dominant, then any crime could be portrayed in principle as a pious deed. Against this he argued that human reason must be able to find a language in which an injustice can actually be called an injustice – for example, the injustice of forced conversion or of expulsion or torture. If such impartiality, informed by the real horrors of social life, is not possible, toleration can never be more than permission or a *modus vivendi* – and thus is prey to the arbitrariness of contingent social forces and power relations.⁸ We would be mistaken if we optimistically believed that in our democratic age we had overcome the former conception in favor of the latter – the contrary is the case. Many contemporary disputes involve conflicts between proponents of both conceptions, and the permission conception reappears in a majoritarian guise. While some people, for example, think that minarets and mosques should be tolerated provided that they confine themselves to the framework laid down by Christian majorities, others insist that having suitable places of worship is a basic equal right.

Glen was not a majoritarian, but he believed that permission toleration is basically all that is possible and realistic. I am not sure this is true. But be that as it may; there are two questions here, one primarily a matter for sociology – What is realistic? – the other for philosophy: What is right? The latter question must be answered with normative reasons and, in my view, with considerations of justice. For what else is the question: “What status and rights ought minorities or certain groups to have in a society?” except a question of justice? The central connection between justice and toleration consists in the following question: Does my objection to a practice rest on reasons that are not merely a reflection of my ethical or religious position that others, after all, do not share and do not have to share, but on reasons that are sufficient to proceed to a rejection – hence reasons that, for example, are sufficiently strong to justify prohibiting this practice with legal means? Being tolerant means that you accept that justice is relevant when moving from objection to rejection.

What do I have to accept in order to answer this question within the framework of the respect conception? This touches on a difficult epistemological point, because toleration is often accused of demanding that one

⁸ Forst 2013, §18.

question one's position in a skeptical spirit – and Glen thought that, too. He maintained that if a fundamentalist Christian has to accept that his objection to homosexuality is publicly treated as a judgment that cannot be reciprocally and generally justified among equals, his right to justification may not have been met⁹ (which I doubt) – although Glen admitted that if the fundamentalist accepted the boundary of reciprocal and general justification, he would be tolerant in accordance with the respect conception. But Glen neither thought that there was a higher-order moral duty to respect that threshold nor did he think that the threshold would deliver results beyond reasonable disagreement – because there would always be “reasonable disagreements about what is reasonable.”¹⁰ And to insist on a standard of reasonableness beyond such disagreements would just mean dressing up substantive judgments as impartial ones, which in his view they are not.

This is the main challenge posed by Glen. But note that in this critique he still speaks of ‘reasonable disagreements’, seemingly being unwilling to allow for completely arbitrary definitions of what counts as reasonable and maintaining a distinction between reasonable and unreasonable disagreements. But then how do we define that mysterious faculty called ‘reason’?

According to my view, being reasonable in contexts of religious conflict does not require that one doubts the truth of one's own religion. But one acknowledges that religious (or other) beliefs about the good life are neither verifiable nor falsifiable by rational means. They are situated in the realm that Bayle called *dessus de la raison*, beyond the scope of reason as it were, but are not necessarily irrational (unless they involve superstition). This is the realm of faith. Reason allows many ethical positions of faith among which it cannot and must not decide itself. The epistemic component must be supplemented with a normative one. I must also accept that I owe others who live with me under a shared system of norms reasons for such norms that we can share morally and politically as equal normative authorities, and in particular do not stem from the fund of convictions that are matters of reasonable ethical dispute. It is unreasonable in a moral-political sense to legislate one's own values of faith as generally and reciprocally binding norms in a society divided by faith. The faculty of reason as the faculty of public justification then combines theoretical and

⁹Newey 2013, 97.

¹⁰*Ibidem*, 96.

moral elements, and this entails discursive work, because what is reciprocally generalizable cannot be determined *a priori*, although we do have guidelines as to what is (reciprocally and generally) justifiable and which forms of disrespect cannot be tolerated. So Glen was right to insist that there will be debates about what can be reasonably justified, but he was wrong to infer that such debates are open-ended, for want of any impartial standards that at least noumenally and normatively supersede such debates.

This, to sum up, is where the spade turns, to use a Wittgensteinian phrase Glen would have liked. If we think that the Christian fundamentalist has no good reason to outlaw or discriminate against homosexual practices, then we should call him unreasonable if he does so. And in order to do this we need an account of reason that justifies us doing so – for reason is nothing but the faculty of justification. We cannot regard our notion of reason as merely ‘our’ reason alongside liberal conceptions of reason, Christian conceptions and so on. At some point, we have to leave the ‘extravagance’ of such positivist relativism and take a stance and explain what reason is and what it means in such conflicts. Not to do so would amount to a lack of both contextual participation and of philosophical distance and reflection. Unreason may prevail politically, but as critical theorists we must cultivate a language to call it thus and not just present a sophisticated protocol of social power.

So, as will be apparent, our conversation was not just one about toleration. It was also about what we do when we do political philosophy and when we think about social and political issues in an engaged way. It was about ourselves. And for this and many other reasons I wish Glen could be with us to continue this dialogue.

REFERENCES

- Forst R. (2013), *Toleration in Conflict. Past and Present*, Cambridge, Cambridge University Press.
- Goethe J.W. (1999), *Maxims and Reflections*, trans. by E. Stopp, London, Penguin.
- Kant I. (1996), “An Answer to the Question: What is Enlightenment?”, in Id., *Practical Philosophy*, ed. and trans. by M. Gregor, Cambridge, Cambridge University Press.
- Newey G. (2013), *Toleration in Political Conflict*, Cambridge, Cambridge University Press.

I. GLEN NEWEY'S CRITIQUE OF RAWLS'S POLITICAL LIBERALISM

Glen Newey's philosophical analysis focuses extensively on the concept of toleration, proposing an original and non-mainstream account of this notion. In his works Newey insists on the double-edged nature of toleration and liberty. According to his view, the very same liberal institutions that grant freedom of conscience and provide the social context for toleration to be enjoyed can be endangered by an excessive toleration of the intolerants. Newey, then, calls into question whether a general justification for political toleration (i.e. a version of toleration in which political institutions are involved) is available claiming that: a) the condition of dislike is absent in relation to the neutral attitude of liberal institutions; and, b) liberal institutions should be careful in tolerating anti-liberals.¹ His conclusion is that political toleration can be reduced and supplanted by the coercive power of the state (Newey 2013). Vertical forms of toleration, according to Newey's analysis, which establishes a triadic relation where the state institutions are involved as referee, give rise to a replication problem where the opposite parties are caught in a circular system of reciprocal accusations of intolerance. According to Newey, toleration in its political version is undermined in its core meaning, thereby becoming a superfluous concept.²

¹ "This is no less than the claim that liberal institutions were proving to be self-disembedding, in that they fostered sedition by anti-liberals who exploited those very institutions in order to subvert them" (Newey 2009, 134, n. 22).

² For a wider analysis of Newey's criticism of normative accounts of toleration, see Galeotti in this issue (15-39).

In this work my goal is to analyse Newey's critique (2009) of the role played by toleration within Rawls's system. Since toleration is one of the historical tenets of liberalism, this concept is central in the theory developed by Rawls starting from *A Theory of Justice* (1971, from now on TJ) and proceeding with *Political Liberalism* (1993, from now on PL). Newey claims that Rawls "treats toleration as a corollary of his wider theory of justice" (2009, 132). In TJ, Newey observes, Rawls provides two arguments in favor of toleration. A direct argument rests primarily on the general principle for equal liberty behind the veil of ignorance, showing the strategic advantage of vetoing any political system which would restrict someone's liberty on the basis of the disapproval of others. A second, indirect argument supports a tolerant attitude by citizens on the assumption that the search for stability requires an institutional context in which intolerants are tolerated for the sake of fostering the allegiance of all the members of the constituency. Rawls believes that institutions legitimated on liberal grounds are *self-embedding*, namely, that over time they will obtain the support even of allegedly illiberal (and intolerant) citizens that have been benefitting from the widely tolerant social environment. Newey is right in highlighting (2009, 133) the strict symbiosis between justification and stability in TJ. Only political institutions that are just – according to the justificatory expedient of the original position coupled with the method of reflective equilibrium – will prove stable over time. In this picture toleration plays a key role. It provides a pragmatic solution to conflicts among citizens not publicly solvable once for all.

Interestingly, Newey suggests that one of the main shifts from TJ to PL consists in Rawls acknowledging that the symbiosis between justification and stability is not as strong as he once argued. Recognizing the deeper roots of disagreement among agents (i.e. the burdens of judgment), Rawls in PL admits that establishing a justified principle of justice will not be sufficient to guarantee stability for the right reason.³ What then is the role that Rawls envisages for toleration in this more conflictual context? First, methodologically, Rawls claims that "political liberalism applies the principle of toleration

³ Rawls (1993; 1995) distinguishes between the stability for the right reasons and *modus vivendi*. If the latter is the case, then "society's stability depends on a balance of forces in contingent and possibly fluctuating circumstances" (1995, 147). On the contrary, stability for the right reasons is reached when citizens are motivated to support a theory of justice thanks to the achievement of a reasonable overlapping consensus.

to philosophy itself” (1993, 10). In this sense, toleration becomes a sort of meta-justificatory normative commitment: political decisions ought to be justified by way of arguments that do not rely on any specific comprehensive doctrine, allowing each citizen the autonomy to find some form of coherence between her own personal view and the political conception autonomously. Second, being tolerant is among the fundamental features of the political virtue of reasonableness. Here Newey introduces what I believe is his principal critique of the Rawlsian model in PL. He correctly points out that agential motivation is a constraint to justification and consequently to the possibility of reaching stability for the right reasons. In line with a realist sensibility, Newey speaks of the *facticity of motivation*, an empirical and independent check on the force of the justificatory setting laid out by Rawls. Newey defines Rawls shift in PL as a “stipulative turn” (2009, 143-145) in which the tensions between desirability and feasibility (or, as Habermas would say, between justified acceptability and actual acceptance)⁴ is solved by limiting the scope of the theory to those agents that show the right motivation to adhere to it. If political liberalism turns out to be a justified and stably accepted conception *only* for reasonable citizens, then the tolerant attitude of these reasonable citizens can be stipulated without requiring further investigation.

In my opinion, Newey’s concerns regarding the scope of Rawls’s political liberalism are well posed. If political liberalism does not engage with those lacking the right motivation (i.e. unreasonable and/or intolerant citizens), then the Rawlsian model ends up overlooking the empirical constraints related to the search for stability, justifying a theory that speaks only to those who are already liberal.⁵ This reading of PL is somehow counterintuitive, and

⁴ “If I understand Rawls correctly, however, he does not wish to distinguish in this way between questions of justification and questions of stability. When he calls his conception of justice political, his intention appears to be rather to collapse the distinction between its justified acceptability and its actual acceptance [...] In my view, Rawls must make a sharper distinction between acceptability and acceptance. A purely instrumental understanding of the theory is already invalidated by the fact that the citizens must first be convinced by the proposed conception of justice before such a consensus can come about” (Habermas 1995, 122).

⁵ Similar concerns are raised by other authors. Some authors stress that justificatory arguments directed specifically to an idealized constituency are detrimental to the agential autonomy of real citizens, imposing upon them a standardized way of reasoning on political matters (Gaus 1999; Vallier 2014). Others, more in line with Newey’s way of reason-

yet sharp and profound (as is often the case with Newey), arguing that Rawls outlines a political conception of liberalism that does away with the empirical world, therefore defending a theory even more idealized than in TJ.

In this context, it would be useful to turn to Jonathan Quong (2011), who has provided one of the most complete and coherent revisions of Rawls's paradigm. In his *Liberalism without Perfection* Quong shows that the first decision that should be taken when dealing with political liberalism is the definition of the political constituency. Here he lays out two possible readings of the overall scope of political liberalism. An *external conception of political liberalism* takes the constituency as an external constraint on the definition of the content of liberal theory. From this perspective, pluralism is described as a brute fact of reality that political deliberation should accommodate in the best possible way. Thus, even though the fact of pluralism is a fact of contemporary democracies, still the ideal justification might be able to overcome the differences and accepted as valid by the widest constituency possible. From another perspective, the *internal conception of political liberalism* views pluralism as a natural effect of tolerant liberal institutions. Hence, pluralism is interpreted as an internal challenge to political contexts that are already driven by liberal commitments. Following the internal conception of political liberalism, Quong claims that the justificatory scope of political liberalism should be circumscribed to an idealized constituency in which the members already share some liberal premises (2011, 135-160).

This distinction between an external and an internal conception of political liberalism is indeed consistent with Newey's analysis I briefly outlined. It seems to me that both readings are available to Rawls's scholars. Quong, for example, defends the internal conception, arguing that political liberalism can be properly justified if and only if the justificatory constituency is limited to reasonable citizens.⁶ Quong soundly defends the strategy of dividing the constituency among reasonable and unreasonable citizens, claiming that introducing strong idealization in the model is the only way to justify political

ning, suggest that a theory of justice should primarily focus on real constituencies, rather than build up a theory for idealized citizens (Horton 2010; Rossi 2013; Sleat 2015).

⁶ "The legitimacy of political principles does not depend on whether current liberal citizens do accept them, or whether the principles are congruent with their current beliefs. Instead principles are defined as legitimate if it is possible to present them in a way such that it could be endorsed by rational and reasonable citizens" (Quong 2011, 144).

liberalism as the most viable and coherent theory of justice within a context of reasonable pluralism. The external conception, by contrast, is at the same time less demanding and more ambitious than the internal conception. On the one hand, the external conception takes political constituencies as external constraints on the justificatory processes, which fits with Newey's suggestion that the facticity of motivation is "a datum with which the outputs of the theory have to contend" (2009, 145, n. 68). On the other hand, this approach is much more ambitious than anything Newey would accept, as it claims to be able to achieve an agreement starting from nothing but unrestrained disagreement.

These two conceptions of political liberalism differ in their understanding of the scope of a liberal theory of justice. The internal conception stresses the reconciliatory aspects of the justificatory enterprise, taking a stance from the beginning about *who* is the adequate recipient of justification and which normative constraints these citizens should meet. By contrast, the external conception faces the motivational constraint imposed by actual constituencies, having faith in the ability of the justificatory strategy to overcome unleashed disagreement and to achieve consensus (or principled compromise) over political decisions with a majority of the constituency. In my opinion, the internal conception is a plausible reading of Rawls's PL, sustaining a version of political liberalism that is coherent and stable, but one that is less powerful, since it does away with the wager of including even citizens that are not properly (or not in every circumstance) reasonable in the wide justificatory processes. The external conception, if taken seriously, would, I believe, takes us *beyond Rawls*, establishing a balance between realistic insights and the normative tenets of liberalism. Newey's critique of Rawls's political liberalism is an important starting point toward this second path, emphasizing the tensions between motivation and justification – tensions that the internal conception waters down through strong idealizations – and the double-edge nature of concepts such as freedom and toleration.

2. THE EPISTEMOLOGY OF TOLERATION

In the previous section, I outlined Newey's concerns regarding the general scope of political liberalism, as envisaged by Rawls. As I said, I share some of the general remarks pressed by Newey. I think Newey is correct to highlight the

relevance of the facticity of motivation, therefore criticizing versions of liberalism that impose burdensome idealization. Now, in the second section of this contribution I shall concentrate on a second set of *analytical objections* raised by Newey against Rawls's account of toleration. Correctly, Newey connects the concept of toleration as employed by Rawls with the concept of reasonable disagreement. To recall, Rawls in PL argues that reasonable disagreement among agents is a genuine possibility, and not merely the outcome of flawed procedures of reasoning, nor a fact provoked by the unreasonable attitude of citizens.⁷ In order to explain why reasonable disagreement is a genuine possibility, Rawls introduces the notion of the burdens of judgment, that is "hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life" (Rawls 1996, 56). Thanks to the description of the burdens of judgement as a stable circumstance of our social life, Rawls can then proceed in defining disagreement as an inescapable fact of liberal and democratic political domains and, even more precisely, as a proof that liberal and democratic societies function well, allowing citizens to enjoy equal liberty of conscience and freedom of thought. In this sense, the burdens of judgment are related to the concept of reasonableness that ground the ideal of liberty of conscience and freedom of thought appealing to epistemic reasons. Hence, Rawls's arguments in favour of toleration as a horizontal virtue stem from his analysis of reasonableness as a civic virtue, characterized both morally and epistemically. Reasonable agents, aware of the burdens of judgment and respecting the ideal of equal respect, are motivated to publicly deliberate without trying to impose their own comprehensive doctrine upon the whole constituency, therefore assuming a general tolerant attitude toward others.

Newey strongly criticizes the epistemic grounds of toleration as defended in PL. He claims that if we really take the burdens of judgment seriously, then such burdens "tend to undermine the reasonableness of any disagreements they may explain" (Newey 2009, 141). According to Newey, if epistemic complexity really does explain genuine disagreement among agents, then epistemically reasonable agents are compelled to take a stance of *epochē*, rather than keep

⁷ As Rawls (1993, 58) states: "Many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion. Some conflicting reasonable judgments (especially important are those belonging under peoples' comprehensive doctrines) may be true, others false; conceivably, all may be false".

believing their position while being tolerant of others' positions as well.⁸ In a less sophisticated form, this argument recalls a debate in the field of epistemology of disagreement concerning the right epistemic reaction to deep qualified disagreement with an epistemic peer.⁹ Epistemologists tend to support two different views. The *Steadfast View* claims that agents can keep believing the truthfulness of their beliefs, regardless of the qualified disagreement with a peer. Given the absence of an external epistemic authority acknowledged by all, an adequate doxastic response is to 'stick to my own guns' and not revise or reconsider the trust in my belief. Authors provide different reasons in support of this strategy, such as the fact that higher-order evidence concerning the other party's epistemic standpoint does not count (Kelly 2005), or they refer to the ineliminability of the first-person standpoint, according to which we have good epistemic reasons to trust our beliefs as long as they are ours (Enoch 2011; Van Inwagen 1996; Wedgwood 2010). By contrast, according to the *Conciliatory View* (Christensen 2007; Elga 2007; Feldman 2007; Lackey 2010), the fact that an epistemic peer disagrees with me with regard to the evaluation of the same piece of evidence is a good second-order reason to 'bite the bullet' and at least question the epistemic processes that led me to believe that *p*. A strong interpretation of the conciliatory view calls for a revisions of my belief in the attempt to split the difference and give an equal weight in the evaluation of both mine and others opinions (Feldman 2006; Gelfert 2011). It seems to me that this stricter interpretation of the conciliatory view goes in the direction of Newey's suggestion, namely that in the face of reasonable disagreement an epistemic adequate reaction is suspending the judgment. Newey actually reaches a further point, claiming that "if what Rawls has said about the burdens is right, then acceptance on any comprehensive doctrine is under-determined by reason, and so Rawls's last step does seem unreasonable" (Newey 2009, 142).

⁸ "Since *p* and not-*p* are inconsistent, and inferences drawn using the law of non-contradiction are presumably reasonable, then each of us, to the extent that we are reasonable, should abandon or qualify our original belief" (Newey 2009, 142).

⁹ Epistemologists concentrate on ideal circumstances in which epistemic peers, namely agents that possess similar epistemic abilities and are also more or less equal with respect to their familiarity with the body of evidence and the informational set, reasonably end up sustaining different conclusions. Obviously, the circumstances of politics are not at all ideal and hardly citizens can be considered epistemic peers. However, this debate is relevant to capture the meaning of Newey's criticism of Rawls's epistemic account.

In this section, my goal is to rescue Rawls from the analytical objections raised by Newey. First, let me say that I take Newey's criticisms to be fair, in the sense that Rawls's strategic decision to do away with any technical epistemic analysis (in order to meet the standard of applying toleration to philosophy itself) leaves the theory hostage to well-posed criticisms (see for example Gaus 1996; Habermas 1995; Raz 1990). In the attempt to outline a strictly political account of liberalism, Rawls employs the method of avoidance to epistemology as well as metaphysics. However, this decision produces a methodological weakness, because it is not possible to provide a fully-fledged account of political legitimacy (and public justification) while avoiding any references to the epistemological framework that supports such project. I argued elsewhere (Liveriero 2018) that an analytical analysis that clarifies the epistemological commitments of PL can be laid out while remaining consistent with the Rawlsian project overall. I will try to do the same here, briefly touching on a few epistemological themes that I believe can help clarify the epistemological roots of toleration as an intrinsic liberal civic virtue.

Newey claims that taking seriously the burdens of judgment implies accepting a skeptical *epochē* as the reasonable outcome of disagreement among agents. This conclusion would actually deprive toleration of any profound meaning, because the decision between sustaining p or not- p would be undetermined from the epistemological point of view. In my opinion, this is an interesting, but extreme reading of the burdens of judgment. More consistently with the actual phenomenology of disagreement, we can read the burdens of judgment as epistemological features derived from a fallibilist general theory of knowledge.¹⁰ If I am right, reasonable citizens, in acknowledging the existence of the burdens of judgment along with the acceptance of mutual terms of cooperation, should prove able to sustain their belief in accordance with a *fallibilist proviso*. According to the proviso, an agent S can be doxastically justified in holding the belief that p , even if S 's full body of evidence for p does not necessarily entail that p is true. Consistently, S can be justified

¹⁰ In general terms, fallibilism is an epistemic theory according to which genuine knowledge is compatible with the possibility of error because agents' epistemic processes for disclosing evidence can never achieve certainty. Consequently, for fallibilism the reasons an agent hold in her doxastic system of beliefs may possibly be very good, but never warranted as true.

in believing that p , even when counterfactually, she might actually be not justified in believing that p . Reasonable citizens, including the burdens of judgement among their epistemic set of beliefs, have reasons to accept the fallibilist proviso, therefore assuming an epistemic modesty stance toward their doxastically justified beliefs. Being epistemically modest does not coincide with being sceptical. Rather, an epistemically reasonable citizen is ready to accept the possibility that in cases where the evidence at stake were directly and fully accessible and her epistemic capacities infallible, her present belief that p might indeed turn out to be false. I think that this conclusion is compatible with the epistemology of disagreement debate, even though it does not take a final stance concerning which is the best epistemic reaction to deep qualified disagreement. More modestly, the epistemic analysis is useful in the political theory domain in order to provide insights regarding what citizens owe to each other, both as moral and epistemic agents. In the political domain, at the horizontal level, the answer to this query is toleration more often than not. This is the reason why toleration is indeed a “core creed of liberalism” (Newey 2009, 131), notwithstanding its double-edged nature.

Pace Newey, I argue that a tolerant attitude among reasonable citizens can be supported by epistemic reasons that do not lead to skepticism, but rather to the more modest acceptance of the *fallibilist proviso*. This means that when intersubjective deliberation is not useful in solving or mitigating disagreement, citizens can keep believing the truthfulness of their beliefs, and yet they have sound reasons for not disrespectfully dismissing others' positions as utterly wrong and epistemically inferior. Hence, a tolerant horizontal attitude is morally grounded in the principle of equal respect as well as sustained by epistemic reasons derived from the recognition of our shared fallibility as epistemic agents. This conclusion is in my opinion perfectly compatible with Rawls's main goals in PL. Yet, the method of avoidance, if interpreted in a strict way, would require us to avoid any reference to fallibilism as the most adequate model of knowledge. However, avoiding any clarification about the epistemic stances required by a justificatory framework can lead to unwilling confusions and to an overall perception of argumentative weakness. Against Rawls, I maintain that political liberalism cannot be robust vis-à-vis different theories of justification, because as theorists we must take a stance regarding the epistemological framework we use while developing a specific theory of political legitimacy.

3. POLITICAL LIBERALISM AFTER RAWLS

In conclusion, Newey's dialogue with Rawls sheds light on some concerns regarding the Rawlsian paradigm that are worth further analysis. Leaving aside the debate concerning the best account of toleration – that is object of analysis of other contributions in this volume in Newey's memory – my paper sought to clarify which of Newey's criticisms of Rawls are well posed and which can be rebutted. Briefly stated, I agree with Newey that in the passage from TJ to PL Rawls "gets lost" with regard to the theme of motivation. On the one hand, it seems that opening the theory to the fact of pluralism and highlighting the relevance of the search for stability should bring Rawls to pay even more attention to the facticity of motivation. On the other hand, the sharp distinction between reasonable and unreasonable citizens ends up watering down the motivational theme. An uncharitable reading can actually claim that Rawls's political liberalism cannot "accomplish more than merely the hermeneutic clarification of a contingent tradition" (Habermas 1995, 120), referring solely to citizens that are already liberal and therefore motivated to sustain such political system.

Newey's analysis is one of the most clever and well-posed available on the topic, clearly explaining the intrinsic tensions within PL with regard to the relationship between stability and motivation. I also believe that the right solution to this tension goes in the direction hinted by Newey, namely revising the justificatory strategy in order to include reasonable and unreasonable citizens alike. Naturally, this shift would impose profound changes in the general Rawlsian framework. For example, dealing with a less homogeneous constituency might suggest that political compromises often are good political solutions, rather than unrealistic consensus-based decisions. Moreover, political deliberations shall be open to partisan and strategic reasons, rather than focusing solely on justice-based reasons. To use a slogan, a post-Rawlsian political liberalism might try to achieve normative goals proving more flexible in dealing with the facticity of the real world. But this solution, not surprisingly, would require stipulative turns that Newey, for sure, would have identified and criticized. For one, extending the justificatory labour to include not reasonable citizens imposes a further rethinking of the limits of toleration. This conclusion proves once more that a satisfying theory of political liberalism should include an adequate theory of toleration among its fundamental tenets.

REFERENCES

- Christensen D. (2007), "Epistemology of Disagreement: The Good News", *Philosophical Review*, vol. 116, n. 2, pp. 187-217.
- Elga A. (2007), "Reflection and disagreement", *Noûs*, vol. 41, n. 3, pp. 478-502.
- Enoch D. (2011), "Not Just a Truthometer: Taking Oneself Seriously (but not too Seriously) in Case of Peer Disagreement", *Mind*, vol. 119, n. 476, pp. 953-997.
- Feldman R. (2006), "Epistemological Puzzles about Disagreement", in S. Hetherington (ed.), *Epistemology Futures*, Oxford, Clarendon Press, pp. 216-236.
- (2007), "Reasonable Religious Disagreements", in L. Antony (ed.), *Philosophers Without Gods: Meditations on Atheism and the Secular*, Oxford, Oxford University Press, pp. 194-214.
- Galeotti A.E. (2019), "Glen Newey's Critique of Political Toleration", *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 15-39.
- Gaus G.F. (1996), *Justificatory Liberalism: An Essay on Epistemology and Political Theory*, New York, Oxford University Press.
- (1999), "Reasonable Pluralism and the Domain of the Political: How the Weaknesses of John Rawls's Political Liberalism Can Be Overcome by a Justificatory Liberalism", *Inquiry*, vol. 42, n. 2, pp. 259-284.
- Gelfert A. (2011), "Who is an Epistemic Peer?", *Logos & Episteme*, vol. 2, n. 4, pp. 507-514.
- Habermas J. (1995), "Reconciliation Through the Public use of Reason: Remarks on John Rawls's Political Liberalism", *The Journal of Philosophy*, vol. 92, n. 3, pp. 109-131.
- Horton J. (2010), "Realism, Liberal Moralism and a Political Theory of *Modus Vivendi*", *European journal of political theory*, vol. 9, n. 4, pp. 431-448.
- Kelly T. (2005), "The Epistemic Significance of Disagreement", in J. Hawthorne e T. Gendler (eds), *Oxford Studies in Epistemology*, vol. 1, Oxford, Oxford University Press, pp. 167-195.
- Lackey J. (2010), "A Justificationist View of Disagreement's Epistemic Significance", in A. Millar, A. Haddock, D. Pritchard (eds), *Social Epistemology*, Oxford, Oxford University Press, pp. 298-325.
- Liveriero F. (2018), "Does Epistemology Matter? Political Legitimacy in the Face of Disagreement", *Gli Annali del Laboratorio di Politica Comparata e Filosofia Politica*, n. 2, 2018, pp. 1-42.
- Newey G. (2009), "John Rawls: Liberalism at the Limits of Intolerance", in S.P. Young (ed.), *Reflections on Rawls. An Assessment of his Legacy*, Ashgate, Routledge, pp. 131-152.
- (2013), *Toleration in Political Conflict*, Cambridge, Cambridge University Press.

- Quong J. (2011), *Liberalism without Perfection*, New York, Oxford University Press.
- Rawls J. (1971), *A Theory of Justice*, Cambridge (Ma), Harvard University Press.
- (1993), *Political Liberalism* [2nd edition 1996], New York Columbia University Press.
- (1995), “Political Liberalism: Reply to Habermas”, *The Journal of Philosophy*, vol. 92, n. 3, pp. 132-180.
- Raz J. (1990), “Facing Diversity: The Case of Epistemic Abstinence”, *Philosophy & Public Affairs*, vol. 19, n. 1, pp. 3-46.
- Rossi E. (2013), “Consensus, Compromise, Justice and Legitimacy”, *Critical Review of International Social and Political Philosophy*, vol. 16, n. 4, pp. 557-572.
- Sleat M. (2015), “Justice and Legitimacy in Contemporary Liberal Thought: A Critique”, *Social Theory and Practice*, vol. 41, n. 2, pp. 230-252.
- Vallier K. (2014), *Liberal Politics and Public Faith: Beyond Separation*, New York, Routledge.
- Van Inwagen P. (1996), “It is Wrong, Always, Everywhere, and for Anyone, to Believe Anything, Upon Insufficient Evidence”, in J. Jordan, D. Howard-Snyder (eds), *Faith, Freedom, and Rationality*, Lanham, Rowman and Littlefield, pp. 137-154.
- Wedgwood R. (2010), “The Moral Evil Demons”, in R. Feldamn, T. Warfield (eds), *Disagreement*, Oxford, Oxford University Press, pp. 216-247.

I. INTRODUCTION

The belief that politicians and the media lie to the people and seek to deceive them for self-interested reasons long predates today's accusations of 'fake news' (Jay 2010). Though those levelling such accusations invariably contend the present political class to be more mendacious than politicians in the past (Osborne 2005), it is a recurrent complaint going back to antiquity. Yet, a distinguished and just as long tradition of political thought treats calls for truth and openness in politics with scepticism (Arendt 1967).

From Plato through Machiavelli to Leo Strauss and Hannah Arendt, numerous political philosophers have seen politics as a realm in which lies and deception necessarily flourish (Jay 2010). Though their reasons for so arguing differ in a number of crucial respects, all agree with Arendt's claim that "Truthfulness has never been counted among the political virtues, and lies have always been regarded as justifiable tools in political dealings" (Arendt 1971, 4). These philosophers consider those who bemoan this state of affairs as either naïve fools or devious charlatans, likely to be even greater spreaders of falsehood and deceit themselves. Indeed, as we shall see, accusations of lying and deception, on the one hand, and the temptation to lie and deceive, on the other, often prove to be tied up with misplaced expectations, distorted beliefs and self-deception on the part of both politicians and the general public (Galeotti 2015). Disentangling and distinguishing the one from the other proves harder than one might think.

Lying and deception in politics extend from outright mendacity to deny or hide a misdemeanour that might harm a politician's personal reputation,

such as adultery or a criminal act unrelated to the exercise or attainment of political office; through seeking to cover up some political offence, such as taking bribes or electoral fraud; to more accepted forms of being “economical with the truth”¹ that range from protecting state secrets, through dissembling to other politicians or the electorate, as when making them promises one knows one cannot or do not intend to keep; to casting unwarranted aspersions on one’s rivals and spinning one’s own abilities, achievements and policies (Mearsheimer 2011, 15-20). Most people would regard some of these lies and forms of deceit as more deserving of condemnation than others. Indeed, quite a few people would acknowledge that certain types of dissembling, such as misleading an enemy in war about one’s military plans, might be fully justified (Mearsheimer 2011, 40).

This article explores these various forms of lying and deception in the context of the norms and practices typically associated with liberal democracy. According to such a system, politicians are considered to be the authorised and accountable representatives of the electorate, with an obligation to pursue the public interest rather than simply their personal interests or the private interests of a specific group of individuals. To the extent they do further their own interests and those of their friends or supporters, democratic norms suggest that, however hypocritically or implausibly, they must at least claim to be doing so for the common good. To this end, democratic politicians are constrained not only by the democratic process but also by liberal constitutional norms protecting certain individual civil and political rights, such as freedom of speech and association, that are orientated towards ensuring due process and the equal protection of the law for all.

No democratic system fully meets the standards of the liberal democratic ideal. Moreover, commentators divide over how far it can or should do. Some contend democratic politics necessarily involves, and can plausibly require, truth telling, with all lies and deceit consequently damaging democracy to some degree (Bok 1978, 172). If politicians are to rule for the people and be accountable to them, then they believe policy-making needs to be transparent and based on clearly articulated and openly avowed principles and policies.

¹ Though earlier usages exist, this phrase gained notoriety when used by the British Cabinet Secretary Sir Robert Armstrong in the *Spycatcher* trial of 1986 to distinguish telling an outright lie from giving a misleading impression.

Politicians can only be counted on to rule in the public interest when they are obliged to do so in full view of the public, and under their equal influence and control. By contrast, I have noted already how others regard certain forms of deceit and lying as inherent to politics in general, and to democratic politics in particular (Jay 2010, ch. 3). They maintain democracy cannot but rest on a noble lie: that of pretending that people can rule themselves through free and fair agreements on those policies that best promote their collective welfare (Canovan 1990). However, people's values and concerns are too diverse, incompatible and incommensurable for either public reasons or shared interests to exist. As a result, the democratic ideal proves impossible. Instead, politicians must often employ rhetoric and half-truths to build coalitions between groups of people with conflicting views and interests so as to mobilise sufficient popular support to promote almost any collective enterprise. The falsehood, according to which governments can rule for the common good of citizens, that nevertheless remains so necessary to democratic legitimacy, thereby ends up as the source of all the other lies politicians unavoidably tell in politics (Bellamy 2010).

Given Glen Newey's political realism (Newey 2001a), it is unsurprising that he should have sided with those philosophers who regard democracy and truthfulness as not entirely reconcilable, and involving a trade-off to some degree (Newey 2003). As will emerge in the analysis that follows, while I share some of his misgivings, I consider his account to be too negative. His belief in the incompatibility of democracy and truthfulness derives from his regarding democracy as an expression of the collective autonomy of the people, and hence as resting on the consent of citizens (Newey 2001b). That poses an impossible and inappropriate standard for any democratic system to meet. Instead, I shall suggest that we should see democracy as a system of public equality. Such an account finds both lying and deception as an infringement of democratic norms, and agrees with Newey's view that deception poses a greater threat than lies. However, I shall argue that while persuasiveness and rhetoric form an intrinsic part of democratic reasoning that can shade into deception on occasion, the democratic process both encourages and requires truthfulness.

The following analysis of these competing views begins by exploring what counts as lying and deception, identifying why they might be viewed as normatively objectionable, and distinguishing the different kinds of lies and deceit democratic politicians are apt to commit, as well as their various motivations for doing so. I conclude with an examination of how truth and

truthfulness play out in the circumstances of politics. Although truthfulness in politics will be shown to rest on persuasiveness and opinion as much as logic and facts, it will be argued that distinctions can be drawn between private interests and public reasons; deception and delusion; honesty and dishonesty; if not between lies and truth *per se*. There may be no secure epistemological grounding of the objective truth and morality of most political opinions but that does not mean politicians can simply say and act as they please so long as the electorate are willing to believe and support them. Rather, we can expect them to offer a minimum of reasoned and evidence-based arguments for their views and actions that, even if not conclusive, can be assessed independently and freely by voters, opponents and the media with regard to their likely strengths and weaknesses.

2. LIES AND DECEPTION. DEFINITIONS AND DEMOCRATIC OBJECTIONS

This section starts by defining lying and deception before turning to what renders such practices objectionable within a democracy. Neither the first nor, as a consequence, the second proves entirely straightforward.

2.1 Lying and deception defined

Both lying and deception can be defined as a deliberate attempt by a person or persons to assert (Fallis 2009, 33), and possibly mislead another person or persons into believing (Bok 1978, 13-16), something that the liar(s) knows or thinks is false. However, although lying may often involve deception it need not always deceive, or at least not straightforwardly so (Fallis 2009, 41-43). Nor need all deception involve lying.

For example, a cancer patient may lie to his family about how he is doing by saying he's fine knowing full well they are aware he is lying and in fact is doing rather badly. But the lie and the family's acceptance of it may ease some of the emotional stress each feels about the situation. At best, it is a willed self-deception on all sides. Likewise, some forms of deception can comprise telling a misleading truth, such as a half-truth that does not reveal all one knows (Weissberg 2004, 169), or failing to correct another's misperceptions, misunderstandings or false assumptions, or even their lack of knowledge, rather than outright lying. Nevertheless, lying and deception are alike in involving an intention on the part of those who commit them to create, or sus-

tain, what they consider to be an erroneous opinion in others. To the extent the lying is objectionable, so it might be thought is deception.

However, perhaps that goes too far. Maybe lying is worse than deception. For example, in a criminal trial we think it reasonable and even appropriate that the defence lawyers should place the best possible gloss on their client's behaviour, leaving it to the prosecution to expose the flaws in their account. If the prosecution fail to do so, so that a guilty person goes free, the defence team may have succeeded in deceiving the jury but they have not lied to them. Many people will feel that in such a case the defence has simply done their job and blame the prosecution lawyers for failing to do their's. The line between deception and lying may be fuzzy, therefore, but it is right to distinguish the two nevertheless. Advocacy ought to stop short of lying but it may encompass, possibly unavoidably, elements of deception simply in highlighting certain facts and reasons rather than others. After all, limited time and knowledge, and an inevitable partiality to certain views deriving from our education and experience, mean that some degree of selectivity proves inescapable when presenting any argument.

Nevertheless, although the selectivity typical of any kind of advocacy may seem like deception, at least superficially, it need not involve any intent to deceive. Someone who *inadvertently* creates a false impression in the mind of another through unwittingly either holding mistaken views themselves, or possessing incomplete or flawed information, may mislead others but clearly does not lie to or deceive them. They may be open to criticism and censure for their stupidity, ignorance or culpability in failing to become better informed, but their fault is different to that of a liar or deceiver who intends to mislead. Likewise, we can distinguish between those defence lawyers who vigorously defend the innocence of their clients while knowing they are guilty and those lawyers who, as is generally the case, give their clients the benefit of the doubt and deliberately avoid raising the issue of their clients' possible guilt so as not to morally compromise their ability to advocate on their behalf. In the first case, the lawyer has wilfully deceived others in a way tantamount to lying, in the second the lawyer has at worst deceived him or herself. Yet, lawyers in this second category might regard the obligation to uncover the truth as resting as much with the prosecution and jury as themselves. They may feel upholding truthfulness cannot be achieved simply by trusting everyone to act without deception or lies but also involves being prepared to challenge and question what they say. It is a shared responsibility of the actors within the system.

Likewise, in politics truth and falsehood are not always entirely clear-cut. People may often reasonably interpret the significance of various facts differently when making a political or moral judgment about a particular policy. Of course, that does not mean that all views are equally well supported by either the evidence or by similarly coherent and relevant arguments. Nevertheless, in many areas of human life, both the known facts and practical reasoning can support a range of reasonable views. Naturally, politicians – no less than political philosophers debating such questions in a seminar – will seek to put the best gloss on their preferred view, choosing which facts and arguments to highlight accordingly. Yet, it is debateable whether in so doing they deceive or lie. Perhaps they do so if they fail to mention a fact or argument that provides a particularly strong objection to their own position – one to which they feel they have only a weak response. However, it might be argued that their duty is to advocate as well as they can the position that best serves the interests of the people they represent or the cause or position they consider most worthy or valuable. As with the example of the defense lawyer given above, though, there may be limits to how partial in the selection of evidence and arguments such advocacy can go before it involves deception and lying. Here too, we rely on the effectiveness of opposing politicians and philosophers to reveal the weaknesses of each other's arguments.

In the UK, the non governmental parties are termed Her Majesty's Loyal Opposition in recognition of their legitimate and crucial role within the political system as licensed critics and challengers of the government, who play a key function in ensuring minister's are both competent and honest. And, of course, such opposition also appeals ultimately to voters and citizens, who perhaps have an obligation to become informed. From this perspective, truthfulness proves an attribute of the political (or, in the lawyers case, judicial) system as a whole, something not just individual politicians but also all citizens have a duty to uphold. I shall develop this argument further below. Before doing so, however, I wish to turn to the claim that lying and deception form an intrinsic aspect of politics.

2.2 Democratic objections

In Kantian manner, Glen Newey has argued the core consideration behind the normative objection to lies and deceptions rests on their taking away our capacity to consent or not to them as a principle of action (Newey 2001b, 1).

I shall suggest below that constitutes too high a standard. However, the importance we attribute to consent rests in its turn on regarding individuals as autonomous agents, entitled to equal concern and respect. The equal political status of all citizens, whether they are the head of state, a minister in the government, a famous scientist, singer or footballer, or an unemployed labourer, forms an important democratic norm, and its possible infringement when politicians and public servants lie or deceive their fellow citizens arguably explains the normative concerns underlying such actions (Christiano 2008). From this perspective, to lie to or deceive someone is objectionable when it involves exercising an illegitimate form of power over that person that undercuts their ability to think and act autonomously. As Bob Goodin notes (Goodin 1980, 62–63), it constitutes a form of manipulation that involves a duplicitous interference designed to lead those subject to it to act contrary to their putative will. Such behaviour fails to treat others with equal concern and respect as persons capable of making their own judgments and choices.

For example, suppose a political leader makes a deliberately false claim that the government has credible evidence that a neighbouring state not only possesses weapons of mass destruction but also is preparing to use them soon, his intention being to sway public opinion towards supporting a pre-emptive strike against that state.² To put the best gloss on the case, imagine that the politician believes the neighbouring regime does indeed possess such weapons and that a pre-emptive strike offers the most appropriate way of addressing the situation but simply has no firm evidence to back his conviction. Most citizens are as aware as the politician that their neighbour could be prone to such acts – it is after all an authoritarian military regime, ruled by an unstable dictatorial ruler. However, a majority read the situation differently to him. Many doubt their neighbour has been able to develop or acquire such weapons, and even more believe the questionable morality and likely consequences of starting a war make such a policy less justifiable than one of preparing for the worst while continuing to work towards reducing the capacity or probability of this regime using such weapons. In such a case, the politician's deception – however well intentioned – denies the right of his fel-

² What follows is a stylized account of the Blair government's policy towards Iraq between 1997–2002. For an account of the alleged lies and deception involved, see Osborne 2005, ch. 8.

low citizens to make their own judgment about the situation. After all, their interests are as much at stake in this collective decision as the politician's. By deceiving them, the politician undermines their ability to judge for themselves and manipulates them towards his preferred view.

Such cases are objectionable because they involve the liar regarding him or herself as having superior judgement to the deceived, and hence not as their equals. In the process, those who deceive diminish the freedom of the deceived by manipulating their choices in directions favoured by the deceiver and which the deceived might not have chosen for themselves had they possessed fuller information.

At best, such acts involve a degree of paternalism that the liar or deceiver considers to be warranted. Most people acknowledge that healthy adults can in specific circumstances justifiably claim to be better able to make choices that serve the interests of children or individuals afflicted by certain mentally or emotionally disabling conditions than they could themselves. Even so, how far anyone need or should engage in lies or deceit when doing so is less clear. Where rational argument has failed, or is unlikely to work, and a shift in behaviour is genuinely needful, then lying or deception may be preferable to coercion. If telling a small child that they may be eaten by a sea monster proves more effective at inhibiting them from bathing in a hazardous sea than explaining the dangers of tidal currents, then such deception may be a preferable alternative to preventing them physically from entering the water. Much depends on the context and the individuals concerned. However, a democratic system derives its rationale from assuming that citizens are for the most part better judges of their own interests than others are likely to be, with fairness requiring that what touches all should be decided by all. In which case, the paternalist justification surely cannot apply, suggesting honesty to be the only defensible policy.

John Mearsheimer (2011) has suggested that motivation can make a difference. He distinguishes selfish, or self-serving, from strategic motivations (Mearsheimer 2011, 11). By the former, he has in mind those lies and deceptions designed to preserve a politician's personal reputation, or to cover up a criminal act. These motivations, especially the second, provide the clearest case of an objectionable form of lying. Mearsheimer defines strategic lying as lying for reasons of state. For example, in wartime democratic politicians have occasionally deceived their own citizens but only in order to gain an advantage against the enemy, as when the British government and its allies

sought to mislead the Germans as to the location as well as the timing of the D Day landings during the Second World War. More problematically, democratic politicians have also denied negotiating with those they have hitherto condemned as “terrorists” or “enemies” in order not to arouse domestic opposition prior to obtaining a peace deal they believe will ultimately serve people’s interest. For example, former British Prime Minister John Major repeatedly and vehemently denied speaking with the IRA when making the initial moves that eventually gave rise to the Good Friday Agreement. Likewise, a prominent politician might feel justified in hiding a terminal illness, say, when his or her leadership is believed crucial to maintaining domestic morale during an emergency or a crisis.

What renders a “strategic” lie justified (or at least acceptable) or not appears to depend on a number of not entirely congruent factors. On the one hand, there are moral considerations of different kinds. If the liar and deceiver is an honourable person, then the good intentions of their lie seem at least more trustworthy as not stemming from mere self-regarding interests (Walzer 1973, 166). These considerations echo earlier theological debates as to whether it was justified for a Christian to escape persecution for their religious beliefs by pretending to conform outwardly to the faith imposed by their potential oppressors while holding to their original beliefs “in their heart” (Osborne 2005, 116-122). The difficulty with this argument is that the conviction that one is “right” in one’s “heart” is a self-legitimizing reason, that could be deployed both honestly and dishonestly, and involve a high degree of self-deception (Osborne 2005, 135-137). Virtue may not always be able to wear its heart on its sleeve, but how can we trust it if it does not? The worry is that politicians who engage in what they regard as justified strategic lying may be simply self-deceived.³ In these cases, the motivation makes little difference – their acts may have been well-intentioned but their unfounded and misguided lying will still be objectionable as involving unwarranted manipulation and paternalism.

Moral reasoning of a consequentialist character potentially enters at this point. Machiavelli can be read as arguing that lying may be a justified means if it can be shown to serve good ends (Machiavelli 1995 [1513], chs 15 and

³ For example, such was the conclusion of Sir John Chilcot’s *Iraq Inquiry* (2016) with regard to Tony Blair’s belief in the Iraqi regime’s possession of Weapons of Mass Destruction.

18), as most commentators believe was the case with the secret negotiations that ultimately brought peace to Northern Ireland. Some see such cases as instances of Machiavellian political *virtù*, in which a wrong action proves allowable when it is necessary to achieve a valid political goal such as peace and stability, from which all will benefit (Berlin 1971). Yet, as Machiavelli remarked, a tension between the good result and the wrong action remains even here – the one may partially excuse but it does not remove the other (Walzer 1973, 175-176).

Note, that paternalism is not involved in a scenario where citizens have delegated the making of a decision to the executive in specific circumstances. One can imagine a situation where the politician really does have reliable information regarding an imminent attack and needs to react immediately. Most democracies empower their executives to act without prior consultation in such circumstances, although they generally put systems in place aimed at verifying that such an emergency truly exists for which such action would be proportionate. For example, the agreement of senior members of the military and possibly the judiciary, both of whom should ideally have some independence from the government, is typically required for such actions.

Some commentators contend that democracy can be reconciled with deceit and lying by politicians in a parallel manner if it can be argued that voters have consented to the use of deceit and lies by governments, at least in exceptional circumstances such as these, where national security might be at stake (Bok 1978, 172, 181; Newey 2003 also advocates such an arrangement, although he notes its paradoxical character). Such consent obviously cannot be given to any particular lie or deception without being self-defeating. But it could be justified in general terms and consent given through the passing of legislation or a constitutional provision giving the executive certain emergency powers to act deceitfully (Thompson 1987, 22-23, 25-26). Indeed, as Mearsheimer (2011, 72-74) observes, precisely because democracy standardly requires transparency and allows for criticism, the need for deception and lies in democratic states might be greater than in autocratic states if governments are to act expeditiously.

However, granting politicians such powers depends on their being trusted to act according to their mandate. Even with controls, such as those described above, such trust may be open to abuse. Meanwhile, to use executive privilege to lie in these circumstances without the requisite evidence or justification would be deceitful and subject to the same strictures as apply to the original case.

3. DEMOCRATIC LIES

As we saw, some past thinkers have argued that democracy fosters lies. Here, I examine how far this is the case, looking first at whether democracy rests on a lie and then at how far it encourages lying.

3.1 Does democracy rest on a lie?

So far, we have assumed lying and deception to be generally incompatible with democracy. However, that assumption perhaps moves too fast. I noted above Newey's contention that key to the democratic critique is the notion of consent, with lying and deceiving by their very nature appearing to undercut the very possibility of someone giving their consent to them, albeit with the potential exception of a generalised consent to certain exceptional cases of necessary lies and deception. We accept some such standard in commercial transactions. Buyers are exhorted to beware but certain forms of deception amount to fraud and invalidate the contract nonetheless as being inconsistent with genuine consensual agreement by the purchaser. Yet, this standard seems impossibly high for politics. Most proponents of the social contract tradition have acknowledged difficulties in claiming any existing political community to be based on the actual consent of its founding members, let alone its current ones (Lessnoff 1986). Nor can the presence of a functioning democratic system be plausibly viewed as a mechanism that ensures all acts of government enjoy the tacit, let alone the explicit, consent of the people. At best, they may enjoy the support of only a majority or, more likely, a plurality of the population. Meanwhile, how far such support can be regarded as involving rational consent to every aspect of a government's programme remains dubious. A majority of voters may simply be persuaded that on balance the policies and personnel of a given party represent the least bad of the available alternatives.

Some political philosophers argue that political legitimacy only requires that the basic principles underlying a liberal democratic constitutional order should be such that one could imagine people hypothetically consenting to it, or at least having no reasonable grounds to dissent. Yet, even liberal democratically inclined philosophers disagree as to which constellation of principles ought to command our rational consent, and how they should be ordered and applied. If a freely arrived at rational consensus cannot be assumed even on the fundamentals of a liberal democratic society, does that mean that the very idea of a political community built on the free and equal consent of its

members must itself be deemed a big lie, with the policies settled on by liberal democracies themselves the product of numerous smaller lies? After all, if the possibility of all reasoning to the same conclusions is not possible, how else can agreement be reached among people except through some deceiving others into believing what they know cannot be proved and may well be false?

A number of philosophers have thought this to be so, with some regarding it as a pernicious and others as a “noble” lie (see Canovan 1990 for a discussion, especially 5-9). Much as parents collude in their children’s false belief in the existence of Santa Claus because they regard this fantasy as part of the magic of childhood, and so as something of value that they wish their children to enjoy, so citizens and politicians within a liberal democratic society can be regarded as colluding in supporting the myth of a society of free and equal individuals. Indeed, one can plausibly see such a myth as one to which to some degree all parties consent. Like a magical childhood, a liberal democratic society has a genuine value for most citizens. Rights may not be “natural” but rather contingent and vulnerable historical achievements. But regarding them as if they did inhere in human beings as such, and that the legitimacy of any political society rests on it being possible for citizens to claim them, arguably serves as an important political myth, which usefully raises the expectations citizens have of their governments (Canovan 1990, 13-17).

However, liberals tend not to employ such fictions, while conservatives – who do use them – typically do so to criticise the liberal’s reliance on appeals to reason alone, arguing that it can only result in an anarchy of conflicting individual assertions (Burke 2014 [1790], 35 and 95). Instead, conservatives appeal to the need to preserve the “mystery” of the historically contingent customs and traditions binding societies together and supporting existing social entitlements and obligations. On this account, viewing the aristocracy, say, as truly noble and entitled to rule not only encourages deference from the lower orders but also fosters a genuine nobility of spirit among the upper classes (Burke 2014 [1790], 78). By contrast, the standard liberal view holds that it is precisely such a social order that encourages deceit and lies, with the lower classes forced into adopting falsely flattering and fawning behaviour to curry favour among those with power over them and whose position and condescending behaviour rests on little more than fraud. Not only will honesty only flourish within an egalitarian society, where no one is owed deference on the basis of birth or position alone, but also, so they claim, such a society will be one that has no need for dishonesty to sustain it (Paine 2000 [1791], 97). Meanwhile, the worry arises

that if democracy was thought to be nothing but a ‘big lie’, designed to give a false veneer of legitimacy to the rule of the few over the many, then that would in its turn delegitimise all appeals to truth in democratic politics – suggesting all truth claims are ‘fake news’ (Hahl *et al.* 2018).

3.2 Is democratic rhetoric a form of lying or, worse, bullshit or even post-truth?

If, as I suggested above – and will argue more fully below, no rational consensus on which all reasonable and rational individuals could be expected to converge exists, so that we can always expect people to reasonably disagree, then how can collective agreements be legitimately concluded? In gaining support for any programme or proposal, politicians make as much – if not more – use of rhetoric as reason. Persuasion can take many forms. Clear, coherent, logical and evidence-based reasoning undoubtedly can and do play their part, but so do oratory and charisma that appeal to people’s passions and emotions. Indeed, in situations where an appeal to reason and fact alone will only get so far as to suggest a range of views as reasonable, then rhetoric is likely to be necessary to garner support behind one of those views.

How far can lying and deception be seen as rhetorical devices? The Socratic condemnation of the rhetoric of the Sophists reported by Plato tends in that direction, and lives on in the standard definition of sophistry as specious and false reasoning, with the intention to deceive. The contemporary adoption of “spin” and advertising techniques by politicians has often been characterised in these terms. Whether a “sexed-up” or “dodgy” dossier, over selling the likelihood that a foreign power possesses WMD,⁴ can be distinguished from an outright “lie” may itself seem an example of captious and sophistic reasoning. However, even if we envisage spinning and being “economical with the truth” as resting on a continuum between truthfulness, on the one side, and outright mendacity and duplicity, on the other, most would accept a valid distinction exists between presenting one’s case effectively and in the best possible light and lying and deception. The difficulty resides in where to draw the line.

⁴ On 24 September 2002 the British Government of Prime Minister Tony Blair published a dossier on *Iraq’s Weapons of Mass Destruction: The Assessment of the British Government*. The document included a claim that Iraq could deploy WMD against the UK within 45 minutes, which was widely criticised as at best exaggerated (‘sexed-up’) and at worst fallacious (‘dodgy’).

Part of this difficulty rests on practical judgments in the realm of human affairs not being capable of justification on the basis of either “rational” or “factual” truth alone. A distinction made by Arendt (1967, 226), the first refers to the logical and propositional reasoning typical of mathematics, the second to the empirical reasoning of the natural sciences. While both have their role, neither fully determines our political judgments.

In the areas of logic and mathematical reasoning, or what Arendt (1967) calls “rational” truth, these processes are more or less self-validating *a priori* as a means for generating correct answers in their respective domains. Two plus two equals four because maths as a coherent and consistent system of logical reasoning involves that necessarily being the case. The key features of such reasoning consist of its being public, in the broad senses of being in principle accessible to all with the mental ability and training to follow it, and hence transparent and demonstrable of “proof” in the technical sense.

Reasoning in other areas of human knowledge proves less certain. Within the natural sciences, the experimental method has allowed the testing of hypotheses and their provisional empirical validation, at least until later refinements in both reasoning and experimental technique lead to their being re-confirmed or falsified. As such, an epistemological basis exists in this domain for grounding what Arendt terms ‘factual’ truth. Once again, both the formulation of hypotheses and their experimental testing involve the characteristics of publicity noted above, with such processes possessing the same key feature of being replicable and capable of peer assessment.

That does not mean that there are no matters even in the domain of natural science that are not subject to controversy through being less than clear-cut. Some hypotheses may remain, provisionally at least, untestable yet necessary to fill gaps in our current understanding of certain phenomena – such was the case in the past for the general theory of relativity. There have also been instances of such theories later being shown to be misguided, as proved the case with theories of phlogiston prior to the discovery of oxygen in the eighteenth century and may well be true of what contemporary physicists term ‘dark matter’. However, in these sorts of cases a public method for testing such claims exists, even if it may not be always immediately possible for it to be deployed.

Global warming has been seen as pointing to difficulties in objectively grounding ‘factual truth’ even in natural science. The multiple physical and social factors involved in anthropogenic climate change initially made the

complex causal dynamics hard to identify and assess in a way that could lay claim to general acceptance. Nevertheless, the steady accumulation of evidence through public methods has now made those who deny the existence of humanly caused global warming akin at best to those who continue to assert the earth to be flat. Their thinking is simply incomplete, be it through ignorance and an inability to follow what is nonetheless open to public reasoning, or willfully and for self-serving motives.

Although both logical and factual truth play an important part in political reasoning, they cannot fully determine it. As John Rawls noted, practical reasoning on political issues has a normative dimension and consequently labours under what he called the “burdens of judgment” (Rawls 1993, 55-56). The factual information required for deciding what policy we ought to adopt to best address any social and economic problem can be complex and its exact bearing on the matter at hand open to varying assessments. This proves especially the case given disagreement over the weight to be given to different normative considerations and how particular values are in any case to be understood and specified. What people consider the most plausible way of interpreting and balancing the relevant facts and normative considerations will tend to reflect their own experiences and knowledge, which not only are unavoidably limited and liable to be oriented towards their own concerns but also inevitably differ from those of people with different experiences and knowledge. For example, people hold very different views on the role of different social and moral factors in crime, and hence of the most appropriate forms of punishment and policy responses. If some emphasise individual responsibility and retributive concerns, others are inclined to adopt more complex assessments that diminish the salience of these factors.

None of this means that logical and empirical reasoning can be ignored or have no independent weight in political decision-making. Take the example of global warming and climate change denial. Reasonable disagreements of the Rawlsian kind can occur over issues such as who has responsibility for mitigating climate change – for example, should developed countries accept greater responsibility than developing countries – or which of a range of policies, such as carbon taxes and carbon off-setting, might be regarded as the most effective, or which policies might be fairest, both among current generations and towards future generations, and so on. These disagreements can give rise to a wide range of policy recommendations, some of which will be in conflict with others. However, none of them involve denying either the

fact of global warming or the need to provide a coherent and evidence based proposal as to how it might be most successfully and equitably tackled. By contrast, climate change denial seeks to either misrepresent or ignore rational and factual truth in this area. Some types of denial may take the form of lies or misleading half-truths that conceal or distort the import of pertinent arguments or facts. Companies may use such tactics to avoid costly and constraining regulations by seeking to diminish the risks of their activities, or politicians employ them to curry favour with voters by suggesting certain burdensome measures are neither urgent nor even necessary. However, such misrepresentation conceals the truth – it does not deny it, and as such is capable of being revealed as a distortion of the truth.

The most pernicious forms of climate change denial, though, take the form of what has been called bullshit and post-truth. Harry Frankfurt (2005) has famously defined bullshit as a disregard for truth, which takes the form of employing spurious and possibly meaningless arguments and simply making up the evidence. Post-truth goes further, and denies the very existence of truth – all views are simply a matter of opinion. Whereas the liar seeks to conceal the truth, the bullshitter sidelines it as irrelevant and the post-truth advocate disputes its very existence. These rhetorical strategies become possible the more inaccessible the relevant reasoning and facts are to most people. If these can only be fully understood by those with the relevant expertise and training, and cannot be easily or straightforwardly related to peoples' everyday experience – as is the case with some of the evidence for global warming – then people may be open to those who cast doubt on its value and validity. That becomes all the more likely if truth is of an inconvenient nature and has potentially costly consequences for people, especially if they feel these costs are not being fairly distributed, which is a matter of reasonable disagreement.

As a result, we need a way of distinguishing reasonable from unreasonable disagreements. Neither technocratic government nor rule by philosopher kings is possible because unlike the purely logical and natural scientific disagreements, no public epistemological processes are available to settle disputes between rival ontological claims about the just or even the most efficient society. Logical reasoning and empirical evidence can help clarify what is in dispute and offer important background information. A concern with truthfulness, in the sense identified by Williams (2002, 11) as a regard for the virtues of sincerity and accuracy, can encourage people to engage with each

other's arguments and concerns and to argue in less self-interested, narrow or myopic ways. But there is no guarantee that people will converge through the force of reason and the weight of evidence alone on a given position, or that if they did that such a consensus would necessarily be the correct position to take. Yet, on many of these issues a collective decision needs to be taken despite these disagreements. If outright coercion is to be avoided, then some process seems necessary for reaching agreements that the vast majority, if not all people, will accept as legitimate.

Democratic politics offers itself up as a legitimate process of this kind. A key issue, therefore, is how far the democratic process is capable of weeding out lies, bullshit and post-truth from legitimate attempts at persuasion. To return to the earlier example of a court of law and the opposing arguments of the prosecution and defence lawyers – just as these advocates attempt to persuade a jury of their case, in part by uncovering flaws in each other's arguments, can we see democratic politicians as likewise engaged in doing something similar with regard to the electorate? If not, what will prevent democratic decisions being based on lies and bullshit, and as such deeply flawed? The question, to which we now turn, therefore, is how effective is democracy in promoting truthfulness by encouraging a respect for it among politicians and citizens alike?

4. TRUTHFULNESS WITHIN THE CIRCUMSTANCES OF DEMOCRATIC POLITICS

Like logical reasoning and the experimental method, democracy is in many respects a public process. It is public in offering a form of collective decision-making that offers each person a single vote and conducting elections and the aggregation of votes under certain known and settled rules of the game. As we saw above, ideally such rules should allow all voters to be treated as free and equal, capable of making their own decisions and able to express their views, and to operate in a fair manner through not being biased towards any given view and treating all views equally, with majority rule an impartial means for settling a stand off among different views. However, democratic procedures possess epistemic qualities to only a limited degree.

Certainly, some epistemic gains can be attributed to such forms of collective decision-making. For example, both Condorcet's jury theorem (List, Goodin 2001) and the "wisdom of the crowds" thesis (Surowiecki 2004) sug-

gest that, given certain assumptions, the more people involved in making the decision, the more accurate it is likely to be. Democratic systems should also allow a plurality of different views to be aired and for advocates of each of them to challenge the factual and rational basis of the other views. More generally, democracy offers a mechanism for gathering information about people's needs and concerns. However, while the goal of an ideal democracy might be to offer an equal say to all involved and a fair mechanism for deciding differences, it cannot be claimed that a democratic process produces 'correct' answers in the manner of a logical proof or a confirmation of hypotheses in the manner of an experiment. It merely indicates the degree of support certain propositions can obtain among a relevant group of people, and provide a neutral and equitable way of resolving conflicts. There can even be reasonable disagreement on which electoral systems and rules best realise the democratic ideal, given that notions of fairness and equity are themselves open to a variety of interpretations.

Nevertheless, democracy operates as a public method that incentivises politicians and citizens to express their views openly and to engage with the opinions of others. Given the need for democratic politicians to gain the support of a plurality or even a majority of the electorate, depending on the voting system, and the acceptance by most of the rest of their right to rule, it becomes necessary for them to claim at least to govern in the public interest. However, the truth of that claim cannot be demonstrated unequivocally. Various forms of evidence may be recruited to defend it, but citizens can and will evaluate their relevance and bearing by different criteria. As we noted above, rhetoric and persuasiveness are therefore ineliminable aspects of politics, as they are of much argument in the humanities and social sciences. Yet, that need not mean that logic and evidence, on the one hand, and the virtues of sincerity and accuracy associated with truthfulness, on the other, count for nothing. Citizens will still have good reasons to want their politicians to be consistent in their principles, and to propose policies that are realistic and effective. How will they be able to trust them otherwise, and be able to select those they feel likely to pursue programmes that promote their interests and sanction them if they fail?

Some philosophers have worried truthfulness as well as truth has become ever harder to achieve in contemporary politics. Arendt believed that "rational" truth in particular had limited application to politics. In her account, the truth of political argumentation was necessarily a matter of public opin-

ion rather than of logic and depended on the debating skills of those involved. However, that did not mean politics had no use for truth of any kind. She felt that “factual” truth did hold an independent validity within political argument. However, she feared that facts were increasingly distorted in politics. Commenting on George Clemenceau’s remark that, while he did not know how guilt for the start of the First World War would be apportioned by future historians, he did know for certain that “they will not say Belgium invaded Germany”, Arendt observed that such re-writing of the facts was precisely what totalitarian regimes attempted (Arendt 1967, 234). Although the facts allowed for different historical interpretations, including a lively debate about the causes of the First World War in Germany and elsewhere, they also placed a constraint on allowable interpretations of a kind that totalitarian regimes will frequently seek to deny.

Indeed, her worry was that for slightly different reasons a parallel denial of “fact” was also occurring in democracies. Discussing the lessons to be learned from the Pentagon Papers (Arendt 1971), her argument once again was that they revealed a failure to engage with factual truth. On the one hand, she argued successive Presidents misled the American electorate about the conduct of the Vietnam War by believing that elections had more to do with advertising and spin than being honest. Worse, politicians and their advisors came to believe their own hype. As a result, they failed to acknowledge the manifest shortcomings of the military campaign. On the other hand, policy-makers based their policies on theoretical suppositions regarding human behaviour that were unsupported by any evidence, and in particular historical evidence about the region, its lack of strategic importance and its culture.

Nevertheless, in the case of both totalitarian and democratic regimes, Arendt contended that what she calls the contingency of historical fact ultimately wins out against all attempts to deny factual truth. Ultimately, neither citizens nor governments can consistently live a lie. The dramatic transformation of the public sphere by new media since the 1960s and 1970s, when Arendt wrote her essays on truth and politics, has led some commentators to fear we are now moving into a post-truth era (e.g. Davis 2017). They worry that facts about the world are no longer accessible to citizens, even with regard to their own lives. Jeremy Bentham famously defended democracy on the grounds that although the electorate might not be able to judge how best to make a shoe, they could judge when the shoe pinched and hence be capable of removing politicians whose policies left them worse off (Harri-

son 1983, 209). However, if politicians can always blame others for their failings, asserting that all criticism is simply “fake news”, no such control can operate. As Arendt (1967) noted, within a democratic society one needs independent sources of both rational and factual truth to the politicians themselves and their supporters – including independent media and universities. When these come under political attack and get undermined, then the possibility for a democratic system to operate as a mechanism capable of promoting truthfulness gets correspondingly diminished.

5. CONCLUSION

In his study of lying in international politics, Mearsheimer (2011, 25-30) contends leaders rarely lie to each other, at least in peacetime, but frequently do so to their own citizens. He surmises that in the international sphere trust is paramount because no authority exists with a legitimate monopoly of coercive force capable of enforcing agreements between states. As a result, if agreements are to be long lasting, then they must be honestly made. By contrast, in the domestic sphere politicians can afford to be untrustworthy because they can rely on the apparatus of the state to secure their position.

While the point about the international sphere is well taken, the inference he draws with regard to domestic politics appears over determined. At least within democratic states, the foregoing analysis suggests that leaders have pragmatic as well as moral reasons to be truthful to some degree. Lies will find you out. Yet, politics is the realm of opinion, and truthfulness a systemic property rather than something any individual citizen or politician can be expected to possess alone. To this extent, Newey was perhaps not realist enough – real politics may be less open to lies and especially deception than an idealised politics based on the consent of autonomous individuals precisely because it sets its sights lower.

REFERENCES

- Arendt H. (1967), "Truth and Politics", in *Between Past and Future: Eight Exercises in Political Thought*, London, Penguin Books 2006, ch. 7.
- (1971), "Lying in Politics: Reflections on the Pentagon Papers", in *Crises in the Republic*, Florida, Harcourt Brace and Co, 1972, ch. 1
- Bellamy R. (2010), "Dirty Hands and Clean Gloves: Liberal Ideals and Real Politics", *European Journal of Political Theory*, vol. 9, n. 4, pp. 412-430.
- Berlin I. (1971), "The Question of Machiavelli", *The New York Review of Books*, 4 November 1971.
- Bok S. (1978), *Lying: Moral Choice in Public and Private Life*, New York, Vintage Books.
- British Government (2002), *Iraq's Weapons of Mass Destruction: The Assessment of the British Government* (known as the "September Dossier", http://news.bbc.co.uk/1/hi/shared/spl/hi/middle_east/02/uk_dossier_on_iraq/pdf/iraqdossier.pdf).
- Burke E. (2014) [1790], *Reflections on the Revolution in France*, in *Revolutionary Writings*, ed. by I. Hampshire-Monk, Cambridge, Cambridge University Press, pp. 1-250.
- Canovan M. (1990), "On Being Economical with the Truth: Some Liberal Reflections", *Political Studies*, vol. 38, n. 1, pp. 5-19.
- Chilcot J. (2016), *The Iraq Inquiry*, Her Majesty's Stationery Office, <https://webarchive.nationalarchives.gov.uk/20171123122743/http://www.iraqinquiry.org.uk/the-report/>.
- Christiano T. (2008), *The Constitution of Equality*, Oxford, Oxford University Press.
- Davis E. (2017), *Post-Truth: Peak Bullshit - and What We Can Do About It*, London, Little Brown.
- Fallis J. (2009), "What is Lying?", *Journal of Philosophy*, vol. 106, n. 1, pp. 29-56.
- Frankfurt H. (2005), *On Bullshit*, Princeton, Princeton University Press.
- Galeotti, A.E. (2015) "Liar or Self-Deceived? Reflections on Political Deception", *Political Studies*, vol. 63, n. 4, pp. 887-902.
- Goodin R.E. (1980), *Manipulatory Politics*, New Haven, Yale University Press.
- Hahl O., Kim M., Zuckerman Sivan E.W. (2018), "The Authentic Appeal of the Lying Demagogue: Proclaiming the Deeper Truth about Political Illegitimacy", *American Sociological Review*, vol. 83, n. 1, pp. 1-33.
- Harrison R. (1983), *Bentham*, London, Routledge.
- Jay M. (2010), *The Virtues of Mendacity: On Lying in Politics*, Charlottesville - London, University of Virginia Press.
- Lessnoff M. (1986), *Social Contract*, London, Macmillan.

- List C., Goodin R.E. (2001), "Epistemic Democracy: Generalizing the Condorcet Jury Theorem", *Journal of Political Philosophy*, n. 9, pp. 277-306.
- Machiavelli N. 1995 [1513], *The Prince*, ed. and trans. by D. Wootton, Indianapolis, Hackett.
- Mearsheimer J. (2011), *Why Leaders Lie*, London, Duckworth.
- Newey G. (2001a), *After Politics: the Rejection of Politics in Contemporary Liberal Philosophy*, London, Palgrave.
- (2001b), "Truth and Deception in Democratic Politics", ESRC Grant Reference R000223151, Research Summary, <https://researchcatalogue.esrc.ac.uk/grants/R000223151/outputs/read/04637d31-6dc1-4493-bcb7-89df4ca21cfb>.
- (2003), *Full Report of Research Activities and Results*, www.regard.as.uk/research_findings/R000223151/report.pdf.
- Oborne P. (2005), *The Rise of Political Lying*, London, Free Press.
- Paine T. (2000) [1791], "The Rights of Man, Part 1", in B. Kuklick (ed.), *Political Writings*, Cambridge, Cambridge University Press, 2000, pp. 57-154.
- Plato (1987), *The Republic*, trans. by D. Lee, Harmondsworth, Penguin.
- Rawls J. (1993), *Political Liberalism*, New York, Columbia University Press.
- Surowiecki J. (2004), *The Wisdom of Crowds: Why the Many are Smarter than the Few*, New York, Doubleday.
- Thompson D. (1987), *Political Ethics and Public Office*, Cambridge (MA), Harvard University Press.
- Walzer M. (1973), "Political Action: The Problem of Dirty Hands", *Philosophy and Public Affairs*, vol. 2, n. 2, pp. 160-180.
- Weissberg R. (2004), "Mr Pinocchio Goes to Washington: Lying in Politics", *Social Philosophy and Policy*, vol. 21, n. 1, pp. 167-204.
- Williams B. (2002), *Truth and Truthfulness: An Essay in Genealogy*, Princeton, Princeton University Press.

Dimitrios Efthymiou

**Political Lying
in Newey and Bellamy**

I. INTRODUCTION

Are states justified to lie to their citizens? Before delving into what Glen Newey thought about this question, here is an example from current affairs: the story of the Ukrainian Journalist Arkady Babchenko (BBC 2018). Ukraine staged his murder to foil his assassination by Russia allegedly. More specifically, the authorities announced his death only to present him alive, and well, 24 hours later. The case of Arkady Babchenko besides attracting wide press coverage and amusing headings such as: ‘you only live twice’, it also raises questions that are at the core of Newey’s work as well as of Bellamy’s paper on political lying in this volume: were the Ukrainian authorities justified in staging his murder and lying to their people and their allies? Was their decision a case of Machiavellian virtù or a rather clumsy and inept exercise of political will? And if it was inept, why was it inept? Was it because in this way the Ukrainian authorities undermined their democratic credentials by resorting to tactics that are no better than those deployed by their adversaries? Was it because they undermined the ideal of liberal democracy that requires politicians not to fool their citizens by spreading fake news and aiming at least instead of being truthful to them?

The article tries to answer this question by providing a qualified defence of Newey’s work on political lying and defend a revamped version of his position from several objections. The structure of the article is as follows. Section 1 lays out Newey’s consent-based argument against political lying as well as his views on when political lying is permissible. It provides an analytic and revamped reconstruction of that argument that remains faithful to what it takes to be the key normative kernel of his critique of political lying and

it distinguishes between three types of qualifications to its scope. Section 2 shows, contra Bellamy, why Newey's argument does not constitute "too high a standard" but a rather moderate, if not too timid one by showing that Newey's core argument i) survives a rejection of a *consent-based* objection to political lying as a violation of the agreed terms of democratic association; ii) it is in some respects *less realist* than Bellamy's preferred approach while more demanding in others; iii) it leaves enough space for *civic virtue* as a means to robustly safeguarding democratic politics from deception and finally; iv) it provides us with more robust safeguards from political rhetoric and spin than Bellamy's preferred approach creating in that sense the needed space for genuine agreement based on rationality and empirical knowledge consistent with the democratically approved wishes of the electorate.

II. NEWEY'S THESIS ON POLITICAL LYING

To better understand Newey's thesis on political lying, and Bellamy's criticisms of it, one needs to examine in some detail some key passages, and arguments, from his earlier work. Let us call them P and Q. In his last book, Newey says that:

(P) = There is no free-speech-based right to lie in the public sphere because free speech is based on freedom of association whereas lying on the terms of association precludes joining agency with others on mutually agreed terms.

Deception clearly disrupts association because the proposition to which agreement is being sought differs from that on which the proposer aims to act.

There could be, however, cases or conditions in liberal democracies where politicians are permitted if not required to lie. Newey's earlier article on political lying also sets out these conditions:

(Q) = to have a claim-right to something is to have a claim-right to whatever is a necessary condition of securing the thing that the right is a right to.

Therefore, in virtue of (Q) it is justified that citizens are lied to when they have consented via their vote to a policy that successful implementation of which requires lying. As Newey puts it:

If D is a legitimate democratic decision-procedure, it is a condition of respecting the citizens' autonomy that their D-approved wishes (expressed through the ballot, etc.) are respected, i.e., that the D-approved policies are implemented. But citizens may, via D, approve some policy (e.g., relating to official secrecy), whose implementation demands that they are lied to.

Newey here seems to follow a tradition in political theory that emphasises the importance of consent in democratic legitimacy. The rest of this section focuses on where Newey keeps and breaks rank with that tradition. This type of analysis matters not for cartographic purposes but because it will help us assess the force of his argument as well as that of the criticisms levelled against him. Like Hobbes, Locke and Rousseau Newey appears to share the view that a state is democratically legitimate only if it comes about with the consent of those subject to its authority (Christiano 2006; Estlund 2009, 119; Pettit 2012). In that sense, Newey can be read as subscribing to a consent-based theory of democratic authority that could be generally stated as follows:

There is no democratic authority over a person without that person's consent to be under that authority.

This consent-based conception of democratic authority has been criticised as implausible and Bellamy does a good job in his article in reminding us of some of these criticisms (Bellamy, this issue, 61-82; Christiano 2006 and 2008). This focus on consent is not, it will be argued, a fair criticism of the *spirit* of Newey's argument. Newey, in the passages mentioned above, takes for granted that there is a legitimate democratic decision-procedure in place, possibly brought about by the consent, actual, hypothetical or tacit, by all those participating in that decision-making procedure. This claim is not, nevertheless, the normative core of Newey's argument. Its normative core is a particular *nullity proviso* that renders consent on the part of the ruled conditional (Estlund 2007, 119). The relevant nullity proviso could be stated as follows:

Consent on the part of the ruled or governed does not establish legitimate democratic authority over them when it is brought about by lying or deception.

Consent serves more here as a safeguard for the effective control over the *kind* of promises rulers could make to the ruled rather than as a normative prerequisite for every type of democratic decision-making. It is better, therefore, to read Newey here as not primarily concerned with consent to

a particular policy or procedure but with whether voters' authorisation of a particular policy via democratic means is nullified when that policy is the product of lying. This nullity proviso is what this article takes to be the normative kernel of Newey's position.

Reading Newey's argument in this way brings him closer to some arguments put forward by Philip Pettit (2012) in his later writings.¹ There Pettit, like Newey, explains how lying amounts to deception over the choices available one has (Pettit 2012, 54-55). Deception on the part of those who are, or wish to win, political office, amounts to an effort to unilaterally control the will or preference of voters by mispresenting policy choices that are available as unavailable (or choices that are unavailable as available) or, more often, by giving policy choices qualities that they do not have. An example here could help to illustrate the point and highlight the similarity between Newey's position and Pettit's. Following Newey and Pettit we could formulate the following claim:

A gives her vote to B believing that B will deliver P with qualities x, y, x+,x- etc.

A has an interest in knowing whether B is truthful about delivering P with qualities x, y, x+x- etc.

When politicians are not held accountable for lying then, voters lose effective control over their policy choices as it becomes difficult for them to know whether a policy P has the qualities politicians claim it has or not. When deceived voters choose "x" after being led to believe that "x" is "Great X" only to find out later that what is presented to them as "Great X" is nothing but "little x" instead. If one substitutes "vote" with "money" above, one gets the analogy sought by Newey between deception in the exercise of political rights and deception in the exercise of consumer rights. Lying, in both cases, is a form of unauthorised and undisclosed interference with the choices one has.

At this point, one needs to draw three distinctions that follow from the above definitions and that will help to motivate the discussion that follows in the rest of this article. They also add three qualifications to Newey's position. First, there is a set of options that are incompatible with democratic decision-making that voters are not entitled to exercise. If this is true, then

¹ See also Goodin (1980) for an account of manipulation in politics.

political lying has a restricted domain of application in well-ordered democracies and concerns those options voters have a right to exercise. For example, politicians may be permitted to lie about whether they intend to ban a neo-Nazi political organisation if that is *necessary* to foil the neo-Nazi group's plot to take over power by a military coup as this not an option that citizens are entitled to exercise in a democratic decision-procedure.² Newey's position is compatible with this mild first qualification of his thesis as it does not preclude that a concern for political lying operates within a domain framed by democratic ideals.

Second, a distinction needs to be drawn between first-order and second-order political decisions. A D-approved wish, in Newey's terms, is a first-order decision over the kind of policy that a democratic government should pursue. It is imperative that voters are not deceived on what that policy exactly is. A second-order decision, on the other hand, concerns the choice of the means to pursue the D-approved wish. It is possible that voters approve some means and not others or that they prefer some means more than others. As long as all preferred means do not contradict D-approved wishes and are compatible with democratic ideas, there is no conflict between the preferred D-approved wishes and the preferred means. Politicians may be justified to lie to voters about successful conditions of implementation if and only if voters *irrational-ly reject the only means available* to implement what they are deeply committed to as expressed in their D-approved wish. We may say that Newey was a weak paternalist concerning second-order decisions because he thought that it is permissible for politicians to interfere with means that voters choose to achieve their stated ends if those means are likely to defeat those ends (Dworkin 2017). This is the second qualification of Newey's thesis that explains why Newey thinks that political lying in some cases is permissible.³

Third, there could be cases of political lying where state officials do not lie to their citizens but politicians, and citizens, of other states. This case is a hard case that Newey does not discuss in detail. One could argue that politicians

² See Christiano (2006) for a discussion of internal limits to democratic decision-making.

³ Newey could also be read as a soft paternalist with respect to first-order decisions, at least to the extent that one reads his thesis on political lying as implying that politicians have a duty to ensure, or at least a duty to make it more likely, that voters opt for a policy knowledgeably and hence voluntarily. More on this point below at II.3.

are only bound to tell the truth about policy options to citizens of their state and even that they are required to lie to members of other political communities if that is necessary to serve the D-approved wishes of their citizens best. This course of action may make sense in times of war, especially with undemocratic regimes and it is also consistent with the requirement of just war theory but it also has its limits.⁴ It explains, for example, why it was permissible for the allies to deceive Nazi-Germany over the precise time and location of D-day but it does not explain why it was wrong for Japan to deceive the USA about its intention to declare war to the USA in order to successfully launch its surprise attack in Pearl Harbor. Can Newey's argument about political lying be given an international scope and apply consistently at least in times of peace among democratic states? Prudential considerations could motivate politicians to be truthful in their discussions with their counterparts in other countries (Bellamy, this issue, 80; Mearsheimer 2011). But it is hard to see why such considerations could prove robustly reliable over time, especially between states that are asymmetrically positioned due to inequalities in military or economic power. It seems difficult, therefore, to value Newey's concern for political lying in isolation from other normative considerations. The case of international relations between democratic states in times of peace makes that clear. Concern for political lying within a given democratic society alone without invoking normatively thicker considerations such as *equal and reciprocal respect* for the D-approved wishes of other political communities and their rights to democratic self-determination and political non-domination is difficult to defend without succumbing to brute realism.⁵ This is not to say that political lying is never justified in international relations among democratic states. Lying to one's citizens could be justified *when unequivocally necessary to preserve democratic self-determination and non-domination not just domestically but also internationally* as these are the very commitments on which democratic politics is based (see also above). This final point is the third qualification to Newey's argument I would like to defend. His thesis on

⁴ On just war theory see e.g. Walzer 1977.

⁵ I use 'brute' here to distinguish between realists, on the one hand, that appeal directly and exclusively to the national interest or self-interest of the relevant agent and forms of realism that are more inclusive and critical of current inequalities of bargaining power between states or individuals, see e.g. Kennan (1985) vs. Rossi and Sleat (2014) respectively.

political lying has independent merit, as thinly formulated, but it becomes more forceful when combined with these normative considerations rather than when examined in isolation from such considerations.

It is important to emphasise at this point that in all of the above cases, and the qualifications discussed, lying remains wrong according to Newey's thesis* and therefore something to be avoided whenever possible.⁶ Political lying does not, however, in those special cases and only in those cases, nullify the consent or authorisation given by citizens to politicians via a democratic procedure to pursue a particular policy P.

III. DEFENDING NEWEY'S THESIS* AGAINST FOUR CRITICISMS

III.1

Bellamy's article in this volume associates Newey's work on political lying with what he dubs the liberal democracy ideal (Bellamy, this issue, 62); the ideal of democracy that Bellamy associates with Newey is that democracy requires consent and that lying removes consent. Bellamy argues that we need to take some critical distance from the ideal of liberal democracy and instead examine how truth and truthfulness play out in the circumstances of politics. As he puts it in the following representative quotations:

Although truthfulness in politics will be shown to rest on persuasiveness and opinion as much as logic and facts, it will be argued that distinctions can be drawn between private interests and public reasons; deception and delusion; honesty and dishonesty; if not between lies and truth per se (Bellamy, this issue, 64).

There may be no secure epistemological grounding of the objective truth and morality of most political opinions but that does not mean politicians can simply say and act as they please so long as the electorate are willing to believe and support them. Rather, we can expect them to offer a minimum

⁶I use "thesis*" here and throughout the text to signify that this is my revamped version of Newey's thesis based on my interpretation of the quoted passages. This interpretation is based only on some of Newey's writing (Newey 2013; 1997) and it is closer to some of his writings (Newey 2013) than others (Newey 2000; 2001) and it is in some respects inconsistent with his most realist moments (Newey 2010) albeit consistent with his commitment to freedom as undetermination and nonheteronomy (Newey 2018).

of reasoned and evidence-based arguments for their views and actions that, even if not conclusive, can be assessed independently and freely by voters, opponents and the media with regard to their likely strengths and weaknesses (Bellamy, this issue, 64).

Although both logical and factual truth play an important part in political reasoning, they cannot fully determine it. As John Rawls noted, practical reasoning on political issues has a normative dimension and consequently labours under what he called the “burdens of judgment” (Rawls 1993, 55-56) (Bellamy, this issue, 75).

Bellamy takes as his point of departure that Newey’s argument that lying is morally bad because it removes consent yet potentially democratically permissible when we consent to it. He finds, however, these standards too demanding and proposes some less stringent standards. He argues that the rejection of political lying and deception, as incompatible with democracy, is simply too much to ask from democratic theory; an overly demanding baseline that needs to be abandoned. He associates this demandingness of this baseline with contract-based attempts to render our moral judgements not just informed and coherent but also compatible with more demanding normative standards (Bellamy, this issue, 71). Bellamy devotes a section of his paper defending that claim and attempts to enlist Rawls on his side. This is, however, a rather bold claim given that one could read Rawls’s theory as an attempt to limit the domain of political agreement by highlighting the importance of considerations of impartiality and reciprocity in our political judgements (Rawls 1993; 1999).⁷ For Rawls, therefore, as I read him, the range of reasonable disagreement is rather narrow as it excludes views that reject the equality and priority of basic liberties as well as their resourcing via a social minimum required for their effective exercise such as traditional utilitarianism and libertarianism respectively (Rawls 1993; Freeman 2007). Burdens of judgement do not directly lead to a state of reasonable disagreement as simply a condition where rationality and empirics do not any more alone favour one side of the argument more than the other *irrespectively* of how partial and un-reciprocal or unreasonable that side is.

Further, Rawls believed that the two principles of justice laid out in “A Theory of Justice” was the expression of the *most reasonable* conception of jus-

⁷ On the role and political implications of reciprocity in Rawls’s theory, see Efthymiou 2019a.

tice for liberal democracies even if it is proven difficult for everyone to agree to those principles in actual and foreseeable liberal and democratic societies (Freeman 2007). Finally, Rawls (1999) believed that moving from the realm of principles to actual policies requires a good deal of empirical knowledge that may vary from one society to another (e.g. decisions concerning “the role of different social and moral factors in crime, and hence of the most appropriate forms of punishment and policy responses”). Hence, I disagree with Bellamy on his use and interpretation of Rawls’s work but do not want my criticisms just to be a matter of nailing my colours to the mast on that particular point. Instead, and given that I share the broadly republican approach he is committed to, I aim for an internal critique of his criticisms of Newey in an attempt to defend what I take to be the *spirit* of Newey’s argument (see section I above).

So, here is my first point. Even if we were to reject consent-based or more broadly contract-based accounts of liberal democracy and adopt the thinner conception of democracy favoured by Bellamy, for example, a way to aggregate preferences in order to reach a decision that reflects equal influence and the opinions of the majority in conditions of genuine reasonable disagreement, we will still have very similar and as stringent reasons as before to care about political lying and deception. Political lying simply amounts to misrepresenting options, and as voters, we have an interest in knowing whether we have option X or Y and how attractive to us these options are. Whatever rhetorical techniques are used (only because it is more convenient or self-serving to politicians) to give political choice characteristics that it does not have (or even that are irrelevant to the political choice in question) amounts to deception in the domain of first-order decision making. As explained in some detail in section 1 political lying is a way of tricking us to choose one particular option as opposed to another that better matches our set of political preferences. By removing consent-based theories from the picture, we do not also necessarily remove or weaken considerations against political lying concerning the political choices we inevitably face.

III.2

Let me now move to my second point. Bellamy discusses and rejects paternalism in the paper but when it comes to discussing the example of the Good Friday agreement, his position is difficult to discern versus that of Newey. He says about the Good Friday agreement:

[...] democratic politicians have also denied negotiating with those they have hitherto condemned as ‘terrorist’ or ‘enemies’ in order not to arouse domestic opposition prior to obtaining a peace deal they believe will ultimately serve people’s interest. For example, former British Prime Minister John Major repeatedly and vehemently denied speaking with the IRA when making the initial moves that eventually gave rise to the Good Friday Agreement (Bellamy, this issue, 69).

Lying may be a justified means if it can be shown to serve good ends... as most commentators believe was the case with the secret negotiations that ultimately brought peace to Northern Ireland. Some see such cases as instances of Machiavellian political virtù, in which a wrong action proves allowable when it is necessary to achieve a valid political goal such as peace and stability, from which all will benefit (Berlin 1971). (Bellamy, this issue, 69).

Some commentators contend that democracy can be reconciled with deceit and lying by politicians in a parallel manner if it can be argued that voters have consented to the use of deceit and lies by governments, at least in exceptional circumstances such as these, where national security might be at stake (Bok 1978, 172, 181; Newey 2003 also advocates such an arrangement, although he notes its paradoxical character). Such consent obviously cannot be given to any particular lie or deception without being self-defeating. But it could be justified in general terms and consent given through the passing of legislation or a constitutional provision giving the executive certain emergency powers to act deceitfully (Thompson 1987, 22-23, 25-26). (Bellamy, this issue, 70).

[...] granting politicians such powers depends on their being trusted to act according to their mandate. Even with controls, such as those described above, such trust may be open to abuse. Meanwhile, to use executive privilege to lie in these circumstances without the requisite evidence or justification would be deceitful and subject to the same strictures as apply to the original case (Bellamy, this issue, 70).

Bellamy’s line of argumentation here appears similar to Newey’s but that is only because they *reach* the same conclusion. Notice that Newey could have agreed with Bellamy’s verdict in the case of the Good Friday agreement, but by following a very particular route to reach the same conclusion. If D is a legitimate democratic decision-procedure, it is a condition of respecting the citizens’ autonomy that their D-approved wishes (expressed through the ballot, etc.) are respected, i.e., that the D-approved policies (in this case an

approved policy for seeking peace in Northern Ireland) are implemented. However, citizens may, via D, approve some policy (e.g., relating to official secrecy), whose implementation *demand*s that they are lied to.

Is Bellamy's argument here different from Newey's? It is unclear to me whether it is, especially after one distinguishes lying in the domain of first-order vs. lying in the domain of second-order decisions. If Bellamy's position is not that different to Newey's because, for instance, peace and stability have been democratically agreed to as political goals, as in the Northern Ireland peace talks example, then Bellamy's argument is strikingly similar to Newey's argument. However, if it is so much in line with Newey's rejection of first-order paternalism, then it is not terribly original, and hard to see how it qualifies as a criticism of Newey's position.⁸ If it is different, then it must be because of Bellamy's rejection of lying tout court regardless of whether it concerns first-order or second-order decisions or because Bellamy believes that lying is justified in certain cases and specific circumstances, regardless of whether these concern first-order or second-order decisions as long as lying in such cases is democratically authorised and effectively controlled by democratic institutions. It is unclear to me how much different Bellamy's position is in relation to Newey's thesis* in the examples discussed. To see this, imagine a scenario where voters authorise politicians to lie to them on issues of peace and stability in specific circumstances as long as their actions are checked by relevant democratic institutions. But isn't that tantamount to voters saying to politicians "we authorise you to lie to us about how you go about in certain circumstances achieving what we value as our first-order D-approved policy because we recognise that in these cases lying is a necessary means to our D-approved ends and,

⁸ In an earlier version of Bellamy's article, to which this paper was initially meant to respond, Bellamy took a position that was closer to first-order paternalism in cases of peace and stability. In my first round of comments I suggested that such first-order paternalism is unnecessary if the wish for peace and stability is democratically approved. This appears to be Bellamy's line of argument in the revised version of the article published in this volume. Hence, partly, my difficulty to discern the remnants of his previous position in the revised version of his article. For example, in his 2010 article Bellamy allows more space for deceit as a permissible means to the politicians' hands. He says there: "compromise between plural demands and white or dark lies may all require political reasoning be less than public and make equivocation and deceit a virtue" and "politicians must act as foxes and keep certain things hidden".

by the way, because we do not trust you in doing that only when necessary we also authorise you to instate certain institutional safeguards against unnecessary lying”? The only difference then is that *authorisation* to lie in exceptional circumstances as a necessary means to successfully implementing a D-approved policy is necessary in the case of Bellamy’s republicanism whereas unnecessary according to Newey’s thesis*, although preferable. But this criticism of Newey sounds more like a more robust nullity proviso on democratic decision-making rather than the less demanding and more realist version Bellamy promises to deliver vs. consent-based approaches like Newey’s.⁹

III.3

Let me now move to my third and fourth criticism that is more focused on some broader aspects of Bellamy’s criticisms of Newey’s argument. Newey’s focus on political lying could be read as relying on a particular kind of civic virtue on the part of both politicians and voters that goes beyond serving self-interest. Why would otherwise politicians, and voters, provide each other with the truth if that did not serve their self-interest? It is easier perhaps to think of cases where a voter asks a politician: “is this really in my interest?” rather than the opposite and hence to argue that politicians as public servants of their electorate are bound by a duty not to lie to the electorate about what is on offer to them. Doing otherwise would be tantamount to the rulers treating the ruled as merely the object of political power as opposed to its subject; not exactly a democratic picture. This concern for abuse of power is the normative core of Newey’s thesis* on political lying. However, here the question then is whether honesty on the part of politicians is a civic virtue necessary as a safeguard against political lying? Bellamy has his doubts in his commentary. He acknowledges that:

⁹ In general, the marriage of realism and republicanism seems to me like an unhappy one and difficult to sustain without succumbing to adapted expectations and falling into some form of status quo bias. See Pettit (2017) on the compatibility of realism and republicanism and Efthymiou (2019b) for the criticism that republicans are in some cases a bit too eager to invoke indeterminacy and disagreement in levels of adequate protection against domination in order to resort to the “tough luck” test of democratic legitimacy as a procedure that does not favour the will of anyone more than any other.

If the liar and deceiver is an honourable person, then the good intentions of their lie seem at least more trustworthy as not stemming from mere self-regarding interests (Walzer 1973, 166). (Bellamy, this issue, 69).

But he then adds:

The difficulty with this argument is that the conviction that one is ‘right’ in one’s ‘heart’ is a self-legitimizing reason, that could be deployed both honestly and dishonestly, and involve a high degree of self-deception (Osborne 2005, 135-137). Virtue may not always be able to wear its heart on its sleeve, but how can we trust it if it does not? The worry is that politicians who engage in what they regard as justified strategic lying may be simply self-deceived. In these cases, the motivation makes little difference – their acts may have been well-intentioned but their unfounded and misguided lying will still be objectionable as involving unwarranted manipulation and paternalism (Bellamy, this issue, 70).

I think that Bellamy is right to focus on motivation as something on which Newey’s argument partly relies on but wrong, or at least too quick, to dismiss truthfulness as a virtue, or a disposition to tell the truth, that politicians ought to have or at least to aim at.¹⁰ This is the case, I will argue, even if accept the rather non-ideal circumstances of politics, as Richard depicts them, and even something like a civilising force of hypocrisy is inevitable for the reasons he gives in his article (e.g. burdens of judgement, limits of factual claims etc.). Even in those conditions, we still have reasons to value such virtues, not just as personal qualities but also *civic* qualities. Let me explain with the use of an example:

A commitment to truthfulness as a virtue makes less likely the adoption of false positives when it comes to policies that claim to serve the common good. This is because those who act in accordance to a disposition to seek truth are more likely to spend more time double-checking facts about whether, for example, a policy “x” or “y” would actually benefit everyone economically as opposed to a particular social group. Even if truthfulness is difficult to measure, we are more secure in a world where politicians are required to aim at that ideal

¹⁰ I follow here Pettit (2015), rather than Mearnsheimer (2011) in his treatment of honesty as a robust good the provision of which requires telling the truth robustly rather than merely when it is for one convenient or beneficial.

than in a world where the room for rhetorical manipulation is greater. Hence, there is an argument, even a consequentialist one, for treating truthfulness as a virtue or as a disposition that politicians ought to aim at in order to deliver better policy results concerning policies from which everyone benefits. There will be a smaller number of cases of ‘false positives’ of the ‘civilising force of hypocrisy’, so to speak, when a significant number of politicians are to some extent, or fully, motivated by a concern to present their constituents with the truth about the choices they face to a world where politicians care for truth only when it suits them or when they are forced to care.¹¹ It is an advantage then of Newey’s thesis* that it relies on, or at least leaves space for, civic virtue.

III.4

One could object at this point that the room for a kind of politics that appeals to the common good is small. It is precisely because the room for such politics is limited that the scope for agreement is rather limited, the objection goes. How are we to proceed, if we were to follow Newey’s thesis*, in conditions of genuine reasonable disagreement where facts and reason alone do not favour one side more than the other? It is at this point that Bellamy takes some distance from Newey’s thesis* and its commitment to logical and empirical reasoning. Bellamy says at this point:

Part of the difficulty in determining where precisely lying starts and ends on the continuum between truth and mendacity, rests on practical judgments in the realm of human affairs not being capable of justification on the basis of either ‘rational’ or ‘factual’ truth alone. Both have their role but neither fully determines our judgments (Bellamy, this issue, 74).

Again, one can agree with Bellamy that practical judgments in the realm of human affairs are not often argued on the basis of either ‘rational’ or ‘factual’ truth alone. This is an indisputable fact, especially in an arena increasingly characterised by post-truth and bullshitting, as rightly Bellamy points out (Bellamy, this issue; Davis 2017; Frankfurt 2005). The important question here, however, is not the extent to which rational and factual truth determines our political judgements here and now but rather whether rhetoric and spin should be allowed to determine our political judgements in conditions

¹¹ See Efthymiou 2018 on the relationship of dispositions to civic virtue.

of genuine reasonable disagreement. Here are three reasons to be sceptical about that claim.

The first and broader methodological point here is that there is no difficulty on “where to draw the line” between “presenting one’s case effectively and in the best possible light and lying and deception” (Bellamy, this issue, 73). To put it more succinctly: there is no problem with “presenting one’s case effectively and in the best possible light” when this is achieved by presenting valid and sound arguments, but there is a problem when this is accomplished by informal fallacies and rhetoric regardless of whether one has reached a state of genuine reasonable disagreement or not. Lying and deception is just a subset of efficacious but fallacious persuasion. Hence, a line between presenting one’s case in best possible light and deception is clearly drawn here; and it is a line fully compatible with Newey’s thesis*.

The second point is that the use of rhetoric and spin could be justified, according to Newey’s thesis*, on grounds of weak paternalism but not because of the limits of “rational and empirical truth” in political argument. For example, if a D-approved policy P can only be successfully implemented by use of rhetoric and spin rather than “rational and empirical truth” then politicians, in such conditions and only in such conditions, are permitted to use rhetoric and spin for the same reasons they are also permitted to lie. This is what follows from Newey’s thesis* and its relevant qualifications. However, note that this applies only to the case of second-order decisions and not in cases where there is genuine reasonable disagreement over first-order decisions. This, I think, is another key difference between Newey’s position and Bellamy’s.

Third, one wonders how much that space of unresolvable disagreement and political impasse shrinks when one adopts a rationalist and empirical approach to assessing political decisions.¹² The claim that reaching an agreement requires rhetoric and spin in conditions of genuine reasonable disagreement appears false. Rhetoric and spin are not practically required to resolve a reasonable disagreement over the maximally feasible implementation of D-approved first-order principles. Instead, strategic considerations come into play and should come into play in such conditions. Here is an example:

¹² This space shrinks further if one accepts, as Bellamy (this issue, 77) seems to do that democratic deliberation is more likely to deliver more accurate decisions than alternatives (List, Goodin 2001).

Assume A are voters and B politicians. Assume a subset of A, A_1 prefers policy x to y and that the only way get to x is to form an alliance with subset A_2 in order to elect the number of B_1 and B_2 politicians necessary to make it more likely that x than y. Suppose, further, A_1 and A_2 disagree over z but agree that getting x over y is more important in getting or not getting z respectively. In those conditions of irreconcilable disagreement over z there is agreement that x is superior to y. Consider now a variation of the above scenario, where A_1 and A_2 disagree not just over z but also over the degree to which x is to be preferred to y.¹³ In those conditions, members of A_1 have reasons to vote as members of A_2 (for B_2 candidates) if they have good reasons to think that by voting for B_2 candidates they will get somewhat more of x as opposed to y than if they vote for B_3 candidates that favour univocally y to x if their preferred candidate B_1 that has very limited chances to win any seats.

One could object here that these complex political decisions are oversimplified in the above example and not easy to make due to limited information and limited rationality. This is not, however, an argument for the opposite of *such* decision making.¹⁴ It is rather a call for doing our best, given these limitations to human reasoning. Even in conditions where no option could be shown to be instrumentally better than any other resorting to rhetoric and spin is worse to resort to than a lottery. Choosing randomly at least preserves the autonomy of the will of the voter whereas rhetoric and spin, even in conditions of genuine political disagreement and uncertainty, aim to defraud the voter about her will and preferences.¹⁵ Newey would agree, I think, with that conclusion and exhortation: politicians have a duty to layout a rationalist and informed strategy in light of the preferences of their voters. Voters on the

¹³ See e.g. Hamlin and Stemplowska (2012) on how the use of indifference curves could help inform such decisions.

¹⁴ For example, one could distinguish here between one scenario of genuine reasonable disagreement concerning first-order decisions where politicians use rhetoric and spin to deceive voters to choose among two options that voters are rationally indifferent to and a second scenario where voters choose rhetoric and spin as a tiebreaker between two equally good political options. But also in this second case voters' choice is based on fallacious thinking and therefore on something that lacks argumentative value. Choosing randomly, in such conditions, is at least a sign of resistance to succumbing to fallacious thinking.

¹⁵ See Efthymiou (2015) on why we can and are justified to choose randomly in such circumstances; that is when such a random choice does not affect directly or indirectly the maximum realization of our political commitments.

other hand, have a right not to be deceived about their first-order political choices regardless of the degree of disagreement and uncertainty in democratic decision-making.

IV. CONCLUSION

In this article, I argued that Newey's writings on political lying amount to a concern for safeguarding voters' will or preferences from deceptive influence on the part of politicians. The primary motivation behind Newey's approach, consistent with his attraction to Hobbesian realism, is a concern with the darker sides of political power and the tendency of politicians to abuse that power, I argued. For Newey the antidote to manipulative manoeuvres by politicians eager to gain, or remain in, power is to place on them the burden of proof when it comes to the truthfulness of their claims. "Prove to me that it is true, that policy P that you propose has qualities x, y and z if you want me to vote for you and to be bound by my decision to opt for you and P" says Newey's citizen to the politician. It is also important that we do not (over)interpret Newey's call as a call for a wider set of comprehensive checks and balances on the exercise of political power but as a call merely compatible with such checks and balances. Newey's thesis* on political lying is not an attempt to transcend this Hobbesian side of politics. What animates his thesis is a rather modest attempt to tame that dark side of politics, if not to minimise its reach. A call meant to serve rather as a reminder that even when politics is not brutish and short, it can still be quite nasty and bullshit-ty.

REFERENCES

- BBC, "Arkady Babchenko: Ukraine Faked Murder of Journalist", <https://www.bbc.com/news/world-europe-44307611>.
- Bellamy R. (2010), "Dirty Hands and Clean Gloves: Liberal Ideals and Real Politics", *European Journal of Political Theory*, vol. 9, n. 4, pp. 412-430.
- (2019), "Lies, Deception and Democracy", *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 61-82.
- Christiano T. (2006), "Democracy", *Stanford Encyclopaedia of Philosophy*, <https://plato.stanford.edu/entries/democracy/>.
- (2008), *The Constitution of Equality*, Oxford, Oxford University Press.

- Davis E. (2017), *Post-Truth: Peak Bullshit - and What We Can Do About It*, London, Little Brown.
- Dworkin G. (2017), "Paternalism [Electronic resource]", Stanford Encyclopaedia of Philosophy, <http://plato.stanford.edu/entries/paternalism>.
- Efthymiou D. (2015), "Sen's Idea(l) of Justice", *Jurisprudence*, vol. 5, n. 2, pp. 352-362.
- (2018), "The Normative Value of Partisanship: When and Why Partisanship Matters", *Political Studies*, vol. 66, n. 1, pp. 192-208.
- (2019a), "EU Migration, Out-of-work Benefits and Reciprocity: Are Member States Justified in Restricting Access to Welfare Rights?", *European Journal of Political Theory*, <https://doi.org/10.1177/1474885118825360>.
- (2019b), "Respect in Neo-Republicanism: A Good Too Rich or Too Thin?", *Res Publica*, <https://doi.org/10.1007/s11158-019-09423-6>.
- Estlund D. (2009), *Democratic Authority: A Philosophical Framework*, Princeton, Princeton University Press.
- Freeman S.R. (2007), *Rawls*, London - New York, Routledge.
- Frankfurt H. (2005), *On Bullshit*, Princeton, Princeton University Press.
- Goodin R.E. (1980), *Manipulatory Politics*, New Haven, Yale University Press.
- Hamlin A., Stemplowska Z. (2012), "Theory, Ideal Theory and the Theory of Ideals", *Political Studies Review*, vol. 10, pp. 48-62.
- Kennan G.F. (1985), "Morality and Foreign Policy", *Foreign Affairs*, vol. 64, n. 2, pp. 205-218.
- List C., Goodin R.E. (2001), "Epistemic Democracy: Generalizing the Condorcet Jury Theorem", *Journal of Political Philosophy*, n. 9, pp. 277-306.
- Mearsheimer J. (2011), *Why Leaders Lie*, London, Duckworth.
- Newey G. (1997), "Political Lying: A Defense", *Public Affairs Quarterly*, vol. 11, n. 2, pp. 93-116.
- (2000), *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy*, New York, Springer.
- (2001), "Is Democratic Toleration a Rubber Duck?", *Res Publica*, vol. 7, n. 3, pp. 315-336.
- (2010), "Two Dogmas of Liberalism", *European Journal of Political Theory*, vol. 9, n. 4, pp. 449-465.
- (2013), "Toleration, Free Speech and the Right to Lie", in Id., *Toleration in Political Conflict*, Cambridge, Cambridge University Press, 2013, pp. 183-206.
- (2018), "Realism and Surrealism in Political Philosophy", in M. Sleat *et al.*, *Politics Recovered: Realist Thought in Theory and Practice*, New York, Columbia University Press, 2018.

- Pettit P. (2012), *On the People's Terms: A Republican Theory and Model of Democracy*, Cambridge, Cambridge University Press.
- (2015), *The Robust Demands of the Good: Ethics with Attachment, Virtue, and Respect*, Oxford, Oxford University Press.
- (2017), “Political realism meets civic republicanism”, *Critical Review of International Social and Political Philosophy*, vol. 20, n. 3, pp. 331-347.
- Rawls J. (1993), *Political Liberalism*, New York, Columbia University Press.
- (1999), *A Theory of Justice*, Cambridge (MA), Harvard University Press.
- Rossi E., Sleat M. (2014), “Realism in Normative Political Theory”, *Philosophy Compass*, vol. 9, n. 10, pp. 689-701.
- Walzer M. (1973), “Political Action: The Problem of Dirty Hands”, *Philosophy and Public Affairs*, vol. 2, n. 2, pp. 160-180.
- (1977) *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York, Basic Books.

Rawls famously described his version of political liberalism as a consequence of an application of the principle of toleration to philosophy itself. Political liberalism, as he understands it, requires that one abstain from taking a position on competing (reasonable) conceptions of the good life even while affirming an agreement on fundamental political values. This is of course another way of formulating his idea of an overlapping consensus in which citizens can disagree on conceptions of the good while still embracing shared political values. This could also be described as Rawls's case for democratic toleration, though as I hope to show there might also be some good reasons for not using this description.

As is also well-known to this audience, Glen Newey has been a forceful critic of liberal attempts to reconcile toleration with other liberal political values, including both public reason and democracy. Indeed, he has questioned whether toleration remains a coherent value or ideal in democratic politics. According to Newey, Rawls's use of an overlapping consensus among reasonable views ultimately seeks to avoid or circumvent what Newey calls the 'circumstances of politics'. The idea of an overlapping consensus among reasonable views on fundamental political values either presupposes strong normative assumptions about what the limits of toleration rightly are (and so doesn't take pluralism seriously enough) or it makes factual or empirical assumptions about the scope of agreement that Newey considers to be deeply suspect. Which views are "reasonably rejectable" varies according to circumstances, including in particular circumstances related to polit-

ical stability.¹ Further, on Newey's view, toleration is not obviously a virtue that can be applied to the exercise of political authority in a democratic regime. Political authority institutes or imposes terms of toleration between symmetrically situated conflicting parties – specifies what the limits of toleration are – and so it would be a mistake to see the state (or political authority) as itself exhibiting toleration. In this respect, Newey embraces what Rainer Forst (and others) call the “permission” conception of toleration-in the paradigmatic case, the enlightened despot permits views with which he personally disagrees.² But with the shift to an impersonal democratic state, it is no longer obvious that the state is best described as acting tolerantly. Newey concedes that there might be a limited role for toleration as a virtue among citizens; but it plays a much less significant role than is suggested by Rawls's remarks about applying the principle of toleration to philosophy itself.³

These remarks already expose some deep disagreements between Rawls and Newey on the understanding of what politics is or what it might mean to have a political conception of justice. Indeed, earlier in *After Politics* Newey described Rawls's political liberalism as both “anti-political” and “post-political”.⁴ I don't intend to enter (very far) into this large debate about the definition of the political. Newey's criticisms of political liberalism and toleration are nevertheless important – even apart from their deeper disagreement on the nature of politics. Is toleration a coherent ideal? Is toleration compatible with respect or is respect beyond toleration? Is toleration something a political authority might exhibit in its effort to be neutral with respect to competing conceptions of the good? Though I don't agree with all of the details of his analysis, I think there is some reason to think Newey is correct in his conclusion that – to cite the title of an earlier essay – “democratic toleration is a rubber duck”.⁵ That is to say, toleration is not what it appears to be since, strictly speaking, the state imposes the limits of toleration (among competing parties) but does not

¹ Newey 2013, 121.

² Forst 2013, 436.

³ Newey 2013, 120.

⁴ Newey 2001a, 178.

⁵ Newey 2001b.

itself behave tolerantly toward others. However, as I hope to show, the reasons for this are quite different than those offered by Newey. I also propose to explore this question in connection with some more specific debates primarily (but not exclusively) in the U.S. about the role of religion in the public sphere.

The discussion about toleration I have in mind concerns the treatment of religion within political liberalism with respect to the two clauses concerning religion in the First Amendment. On the one hand, the establishment clause has provided a basis for treating religion as special in a negative manner: it has been used to argue that religious reasons should not be invoked in the context of making or justifying laws, or at least laws concerning constitutional essentials, on the grounds that religion should be kept separate from the state. At the same time, the “free exercise” clause of the first amendment has been invoked to claim that sometimes religion is special in the sense that it is entitled to special accommodations and protections. Thus, the state has made accommodation to religious groups who have been disadvantaged by (otherwise purportedly neutral) state policy, but has denied such accommodations to non-religious groups.

One might claim that liberalism (including political liberalism) is at least consistent – in both cases it treats religion as “special”, even though in the one case it excludes it from politics while in the other case it accords it special benefits. But this is a rather abstract way of viewing the matter – and many critics of liberalism have been quick to fault liberalism for its lack of even-handedness.⁶ It seems inconsistent to grant accommodations on basis of religious considerations, but then not allow citizens to appeal to religious considerations in justification of policy (while permitting non-religious justifications) (Eberle 2002; McConnell 2013). Or, from a competing perspective, if one is opposed to the use of religious justification for law and policy, one should also be hesitant to support accommodations for religious organizations (as some stronger secularists have argued) (Leiter 2013) [see Table 1].

⁶ See Woltersdorff 1997; Eberle 2002.

Table 1 • Is religion special?
(see Schwartzman 2012, for diagram and references)

	<i>Accommodation</i>	<i>Non-accommodation</i>
<i>Inclusive</i>	1 not special, special Michael McConnell, Nicholas Wolterstorff	2 not special, not special C. Eisgruber and L. Sager
<i>Exclusive</i>	3 special, special Robert Audi, Andrew Koppelman, Cecile Laborde	4 special, not special William Marshall

A more recent response among some liberals – Dworkin is a good example as is also Brian Leiter in his book, *Why Tolerate Religion?* – has been to argue that religion is not “special” in either case: it is not religion *per se* that is prohibited by the establishment clause, but any comprehensive ethical view that citizens could reasonably reject. Similarly the “free exercise” clause provides a basis for granting not only religious accommodation but also accommodations for any sincere matters of conscience or what Laborde calls “identity-protecting commitments” (215). This is a strong response to the claim that religion is “special” – and one that remains controversial. For example, it has been charged that this view – and with respect to both clauses – inevitably leads to anarchy.⁷ In the first case, because it is not clear there is any basis for justifying law if all ethical views are excluded; in the second “free exercise” case because it leads to what many regard as frivolous exemptions – say, for attendance at football games, etc. [see Table 2].

⁷ Dworkin 2013, 124; see also Schwartzman 2014, 1321-1337.

Table 2 • Is conscience, or principled conviction about the good, special?
(see Schwartzman 2012, for diagram and references)

	<i>Accommodation</i>	<i>Non-accommodation</i>
<i>Inclusive</i>	1 level-up, level-up G. Gaus and K. Vallier	2 level-up, level-down B. Leiter, <i>Why Tolerate Religion?</i> Peter Jones
<i>Exclusive</i>	3 level-down, level-up J. Quong; C. Laborde; <i>Public reasons liberalism</i> Habermas	4 level-down, level-down Strong secular republicanism? some versions of luck egalitarianism?

There is another criticism, though, and one that has been especially directed at political liberalism and its tendency to be inconsistent in its views about religion. With respect to establishment, it displays a preference to “level-down”: to argue that no comprehensive views (not only religious ones) can be appealed to in justification of law. By contrast, with respect to the “free exercise” clause, it reveals a tendency to “level-up” – that is, to provide accommodations not only to religious minorities, but as a more general way to address various multicultural concerns.⁸ It would (as above) seem to be more consistent to level-down in both cases; or to level-up in both cases. (Schwartzman has also suggested that position #4 in Table 2 might be the most egalitarian at least initially.) In my remarks here, I would like to see what might be said in favor of less consistency – perhaps in the name of greater equality!

In her recent book, *Liberalism's Religion*, Cecile Laborde defends a position that embraces this proposal.⁹ On the one hand, she defends what she calls “minimal secularism” and a “restrained neutrality”. Religion is not special; but still there are good reasons (good public reasons) for excluding appeals to comprehensive views in the justification of law (or at least constitutional

⁸ See, for example, the criticisms of Barry 2001.

⁹ Laborde 2017.

essentials), when those comprehensive views fail to meet various conditions (ch. 4). She thus adopts what I've called the "levelling-down" view with respect to the establishment clause. At the same time, though, she advocates a "levelling-up" view with respect to the free-exercise clause (see ch. 6). Consequently, in view of her arguments it is not clear that there remains any significant role for toleration strictly speaking and so, in some respects, some of Newey's reservations would seem to be confirmed: The democratic state need not tolerate unreasonable views – in the specific sense that those views should not play a role in the justification of basic law or constitutional essentials – and it should "accommodate" and not simply tolerate views that are unfairly disadvantaged by otherwise "neutral" practices.

I. THE "ESTABLISHMENT" CLAUSE

In ways that bear resemblance to other "post-secular" accounts of the relation between religion and politics (e.g., Maclure, Taylor 2011), Laborde defends "minimal secularism" and "restrained neutrality" against various alternatives that advocate a more "inclusivist" interpretation of the establishment clause. For example, she rejects Gaus and Vallier's defense of inclusivism on epistemic grounds. According to them, the epistemic criterion for public reason should not be "shareability" (Quong 2011) but rather "intelligibility" by which they mean that comprehensive doctrines and viewpoints must be understandable from the agent's own point of view even if those agents don't otherwise accept them as true or even reasonable. Reasons that are in this sense intelligible should not be excluded from playing a role in political justification. This is clearly offered as a widely inclusive view in which few reasons are excluded from playing a role in justification. Laborde rejects this view on the grounds that it fails to respect citizens for whom those reasons might not be accessible. Accessibility, in contrast to intelligibility, requires that reasons be followable by others who do not share the comprehensive ethical view in which those reasons are located. Inaccessibility is however not a feature only of religious views – some feminist views, for example, might also be inaccessible – and, she argues, some religious views may indeed be accessible (see her remarks on Waldron on Locke). Accessibility thus admits a wider range of reasons than some stronger secular accounts (Audi 2011), but still qualifies as an "exclusivist" view.

At the same time, Laborde is critical of other defenses of exclusivism for their failure to clarify sufficiently the relevant distinction between public and non-public reasons. For example, she is critical of those who simply stipulate an identity or isomorphism between reasonable views and those that embrace political liberalism.¹⁰ But she is also critical of views, such as Jonathan Quong's, that attempt to defend a distinction between public and non-public reasons solely on epistemic grounds. (For her, accessibility is a necessary but not sufficient basis for distinguishing public from nonpublic reasons.) As she notes, Quong has proposed a distinction between foundational and justificatory disagreements and suggests that, while disagreements about the good are foundational or go all the way down, disagreements about justice are justificatory in character – they presuppose a liberal set of political values in terms of which such disagreements might finally be settled (even if they are not yet settled) (98f.). Though she grants that this is an improvement upon a stipulative resolution, she argues that it nonetheless fails since it does not answer what she calls the “jurisdictional boundary problem” (104). According to her, the distinction between public and nonpublic reasons (and so, ultimately too, the distinction between matters of justice or right and conceptions of the good life) are not ones that can be settled on epistemic grounds alone but rather require an exercise of state power. In this respect, her view once again would seem to be closer to Newey's view about the fundamental role played by the state's interest in maintaining peace and security.

Laborde's own solution is however somewhat perplexing. I quote her at length: “Theorists of liberal neutrality tend to assume that the right and the good are self-evident categories of moral reasoning; yet, clearly, they have evolved historically and are themselves the sites of foundational political disagreement. Disagreement about justice goes deeper than Quong admits... It depends on a prior identification of which areas of social life are justice-apt. And this determination cannot be made without judgments of substantive, metaphysical, and ontological question – judgments that ultimately it is the province of the state to make... In sum, it looks as though critical religion theorists have a point when they say that liberal neutrality assumes a prior conception of the legitimacy of the state as a ‘meta-jurisdictional’ authority” (109).

¹⁰ See, for example, her comments on Lecce 2008.

This statement is surprising given that it is made by someone who identifies herself as a public reasons theorist, even if one with a “republican” twist.¹¹ The apparent inconsistency is, I believe, due to a significant ambiguity in how her remarks are interpreted. On the one hand, they could be read as an endorsement of the “anti-political” critique of contemporary political liberalism advanced by Newey and others. Attempts to give a philosophical or epistemic account of the distinction between public and non-public and, beyond that, reasonable and unreasonable (since the latter are ones that fail to incorporate the proper distinction between public and non-public), all reflect attempts to escape the ‘circumstance of politics’. And, as Newey has argued, it is precisely the role of the state to impose limits of toleration between symmetrically situated parties, each of whom claims that the other is behaving in an intolerable manner.¹² Her own claims that it is exclusively states (or the democratic state) that have *Kompetenz-Kompetenz*, that is: “The authority to define their own spheres of competence, as well as those of other institutions” (Laborde 2017, 165) would seem to lend some support to this reading.

However, this reading does not fit well with other remarks Laborde makes about the legitimacy of political authority. Of course, in one sense the state must be the final arbiter – the state does not share this *Kompetenz* with other institutions as some recent pluralists and “new religion institutionalists” have argued.¹³ But there is still a question of the sort of considerations on which the state should base its decisions and exercise its jurisdictional power. On this second reading, Laborde’s claim about the state’s jurisdictional authority is also a normative claim that such decisions must be democratically made, where this assumes too in accordance with core liberal values (159). To be sure, this is not solely an epistemic matter; but it is also not an arbitrary exercise of power, as a more Schmittian view might have it. For public reason liberals – and here I include both Rawls and Habermas – the democratic process must also trust itself to a liberal political culture that informs those democratic procedures. Or, as Habermas puts it, democratic procedures must meet a liberal political culture halfway if they can make

¹¹ Laborde 2013, 67-86. For a different interpretation of the relation between state neutrality and accommodation, see Baynes 1992, 50-69.

¹² Newey 2013, ch. 3.

¹³ For a critique of this new pluralism see Cohen 2017.

any claim to legitimacy.¹⁴ There is then no *a priori* guarantee of a convergence among (reasonable) views on fundamental values (in a way that perhaps Quong assumes, though his “internalist” defense leaves this unclear), but neither is the appeal to democratic procedure an attempt to escape the “circumstances of politics”. Rather, I would like to suggest, it reflects a deep reliance on what Habermas calls “democratic common sense” (“Faith and Knowledge”) or what Rawls also calls a “reasonable faith”.¹⁵ As Rawls argued in his 1980 Dewey lectures, even the theoretical construction of the ‘original position’ must, in the last analysis, be acceptable to each citizen viewed as a free and equal member of society. More poignantly, in his response to Habermas’ suggestion that he (Rawls 1996) had assigned a less modest role to philosophy than Habermas himself, Rawls replied, “In justice as fairness there are no experts. Heaven forbid”.¹⁶ Rawls too maintains that ultimately any contributions offered by ‘students of philosophy’ must be received as that of one citizen among others (427). Just as for Habermas “quasi-transcendental” reconstructions cannot displace common sense knowledge but at most help to guide it, for Rawls “philosophy as defense” can only hope to make explicit what is found in common human reason defending it against more pretentious attempts in grounding.¹⁷ In other words, and to bring home the point of this second interpretation, the claim that jurisdictional authority belongs to the democratic state is neither pure philosophy imposed from above nor an acquiescence to the (sheer) “circumstances of politics”. It is an expression of democratic common sense or reasonable faith shared by Habermas and Rawls. (Of course, this claim does not deny that there is much more to be said about the character and limits of the notion of reasonableness implicit in this idea of a reasonable faith.¹⁸)

¹⁴ Habermas 1996, 461.

¹⁵ For further discussion, see my comparison of Habermas and Rawls in Baynes 2016, ch. 8.

¹⁶ Rawls 1996, 427.

¹⁷ Rawls 1999, 306.

¹⁸ This idea of a reasonable faith also seems (to me) close to Rainer Forst’s recent defense of an ideal of toleration in the tradition of Pierre Bayle (in contrast to Kant), see his *Normativity and Power*, ch. 5. Forst’s own debate with Newey concerns the question of whether there is an impartial moral point of view that can ground the “limits of toleration” that is not itself subject to the “circumstances of politics”. My own view is that the idea of such an impartial moral grounding of these limits remains part of the hope of a “reasonable faith” – and what I have called the “dialectic” of moral and political constructivism (Baynes 2016, 124f).

2. THE “FREE EXERCISE” CLAUSE

My remarks on Laborde’s interpretation of the free exercise clause will be brief (since establishment is controversial enough!). Again, to locate her position, she defends what I have labeled #3 in my diagram: exclusive accommodationist. Thus, while she argues that we should “level-down” when it concerns public justification – that is, on her view, public officials (at least) should not invoke reasons that are not accessible and that, even if they are accessible, otherwise infringe on the ‘civic equality’ of citizens in the justification of policies – she also claims that we should “level-up” when it concerns accommodating those who might be (unfairly) burdened or disadvantaged by the impact of those policies. For example, it is appropriate as a matter of justice to accommodate those who are unfairly burdened by employment laws that are based on secular considerations (see critiques of *Sherbert v. Verner*, which held Seventh-Day Adventist was not entitled to unemployment benefits). Such accommodations should not be restricted to religious minorities but should also be extended to any minority group whose “integrity-protecting commitments” are disproportionately burdened (203). In other words, religion *per se* is not special.

Laborde thus argues against positions like that of Brian Leiter who defend a “level-down” view on accommodation. On his view accommodations for those who have been disadvantaged should be rare and he argues against “burden-shifting” in favor of those who have been disadvantaged by the fact that they are simply in the minority. His view seems to be that individuals should be willing to bear the costs of their more expensive tastes, even when they are based on considerations of principle. Laborde by contrast argues that this gives unfair advantage to the status quo. She also argues that, in contrast to Leiter’s attempt to explain any accommodations by appeal to a principle of toleration alone, accommodations can and should also be based on considerations of equal respect. Exemptions from general laws, for example, are thus not based on the claim that a majority permits a minority practice to exist despite their disapproval of that practice but on a claim that those disadvantaged have a right to equal opportunity of core life-choices based on considerations of equal respect (see also Alan Patten). As she puts it, “all individuals should have a fair opportunity not to have their ‘identity-protecting commitments’ disproportionately burdened” (228). She cites in her support the UK case of *Ahmad v. Inner London Education Authority* (1976) as an illus-

tration: Accommodating Ahmad's Friday work schedule is a means to secure equal opportunity in the context of the advantaged Christian majority (231).

Of course, this view raises a number of difficult considerations – are those who believe their integrity is burdened by laws permitting same-sex marriage also entitled to accommodations (*Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 2017)? Are private organizations entitled to similar sorts of exemptions even if this imposes significant costs on their employees? (*Burwell v. Hobby Lobby Stores*, 2014).¹⁹ Unfortunately, there is not space here to pursue these extremely difficult questions further. Laborde's general strategy is nonetheless clear: One should "level-up" not "level-down".

3. CONCLUSION

Laborde's extended defense of what I have called an "exclusive accommodationist" position is at one level quite far from Newey's reservations about the place of toleration in contemporary democratic theory. Yet, even if it is for different reasons, they seem to be in agreement about the limited role for toleration in contemporary democratic politics. Rawls's description of political liberalism as the consequence of applying toleration to philosophy itself is, it seems, quite misleading: What political liberalism calls for, on the part of the state, is not for it tolerate (reasonable) conceptions of the good life (since that implies a negative judgment that one then has reason to refrain from acting on). Rather, it calls for "abstinence" (in Raz's memorable phrase): the state should not take a position one way or the other concerning the truth or rightness of the view in question (though Raz is of course himself critical of this view). This means that on an "exclusivist" reading of the establishment clause one should not take a further position on the merits of the "ethical view" in question; rather, from the point of view of justice, all (reasonable) views are equal and none should have any "special" status (leveling-down). Ian Carter has more recently extended this idea to assessments of the normative status of citizens themselves in connection with what he calls "opacity respect".²⁰ What this suggests is that, in exercising abstinence, one is not simply "tolerating" a fellow citizen (since

¹⁹ See, more generally, Schwartzman 2016.

²⁰ Carter 2011, 538-571; Carter 2013.

one refrains from making a judgment at all). One takes recognition respect as a 'range property' (Rawls) and abstains from making any further judgment of the degree to which a person exhibits it. Further, with respect to the "free exercise" clause again the primary idea seems not to be one of "tolerating" minorities, but rather of attempting to be sure that minorities are, through accommodation, respected as equals. So, with respect to the "non-religious" reinterpretations of the two religion clauses, it is not clear on this rendering of the "exclusive accommodationist" view that toleration is an appropriate term or a relevant virtue (at least from the point of view of the state). As I suggested in my opening remarks, this seems to yield an unexpected convergence with political liberalism on Newey's thesis that "toleration is a rubber duck"!

REFERENCES

- Audi R. (2011), *Democratic Authority and the Separation of Church and State*, New York, Oxford University Press.
- Barry B. (2001), *Culture and Equality*, Cambridge, Polity Press.
- Baynes K. (1992), "Liberal Neutrality, Pluralism and Deliberative Politics", *Praxis International*, n. 12, pp. 50-69.
- (2016), *Habermas*. New York, Routledge.
- Carter I. (2011), "Respect and the Basis for Equality", *Ethics*, n. 121, pp. 538-571.
- (2013), "Are Toleration and Respect Compatible?", *Journal of Applied Philosophy*, n. 30, pp. 195-208.
- Cohen J. (2017), "Sovereignty, the Corporate Religious, and Jurisdictional/Political Pluralism", in C. Laborde, A. Bardon (eds), *Religion in Liberal Political Philosophy*, New York, Oxford University Press.
- Dworkin R. (2013), *Religion without God*, Cambridge, Harvard University Press.
- Eberle C. (2002), *Religious Conviction in Liberal Politics*, New York, Cambridge University Press.
- Eisgruber C., Sager L. (2007), *Religious Freedom and the Constitution*, Cambridge, Harvard University Press.
- Forst R. (2013), *Toleration in Conflict*, New York, Cambridge University Press.
- (2014), *Justification and Critique*, Malden, Polity Press.
- (2017), *Normativity and Power*, New York, Oxford University Press.
- Gaus G., Vallier K. (2009), "The Role of Religious Conviction in a Publicly Justified Polity", *Philosophy and Social Criticism*, n. 35, pp. 51-76.
- Habermas J. (1996), *Between Facts and Norms*, Cambridge (MA), The MIT Press.
- (2003), "Faith and Knowledge", in *The Future of Human Nature*, Malden, Polity Press.
- Jones P. (2007), "Making Sense of Political Toleration", *British Journal of Political Science*, n. 37, pp. 383-402.
- Koppelman A. (2013), *Defending American Religious Neutrality*, Cambridge (MA), Harvard University Press.
- Labord C. (2013), "Political Liberalism and Religion: On Separation and Establishment", *The Journal of Political Philosophy*, n. 31, pp. 67-86.
- (2017), *Liberalism's Religion*, Cambridge (MA), Harvard University Press.
- Lecce S. (2008), *Against Perfectionism: A Defense of Liberal Neutrality*, Toronto, Toronto University Press.
- Leiter B. (2013), *Why Tolerate Religion?*, Cambridge (MA), Harvard University Press.
- MacLure J., Taylor C. (2011), *Secularism and Freedom of Conscience*, Cambridge, Harvard University Press.

- Marshall W. (1993), "The Inequality of Anti-Establishment", *Brigham Young University Law Review*, n. 52.
- McConnell M. (2013), "Why Protect Religious Freedom?", *Yale Law Journal*, n. 123, pp. 770-792.
- Newey G. (2001a), *After Politics*, New York, Palgrave.
- (2001b), "Is Tolerant Democracy a Rubber Duck?", *Res Publica*, vol. 7, n. 3, pp. 315-336.
- (2013), *Toleration in Political Conflict*, New York, Cambridge University Press.
- Patten A. (2017), "The Normative Logic of Religious Liberty", *The Journal of Political Philosophy*, n. 25, pp. 129-154.
- Rawls J. (1996), *Political Liberalism*, Cambridge (MA), Harvard University Press.
- (1999), "Kantian Constructivism in Moral Theory", in *Collected Papers*, Cambridge, Harvard University Press.
- Quong J. (2011), *Liberalism without Perfectionism*, Oxford, Oxford University Press.
- Schwartzman M. (2012), "What if Religion is Not Special?", *Chicago Law Review*, n. 79, pp. 1351-1427.
- (2014), "Religion, Equality and Public Reason", *Boston University Law Review*, n. 94, pp. 1321-1337.
- Schwartzman M., Flanders C., Robinson Z. (eds) (2016), *The Rise of Corporate Religious Liberty*, New York, Oxford University Press.
- Waldron J. (2002), *God, Locke and Equality*, New York, Cambridge University Press.
- Woltersdorff N. (1997), "Why we Should Reject what Liberals Tell us about Speaking and Acting in Public for Religious Reasons", in P. Weithman (ed.), *Religion and Contemporary Liberalism*, Notre Dame, Notre Dame University Press.

I. INTRODUCTION

Clausewitz famously said that war is the continuation of politics by other means, or something like that.¹ The view implies that politics and war share an end, or ends, though it at least leaves it open that the two activities are distinct. This paper concerns means more than ends, and in particular the relation between force and legitimacy. “Force” is a term applicable to a range of human and other interactions, of course, and may cover the “force of the stronger argument”, usually thought to be benign, as well as the blunt application of military power.² The question I examine is how far legitimacy is destroyed by the use of force.

It is clear that force is always there, a fact correctly registered by Weber’s famous definition of the state. An over-schematic map of the relations between the condition of war and the political condition might encourage

¹ Clausewitz in fact says something along these lines more than once in *On War*. The German in the passage usually cited (Bk 1.1., §24) is, “Der Krieg ist eine bloße Fortsetzung der Politik mit anderen Mitteln”, which might be rendered: “War is simply a continuation of politics [or policy] using other means”. Clausewitz amplifies (Bk. 3, 140): “Der Krieg ist nichts als eine Fortsetzung des politischen Verkehrs mit Einmischung anderer Mittel, um damit zugleich zu behaupten, daß dieser politische Verkehr durch den Krieg selbst nicht aufhört, nicht in etwas anderes verwandelt wird, sondern daß er in seinem Wesen fortbesteht, wie auch die Mittel gestaltet sein mögen, deren er sich bedient”. As this makes clear, Clausewitz’s view was the politics does not cease when two states find themselves in status belli, since political (e.g. diplomatic) efforts can continue concurrently with it.

² I will take it that ‘force’ is a generic term, roughly equivalent to the *Gewalt* of Weber’s definition of the [...].

the thought that states could operate in a world subsequent to force. But, as Hobbes underlines, what the political condition is subsequent to is not force, but endemic uncertainty regarding its use: that is what overcoming the state of war means. Achieving this itself depends on the successful deployment of force. Whether Hobbes was right to think that this in turn requires the radical centralisation of political power is not a question I will take up. The starting-point for the discussion is the simple fact that force is ineliminable from political life. Often³ liberals do not deny this, but hope to manage and tame the use of force within a frame that specifies when its use is justified.

I doubt whether such a prospectus can succeed, but the containment of force in political life by a framing story about justification is not the immediate focus here. The discussion deals instead with the effect of force on the political context of justification itself. It is in this connection that I introduce the idea of a *power loop* as a way of identifying (what I see as) the ineliminability, not simply of force itself, but of its effect on how that context itself is understood, including the kinds of justification that may be offered to legitimate what is done there. The aim is not to usurp the dominant liberal paradigm with a pallid version of relativism. It is to argue, ultimately, that justification cannot be what marks the distinction between politics and non-politics, because political life constantly and predictably calls into question, without definitively deciding, whether submitted justifications are indeed legitimating. The upshot is that force cannot, simply in the construction of politics, be subordinated to justification.

2. POLITICS AND LEGITIMATION: OVERVIEW OF WILLIAMS

I begin by considering Bernard Williams' much discussed posthumous work on politics and legitimacy.⁴ I assume that Williams' construction of politics

³ Even so, John Rawls' position on modus vivendi accommodations in *Political Liberalism* (1995) comes close to arguing that force – at least where it involves rough equality of power – is, in itself, illegitimate. The contrast is with the liberal *Rechtsstaat*, where no force is needed, presumably because everyone is of like mind. To this extent, a basic condition of politics is not met.

⁴ See Williams 2005, ch. 1.

aims to work with minimally contestable norms. He works on the assumption that politics is something other than war, and that exchanges of claims about legitimacy can occur only in the absence of war. The motivation for doing so comes from the thought that politics, as distinct from war, cannot simply involve the use of force by one group of people on another. What is required, beyond that, is the idea that power is used legitimately, and that this idea can inform the beliefs not just of those who exercise (and so may be thought to benefit from) it, but also those subjected to it. This Basic Legitimation Demand, or BLD, is one that, if met, effects the transmutation of power from belligerence to politics.

Williams argues that what is needed for politics is something more than an account of one group's successful domination of another, as with the domination of the Helots by the Spartans. What does politics require beyond this? Those who wield power must meet the BLD, Williams argues, by justifying their dominance to those on the receiving end. What is required is an account of legitimacy, and the powerful cannot give this simply by reaffirming the fact of their dominance: they have to *justify* this fact. But as Williams notes, it is far from obvious what 'justify' amounts to here. In the sense in which 'justify' is an 'achievement verb', I could be said to justify a practice merely if I perform the speech-act of justification, for example by claiming that the dominated group is downtrodden because its members are naturally inferior. In this sense, the demand that politics exists only if the dominators justify their position is too weak for Williams' purposes – indeed, since the bare verbal form imposes no constraints whatever on the content of the justification, it hardly offers an advance on the fact of domination. What is required on top, Williams thinks, is a 'normative supplement' that goes beyond a flatly ideological statement of the fact of domination.

As with all accounts of legitimacy, the danger of triviality looms again: even if those in power prove successful in eliciting assent from those at whom legitimation is directed, the disposition to accept the regime may simply be an artefact of power. As Williams notes, the acceptance has to go beyond mere *de facto* rubber-stamping of others' title to rule, by a perhaps deluded or misinformed citizenry. Williams thinks that the normative supplement here can be furnished by posing a counter-factual question. The question is whether the ruled would still have accepted the rulers' legitimacy, even if they were not subject to force.

At this point Williams draws on the ‘Critical Theory Test’ (CTT) set out in his earlier book *Truth and Truthfulness*.⁵ The test requires that a dominated group’s consent to the exercise of power is not itself simply the by product of that power. The dominant group may encourage its subjects to think that they deserve their lowly position, as with working class ‘deference’, or women’s ‘submission’ to patriarchal power. Such cases would presumably fail the CTT: consent is not sufficient for legitimating power, and hence to make the rule of some people by others a matter of political authority rather than mere force. At the same time, consent is not necessary for legitimacy, since those who withhold their consent may simply be unreasonably opposed to authority on principle, or be outlaws of some kind. So in Williams’ view consent is neither necessary nor sufficient for legitimacy, and hence for politics as opposed to mere domination. This leaves the Hobbesian question: what does secure legitimacy, and hence distinguishes politics from the condition of mere warfare?

Williams answers as follows:

Who has to be satisfied that the BLD has been met by a given formation at one given time is a good question, and it depends on the circumstances. Moreover, it is a political question, which depends on the political circumstances. Obviously, the people to be satisfied should include a substantial number of the people; beyond that they may include other powers, groups, elsewhere sympathetic to the minority, young people who need to understand what is happening, influential critics who need to be persuaded, and so forth.⁶

The problem here is similar to the one that faces Habermas’ attempts to formulate discursive principles of legitimacy. The question is taken to be whether individuals in certain ideal conditions would accept the principles. But the content of the conditions cannot even be set out prior to politics, or the ‘circumstances’ to which Williams refers. Not that cases of withheld or offered assent that affect legitimacy one way or the other do not vary circumstantially – no doubt they do. But on Williams’ own account, they surely vary circumstantially in ways that affect how the CTT will operate. In some cases, assent proves

⁵ Williams 2002.

⁶ Williams 1996, 36.

to have been suborned by methods that neutralise their power to legitimate authority, but it is very often a genuine question whether the circumstances are such as to derail claims of legitimacy. There is no obvious reason to believe that adequate criteria for judging answers to that question will admit of some general characterisation. One reason for that is that the circumstances themselves can be characterised in multiple ways, some of them mutually incompatible. Indeterminacy also attends what counts as information at all, and what bits of information are relevant or salient.

Why not rest content with the CTT? Indeed, why does Williams not say this himself, as the test seems precisely designed to handle problematic claims to legitimacy? While it remains conjectural why Williams did not do this, a possible explanation lies in the non-functioning of the test in cases where, assuming its rationale is to give a basis to decide legitimacy, clarification is most needed. The basic problem is how to provide clear truth conditions for the consent clause – the conditions under which the affected individuals would accept them. As Williams says, the circumstances in which an act of consent would pass the CTT, and thus confer legitimacy rather than merely reaffirming the fact of domination, defy pre-political formulation. So they cannot be brought in before politics as a way to distinguish politics from non-politics. It is not hard to come up with legitimacy derailing scenarios where assent has been extracted by deception, drugs or brute force. The harder cases are those where these methods are not used, but assent is extracted through more insidious means, as in ‘dominant ideology’ scenarios.

Suppose one says that citizen Z’s assent to a purported authority results from indoctrination by the authority when Z was young; then, in some possible worlds where the indoctrination does not exist, Z will not assent, but in some Z will assent anyway.⁷ The proposal falls prey to the ‘failsafe’ considerations that beset counter-factual analysis in other areas, such as causation.⁸ Where the regime has been instrumental in procuring its own support, it may seem obvious that citizens’ acceptance of it fails to legitimate it. After all, many grossly unjust regimes have proven adept at spreading propagand-

⁷ One strategy is to invoke the closest counter-factual world to the real one to secure the truth conditions. The problem here is how to make the notion of trans-world proximity robust enough to do the justificatory job asked of it.

⁸ See e.g. Ehring 1997, 27-28.

da to promote their own acceptance. Perhaps the CTT will weed out such cases. But it may also end up by giving out false negatives. The habits of acceptance may be inculcated in more subtle ways than via overt propaganda of the sort used by totalitarian regimes. An obvious example is education, which inculcates the habits of obedience in a variety of forums, and not just in say, Citizenship class. The interleaved processes of schooling and socialisation work to secure the grounds of compliance – and the formal curriculum follows the state's say so about which students should get taught what, when and how.

But it isn't obvious that these facts invalidate the acceptance of the norms, any more than the perhaps coercive inculcation of Boyle's Law, say, or the binomial theorem makes them or their acceptance invalid. Localised legitimating consent may arise even in those regimes whose illegitimacy is plain. If the Test is meant to show that a regime is legitimate only if people would accept it without the force of propaganda, there will be possible worlds in which people accept the regime anyway. The Test is unable, that is, to distinguish between the 'false' positives whose legitimating force it wishes to deny, from those positives that there is no good reason to reject. As a result, the CTT fails as a legitimacy filter.

It relies on a counter-factual question – whether or not the citizens would continue to accept the regime if its coercive force were removed. But the truth-conditions of the counter-factual remain quite unclear: there seem to be some scenarios in which the contrary-to-fact supposition is one in which people do not accept the regime, and others where they do. Williams' test tries to establish the basis on which acceptance is legitimating.⁹ But a test of this kind will not provide an uncontroversial way of marking off legitimate from illegitimate coercion. It is more plausible to think that a person's political predispositions will decide, when presented with some regime, whether or not she thinks that those subject to it have accepted it, and so whether, as they do, she sees it as legitimate.

⁹ Appeal to what a 'reasonable' person would accept in the counter-factual situation simply begs the relevant questions. What if the person suffers a lapse of rationality? Or if she is badly informed? At this point the usual move is to restrict talk to persons who are fully informed and rational. What if rational people can disagree? When such questions are pressed it becomes clear that the possible worlds talk is simply a proxy for advocacy of a certain pattern of response as reasonable

There is no reason to think that the reasons presented at this point can be purged of political content. People are apt to accept or reject the justification because they have already adopted a political position, not the other way round. The truth-conditions of the counter-factual claim that people would not accept the authority in a certain set of circumstances are simply unclear, and as a result are ill-fitted to do the job of legitimacy-filtration. If one group claims that it has legitimated its power over another, but the latter rejects this claim, do we have politics, or war? Is one doing politics with the other, while that other is at war with the first? This is a genuine possibility. For example, were the mainly Roman Catholic nationalist and republican community of Northern Ireland during the Troubles at war with the UK state, or simply a political minority over whom power could, accordingly, be legitimately exercised? It became a political matter whether republican prisoners should be granted 'political' status, and indeed whether the use of violence was a legitimate political strategy.

Notoriously, similar questions come up in marxist analysis of legitimation under capitalism.¹⁰ Marxists either deny that the capitalist state is legitimate, or argue that the concept of 'legitimacy' is only applicable within the system, e.g. as contractual validity, so that the system's own legitimacy falls beyond the concept's scope. Marxists will then deny that legitimacy offers a viable means of distinguishing politics from the non-political, since the concept of legitimacy is being deployed to defend the interests of the powerful. But, the story goes, the underlying notion of legitimacy is either invalid or only applies within the system, to relations between those who accept its normative paradigm. So, liberals cannot rely on the concept of politics to distinguish political – that is, acceptable – methods from supposedly non-political ones, such as subversion or violence. On Williams' account, the concept of politics seems to have the following peculiarity: we are only in a position to apply the concept if we know we are already in a situation in which the concept itself applies: that is, our use of the concept is, in effect, infallible. Unless this is so, one cannot operate the distinctions that the notion of legitimacy within the BLD requires, such as between authentic and suborned or otherwise illicitly procured consent. To identify this as a peculiarity is not of itself to object to it. Williams' account implies, in line with the view defended here, that it is itself a political matter what falls within the extension of the term 'politics'.

¹⁰ It was, for instance, a major concern of the Frankfurt School. See J. Habermas 1975.

No blanket distinction between politics and non-politics, such as that between relations within the scope of the BLD and those outside, seems convincing. Suppose that an application of it yields the conclusion that a given set of relations between actors meets the BLD. But if some group of people fails to agree with that, they may adopt that as a political stance while, by hypothesis, rejecting the claim that the BLD is met. Are these people then at war with the governing power? Perhaps, if a necessary condition of meeting the BLD is actual acceptance of the relevant power by groups to whom it is a live question; but perhaps not, if an acceptance-independent criterion of legitimacy is used. In circumstances where legitimacy itself is in question, the protagonists will necessarily take contrasting positions about the nature of their relationship. But it is not obvious that those who reject the legitimacy claims are thereby in a state of ‘war’, where this excludes politics.

Consider the possibility of civil disobedience. On Rawls’ influential view in *A Theory of Justice*, nearly-just societies can be the site of justifiable civil disobedience where this targets remaining areas of injustice (presumably this applies a fortiori to grossly unjust ones).¹¹ Clearly one point at issue between authorities and protesters will precisely be whether the policy, law... is substantively unjust, or whether it is legitimate. Presumably those involved will think that one or other of these claims is true (or both). Such was the case, for instance, with the “Not in my name” protests before the 2003 invasion of Iraq.¹² Part of the significance of the phrase lies in its denying legitimacy to the policy, rather than merely opposing it. Whether or not the protesters are thought of as making a valid claim, it is not obvious that what they were saying falls outside politics merely because they were calling the war’s legitimacy into question.

There seems little reason to say that the denial of legitimacy places these protests outside the scope of politics, let alone that they therefore belong to the sphere of ‘war’ – they seem rather to be a clear instance of political action. Suppose the protesters were wrong. Then the government’s legitimacy claims survive the CTT, and so there is no reason to think of the protesters’ relation to it as other than political, on Williams’ own view. But suppose that the protesters

¹¹ Rawls 1971, §55, 319ff.

¹² The phrase has also been used, for example, by peace activists in Israel and by anti-ISIS Muslim campaigners. See <https://www.youtube.com/watch?v=hAxIOC8Zisc> (accessed: 21st October 2015).

were right. Then the government's claims to legitimate the war were unacceptable (and may perhaps have failed the CTT). But even then, it looks like a further step to infer that the failure put the protesters into a state of war with the government. A significant feature of the protests were that they rested on a widely-held belief that the government had lied about the case for war. Even so, it remains debatable how far that fact would entirely destroy the basis for a political relation between protesters and government.¹³ That is, denials that the BLD has been met, either locally or globally, can be an authentic part of politics. One can say that they can be so only if the demand has already been met, and say that whether this is so holds regardless of the protesters' own views about it. But this retains the protesters' political status only at the cost of rejecting their substantive claim about the policy's legitimacy. If contrarily the account says that the BLD has not been met, again, it puts the protests in the arena of war.

The point can be put in a different way, by noting that liberalism aims to bring the use of force entirely within the scope of the reasonable. For example, *Political Liberalism* deploys "reasonable pluralism" in the form of reasonable disagreement about the nature of the good life or "comprehensive doctrines" as a means of deriving reasonable agreement about the terms of association, including about the use of force. The point of the construction is to create a justificatory frame in which certain such doctrines are ruled out at the start, and are therefore seen as fit targets for the use of force. To this extent, the domain of the reasonable coincides with that of the justifiable, and negatively defines the space in which force is justifiably applied: that is, to doctrines, or their exponents, that do not accept what I will refer to as the *Principles*: that force cannot be justifiably applied to those who agree their doctrines are reasonably rejectable; or, differently, that force cannot be justifiably applied to those who hold doctrines that are reasonable. The two versions come together if it is a condition of being reasonable that one agree that one's particular comprehensive doctrine is reasonably rejectable, and Rawls does appear to make this assumption.¹⁴

¹³ To summarise a discussion I have pursued elsewhere, while mendacity for obvious reasons seems to void the basis for shared agency between the liar and the lied-to, it is not obvious that the demand this generates for transparency (or at least non-mendacity) can operate at the level of political association as opposed to more specific contractual dealings (such as between vendors and customers). See Newey 2010.

¹⁴ Rawls does not make explicit whether 'reasonable' is applicable to the doctrines themselves – though his usage suggests that this is his meaning – or to way in which they

If so, unreasonable people think that their doctrine is not so rejectable, although in Rawls' view all doctrines are. They are thus eligible for the use of force.¹⁵ However, it is quite possible that people disagree reasonably about which disagreements are reasonable. One obvious ground on which they may do so is because they disagree about how people arrive at their different views, and in particular about how the ethics of belief bears upon that. A version, though not the only one, of that disagreement arises when one person regards as reasonable a set of beliefs that another thinks she holds only as the product of indoctrination. It is of course not self-contradictory to imagine that in such situations, one person is basically right and the other wrong about whether or not she is reasonable in disagreeing with the other – though, equally obviously, few people who disagree believe they are doing so unreasonably. But this is a resource that Rawls, to whom the emergence of disagreement in conditions of freedom is fundamental, is ill-placed to use.

Disagreement may arise not just about what counts as reasonable but also the Principles themselves. It is not clearly unreasonable to deny that force cannot be applied to those whose doctrines are reasonably held, for example because those who hold them think, nonetheless, that they are reasonably rejectable. Perhaps some other considerations simply take priority, examples of which are not hard to imagine. Suppose I think that my doctrine entitles me to emit toxins freely into the environment, even though I also think that other, non-emitting lives are reasonable, and my own can be reasonably rejected by the people living them. It does not seem to follow that the government cannot use force to stop me. Part of the trouble for Rawls is that he never decides between a substantive and purely procedural idea of the reasonable; the underlying problem is that the procedural version lies open to counter-examples like the one just given, while any substantive one faces reasonable rejectability itself.

The upshot of this is that reasonableness is ill-equipped to do the job of demarcating the sphere of politics, as not--violence, and the extra-political state of war. Rawls' specific problems in this area arise from the incoherent

are held. These are not the same. A reasonable doctrine can be held on unreasonable grounds. I by-pass this complication.

¹⁵ It is common ground that even if it is unreasonable, there may be no warrant for the use of force. I may be implacably convinced that my astrological beliefs explain the nature of the cosmos and regard dissentient views as unreasonable. Nonetheless, if I keep my views to myself, no political question need arise.

demands made of the 'burdens of judgement' in his argument.¹⁶ But the presence of those demands are symptomatic of a wider problem, which serves to put the notion of the reasonable under insupportable strain. That problem is that the quest for a moralised basis for distinguishing justifiable and unjustifiable violence – which, his starting-point notwithstanding, is where Williams goes – cannot be completed, given the historically highly situated reasons that real encounters between people throw up. It remains one of the deeply puzzling features of Williams' later thought – which places so much stress on precisely this feature of reasons – that he endorsed an account of politics that is committed to rejecting it, and to reinstating, in effect, the claims of moralism at the very point where he meant to contest them.

3. POWER LOOP AND LEGITIMATION

I take the basic political question – a better way of bringing out, in my view, than Williams' "the first political question" the fact, acknowledged by him, that it will keep coming up – to be *What do we do?* It is obvious that this question arises all the time. For whom it arises, and in relation to what deliberative possibilities, are themselves already political questions. It is also obvious that the question admits of more descriptive and more normative inflections, but even where the answer purports to be a descriptive one, as in some of Pericles' funeral oration to the Athenian assembly in Thucydides' *History of the Peloponnesian War*, it clearly also may have action-guiding intent. This is not an attempt to define 'politics' or 'the political'. It is simply an attempt to characterise the point from which it begins, or rather begins again. There then arise questions of means, including for instance the forms of force at the disposal of those for whom the question arises.

By the term power loop I will understand the following: a situation where a purported authority or its proxies tries to legitimate itself to those subject to its power, and the legitimation itself exemplifies this power relation; so that the legitimation raises the very question it seeks to settle. By contrast, I shall use the term justification in such a way that it need not involve a power loop. For instance, the form of justification that consists in setting out a proof of

¹⁶ Rawls 1995, 52ff.

a theorem does not usually instantiate any power relation, still less one that is acceptable only if the justification itself succeeds.¹⁷ Thus understood, to describe a situation as involving a power loop does not specify whether or not the legitimation succeeds. It can always be asked in a power loop whether the legitimation – which takes the form of an answer to the basic political question – is merely a verbal move, symptomatic of the power that it expresses, and to this extent it can be asked whether it succeeds. But the success-conditions remain to be specified. From the standpoint of the authority itself, it may simply be a matter of saying enough to render a population quiescent. Assent procured by these means no doubt strongly contends to be labelled a ‘false positive’. But other cases prove less tractable.

In part this is because the real circumstances of in which a given legitimation, L, is made involve contextual factors which may be hard to place in a theoretical reduction of politics. Typically, these factors will include many of the following: the purely semantic content of L; who is delivering L; the audience at whom L is ostensibly aimed, as well as those at whom it is really aimed, which may or may not be different; those neither among the intended nor ostensible audience, who may also hear L; the terms in which L is expressed: the speech-act that those delivering L intend to perform, and the speech-act which the various audiences already distinguished take the speaker as having performed; historical factors that bear on all of these matters, such as the past relations between the speaker and the various audiences, the immediate circumstances of utterance, including the relative power of speaker and audiences, and so on.¹⁸

One possibility that emerges in contexts of legitimation is that a discourse may be legitimating for one group, but not for another. A good example is the parliamentary debates that occurred in many jurisdictions during the nineteenth century about the extension of the franchise to groups of men previously excluded, such as the urban working class. Few of these debates were directed at members of the groups in question. Instead they were articulated by members of the political class – those already enfranchised – to their peers. Organisations such as the Chartists did exist to voice the demands of these groups outside parliamentary channels, but even here few thought

¹⁷ This is not to deny that specific examples of any kind of justification may be used in such a way that they embody, or express, relations of power.

¹⁸ See, e.g., Austin 2005; Searle 1969.

about including women either as participants in the demands or among the prospective beneficiaries of reform. What then should be said about the demands, and those voicing them? Democratic agitators were typically educated but politically marginal or excluded tribunes claiming to speak for those kept out of political participation, or at least those whose having been designated as such made them politically visible.

The notion of a power loop is intended to help explain why contextual judgements that are formed within a certain regime where legitimations are made defy thoroughgoing evaluation. Cases where the judgements involve claims about freedom are particularly resistant to correction by theory. When a power loop exists, justifications or other judgements are evaluated in context, whether positively or negatively, by those who are subject to the power that they purport to legitimate. Of course, there is no need for observers to place themselves, sometimes *per impossibile*, inside the context whose legitimations are in question. Take a context that is both familiar (because from the history of incipient parliamentary democracy but also historically remote).

It is tempting, when faced with examples of power used to silence argument, to say that coercion takes away freedom. So, since freedom is a necessary condition of joint agency, and therefore of politics, coercion, by negating joint agency, makes politics impossible. But since force or coercion¹⁹ is a settled feature of political life it makes problematic any generic distinction between it and war. It is not enough to say that politics could be the object of an original agreement, not itself coercive, and that coercion may be used subsequently under agreed conditions. That is indeed possible. But in this case above all, it matters that although such an agreement could hypothetically have been made, it in fact was not. Your objection to being subject to coercion right now is not answered by noting that there is a possible world

¹⁹ I am avoiding this term in general as it involves well-rehearsed difficulties. Developing a philosophically adequate account of coercion is far from straightforward. The problems are apparent in Robert Nozick's influential "Coercion" (1969, 440-472). Nozick's account relies on the idea that P behaves in a way that makes an action A that Q would otherwise have performed less eligible for her, leading her to perform not-A as a result. But this account fails to distinguish coercion from incentivisation. Since non-performance of A is required by Nozick's account, it also fails to allow for the possibility that Q may be coerced even though she still does A.

in which you would have non-coercively agreed to be coerced – even if your agreement to coercion is imagined to include the very circumstances in which you now find yourself.

States do make their citizens, or subjects, an offer that they cannot refuse, and that the consequences of refusing may prove to be very bad for the refuser. All this is very often obvious to that person and observers, as a visible constraint on what she may do. More insidiously, the state may have simply have succeeded in internalising the habits of obedience in her, whether through propaganda, or schooling and wider processes of socialisation. As noted already, the latter possibility makes it much harder to judge whether or not her acceptance of the state is free. As I shall argue later, that possibility is constitutive, in that there is always a possibility of objecting to a regime of embodied freedom, on the grounds of freedom itself.²⁰

4. ANARCHISM AS POLITICAL MORALISM

I have argued that the basic political question is, What do we do? Insofar as that question is practical, orientated towards action, it quickly leads to another, namely, What can we do? And that in turn prompts questions about power – who has it, how they propose to use it, to what end, and so on. In the quotation I began with, Clausewitz indicated that politics and war share an end: the contrast he has in mind is between military and diplomatic means. In addition, though, the means as well as the ends overlap each other, and that is partly²¹ because the methods of political power and war-making overlap.

Anarchists have often seen this clearly, and the insight can lead to what amounts, in a striking phrase of George Woodcock's,²² to 'the rejection of politics'. Schematically put, the argument runs as follows:

- I. Politics and war share methods that rely on the use of force, including violent ones;

²⁰ Another way of putting the point is to say that the condition of consent for a regime must come into possible conflict with any given content for it. I argue this point further in *Rogue Theodicy*.

²¹ Partly, because it is plausible to say that they overlap non-instrumentally as well, for example as expressive acts.

²² See Woodcock 1972.

- II. the methods mentioned in I, including some common to politics and war, are morally unjustifiable;
- III. it is morally unjustifiable to engage in activities which require methods that are morally unjustifiable;
- IV. one should never do what is morally unjustifiable,

which leads to pacifism, as well as the rejection of politics as a practical concern except insofar as its methods can avoid those mentioned in II.

It is clear that the argument rests on moralism, in the form of steps II-IV, that certain actions are simply ruled out as a consequence of their being morally unjustifiable. Liberals share with anarchists the endorsement of IV. But since liberals accept also that politics is morally permissible, and usually accept the moral justifiability of some wars, they are likely to reject II.²³ In this light, the issue regarding the use of force between anarchists and liberals is not over moralism itself as applied to this issue – the demand that the use of force be subject to a regime of moral justification. It is over the tenability of II. Again, the positions coincide practically if, in the world as it is, no actual uses of force can be justified even if in specified conditions they may be. In this way, giving the moral failings of actually existing liberalism, its theoretical counterpart tends towards anarchism: indeed, what is now sometimes called ‘empirical philosophical anarchism’ is another label for disenchanted liberalism.

When force comes under scrutiny, particularly in the case of structured violence, as in war or counter-insurgency, the problem of justification arises in a particularly sharp form. Liberals find themselves ill-placed to say that such actions meet their moralised conditions on justifiability. They lack a generally accepted theory of ‘political obligation’ and the ones that win acceptance from some of them are often of little use in determining what acts of structured violence are justifiable; for instance, Wellman’s ‘good Samaritan’ theory, though tailored to the protection activities of the state, says little about the circumstances authorising action on third parties (such as other state or non-state actors), nor does it concert the resources to disrupt some

²³ Some liberals incline to reject III. Williams perhaps was among them; cf. his well-known remarks that “some situations lie beyond justification” apropos the Godwin question about favouring loved ones in lifeboat-type situations (“Persons, Character and Morality”, in Williams 1981, 18).

suggestions that are likely to be unwelcome to the state's apologists, such as its identification with a protection racket.

Again, with consent-based theories, the obligation-triggering condition does not issue in any obvious guidelines about the use of violent force. Nor is this surprising: not just because there is no prospectus that forms the object of consent, but also because, as already argued, the presence of force always renders questionable the terms in which it is legitimated, and that includes terms based on consent. There is of course the Hobbesian answer that the sovereign gets authorised to decide when and what force to use, even if the consent to it is fictive. But even Hobbes, at least in *Leviathan*, does not countenance renouncing one's right to self-defence, or with it the scope for judgement as to when it should be invoked, a fact that threatens reversion to the state of natural war. It is naive to think that first, the justification of authority depends on consent, but also, second, the consent that confers it can be abstracted from the political arena where the force whose justification is in question is being applied. It's at this point that the move to the ideal attracts liberals – to ask what people would think in the absence of force, or at least force of this specific kind. But in general there is no reason to think that that has an answer; or that, even if it did, the answer in this hypothetical no-force environment would be in any way dispositive for how people should act. As the experience of force is not an aberration or singularity in politics, but a constant if not a constitutive feature of it, a retreat to counter-factual situations where it is absent seems to be precisely the wrong way of going about understanding it. This is in line with the humdrum truth that describing some interaction as political is not the same as awarding it, or the people involved in it, a good conduct mark. Any plausible account of politics which does not simply arrogate to itself, as Rawls' later theory did, the right to legislate about what politics ought to be, is going to have to deal with the fact that it is often morally unedifying, and sometimes not as good as that.

As I have suggested, if the issue is fought out on the moralist's ground, anarchists are likely to have the better of it. The problem with anarchism is that it is not a political position – or at least, not unless it answers the basic political question, *What do we do?* The problems for anarchists will arise soon after that question is posed: for example, if we can't agree on the answer to it, or if other people do not agree with us. But consistently, some anarchists like Woodcock reject politics. In this they do better than liberal moralists, who

both accept politics and reject it. From this angle, actually existing politics gives out a troubling picture, and the relation of projected theory to the landscape of real deliberation is unavoidably blurry.

5. CONCLUSION

I have argued that Williams' constructivism about politics shares more with 'liberal moralist' approaches to politics than is realistic. This is partly a matter of methodology as well as substance. They share a substantive aim of putting politics onto a normatively committed footing, by excluding morally unjustifiable relations of domination. But they also share a method: namely, the use of a normatively-motivated basis for partitioning politics and not-politics. As I have argued, its use simply serves to raise again at a pragmatic level the question it is intended to answer, and to that extent it fails.

I conclude by drawing two implications from the picture sketched above for the current politics of security.

1. Since the 9/11 attacks the idea has gained currency that the top or a major priority for governments is dealing with 'terrorism', a notion summarised in the phrase 'the war on terror'. Of course, 'the war on war' would wear its self-defeatingness on its face. Is counter-insurgency, as practised currently by western governments, a 'political' or a 'military' response to the 'threat'? It follows from what I have already said that no generic distinction can be drawn at the level either of methods or aims between politics and war.

The phrase is useful at least in making it apparent that the choice is not between politics and violence, but between forms of violence. There is no excluding of violence from politics, and to this extent the Hobbes/Williams picture of politics as a replacement for war is a misleading one. The most that could be hoped for – and it is what liberals hope for – would be an account of legitimate violence: that provides much of the impetus behind the recent revival of 'just war theory'. If that means simply what can be brought within 'the rule of law', it raises the question what legitimates that. It is at this point that anarchists can apply leverage, by questioning how far the demand that acts such as those of war be justifiable to all concerned, can be met. They might ask, for instance, how imaginative a counter-factual

the collateral civilian casualties of drone attacks in Yemen or Afghanistan would need for their fate to be acceptable to them in principle and thus justifiable. They might also wonder whether the more imaginative the counter-factual needs to be, the less successful it is likely to be at its job of underwriting legitimation.

2. Real-world political justification, as applied to the terrorist threat, constantly reaffirms the need for 'security' from it as prior to the numerous other lethal risks whose incidence greatly exceeds that of terrorism.²⁴ That fact already casts doubt on a purely consequentialist legitimation of 'counter-insurgency' and the broad range of measures linked to it. More relevantly to the concerns of this paper, it illustrates the point that violence, particularly by the state, often goes well beyond what submitted legitimations, even if taken at face value, warrant. In this setting there is little value in simply pointing to the gap and concluding that, at any rate, a state in good standing would limit its actions to those it could morally justify, where this is assumed to be far more limited than the actions states typically perform. A better start would be to accept that human beings are highly aggressive primates whose capacity for violence, spontaneous and otherwise, expresses itself in their daily actions, and then to think how far it is possible and desirable to contain or deflect this. To draw a bright line between 'politics' and 'war' risks simply replicating ideology and thus – ironically – domination.

²⁴ See e.g. the data on causes of death in the US (2011 figures) by the US Department of Health and Human Services: http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf. For instance, US citizens were 271 times more likely to die from workplace accidents that year than from terrorism.

REFERENCES

- Austin J.L. (2005), *How To Do Things With Words*, 2nd ed., ed. by J.O. Urmson, M. Sbisà, Cambridge (MA), Harvard University Press.
- Clausewitz C. von (2010), *Vom Kriege: vollständige Ausgabe*, Neuenkirchen, Gitta Peyn.
- Ehring D. (1997), *Causation and Persistence: A Theory of Causation*, Oxford, Oxford University Press.
- Habermas J. (1975), *Legitimation Crisis*, tr. by T. McCarthy, Boston, Beacon Press.
- Newey G. (2010), "Free Speech and Bad Speech: *Kasky v. Nike* and the Right to Lie", *Bijdragen*, vol. 71, n. 4, pp. 407-425.
- (2015), *Rogue Theodicy*, Unpublished Manuscript.
- Nozick R. (1969), "Coercion", in S. Morgenbesser, P. Suppes, M. White (eds), *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, New York, St. Martin's Press.
- Rawls J. (1971), *A Theory of Justice*, Oxford, Oxford University Press.
- (1995), *Political Liberalism*, New York, Columbia University Press.
- Searle J.R. (1969), *Speech Acts*, Cambridge, Cambridge University Press.
- Williams B. (1981), *Moral Luck*, Cambridge, Cambridge University Press.
- (1996), "Toleration: a Political or Moral Question?", *Diogenes*, vol. 44, n. 4, pp. 35-48.
- (2002), *Truth and Truthfulness: an essay in genealogy*, Princeton, NJ, Princeton University Press.
- (2005), *In the Beginning was the Deed*, Princeton, Princeton University Press.
- Woodcock G. (1972) *The Rejection of Politics and Other Essays*, Toronto, New Press.

Enzo Rossi

On Glen Newey's Prescient Political Realism

I.

In a 2015 post on the *London Review of Books* Blog Glen Newey regaled us with a rich morsel of autobiography:

In the early 1960s, the British state, having decided people could go to hell in their own way, legalised both suicide and off-course betting. Newly legal high-street bookies like my father, poshed up into 'turf accountants', still had to do their business behind frosted glass, lest passers-by be corrupted by glimpses of the depravities within. In a school-gate encounter with my mother, a fellow parent, Mr Crapp – a pillar of the local chartered accountants' guild and man of God – voiced his surprise that she had the brass to show herself in public, given her husband's job. *My doubts about moralism surfaced around this time*. Later, the parallel realisation dawned that bankers, mortgage lenders, insurers, even Mr Crapp – the plaster saints of market society – had feet of clay (Newey 2015, emphasis added).

Anyone familiar with Glen Newey and his academic work will read the sentence I italicised as an instance of characteristically self-effacing irony, as its author went on to become one of the most prominent realist critics of the still dominant but now somewhat embattled 'ethics first' approach in Anglophone political philosophy. In this brief piece I would like to point out an additional, related layer of meaning, namely that of a hyperbole. I suggest, that is, that Newey did entertain serious worries about political moralism long before those became common currency in our discipline. That is to say, Newey's work from the late 1990s and early 2000s anticipated many of

the themes that were to become the centrepieces of the revival of political realism prompted by the reception of work of Raymond Geuss and Bernard Williams published in the mid-to-late 2000s (Geuss 2008; Williams 2005).

In what follows I will first try to trace some key realist themes in Newey's work, to try and show how his realist insights preceded the explicit realist revival, and how they then developed in dialogue with the growing realist literature. I will then try to place Newey in a taxonomy of realisms, to the extent that his often illuminatingly contrarian positions allows for such an exercise. Finally, and more speculatively, I will consider some of Newey's posthumous work, to try and see where his unique approach to realism might take us next.

2.

The 2001 monograph *After Politics* is undoubtedly the largest piece of evidence of Newey's prescient realism, though as I will try to show it is by no means the earliest. Its central idea is indeed one that we now, in hindsight, easily associate with the realist revival. It is the idea that, for all the fanfare saluting the Rawls-induced resurrection of normative *political* theory in the second half of the 20th century, the revived subfield was too far removed from its ostensible subject matter to warrant its name. "Reports of the discipline's survival may have been exaggerated", Newey warns, because "few works of modern liberal political philosophy attempt to address the real world of politics, often applying inappropriate theoretical models to it when they do" (Newey 2001a). As I noted, this is by now a familiar realist methodological complaint, though one Newey pairs with a more substantive claim aiming to show that the mainstream approach is also politically flawed, in the sense that it hides an attempted power-grab that seeks to re-centre politics around liberal priorities: "liberal political philosophers aim at the supersession of the ostensible subject-matter of their discipline – that is, politics; they aim at a post-political order" (Newey 2001a, 1-2). I trust that this brief summary shows why I think it is fair to say that *After Politics* was, in many ways, ahead of its time.

What is more, I think those original contributions had blossomed much earlier, as far back as some of Newey's first publications, dating from the mid-nineties. Newey's early research topics were fairly typical for an analytically-trained British philosopher: his first articles concern the justifiability of

political authority in the face of value pluralism. However, the perspective Newey brought to bear on this topic is far from commonplace, and reveals a realist position in the making. For example, in an early piece on liberal approaches to multiculturalism, Newey skewers a typical post-Rawlsian liberal position with a realist move: "Clashes of interest inevitably demand the exercise of power, however *bien pensant*--or chary of giving offence--those wielding it" (Newey 1996a, 215). That is to say, political philosophers should not delude themselves that they can make political problems evaporate if only they can find the perfect mixture of pre-political moral commitments. Relatedly, in an article on political obligation from the same period, we find a sober conclusion that would resonate with some current realist views on legitimacy, especially of what I would call the 'ordorealist' variety, as we will see shortly: "A *raison d'état* justification of state action, making no mention of citizens' obligations, may be the most we can hope for" (Newey 1996b, 23).

3.

The examples above illustrate the long-running realist thread in Newey's thought, and how it informed the argument of *After Politics*.¹ Given this long gestation, it is perhaps unsurprising that Newey became one of the most prominent and insightful exponents of the realist revival in contemporary Anglophone political philosophy, once the revival was conceptualized as such. What, then, is Newey's place in the emerging realist current?

As I argued at length elsewhere (Rossi 2019), I think it is possible and fruitful to distinguish between three main realist approaches, at least insofar as we take them as Weberian ideal types: ordorealism, contextual realism, and radical realism. While all three realist approaches reject the priority of even any role for pre-political moral commitments in normative political theory, they are in principle distinct, so while there is some overlap between them it

¹ Similar observations could be made about the relationship between these realist insights and Newey's work on toleration (e.g. 2001b, 2013; Galeotti and Liveriero in this issue) and on Hobbes (e.g. 2008): both of those bodies of work are characterized by a reckoning with the idea that all too often political problems do not admit of philosophical solutions that preserve all that is of value, let alone plausibly subordinate matters of power and interest to matters of morality (Rossi 2013).

is useful to think of them as ways of centering three different non-moralistic problems: the need for order and stability in the case of ordorealism, the question of the appropriate scope of political power for contextual realism, and the intertwining of power and knowledge for radical realism. Each approach, then, draws its political normativity from different sources.

Ordorealism leverages a distinction between politics and raw domination, or suspended warfare, to characterize the question of peace and security – the “first political question” in Williams’s parlance – politics should prioritize (see e.g. Sleat 2013). The idea here is that, while security and peace are paramount, might is not right, because a kind of peace that is merely the product of raw domination does not count as an instance of a political relationship. The crucial difference between this approach and a moralist one lies in the fact that the normative work is done by a conceptual distinction between politics and suspended warfare, and not by a moral entitlement to a certain standard of treatment. A government that treats its subjects like the Spartans treated the Helots – to use Williams’s example – is simply not a government but an enemy. And choosing whether to be a government or an enemy is outside of the scope of the theory of legitimacy.

Contextual realism adopts a more practice-dependent (Sangiovanni 2008) understanding of what it means to answer the first political question. This type of realism draws its normativity from an interpretation of the point and purpose of the institutions that answer the first political question. Such an approach allows for a wider set of normative considerations to influence an order’s legitimacy, including, in some contexts, many issues not typically considered part of the purview of peace and security (e.g. distributive equality and welfare – see Jubb 2015).

Radical realism’s main focus is on providing empirically-driven genealogies – both debunking and vindictory – of the legitimating ideologies of practices, institutions, and even whole politics. Crudely, political realities and possibilities are often not as they seem. Both existing political orders and possible alternatives are often accepted or discarded for power-distorted reasons, which in turn is an epistemic flaw, in the sense that it sabotages our pursuit of the truth. Radical realism’s normativity, then, is epistemic, as it seeks to ground critique not on moral grievances but on improving our understanding of how the world works (see Prinz, Rossi 2017; Rossi 2019; Rossi, Argenton forthcoming).

With that taxonomy in place, I would tentatively suggest that Newey’s realism evolved from a roughly ordorealist stance to a more contextual one,

and that, despite his skepticism of the genealogical *Ideologiekritik* found in the radical approach, his most recent work may yield new insights for realists interested in ideology critique. The work on multiculturalism and political obligation highlighted above shows the clearest indication of the ordorealist leanings of Newey's early work. Already in *After Politics* and in some work on toleration from the same period, however, we begin to see a shift away from harsh *Realpolitik* or *raison d'état*, and towards a more inclusive account of political normativity.² The position now seems to be centred on a distinction between the misguided search of a harmonious moral resolution of political problems, and a context-sensitive account of political accommodation, which isn't a mere watering-down of political morality, but rather a search for what we would now call a distinctly political normativity grounded in an understanding of, e.g., the practice of democratic decision-making (Newey 2001a, 2001b).

Newey then took up the issue of political normativity more explicitly in some more recent and – by now – more self-consciously realist work. For instance, in his contribution to the 2010 special issue of the *European Journal of Political Theory* that for many represents a sort of semi-official launch of the realist current, Newey argued for an avowedly anti-moralist and contextualist understanding of the type of normativity that can legitimate political orders: his realist approach

does not attempt to establish a pre-existing order of reasons by reference to which legitimacy is to be understood. Reasons for acting politically, which include the understandings on which perceptions of legitimacy rest, are as much part of the local political culture as are, say, political institutions. This dims the prospects for theories which seek to lay down foundations for politics using reasons with purportedly universal domain. There is however no special reason to greet the specificity of political reasons with dismay (Newey 2010, 450).

So Newey's earlier realist account of politics, which, given its focus on *raison d'état*, one might have considered more universalistic, gave way to a more contextual, even "relativist" (*ibidem*, 462-463) position. This reading of the

² Not that Newey was ever a fully-fledged ordorealist, even of the liberal variety. He didn't quire offer a realpolitik-motivated endorsement of liberalism as much as sort of diagnostic resignation to its structures and strictures.

position also allows us to see how, despite his skepticism about liberal moralism, Newey can still be considered a liberal (Morgan, this issue, 203-225), albeit a disillusioned, almost reticent liberal (hence his doubts on the more radical wing of realism, as we will see in the next section). Newey's message is indeed that liberalism doesn't have to be the pious moralistic enterprise it has become in the dominant Anglo-American tradition. Newey's rather contributes to alternative and certainly no less storied liberal tradition, or family of traditions. The first liberal lineage that comes to mind here is the "liberalism of fear" commonly associated with political realism (Shklar 1989), a variant of which Newey investigated directly, especially through his work on John Gray's political thought (Horton, Newey 2007). Looking further back, it doesn't seem too far-fetched to also associate Newey to the longstanding Italian realist tradition. This tradition has its roots in Machiavelli and Guicciardini, flourishes in the Enlightenment era, and carries on through the 20th century in both socialist and liberal variants. I bring up this Italian tradition because I would like to suggest that it is possible, albeit speculatively, to associate Newey's reluctant liberalism with the strand of political thought that runs from Machiavelli's *ragion di stato* all the way to Benedetto Croce's subdued Hegelian Liberalism – a liberalism that, somewhat like Newey's, may be considered realist to the extent that it is built on a historical situatedness that, however, resists the temptation of teleological moralism (Bellamy 2013, 184).

4.

Let me now move on to some even more speculative thoughts about where Newey's thinking on realism might have been headed, and where it may lead us. I mentioned that he is sceptical of ideology critique, and so by extension would have been sceptical of radical realism. We can see this in the 2010 piece already: "Does it matter that power-relations influence a person's normative beliefs? [...] Attempts to free people by relieving them of dubiously acquired normative beliefs will have familiar perverse effects" (*ibidem* 2010, 461).

A 2016 paper extends that line of thought. Though sadly posthumous, this piece displays Newey's characteristically contrarian ability to insightfully read arguments against themselves. By developing the notion of a 'power loop', Newey criticises Bernard Williams's Critical Theory Principle – the

idea that we can and should isolate ruling power-distorted elements in a political order's legitimation story – and even the very distinction between politics and suspended warfare. The idea is of a power loop is indeed that of the “ineliminability of the effect of force on how the political context of justification is understood” (Newey, this issue, 118). That is to say, whether we judge whether the first political question has been answered satisfactorily cannot be independent of the coercion that has partly shaped our way of conceptualizing our political predicament. This is a radicalization of Williams's (and Geuss's) critical-theoretic approach: Newey's idea is that, taken to its natural conclusion, ideology critique ends up proving too much, in a way that is reminiscent of moralistic approaches to legitimacy: “If the issue is fought out on the moralist's ground, anarchists are likely to have the better of it. The problem with anarchism is that it is not a political position – or at least, not unless it answers the basic political question, What do we do?” (*ibidem*, 12). The conclusion Newey seems to want to draw from this is, crudely, that we should abandon the project of ideology critique and reconcile ourselves to the strictures of existing state-based solutions to the problem of legitimacy. But is that the only possible result of that argument?

To conclude this brief essay I would like to sketch a Neweyan move against Newey, and read his argument against his own position and extend it in the service of radical realism. To do so, let us take a step back and look at the background to this view, namely Newey's “naturalist account of politics”, based on the “broadly Aristotelian insight” that “political decisions are typically a bricolage created from found objects” (2013, location 784). It seems to me that that approach raises the question of how old those found objects should be. Why start from the state? A political naturalist approach should start from the idea of the inevitability of coercive structures, but there is no need to start from currently existing coercive structures. Indeed, a look at the anthropological and archaeological evidence rather suggests that, for over 90 per cent of human history, the ‘natural’ type of polity was that of an acephalous order enforced through horizontal, non-centralised coercion (see Widerquist, McCall 2017 for an excellent survey of the evidence). Insofar as those societies were stateless, they would satisfy the desiderata of most contemporary anarchists, including realist ones (e.g. Brinn 2019). Newey is only partly right to claim that anarchism is a form of moralism (this issue): it is only insofar as it rejects politics and/or the coercion that goes with it, but empirical evidence shows that that anarchism doesn't need to do that. In

fact I haven't shown it, but merely pointed at the anarchism displayed by the overwhelming majority of human history. The key element that characterizes anarchism on this account is not the rejection of politics but the rejection of the state with its sovereign prerogatives (Raekstad 2016). Newey was right to say that liberal moralist consent-based realist theories lead to (moralistic) philosophical anarchism. But an empirically-grounded form of radical realism may just be able to offer a debunking genealogy of the statism implicit in mainstream theories of legitimacy, and a vindictory genealogy of anarchist political structures (for a similar argument, see Rossi, Argenton forthcoming). Newey might then still have asked whether this form of anarchism can answer the question of what to do. I happen to think that realists can demand the impossible, and that prefigurative politics could provide a pathway towards radically transformative political projects (Rossi 2019), so I don't find the question troubling, at least in the form in which I, reading Newey's work, am able to pose it. What I do find troubling and dejecting is that Glen Newey is no longer around to prove me wrong.³

REFERENCES

- Bellamy R. (2013), *Croce, Gramsci, Bobbio and the Italian Political Tradition*, Colchester, ECPR Press.
- Brinn G. (2019), "Smashing the State Gently", *European Journal of Political Theory*, <https://doi.org/10.1177/1474885119865975>.
- Galeotti A.E. (2019), "Glen Newey's Critique of Political Toleration", *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 15-39.
- Geuss R. (2008), *Philosophy and Real Politics*, Princeton, Princeton University Press.
- Horton J., Newey G. (eds) (2007), *The Political Theory of John Gray*, London, Routledge.
- Jubb R. (2015), "The Real Value of Equality", *Journal of Politics*, vol. 77, 3, pp. 679-691.
- Liveriero F. (2019), "Newey and Rawls in Dialogue: The Limits of Justification and The Conditions of Toleration", *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 49-60, pp. 203-225.

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- Morgan G. (2019), "Glen Newey's Realism, Liberalism, and its Alleged Suppression of Politics", *Biblioteca della libertà*, vol. LIV, nn. 225-226.
- Newey G. (1996a), "Philosophical Aromatherapy", *Res Publica*, vol. 2, 2, pp. 215-221.
- (1996b), "Reasons Beyond Reason? 'Political Obligation' Reconsidered", *Philosophical Papers*, vol. 25, n. 1, pp. 21-48.
- (2001a), *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy*, London, Palgrave.
- (2001b), "Is Democratic Toleration a Rubber Duck?", *Res Publica*, vol. 7, n. 3, pp. 315-336.
- (2008), *Routledge Philosophy Guidebook to Hobbes and 'Leviathan'*, London, Routledge.
- (2010), "Two Dogmas of Liberalism", *European Journal of Political Theory*, vol. 9, n. 4, pp. 449-465.
- (2013), *Toleration in Political Conflict*, Cambridge, Cambridge University Press.
- (2015), "Rigged Wheels", *The London Review of Books Blog*, <https://www.lrb.co.uk/blog/2015/july/rigged-wheels>.
- (2019 [2016]), "Real Legitimation, Anarchism, and Power Loops", *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 117-135.
- Prinz J., Rossi E. (2017), "Political Realism as Ideology Critique", *Critical Review of International Social and Political Philosophy*, vol. 20, pp. 334-348.
- Raekstad P. (2016), "Realism, Utopianism, and Radical Values", *European Journal of Philosophy*, vol. 2, pp. 220-224.
- Rossi E. (2013), "Can Tolerance Be Grounded in Equal Respect?", *European Journal of Political Theory*, vol. 12, pp. 240-252.
- (2019), "Being Realistic and Demanding the Impossible", *Constellations*, vol. 26, pp. 638-652.
- Rossi E., Argenton C. (forthcoming), "Property, Legitimacy, Ideology: A Reality Check", *Journal of Politics*.
- Sangiovanni A. (2008), "Justice and the Priority of Politics to Morality", *Journal of Political Philosophy*, vol. 16, pp. 137-164.
- Shklar, J. (1989), "The Liberalism of Fear", in N. Rosenblum (ed.), *Political Liberalism: Variations on a Theme*, Albany, State University of New York Press.
- Sleat, M. (2013), *Liberal Realism*, Manchester, Manchester University Press.
- Widerquist K., McCall G. (2017), *Prehistoric Myths in Modern Political Philosophy*, Edinburgh, Edinburgh University Press.
- Williams B. (2005), *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, Princeton, Princeton University Press.

Giulia Bistagnino

Glen Newey and the Concept of the Political

I. INTRODUCTION

In the past years, the methodological debate in political theory has seen the emergence of a new wave of political realism. As well-known, political realism is a long-standing tradition of political thought, which goes back to Thucydides and Niccolò Machiavelli, concerned with providing guiding principles for political action based on accurate descriptions of politics and on the consideration that the political realm is, in some sense, autonomous. Contemporary political realists have not only presented new interpretations and ideas about the key features of political realism, but also have embraced such standpoint as a methodological reaction against mainstream liberal, normative theorizing, which they deem moralistic and too ideal.¹

Within this debate, Glen Newey's work constitutes a decisive contribution, which represents an important component of the contemporary renaissance of political realism. On a methodological level, Newey argues that political theory should deal with what is distinctively "political". Indeed, one of Newey's main concerns regards how political theory should be conceived and carried out. From his point of view, contemporary political philosophy, understood in terms of normative theories of liberalism, is not *political* in the relevant sense for its scope is too narrow. According to Newey, normative liberal theorists misunderstand the nature of politics and, in turn, dis-

¹ For discussions of realism as a movement opposed to the "applied-ethics" approach, see Baderin 2014; Galston 2010; Philp 2012; Rossi, Sleat 2014; Stears 2007.

place real politics altogether² by focusing on conceptual distinctions and on constructing and evaluating theories of justice, citizenship, etc. According to Newey, political theory – as it is practiced today – is overly focused on normativity and on what should be done, while lacking a systematic analysis and understanding of what politics is.³ Drawing upon these ideas, Newey proposes a conception of politics, that is realist in kind for it is drawn from the experience of real world politics, in which the political realm is constituted by endemic disagreement and essentially involves the use of power.⁴ In “Real Legitimation, Anarchism and Power Loops”,⁵ Newey scrutinizes even further the notion of politics by not just proposing a conception of it, but by attempting to understand on what basis the realm of the political can be considered as such. By advancing what he calls the “first political question”, Newey proposes a criterion to identify what pertains to the political domain.

In this article, I shall discuss Newey’s idea that the “first political question” should not concern the securing of “order, protection, safety, trust, and the conditions of cooperation”⁶ – as Williams suggests – but *what do we do?*⁷ My aim is to provide an interpretation of what Newey considers basic for classifying a certain issue, action or decision as distinctively political and to show the force and relevance of such an account by elucidating how it applies to different understandings of politics present within the tradition of Western political theory. Indeed, in the essay here under discussion, which is published in this volume for the first time, the idea of the basic political question is underdeveloped. However, if my interpretation is correct, Newey has proposed an innovative and powerful way to understand what are the basic conditions for assessing what falls within the realm of the political.

² Although the attack on contemporary liberals is explicit in Newey’s work (see for example, Newey 2001a, 2), it is interesting to note that he advances the same critique also against perspectives that put conflict at their very centre. For example, he rejects Walter Bryce Gallie’s theory of essential contestability by arguing that it constitutes an attempt to displace political disputes in the philosophical arena. On this point, see Newey 2001b, 252.

³ As Paul Kelly notes (2004, 96), Newey’s idea of political philosophy is influenced by Michael Oakeshott’s methodological reflections on theorizing about politics.

⁴ See Newey 2001a, 7–8.

⁵ Published in this volume.

⁶ Williams 2005, 3.

⁷ Newey 2019 [2016], 127.

The article unfolds as follows: section 2 is devoted to the interpretation of Newey's basic political question and to the elucidation of its different elements. In section 3, I attempt to test whether his account of what constitutes "the political" can actually meet various interpretations of politics offered in the literature. In particular, I focus on three very different accounts:⁸ Carl Schmitt's concept of politics; Hannah Arendt's conception of political action; the liberal idea of the political, jointly with Bernard Williams's basic legitimation demand, which is Newey's starting point for arriving at the basic political question. If – as I aim to show – all accounts meet the basic political question, it seems correct to argue that Newey has successfully pinpointed what is basic about politics. Section 4 briefly shows how the basic political question excludes certain practices from the political domain. In the final section, some concluding remarks are offered.

2. THE BASIC POLITICAL QUESTION

In order to carve out the space of the political and thus to understand what are the crucial characteristics that are necessary to identify a certain issue or circumstance as political, Newey identifies what he takes to be the basic political question: *what do we do?* It is not easy to understand precisely what Newey intends with this question. However, it is possible to provide a tentative interpretation of it, which captures the spirit and aim of Newey's discussion. He states that with this question his intention is not that of providing a definition of politics or the political. However, he also writes that

this question arises all the time. For whom it arises, and in relation to what deliberative possibilities, are themselves already political questions. It is also obvious that the question admits of more descriptive and more normative inflections, but even where the answer purports to be a descriptive one ... it clearly also may have action-guiding intent.⁹

⁸ Although there exist other accounts of the political in the philosophical literature, I limit my discussion to these three conceptions for reasons of space. However, it is important to note that the chosen sample of theories is relevant for it covers not only realist and liberal understandings, but also a peculiar and unique perspective such as that of Arendt, which eschews any categorization.

⁹ Newey 2019 [2016], 127.

Drawing from this, it is possible to advance two considerations. First, the basic political question does not constitute, by itself, the sphere of politics. It is certainly not the case that when the question is posed the domain of the political is somehow revealed. On the contrary, understanding the way in which the question is advanced (by who, with respect to what, throughout which means) is already part of politics. In this sense, the point is that the question *what do we do?* is central every time we are assessing a proper political matter: in order for a situation to be distinguished and identified as political, some version of the question must arise.

Second, the way in which the basic political question is understood can vary, depending on one's idea of what politics is, thus it can be more or less grounded in theories about how political actors operate in practice and what causal mechanism explain political behaviour. Similarly, it can display a more or less normative and prescriptive flavour, attempting to provide answers that go beyond the descriptive reality of how human beings actually act. Moreover, the basic political question arises regardless of whether politics is considered an autonomous domain, characterized by specifically political values, or if it is thought as regulated by morality and ethics. In this sense, it is possible to argue that, precisely because he admits different readings of the same question, Newey's aim seems that of capturing what is really essential about any account of what politics is about. To use a famous Rawlsian distinction,¹⁰ it may be possible to argue that Newey's question is meant to identify a concept of politics, which can be developed and worked into many different conceptions. The basic political question captures those elements which any definition of politics needs to consider and better specify in order to be satisfactory. Indeed, as Newey writes, such question "is simply an attempt to characterise the point from which [politics] begins".¹¹

With respect to the question *what do we do?*, three elements appear crucial: *what*; *we*; *do*. The first element – *what* – concerns the fact that, within the political domain, various courses of action are possible, thus it is necessary to filter those ones that are most appropriate, given the circumstances. In this sense, although consideration and assessment of the past may occur, politics is generally concerned with the future and thus with what is to be done and how it is to be done. As Hanna Pitkin notes "if the central question

¹⁰ See Rawls 1999, 9.

¹¹ Newey 2019 [2016], 11.

of moral discourse might be characterized as ‘what was done?’ the central question in politics would have to be ... ‘what shall we do?’”¹²

The second element – *we* – signals the fact that, when dealing with politics the subject is plural. A course of action is genuinely political if it concerns and regards a certain collectivity and has an influence on it. Moreover, an action is political because it regards the way in which the society is organized and not just a specific individual. Politics does not concern the individual conscience or the individual life. Political questions and matters retain a large scope and scale, they take a general and public form.

The third element – *do* – refers to the fact that politics requires some form of action or decision. The mere act of thinking fails to be political unless it is coupled with discussion with others, deliberations, and actions for the change or maintenance of social circumstances and political institutions and practices. As Hanna Pitkin writes in a similar vein, “political discourse is concerned not primarily with how things work or what things are like, but with what we are to do. Again, the topic is action”.¹³

3. WHAT DO WE DO? COMPETING UNDERSTANDINGS

Now that the idea of the basic political question is clearer, it is possible to evaluate whether it can successfully meet different understandings of politics. Indeed, if it is true that any conception of politics somehow responds to the question *what do we do?*, it is possible to argue that Newey has pinpointed what is really basic or essential to any conception of the political. To this end, in what follows, I briefly recollect and discuss some of the most prominent conceptions of politics present in the philosophical literature.

3.1 *Carl Schmitt: politics as conflict against the enemy*

Schmitt’s political theory aims at restoring dignity to politics by elucidating its real essence, by finding what criterion allows to distinguish it from other domains (as for example those of morality, aesthetics, economy, etc.) Indeed, one of the most pressing concerns of Schmitt regards the autonomy of the

¹² Pitkin 1972, 205.

¹³ *Ibidem*, 206.

political and the necessity not to conflate it with other spheres of human existence. Drawing from a conceptualization based on a pair of constitutive opposition, Schmitt identifies such a criterion in the distinction between friend and enemy, which cannot be reduced to any other distinction, as for example that between the morally good and the morally bad.

Three clarifications are in order to understand Schmitt's conception of politics. First, the friend/enemy distinction should not be intended in a private sense, for it is essentially public. Politics involves groups of people that consider each other enemies, not private individuals who dislike or hate each other.¹⁴ Moreover, for Schmitt, a certain political community, a group of friends in the political sense, can never be judged, from an external perspective, for choosing its enemy. Only from within the group of friends, a decision about enmity can be made and evaluated. Second, it is the possibility of war and mutual killing that constitutes the condition for politics: two groups can recognize each other as enemies if they are willing to initiate a war towards each other, if they are in a situation in which they can make an attempt to each other's lives. Indeed, "the distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation".¹⁵ Third, any sphere of human experience can be politicized insofar as it is dominated by the friend/enemy distinction. Indeed,

every religious, moral, economic, ethical, or other antithesis transforms into a political one if it is sufficiently strong to group human beings effectively according to friend and enemy. The political does not reside in the battle itself, but in [...] being able to distinguish correctly the real friend and the real enemy.¹⁶

In this sense, "the political is, for Schmitt, primary and all-subsuming [...] consists of the degree of intensity [...] at which other spheres [...] lose their identity and are politicized".¹⁷

¹⁴ "An enemy exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity. The enemy is solely the public enemy, because everything that has a relationship to such a collectivity of men, particularly to a whole nation, becomes public by virtue of such a relationship. The enemy is *hostis*, not *inimicus* in the broader sense" (Schmitt 2007, 28).

¹⁵ Schmitt 2007, 26.

¹⁶ *Ibidem*, 37.

¹⁷ Sartori 1989, 65.

Drawing from this rough presentation of Schmitt's theory, it seems easy to show how it fits with Newey's basic political question. For Schmitt, politics arises when a group or community, marked by a certain collective identity (*we*) is constituted by deciding and selecting (*do*) its enemies (*what*).

3.2 Hannah Arendt: *politics as discussion among equals about politics*

Despite rejecting his idea that politics is a struggle against the enemy, Arendt shares Schmitt's project of conferring dignity to politics. Indeed, a large part of her work is devoted to understanding what is authentically political, as distinguished not only from what most other people mistakenly consider political, but also from inauthentic politics.¹⁸ But what is Arendt's definition of politics? According to her, politics is action and, although speech can be considered only one kind of action, there is little doubt that speech is a fundamental and crucial dimension of authentic politics. Indeed, "most political action, in so far as it remains outside the sphere of violence, is [...] transacted in words".¹⁹ In this sense, authentic politics is the opposite of violence or coercion, and is characterized by deliberation, discussion, expression of different points of view and persuasion among equals. Indeed, for Arendt, the equality in access to freedom of speech – what she calls *isonomia*²⁰ – is the hallmark of political relation and a fundamental condition for political action. Accordingly, given that speech is the most vivid and relevant form of action, and since it is an activity that cannot be carried out in isolation, it should not come as surprise that, for Arendt, politics is a public activity in the sense that politics concerns doing things together.²¹ A central feature of political action is plurality: the

¹⁸ Examples of authentic politics are, for Arendt, Periclean Athens, the American revolution, certain working-class rebellions occurred in the nineteenth and twentieth centuries, the civil rights movement in the United States during the 1960s.

¹⁹ Arendt 1998, 26.

²⁰ "*Isonomia* does not mean that all men are equal before the law, or that the law is the same for all, but merely that all have the same claim to political activity, and in the polis this activity primarily took the form of speaking with one another. *Isonomia* is therefore essentially the equal right to speak" (Arendt 2005, 118).

²¹ As it is well-known, according to Arendt, political power occurs when a plurality of actors acts together for some common political purpose they have discussed and agreed upon. "Power corresponds to the human ability not just to act but to act in concert. Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together" (Arendt 1970, 44).

presence of others in the public space, who see, acknowledge or participate to it, is fundamental for an action to be meaningful and authentic. Action, insofar as it requires appearing in public, expressing what appears to one as true, and eliciting consent is possible only in a context of plurality. Indeed, it is because human beings are different, though equals that it is possible to act in unique and distinctive manners.²² Authentic political action is characterized by freedom, intended as the capacity to start something new, to do the unexpected.²³ To act means to be able to eschew regulated, automatic, determinate behaviours and to initiate the unanticipated.²⁴ It is important to note that, according to Arendt, the content of authentic political action is politics itself. Political action is directed towards preserving or creating the condition of possibility for the expression of plurality, thus its target is to preserve, repair, or establish a political body. In this sense, proper political actions regard constitutional matters, the spirit of the laws, or the framework of the rules for the institution of government.²⁵ As Kateb writes, “to speak of the content of politics as politics [...] is to claim that the purpose of politics is politics, that politics (when authentic) exists for its own sake”.²⁶

Does Arendt’s conception of politics answer Newey’s question? Drawing from the discussion offered above, it is possible to argue that the three elements proposed by Newey are all present in Arendt’s thought: politics concerns a group of equals (*we*), who discuss, act jointly and start something new (*do*) to maintain or renew a political body (*what*).

²² Arendt famously writes that “men, not Man, live on the earth and inhabit the world ... Plurality is the condition of human action because we are all the same, that is, human, in such a way that nobody is ever the same as anyone else who ever lived, lives, or will live” (Arendt 1998, 7-8).

²³ The capacity of starting something new is rooted for Arendt in the notion of *natality*: “The new beginning inherent in birth can make itself felt in the world only because the newcomer possesses the capacity of beginning something anew, that is, of acting” (Arendt 1998, 9).

²⁴ It is because of this idea of action as the capacity to initiate something new that Arendt is particularly interested in the cases of revolutions and popular insurrections.

²⁵ Arendt considers the French revolution a failure precisely because its leaders abandoned the goal of freedom in order to focus on matters of subsistence, to answer the social question. In this sense, the French revolutionaries allowed non-political issues to enter the realm of the political inevitably corrupting it (Arendt 2006).

²⁶ Kateb 2000, 134.

3.3 Liberals and Bernard Williams: politics as a domain setter

Liberal theorists generally understand the role of political philosophy in normative terms, considering its goal that of establishing what justice is or providing an account of the most appropriate political order, without defending a specific ontology of politics. For this reason, differently from Schmitt and Arendt, liberal political scholars rarely offer a full analysis of what politics is. However, it is possible to pinpoint the specific conception of the political that liberals rely on by considering what liberalism is about. In an influential article, Michael Walzer advances the idea that liberalism concerns “a certain way of drawing the map of the social and the political world, [it practices] the art of separation.”²⁷ To appreciate this point, consider the most notorious wall defended within the liberal tradition, namely that between the church and the state. Indeed, it is possible to argue that perennial hostility towards any confusion between secular and religious authority and obsession with freedom of conscience and toleration are fundamental traits of liberalism.²⁸ The reason for such attitude is that, according to liberalism, religion does not pertain to the political domain for two reasons: on one hand, matters of faith concern the willingness and beliefs of a certain individual, who cannot be forced to assent to a certain religion. On the other, matters of faith constitute a threat to peace and stability for they are divisive and disputes over religion cannot be solved once and for all. The upshot of this position is that there is a sharp distinction between those matters over which secular authority might be exercised and those over which must not. Of course, the wall between the church and the state relies on the distinction between the private and the public: for liberals, individual rights exist to demarcate and protect a sphere in which any political authority ought not to rule, a sphere in which all should be granted the freedom to do as they please, as long as it does not interfere with the freedom of others.

In this sense, the liberal understanding of politics functions as a domain setter: it functions in such a way that it identifies the boundaries within which the basic political question should arise and those in which it would be wrong to pose it. From a liberal perspective, politics is about finding agreements and compromises on which all individuals of a certain political community can consent to and abide by. Such agreements and compromises cannot regard

²⁷ Walzer 1984, 315.

²⁸ On this point, see Ryan 2007, 368-371.

what religion to believe in or the private sphere. Rather, they should concern how institutions and public rules are shaped. In this sense, the liberal understanding of politics meets Newey's question in stating that politics occurs when a certain polity (*we*) discuss and find an agreement (*do*) about the public sphere and its boundaries (*what*).

Interestingly and despite his intention to propose a realist theory of politics in opposition to liberalism, Williams's idea of the basic legitimation demand functions as a domain setter too. The basic legitimation demand is offered by Williams as a criterion of evaluation that is distinctively political, it is a standard to identify what politics is and, in particular, to distinguish it from mere force or war. Indeed, only when power is used legitimately, Williams holds, it is genuinely political. On the contrary, the use of force by one group of people over another does not qualify as a political action. To illustrate this consideration, he uses the example of the Helot population of Sparta, a radically disadvantaged group of individuals treated as enemies by their rulers. According to Williams, the situation of the Helots is not political because "the mere circumstance of some subjects being de facto in the power of others is no legitimation of their being radically disadvantaged".²⁹ The problem, for Williams, is that a political power cannot be considered as such if it is not legitimate, namely if it cannot be justified in a non-manipulative manner³⁰ to those who are subjected to it. In this sense, insofar as the basic legitimation demand is not met, there is no politics.

According to Williams, politics can genuinely arise only within the boundaries of a legitimate authority. In this sense, legitimacy functions as a domain setter. This approach meets the basic political questions: politics occurs when a dominant group and a subjected group (*we*) recognize the same authority (*do*) by following and respecting its rules (*what*).

²⁹ Williams 2005, 5.

³⁰ In order to provide a theory which excludes the possibility that "the acceptance of a justification does not count if the acceptance itself is produced by the coercive power which is supposedly being justified" (2005, 6), Williams introduces the *critical theory principle*. Such principle functions counterfactually by asking whether those who are ruled would still accept the rulers' legitimacy, even if they were not subjected to their rule.

4. EVALUATING CONCEPTIONS OF POLITICS

The basic political question *per se* provides little guidance for the evaluation of what is the most convincing conception of politics. All the interpretations recollected in the previous section can be criticized and deemed unconvincing. Schmitt's idea of politics may seem reductive with respect to the political projects that can be pursued – the element *do* of Newey's question – for it excludes the possibility of overcoming and eradicating political enmity. Arendt's theory of authentic political action may be rejected because it discards violence as a proper political means, therefore limiting the kinds of actions – the *what* of the basic political question – available to individuals. Indeed, some may find it difficult to deny that sometimes politics can be pursued in violent manners. The liberal understanding of the political may seem implausible because, according to such view, certain issues should not be politicized, thus the basic political question should arise only with respect to certain specific matters. However, if we consider the case of abortion – which has represented one of the most hotly debated political issues in contemporary democratic societies – it is easy to understand how religious considerations cannot help to play a role in political decisions. Finally, Williams's basic legitimation demand may not appear persuasive because of its limited understanding of the political element *we*, which he intends as applying only to subjects recognizing the same authority as legitimate. If we take the case of civil disobedience,³¹ it is easy to appreciate how Newey's question *what do we do?* may very well arise among a minority of individuals who reject the political power and want to change or overthrow it.

However, although some further criteria are needed to defend a specific conception of the political,³² Newey's basic political question is interesting for it allows to consider what are the specific elements that are necessary and essential when we are talking about politics. Accordingly, such an account constitutes an interesting standard to include or exclude certain practices from the realm

³¹ Newey (2019 [2016], 124-125) refers to civil disobedience to criticize Williams's perspective.

³² In the article under discussion, it is clear how Newey prefers a conception of politics that is Schmittian in kind, in which violence is not placed outside the boundaries of the political.

of the political. Consider, for example, the case of conscientious objection,³³ namely the refusal to comply with a specific legal rule, because the latter stands in contrast with one's conscience, because it goes against one's deep religious or moral convictions. Such an act of protest seems to fall outside the political domain because it usually consists in an individual omission carried out in order to preserve one's integrity, in virtue of some moral reasons. If, for example, we examine Henry David Thoreau's refusal to submit his poll tax to the local constable in virtue of his unwillingness to provide material support to a federal government that perpetuated mass injustice,³⁴ it hardly qualifies as political in Newey's sense.³⁵ In "Resistance to civil government", Thoreau writes:

It is not a man's duty, as a matter of course, to devote himself to the eradication of any, even the most enormous wrong; he may still properly have other concerns to engage him; but it is his duty, at least, to wash his hands of it, and, if he gives it no thought longer, not to give it practically his support. If I devote myself to other pursuits and contemplations, I must first see, at least, that I do not pursue them sitting upon another man's shoulders. I must get off him first, that he may pursue his contemplations too.³⁶

This passage suggests that Thoreau's concern lies in the individual conscience: his refusal is determined by his unwillingness to participate directly in some form of injustice and, thus, his action retains a private and not a public dimension.

This point can be greatly appreciated if conscientious objection is contrasted with civil disobedience. Contrary to the former, the latter corresponds to a

³³ It is worth stressing that here I am attempting to understand only whether an act of conscientious objection is properly political. Establishing whether such practice is justified and thus whether it should be protected and authorized by the law is a different matter, which seems indeed political. Following Newey, a society (we) deciding on the legitimacy (what) of such practice (what) meets the basic political question.

³⁴ In particular, through his refusal, Thoreau aimed at protesting the practice of slavery and the Mexican-American war.

³⁵ It is interesting to note that there exists a debate about whether Thoreau's thought should be considered a proper political theory or a view of the self. In particular, see Arendt 1972; Rosenblum 1987; Kateb 1992.

³⁶ Thoreau 2004, 71.

practice in which a breach of law is undertaken with the aim of bringing about a change in laws or government policies. Following Rawls,³⁷ it is possible to argue that civil disobedience is an exception to the obligation to comply with the political authority justified by the presence of unjust laws. Those who disobey appeal to principles of justice that are commonly shared to resist and draw attention to laws or policies that they believe require reassessment or rejection because in contradiction with those very principles. In this sense, civil disobedience is public not only in the sense that it is performed in public, but also because it rests on the political responsibility of the political community as a whole. Conscientious objection, on the contrary, does not address one's collectivity, it is not precisely aimed at changing one's society. Rather, it is concerned with prioritizing individual moral purity. Accordingly, conscientious objection does not meet the basic political question because it does not match its second element, that of *we* and, thus, does not count as genuinely political.

5. CONCLUSIONS

In “Real legitimation, anarchism and power loops”, Newey proposes the basic political question – *what do we do?* – as a criterion for the identification of the political realm. Unfortunately, such issue is underdeveloped in that essay. In this article, I attempted to build on and expand such an idea to show its conceptual importance. Indeed, the analysis of distinct accounts of politics allows to appreciate how the basic political question can be met in different manners. Despite the need for further evaluative criteria to choose which conception of politics is the best suited one, Newey's basic political question constitutes a fundamental starting point to understand what belongs to politics and what does not.

³⁷ Rawls 1999, 319-323.

REFERENCES

- Arendt H. (1970), *On Violence*, San Diego, Harcourt Brace Jovanovich.
- (1972), “Civil Disobedience”, in *Crises of the Republic*, New York, Harcourt Brace Jovanovich.
- (1998), *The Human Condition*, Chicago, The University of Chicago Press.
- (2005), “Introduction into Politics”, in J. Kohn (ed.), *The Promise of Politics*, New York, Schocken Books, pp. 93-200.
- (2006), *On Revolution*, London, Penguin.
- Baderin A. (2014), “Two Forms of Realism in Political Theory”, *European Journal of Political Theory*, vol. 13, n. 2, pp. 132-153.
- Galston W. (2010), “Realism in Political Theory”, *European Journal of Political Theory*, vol. 9, n. 4, pp. 385-411.
- Kateb J. (1992), *The Inner Ocean: Individualism and Democratic Culture*, Ithaca, Cornell University.
- (2000), “Political Action: Its Nature and Advantages”, in D. Vila (ed.), *The Cambridge Companion to Hannah Arendt*, Cambridge, Cambridge University Press, pp. 130-148.
- Kelly P. (2004), *Liberalism*, Cambridge, Polity Press.
- Newey G. (2001a), *After Politics. The Rejection of Politics in Contemporary Liberal Philosophy*, New York, Palgrave.
- (2001b), “Philosophy, Politics and Contestability”, *Journal of Political Ideologies*, vol. 6, n. 3, pp. 245-261.
- (2019 [2016]), “Real Legitimation, Anarchism and Power Loops”, *Biblioteca della Libertà*, vol. LIV, nn. 225-226, pp. 117-135.
- Philp M. (2012), “Realism without Illusions”, *Political Theory*, vol. 40, n. 5, pp. 629-649.
- Pitkin H. (1972), *Wittgenstein and Justice: On the Significance of Ludwig Wittgenstein for Social and Political Thought*, Berkeley, University of California Press.
- Rawls J. (1999), *A Theory of Justice Revised Edition*, Cambridge, Harvard University Press.
- Rosenblum N.L. (1987), *Another liberalism: romanticism and the reconstruction of liberal thought*, Cambridge, Harvard University Press.
- Rossi E., Sleat M. (2014), “Realism in Normative Political Theory”, *Philosophy Compass*, vol. 9, n. 10, pp. 689-701.
- Ryan A. (2007), “Liberalism”, in R. Goodin, P. Pettit, T. Pogge (eds), *A Companion to Contemporary Political Philosophy vol. II*, 2nd ed., Malden, Blackwell, pp. 360-382.

- Sartori G. (1989), "The Essence of the Political in Carl Schmitt", *Journal of Theoretical Politics*, vol. 1, n. 1, pp. 63-75.
- Schmitt C. (2007), *The Concept of the Political. Expanded Edition*, Chicago, The University of Chicago Press.
- Stears M. (2007), "Liberalism and the Politics of Compulsion", *British Journal of Political Science*, vol. 37, n. 3, pp. 533-553.
- Thoreau H.D. (2004), "Resistance to Civil Government", in W. Glick (ed.), *The Higher Law: Thoreau on Civil Disobedience and Reform*, Princeton, Princeton University Press.
- Walzer M. (1984), "Liberalism and the Art of Separation", *Political Theory*, vol. 12, n. 3, pp. 315-330.
- Williams B. (2005), *In the Beginning was the Deed*, Princeton, Princeton University Press.

Greta Favara

Glen Newey's Critique of Legitimacy. An Assessment

I. INTRODUCTION

At the beginning of *Real Legitimation, Anarchism and Power Loops*¹, Glen Newey clearly admits the provocative intent of the discussion that is going to follow: “The question I examine is how far legitimacy is destroyed by the use of force” (117). Given that force is a constitutive and ineliminable element of politics, Newey examines whether its use could be adequately disciplined by drawing clear boundaries between its admissible and inadmissible forms of use. The question, as Newey recognizes, is about the very possibility of offering a compelling theory of legitimacy. Are there any uses of force that we can deem legitimate, and hence acceptable, as opposed to illegitimate ones? Can we distinguish adequate forms of political relationships from inadequate – war-like – ones? The conclusion Newey draws is provocative and might sound unpleasant to all those who rely upon political theory to settle dilemmas of this kind:

Justification cannot be what marks the distinction between politics and non-politics, because political life constantly and predictably calls into question, without definitively deciding, whether submitted justifications are indeed legitimating. The upshot is that force cannot, simply in the construction of politics, be subordinated to justification (118).

¹ Published in this volume at pp. 117-135. From now on, all the references to Newey's *Real legitimation, anarchism and power loops* will be made by indicating exclusively the corresponding page numbers in this volume.

Newey's argument, then, challenges the idea that we can identify clear criteria to establish when force is legitimately employed and, correspondingly, to demarcate acceptable forms politics from mere warfare. Such a conclusion, Newey wants to argue, can be derived from a proper understanding of real politics and its dynamics – in fact, in Newey's own words, it is "force" that "destroys legitimacy".

Put in this way, the argument and its conclusion may leave some perplexed. In fact, the argument seems to rely on an unclear mixture of descriptive and normative elements. Newey's reference to the concept of legitimacy seems to oscillate between "legitimation" – meant as actual acceptance of the political authority – and "standards of legitimacy" – meant as normative criteria for the assessment of the acceptable uses of force. Moreover – as the above-mentioned thesis makes manifest – Newey identifies a strong relationship between these two senses of legitimacy (i.e. the descriptive and the normative one): the argument suggests that since politics affects the conditions upon which some justification can be the object of real legitimation (description), there is no way to identify stable criteria for defining legitimate political relationship from illegitimate ones, and hence of demarcating politics from war (normativity). In this sense, according to Newey, a theory of legitimacy can never achieve what it promises, namely providing us with stable criteria for discerning between admissible and inadmissible uses of force. Since politics redefines the conditions upon which a justification can be found legitimating, politics constantly interferes with theoretical definitions of the boundaries of legitimacy.

Admittedly, this argument works exclusively if we accept that some suitably defined descriptions of politics can ground political normativity – in the specific case considered, if we believe that actual or hypothetical conditions of legitimations have a role in determining the normative criteria for the legitimate use of force. But this is far from being obvious. So, should we interpret Newey's thesis about legitimacy as having just a partial, but also possibly controversial, validity?

In the following I examine the strength of Newey's general claim on legitimacy by clarifying how the interplay between facts and norms – i.e. between political reality and political normativity – should be interpreted, and what role it is supposed to play, in Newey's analysis.

In particular, my comment is structured in two main sections. In the first section I recall in a more detailed way Newey's argument in support of

his general conclusion, and I show that, despite its initial ambition, such an argument can counter only theories of legitimacy that consider actual or hypothetical legitimations as grounds of legitimacy. However, in the second section, I propose a new argument in support of Newey's general claim. In particular, I show that such a defence can build upon scattered suggestions already contained in Newey's discussion. For this reason, I argue that this second argument can be considered as a consistent elaboration of Newey's original project. I conclude by pointing out two further difficulties that Newey's project, if successful, is bound to face.

2. NEWEY'S CHALLENGE I: HOW POLITICS DEFEATS LEGITIMATION

A major part of Newey's paper is devoted to a critical discussion of Bernard Williams's theorization of political legitimacy. This choice is certainly not coincidental: Williams's theorization of legitimacy is typically regarded as a realist account of political legitimacy which aims at overcoming the shortcomings of moralized accounts (Williams 2005; Sleat 2014). Hence, by critically engaging with Williams's attempt to define realist criteria for demarcating legitimate from illegitimate uses of force, Newey aims at making an indirect claim about political realism itself, about how its methods and consequences should be correctly understood. Indeed, since Newey's paper attempts to clarify how a proper understanding of political reality ought to affect our theorization of politics itself, Williams's proposal – which claims to give “a greater autonomy to distinctively political thought” (Williams 2005, 3) – constitutes the most useful target in order to emphasize how realist political theorizing ought to be conceived.

As Newey explains, Williams's theorization of legitimacy arises from what Williams sees as the fundamental trait of *political* relationships, namely their capacity to organize our collective lives by disciplining the use of force in a suitable way, in order to make it in some way acceptable to its subjects. Indeed, Williams claims that the first question politics is meant to answer is “the securing of order, protection, safety, trust, and the conditions of cooperation” (*ibidem*, 3). In Williams's opinion, politics must be understood as being something different from sheer domination, as dominating relationships would simply replicate the problem politics is meant to answer. So, what does differentiate politics from sheer domination? Williams believes that the

answer must be found in the ability of regimes to answer a “Basic Legitimation Demand”, according to which “the state has to offer a justification of its power to *each subject*” (Williams 2005, 4, original emphasis). The ability of a regime to meet the Basic Legitimation Demand is what allows us to define it as a *legitimate* political order (*ibidem*).

Newey's interest consists in scrutinizing the tenability of a project of this kind: is Williams able to find a justification which could allow us to differentiate politics from mere conflict? As pointed out, the justification offered for the use of force by the regime must be acceptable to its subjects. Notice that by “acceptable” Williams does not mean “actual” acceptance. Actual acceptance is neither necessary nor sufficient to define legitimacy because, on the one hand, subjects might be wrong in contesting the use of force by the regime and, on the other hand, their acceptance could be the fruit of manipulation by the governing power. Hence, Williams needs to identify criteria for the justification of legitimacy which would allow both to safeguard subjects' acceptance, but also to avoid the distortions of power. To this end, Williams proposes a Critical Theory Test to distinguish justifications that can ground claims of legitimacy (Williams 2002, 225-232 and 2005, 6; hereinafter CTT). The CTT consists of a *counterfactual* examination of claims of legitimacy: since “the acceptance of a justification does not count if the acceptance itself is produced by the coercive power which is supposedly being justified” (Williams, 2005, 6), we need to imagine alternative scenarios in which the supposed effects of power are absent and ask ourselves whether, in such suitably modified circumstances, the subjects would still accept the regime. While such counterfactual test cannot constitute a sufficient tool to establish the legitimacy of a regime, passing the CTT is a necessary step in that direction.

Yet, Newey claims that such a test, if examined carefully, cannot help us to distinguish cases of manipulated acceptance of power from genuine ones. The crucial problem, in Newey's opinion, is that there is no way to establish the truth conditions of the counterfactual claims examined by the CTT. First, there are always several different hypothetical scenarios which we could consider as good candidates for the counterfactual examination. Second, among those hypothetical scenarios, there are often many controversial cases – i.e. cases in which it is not clear whether the scenario depicted represents a legitimating political relationship. For, unless the counterfactual scenario represents an obvious example of extorted consent, it is not entirely clear how we are supposed to evaluate the reasons grounding subjects' acceptance.

According to Newey, the point is that an evaluation of the subjects' consent cannot be done independently from an assessment of the specific political context in which the justification is offered.

Indeed "the circumstances in which an act of consent would pass the CTT and thus confer legitimacy rather than merely reaffirming the fact of domination, defy pre-political formulation" (121). When controversial cases are under scrutiny, there is no way to establish, independently from the political circumstances themselves, whether people would accept the regime in the considered context, and whether they would do so out of spontaneous acceptance. In fact, subjects come to accept or reject the justifications offered on the basis of political commitments which precede the legitimation itself: "there is no reason to think that the reasons presented at this point can be purged of political content" (123). This is why, for Newey, there is no way in which the CTT could allow us to discriminate between genuine and false legitimations. The complexity and features of political reality do not allow us to define conditions for the acceptance of political power by abstracting from the actual political context in which the justification is offered.

But if hypothetical devices like the CTT are not good candidates for identifying criteria of legitimacy, maybe we should focus exclusively on actual politics. Maybe, that is to say, we should assess whether criteria for defining the admissible uses of force can be identified by examining real political relationships and the quality of the acceptance provided. An alternative strategy to demarcate politics from warfare could be to construe criteria of legitimacy starting from what, in actual contexts, we have reason to believe real agents would deem as an acceptable use of force. Could we identify the boundaries between politics and warfare by investigating the conditions of actual acceptance?

Despite overcoming the difficulties incurred by the CTT, even this solution proves unable to deliver substantive criteria for demarcating politics from warfare. Once again, Newey explains how this is due to some features of political reality, which disempower also this alternative theoretical strategy by making it unable to offer valid normative criteria for assessing legitimacy. To explain why this is the case, it is necessary to recall the idea of a *power loop* introduced by Newey in order to clarify the interaction between force, legitimation, and legitimacy.

Newey defines a power loop as "a situation where a purported authority or its proxies tries to legitimate itself to those subject to its power, and the legitimation itself exemplifies this power-relation; so that the legitimation raises

the very question it seeks to settle” (127). This means that when a purported authority offers a justification for its power to its subjects, it engages in some sort of political action whose objective is to gain their acceptance. These actions might take different forms, but they all have something in common: they entail a manifestation of political power and an act of negotiation in which reasons for acceptance are offered to potentially dissenting parties.

The act itself of seeking a legitimization, then, “raises the very question it seeks to settle” because every attempted legitimization displays a new power relation and attempts to implement a new power equilibrium. Legitimizations determine a substantive change in the political landscape, so that what was found acceptable before the justification was offered might change due to the effects of the legitimization itself. Therefore, Newey talks about *power loops*: because the very attempt by the purported authority to legitimize itself calls for a new legitimization.

This is how politics defies also this second strategy for demarcating legitimate from illegitimate uses of force and, relatedly, politics from warfare. Since the conditions which satisfy the requirements of actual legitimizations constantly change through time, no substantive criteria for demarcating legitimacy could be issued by considering actual acceptance: any criteria of legitimacy would be doomed to be invalid since they would constantly be out of pace with political changes; and if applied, they would create the political conditions for their own defeat.

So, it seems that politics is responsible for defeating criteria for legitimacy grounded both on hypothetical legitimations and on actual ones. On the one hand, real politics makes the CTT necessarily underdetermined, and therefore unable to deliver substantive criteria for legitimacy. On the other, *power loops* leave criteria of legitimacy based on actual acceptability without stable grounds. Hence Newey’s conclusion: “Justification cannot be what marks the distinction between politics and non-politics, because political life constantly and predictably calls into question, without definitively deciding, whether submitted justifications are indeed legitimating” (118). Indeed, in both cases, theories of legitimacy are defeated by real politics because they cannot adequately cope with its complexity.

But does Newey’s conclusion consistently follow from his analysis? Newey seems to suggest that his conclusion should apply to *every* theory of legitimacy. Indeed, his declared objective goes in this direction: “The question I examine is how far legitimacy is destroyed by the use of force” (117).

I argue, however, that Newey's conclusion can only partially follow from his arguments. As I recalled, the arguments in support of his conclusion are built on discussions of justifications of legitimacy which share a fundamental methodological trait: they ground legitimacy upon legitimation, i.e. they identify as criteria for legitimacy those justifications which – either in hypothetical or actual circumstances – could gain subjects' acceptance. However, is this the only or even the correct way to proceed? As long as legitimacy is conceived as dependent upon legitimation – namely on some specific feature of politics intended in a descriptive sense – Newey's trap seems inescapable. Yet, this is notably not the only way to go. Criteria of legitimacy could be conceived as independent from subjects' acceptance of political power; or they could be elaborated in idealized circumstances in which consent still plays a role, but it does so in a fictional environment which brackets real political dynamics.² For Newey's conclusion to be generalizable, the argument in its support ought to be able to counter methodologies of this sort as well.

3. NEWEY'S CHALLENGE II: HOW POLITICS DEFEATS THEORIES OF LEGITIMACY

The burden of the preceding argument might suggest that we interpret Newey's analysis as a demonstration of the failure of *some* theoretical strategies to justify criteria of legitimacy. In the following, I argue that this is not the only conclusion which is possible to draw from Newey's analysis. In fact, from Newey's discussion, it is possible to trace the necessary elements for construing an argument against theorizations of legitimacy broadly conceived.

For Newey's thesis to be generalizable, the argument in its support must also be able to undermine theorizations of legitimacy which do not rely on descriptive features of politics to define the criteria of legitimacy. But if such methodologies do not set some connection between politics in a descriptive sense and politics in a normative sense, how possible is it to demonstrate that "force destroys legitimacy" even in such cases? The argument we are looking for must shift from a theoretical analysis to a

² For an exhaustive overview, see Peter 2017.

meta-theoretical one. As recalled, proposing a theory of legitimacy means selecting a certain conception of the uses of force which can be deemed admissible – i.e. a conception of the admissible forms of political interactions as opposed to mere conflictual uses of force. In other words, proposing a conception of political legitimacy means positively defining who is to be regarded as an enemy or a friend, selecting what forms of coercion regimes are allowed to use, and justifying the imposition of political force against dissidents. Similar efforts which aim to trace a clear divide between admissible and inadmissible uses of force have specific practical consequences in political circumstances. Newey displays these consequences – albeit rather unsystematically – throughout his discussion. Taken together, however, these give us a compelling reason to be suspicious of attempts to produce general theories of political legitimacy.

First, theories of legitimacy – even those that rely on abstractions to derive criteria of legitimacy – are always produced within certain socio-political environments. By being necessarily the fruit of an historically situated intellectual effort, theories of legitimacy are not immune to the effects of ideological distortions produced by power relations. In fact, theorists themselves are political agents who form their sets of beliefs about politics and normativity in a certain political context. Hence, the act of positively theorising criteria of legitimacy might reinforce pre-existing ideologies. Notice that this is not a mere theoretical consequence. Such processes of ideological reinforcement have severe political consequences, not least because criteria of legitimacy establish when coercion can be justified and exercised. By theoretically reinforcing ideologies, criteria of legitimacy can themselves become means of oppression. Newey points out the potential ideological effect of offering a stable criterion to demarcate admissible from inadmissible uses of force in some of his conclusive statements. As Newey, for example, puts it:

I have argued that Williams's constructivism about politics shares more with 'liberal moralist' approaches to politics than is realistic. [...] They share a substantive aim of putting politics onto a normatively committed footing, by excluding morally unjustifiable relations of domination. But they also share a method: namely the use of a normatively-motivated basis for partitioning politics and non-politics. [...] To draw a bright line between 'politics' and 'war' risks simply replicating ideology and thus – ironically – domination (133-134).

How so? As Newey recalls, offering a philosophical ground in support of a certain conception of the admissible use of force allows us to provide a rhetorical justification for the use of coercion. This is why theories of legitimacy can become political tools for the enactment and support of certain relations of domination. So, for example, describing a certain use of force as a “political” one as opposed to a “war-like” intervention can have the effect of preventing us from realizing something crucial about both politics and war – namely, that they are *both* forms of violence (134). In this way, legitimations, instead of allowing us to have a clear grasp of real political dynamics and to exercise a critical examination of power structures, can work as political tools to reinforce our positive attitude towards existing political orders. As Newey makes apparent in his discussion, the argument for the potential ideological, and therefore dominating, character of theories of legitimacy can also be supported in other terms. At some point, Newey considers the problem of political dissent:

Consider the possibility of civil disobedience. [...] Clearly one point at issue between authorities and protesters will precisely be whether the policy, law, etc., is substantively unjust, or whether it is legitimate. [...] There seems little reason to say that the denial of legitimacy places these protests outside the scope of politics, let alone that they therefore belong to the sphere of ‘war’ (124).

Should these kinds of political interventions be described as illegitimate, or suspiciously portrayed as instances of war-like action? There seems to be something not entirely right in drawing such a conclusion on both a theoretical and a practical level. Drawing a line between acceptable and unacceptable forms of political interaction implies introducing evaluative criteria for demarcating acceptable forms of dissent from unacceptable ones. It implies an effort to distinguish those political claims it is admissible to fight for – and which means can be employed to that purpose – from those political claims that are inadmissible. In this way, theories of legitimacy set clear boundaries to political dissent. In sum, attempts to propose theories of legitimacy can be seen, on the one hand, as inescapably ideological, because they define *a priori* the sources of criticism against political power which can be taken into consideration; while, on the other hand, they can be seen as dangerously oppressive, as they justify the use of coercive force to manage illegitimate dissent. In both cases, endorsing a conception of legitimacy as a ground for acceptable

uses of force means leaving unheard, both on a theoretical and on a political level, all those criticisms that subjects might move against the political order and that fall outside the scope of legitimacy.

This brings me to a final remark. Newey seems to suggest that theorizing legitimacy leaves us with inadequate tools to understand our political circumstances. A fixed account of the criteria of legitimacy does not suit the complexity of political reality. Hence his shocking suggestion that any sharp divide between politics and warfare prevents us from dealing with actual conflicts. This is why Newey at some point recalls “the ‘Not in my name’ protests before the 2003 invasion of Iraq” and he points out that “whether or not the protesters are thought of as making a valid claim, it is not obvious that what they were saying falls outside politics merely because they were calling the war’s legitimacy into question” (124).

In addition, by relying on theories of legitimacy to establish admissible political relationships, we might lose sight of crucial issues posed by political reality. So, for example, let’s consider Newey’s worries about the “move to the ideal” – namely “to ask what people would think in the absence of force.” As Newey further elaborates:

In general there is no reason to think that [...] the answer in this hypothetical no-force environment would be in any way dispositive for how people should act. As the experience of force is not an aberration or singularity in politics, but a constant if not a constitutive feature of it, a retreat to counterfactual situations where it is absent seems to be precisely the wrong way of going about understanding it (132).

This is not, of course, to say that every theory of legitimacy resorts to idealizations of this sort; rather, it is to say that normative systems are built by selecting a certain methodology and certain assumptions as relevant in order to derive the correct conception of legitimacy to endorse. Such preliminary process of selection of the relevant methodology and assumptions upon which to build a theory of legitimacy, and that constitutes a necessary step for the construction of every normative system – let’s call this the *normative framework* of a theory –, is what can represent a fundamental problem for political theorizing. By defining a *normative framework*, political reality (or some aspects of it) can be regarded as having normative relevance *as long as* their relevance has been recognized by the normative framework of the theory. This means that normative systems – and *a fortiori* theories of legit-

imacy – are normatively insensitive to all those features of political reality which have not been included in the *normative framework*.

We could deem this way of reflecting normatively about politics as an inadequate (yet not inconsistent) way of proceeding because, when we reason politically, all aspects of political reality seem to have some importance to us – like the complexity of the circumstances encountered, the values at play, the claims subjects raise, the possibilities open to us, and so on. In the above-mentioned example, Newey discusses theories of legitimacy that are insensitive to the reality of the “experience of force”. He argues that these would offer an inadequate way to reason about legitimacy because they would not provide an answer to one of our most pressing political problems, namely how to make sense of, and cope with, the experience of political coercion. Notice that Newey is not making a point about the consistency of theories of this kind, he is rather emphasizing their inadequacy in addressing what we regard as a crucial political problem. Yet, *normative frameworks* impose constraints on the aspects of political reality we could deem normatively relevant. According to Newey, this cannot be the correct way to go, if we want to reach well-formed, critical, and responsible, judgments about the fundamental political question *what do we do?* (127). Newey’s article can be read as an invitation to turn our sight from theory to reality in order to recognize that political theory must look at political reality to be appropriately conducted.

At the beginning of this section I said that if we want to generalize Newey’s thesis according to which force can destroy legitimacy, we have to look for an argument able to demonstrate that the very attempt to propose theories of legitimacy should not be pursued. Indeed, I pointed out that the analysis should be conducted on a meta-theoretical level, as opposed to a theoretical one. To this purpose, I have made a number of digressions into Newey’s discussion of legitimacy with the aim of showing how the very attempt to theorize legitimacy could have a concrete political impact, by reinforcing ideologies or fostering domination, and can be an inadequate way to conduct political reflection. In other words, the arguments put forward were intended to show the *undesirability* of reflecting upon legitimacy by looking for systematic normative theories of it.³

³ Such critical take against systematizations and normative theories is common in realist political thought. For similar arguments, see Geuss 2010, 1-16 and Williams 2006, 155-168.

Are these arguments conclusive if the aim is to generalize Newey's thesis? In a sense, they are not. They do not demonstrate the inconsistency of theorizing about legitimacy generally, nor do they positively defend an alternative method for reflecting about legitimacy in a normative sense. However, they offer us some persuasive reasons to think that elaborating theories of legitimacy might not be the way in which we would like to conduct political reflection. This is all we need to provide sufficient support for Newey's thesis in the present context. Let us bear in mind that the whole point of Newey's analysis is to give priority to real politics over abstract systematizations in political theory. If examining the effect of theories of legitimacy over politics can persuade us that theorizing about legitimacy could be dangerous or inadequate, this could be a perfectly good reason in Newey's perspective.

4. CONCLUSION

I have argued that Newey's thesis about the effects of force on legitimacy can be effectively generalized if we move the analysis from a theoretical to a meta-theoretical level. The meta-theoretical argument claims that, although we could consistently offer theories of legitimacy able to demarcate acceptable from unacceptable uses of force, we should better avoid systematizations of this kind in political reflection. I conclude by mentioning two problems that Newey's project incurs, and that should be the object of future investigations by scholars.

First, Newey claims that a sharp divide between politics and war cannot be drawn and emphasizes the extent to which politics and war share common means, namely the use of force. But this thesis is still underdeveloped, and it might sound – paradoxically – quite unrealistic, if not further discussed. As Newey admits, there are certainly many diverse forms of political violence and there is reason to believe that they will have different normative implications; hence, it would be crucial not to reduce them under the single umbrella category of “form of violence”. Such differences ought to be carefully taken into account and discussed.

This brings me to the second point. As Newey correctly points out, the central question of politics is *what do we do?*. Newey, then, believes that a crucial part of political life consists in figuring out how the use of force should

be managed. Newey does not think that we should refrain from reasoning practically, or from exercising some form of normative reflection. However, in this paper, Newey's conclusions are mainly negative. Yet, if it is not the case to reason about legitimacy by providing a theory of it, how are we supposed to normatively reflect about legitimacy?

These are just some of the issues Newey has contributed to open and that will be worth exploring further.

REFERENCES

- Geuss R. (2010), *Politics and the Imagination*, Princeton, Princeton University Press.
- Newey G. (2019), "Real Legitimation, Anarchism and Power Loops", *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 117-135.
- Peter F. (2017), "Political Legitimacy", *The Stanford Encyclopedia of Philosophy*, ed. by Edward N. Zalta, Stanford University, <https://plato.stanford.edu/archives/sum2017/entries/legitimacy/>.
- Sleat M. (2014), "Legitimacy in Realist Thought Between Moralism and Realpolitik", *Political Theory*, vol. 42, n. 3, pp. 314-337.
- Williams B. (2002), *Truth and Truthfulness: An Essay in Genealogy*, Princeton, Princeton University Press.
- (2005), *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, Princeton, Princeton University Press.
- (2006), *Philosophy as a Humanistic Discipline*, Princeton, Princeton University Press.

Detlef von Daniels

**Realism, Power-Loops, and Re-Entry.
An Imaginary Conversation with
Glen Newey over the Gaps
of Time and Traditions**

*We can think of a person as being happy when he is in the way
of a successful execution (more or less) of a rational plan of life drawn
up under (more or less) favorable conditions, and he is
reasonably confident that his intentions can be carried through.*
John Rawls

*τὰ δὲ πάντα οἰακίζει Κεραυνός.
But the lightning steers beings as a whole.*
Heraclitus

I.

While working on this paper and re-reading several of Glen Newey's books, essays, and unpublished papers, I remembered a conversation I had with Glen several years ago. We met in Berlin, in front of the Staatsbibliothek at Potsdamer Platz, a building ingeniously designed by Hans Scharoun and planted slightly oddly on the street, as if to block Albert Speer's plan of a south-north axis leading to the central square of the future "world capital Germania". We then walked between Mies van der Rohe's Neue Nationalgalerie and the St. Matthäus Church over to the Bendlerblock to have lunch in the cafeteria of the Federal Ministry of Defense. On the way we talked – in German – about the layers of history we were crossing, obliquely referring in the Bendlerblock to the place where Tom Cruise was shot (playing Claus von Stauffenberg in Bryan Singer's *Valkyrie*), but over lunch switched to English to discuss a paper of mine on monarchy as liberalism's little dirty

secret.¹ In retrospect, I have the impression that this short walk from the Staatsbibliothek to Bendlerblock showed many faces of Glen's character, his ability to cross cultural barriers, not only those of languages, his witty skepticism regarding grand narratives, and last but not least his sharp analytical thinking. However, the analytical distinctions he introduced² do not exhaust his philosophical legacy. On our way back, crossing Bendlerblock, passing the Villa Parey where the bullet holes of WWII are still visible, and grasping a glimpse of the Berliner Philharmonie, we would switch back to German, and the very same antinomies of liberalism we had discussed over lunch appeared in a different light. It is this conversation, at the edge of different traditions, conducted from the background of contested cultural knowledge, that I would like to take up and continue as a commemoration.

2.

For preparing the conversation, it is necessary to briefly characterise Newey's thinking. One of his central concerns was to question the self-confidence of contemporary political theory of having a firm stand above political contestations. In his early book, *After Politics*, he outlined his leading idea in the form of three central tenets.

First, politics is characterised by endemic disagreement over what counts as a political question, [...] Second, more generally, politics is characterised by endemic disagreement over issues which are by common consent a matter of public concern. [...] Third, politics essentially involves the use of power.³

However, the strength of this approach was not to develop an elaborate 'theory of the political' himself. Instead, he defended his 'political realist' convictions by showing how various (mostly contemporary) approaches fail

¹ See von Daniels 2016, 456-477. Newey was a staunch anti-British monarchist, and complained that most liberal political philosophers failed to turn their words into deeds, and fierce defiance of the monarchy. This observation is the starting point for my essay.

² See the several formulations the conditions for, and limits of, toleration in Newey 1999b, 53-80.

³ Cf. Newey 2001, 6-7.

to live up to their own standards, e.g. their methodological assumptions.⁴ Thus, against John Rawls's approach in *Political Liberalism* Newey argues that "people can reasonably disagree [...] about whether their disagreements are reasonable. But if one can reasonably disagree about that, the basis for constructing a reasonable consensus fails".⁵ Newey points out that as a consequence, "a theory of justice that meets Rawls's criteria demands curbs on freedom".⁶ In other words, there is a point for free spirits – maybe a point beyond good and evil – from which the reasonableness of Rawls' approach can be questioned.

Newey is certainly aware of Rawls's defence of presenting a "free-standing conception" by explicating the self-understanding of citizens within the context of a modern Western liberal society.⁷ Some reviewers of Newey's works have noticed, moreover, that he shares with the 'political moralist' approaches he criticises the overall liberal framework and the style of analytical argumentation while providing himself few real-world underpinnings and little genealogical awareness (in terms of the Cambridge School: little contextual reading).⁸ Maybe as a rebuttal of these charges, Newey broadened and radicalised his approach in later years. In his last unpublished manuscript, *Rogue Theodicy*, he takes up classical discussions on theodicy and hints at an underlying impulse of his philosophy. It is the 'wild freedom', the freedom before it is tamed in a liberal framework, the freedom to revolt against even God's word that sparked Newey's restless contestations.⁹ "Wild freedom – individuals' inalienable liberty of judgement – persists in the commonwealth, in a way that cannot but jeopardise its stability".¹⁰ The broadened perspective allows Newey to consider not just analytical political philosophy but religious traditions and classical authors, notably Plato and Hobbes, and to refer to a

⁴ *Ibidem*, 9.

⁵ Newey [2015].

⁶ *Ibidem*.

⁷ Cf. Rawls (2005, xlii) and most explicit on the Hegelian task of reconciliation with the past *Lectures on the History of Political Philosophy* (Rawls 2007, 10-11).

⁸ See the reviews of *After Politics* by S. Chambers (2002, 808-809) and J.G. Gunnell (2002, 683-684).

⁹ Newey [2015].

¹⁰ *Ibidem*, 27-28.

classical tragedy, *Antigone*, to characterise the inevitable disagreements traversing the political:

Antigone enacts a collision between two rival forms of fantasised omnipotence, each of which leads to contradiction. It is not that the play pits Creon, an advocate of realism, against *Antigone* as an exponent of utopian justice. Instead each can be thought of as a political actor seeking to annul the conditions of politics. They each use the language of justice, but in circumstances where their bid to convert their encounter with each other into something beyond politics – an agency of pure decisionism against a pure practice of right – proves self-contradictory.

These sentences from Newey's last manuscript show that something has changed over the years in his way of thinking, or maybe they confirm that he had always occupied a slightly odd position in the discourse of analytical political philosophy. The reason can be insinuated by enumerating once again the topics and problems Newey deals with in his last manuscript: ancient philosophy, the theological tradition, and tragedy as a way of reflecting our philosophical self-understanding in the modern world. All this is reminiscent of Hegel's *Phenomenology of Spirit*, which has the same points of reference, including, implicitly, *Antigone* in the background of his thinking to reflect on the irreducible tensions within the political. Not just when roaming and discussing on the streets of Berlin another parallel to Hegel needs to be mentioned. Hegel was, like Newey, very much a lecturing philosopher who thrilled on contestations, and through his provisional and constantly shifting form of writing, tried to evade formal closure.¹¹ This remote reference to Hegel might suffice for an idea of how a conversation with Glen might commence. The question, however, is how it can be conveyed into a commemorative form of writing without falling into the trap of placing the gist of the conversation under layers of historical niceties, or paralysing its ever-changing, multifaceted, political character.

¹¹ On Hegel's style of writing as a refusal to submit to formal closure and *Antigone's* role in the *Phenomenology of Spirit*, see Steiner 1984, 19–36.

3.

For having a clear and determinate starting point, we can consider one of Newey's last presentations, entitled *Real Legitimation, Anarchism, and Power Loops* (presented in Milan on 14th April 2016).¹² In this paper, Newey radicalised his approach by differentiating it from Bernard Williams's (also post-humous) work on politics and legitimacy.¹³ Even though both are commonly labeled political realists, Newey shows through his criticism that he is a different kind of political animal. Newey shares Williams's conviction that the necessary condition for the legitimacy of a state is giving an answer to the first political question, in terms of Williams, the "securing of order, protection, safety, trust, and the conditions of cooperation".¹⁴ Newey frames the question – echoing Lenin's famous essay – more simply: "What do we do?". The formulation is meant to signify that the question cannot be settled once and for all, but keeps coming up and shifts between a descriptive and normative stance.¹⁵ Newey's main criticism of Williams is, however, a different one. He shows that Williams's justificatory strategy, which Williams calls basic legitimation demand (BLD) in conjunction with the critical theory test (CTT), fails to meet its own standard of being realist, instead turning out to be another case of moralism, the very position Williams attempts to demolish.

Williams's argument is that politics requires those who yield power to justify their dominance to those on the receiving end (the BLD). The justification must moreover be more than an avid assurance of having good reasons (what Hegel calls *ein trockenes Versichern*). Eliciting assent from those at whom the legitimation is directed does not suffice either as this can itself be a by-product of the power. Therefore, Williams introduces the further hypothetical condition that assent is only legitimising if it had been given when the ruled were not subject to force (the CTT). Williams concedes: "Who has to be satisfied that the BLD has been met by a given formation at one given time is a good question, and it depends on the circumstances. Moreover, it

¹² Newey, this issue, 117-135.

¹³ B. Williams 2005, ch. 1.

¹⁴ *Ibidem*, 3.

¹⁵ See Newey, 2018, 64.

is a political question, which depends on the political circumstances”.¹⁶ This concession makes a perfect target for Newey’s scepticism. He points out that the “circumstances” Williams refers to can be characterised in multiple ways, and that the distinction between ideological indoctrination and the political education the CTT relies on can itself be drawn into the sphere of politics. For Newey, the ultimate reason for the CTT giving out both false negatives and false positives is that there is no blanket distinction between politics and non-politics. “We are only in a position to apply the concept if we know we are already in a situation in which the concept itself applies: that is, our use of the concept is, in effect, infallible”.¹⁷ But this means that Williams himself has to rely on some moral conception to delineate the area of the political in the first place, thus yielding to political moralism.

A recent political example might explain Newey’s point. Advocates of the political movement Extinction Rebellion argue that they have a right to civil disobedience, and even a right to disrupt the economy and call for a new kind of political system as the current system fails to satisfy the BLD, in the words of Williams, the “securing of order, protection, safety, trust and conditions of cooperation”. The activists hold that as current governments fail to address the looming climate catastrophe, they fail to secure the conditions of human survival (survival in the double sense, survival of the species and survival in a human way).¹⁸ It is not quite clear whether the activists see this failure as an effect of conscious propaganda on the side of the current system (so that the CTT would rule out its legitimacy) or as a sign of ‘a universal objective context of delusion’ (in Marxian terms *universeller Verblendungszusammenhang*) that permeates throughout the political sphere, the economy, and the ordinary (non-critical) civil society. In this case, the CTT would give out, in the view of the rebellion, a false positive as (nearly) everyone is in a state of delusion. In any case, the movement confirms Newey’s point that the basic political question “What do we do?” arises all the time, even in our apparently settled Western societies. In Newey’s words: “For whom it arises, and in relation to which deliberative possibilities, are themselves already political questions”.¹⁹

¹⁶ B. Williams 2005, 136.

¹⁷ Newey, this issue, 117-135.

¹⁸ Extinction Rebellion 2019.

¹⁹ Newey, this issue, 117-135.

Newey coined the term “power loop” to describe “a situation where a purported authority or its proxies tries to legitimate itself to those subject to its power, and the legitimation itself exemplifies this power-relation; so that the legitimation raises the very question it seeks to settle”.²⁰ To use the example of Extinction Rebellion, activists would argue that whatever defenders of the current regime might say – e.g. that property rights, rule of law, and majority decisions need to be accepted – is an expression of unjustified domination of humans over nature.

4.

In an academic context, a typical reaction to this brief exposition would be to question Newey’s account by distinguishing various notions of politics (not each issue seems to involve a drama), or various kinds of political realism. However, this would quickly turn into yet another exercise in a more or less elaborate classification that would, through numerous fine-grained reasonable considerations, disperse Newey’s more disruptive manner of questioning. Alternatively, one might wonder how far or how radically Newey would be willing to take his account. This question has also a side that pertains to daily political discourse. In times where the distinctions between news and fake news, argument and bullying, public office and private advantage are consciously undermined, any further theoretical deconstruction of the last liberal embankments might seem to serve Newey’s legacy poorly, as it creates strange bedfellows. Would Newey really want to argue that everything is up for grabs, depends on circumstances, interpretations, or wouldn’t he finally agree that there are, in the end, some unquestionable, objective standards of decency, rightfulness, or whatever else everyone must bow to before politics can even begin? However, wouldn’t this turn him into a moralist? Even worse, a moralist post-mortem?

This is a variation of the initial question of how Newey’s legacy can be taken up without paralysing its political character. For his writings, it takes on a special form. It is not just the utilisation for specific political views or programs (let’s say of the enemies of liberalism) that would be mistaken. As

²⁰ *Ibidem.*

Newey stresses the concrete and shifting circumstances of politics and the failure of contemporary political philosophy to account for their uncanny and at times irrational nature, any utilisation of Newey's thinking for any political current would be a misappropriation, as it would reinstate one crucial distinction: between the 'pure', written theory, realistic as it might be, and its various 'impure' applications. One might object that this is either not a serious philosophical problem at all, as it pertains to all philosophical theories, apparently without affecting their theoretical dignity, and that insofar as Newey considered himself to be a professional political theorist, it is apparently not one he cared about. Yet this quandary cannot be brushed away so easily. The question of how to preserve and prolong the memory of an oral practice accompanies philosophy from its very beginning in Plato, who has, through his presentation of Socrates as a literary character and through his critique of writing, set the standard for subsequent discussions of this topic.²¹ There is no need to elevate Newey to the new Socrates of our time for relating to this discussion, as there is one aspect of Newey's work that baulks at all theorisation. Newey was, especially in his essays for the blog of the *London Review of Books*, extremely eager to employ unfamiliar or strange words, sometimes words apparently out of context, up to the point of including expressions in a review that were arbitrarily suggested by his friends on Facebook.²² This playful, idiosyncratic way of handling the English language reconnected him to his upbringing, and can only be replicated by following his example. Thus it is not only Newey's character, his way of lecturing, but also his way of writing that shows how Newey wanted to retain a moment of wild freedom, and asks us to take up this flame.

²¹ Socrates's last words "Crito we owe a cock to Asclepius; make this offering to him and do not forget" (Phaedo 118a) are Plato's signature as a writer who carries on Socrates's burden. See Most 1993, 96-111.

²² See Newey 2014a, <https://www.lrb.co.uk/blog/2014/november/among-the-axolotls>, [last accessed November 30th, 2019]. Afterwards, Newey explained in private conversation "some words, though in my original, didn't survive the LRB editors' meat-cleaver – 'antidisestablishmentarianism', 'equipollence' and 'heteroscedasticity' – though most of the genital words did, including the c-word, for which I'm indebted to Jimmy Lenman".

5.

At this point of the discussion, I imagine being with Glen on the way back from lunch, both to continue on with our journeys, again crossing historically tainted terrain, but this time catching the light reflecting from Berliner Philharmonie, which gives me the liberty to respond to Glen's account in a different tone, though a tone that could, through the wink to Plato, already be foreboded.

Newey discusses Plato only briefly in his *Rough Theodicy*, and treats him in an analytical manner, as yet another political theorist. The basic feature he shares with all later theorists is to conceive of a "synoptic theory of justice – one that can apply to society as a whole".²³ Newey argues that the main shortcoming of such a theory is that the pre-political freedom of people to behave contrary to the demands of the theory of justice is denied. Plato's entire project turns out to be one of damage control, though Newey concedes that Plato is at least candid in admitting that the underlying ideology is a form of deception (the noble lie). To use the terminology Newey developed in the critique of Williams, Plato's theory is another example of a power loop, even its archetype. The "legitimation of an authority that exemplifies the power relation" is displayed by the rule of the philosopher-kings in whom reason prevails over appetite, just as they rule over other classes of society. At the same time, Kallipolis shows a world in which all 'wild freedoms' are banned, up to the point of censoring music and expelling all but ceremonial art from the city. Newey sees Plato as a typical political theorist, who fantasises about his theory's omnipotence and is disappointed by the actual course of politics in the world, the type of thinking – and the type of academic existence – Newey revolted against.

However, dealing with Plato almost inevitably draws the interpreter into Plato's weave. The insight that the problem of power loop can, at first, easily be applied to Plato shows that Newey is not satisfied, after all, with stating down-to-earth insights, such as that actual political actors are hardly rational or consensus-seeking, or that before any actual deliberation procedure the dirty deeds of politics needs to be done. Lines like these can often be found as side remarks

²³ Newey [2015].

in Newey's reviews and blogs.²⁴ However, these realist observations – one could also say these contributions towards a phenomenology of politics – are not as one might think, Newey's ultimate bedrock "where the spade is turned".²⁵

6.

To start with, the power loops Newey notices are not confined to contemporary analytical political philosophy, but can be found in theological and classical philosophical discourse, so they are the structure of our thinking. Without noticing, Newey was about to discover a highly abstract 'science of logic', a logic that is at work in all synoptic or all-encompassing philosophical accounts. To illustrate its abstractness and potentially wide-ranging scope of application, the problem can be reformulated in terms of a systems theory. Whenever something is said to be comprehensive (e.g. God is everything) and then qualify it as something (e.g. God is good), the other side of the qualification (the evil) enters into comprehension and creates a paradox: God is good and evil. The problem lies also at the foundation of political philosophy, and can be diagnosed as early as in Aristotle. In *Politics*, he first claims that the city is a kind of partnership (*koinonía*) formed with a view to some good. He then goes on to define the most supreme and comprehensive partnership of all, which includes all the others ones (houses, families, trade) (*koinonía kyriotáte*) not as a 'partnership as such', but qualifies it in a specific way as a "political" (*koinonía politike*), so that the distinction between the political and non-political reappears within the city.²⁶ Niklas Luhmann coined the problem as the re-entry of a distinction in itself.²⁷ I spare myself, at this point, a more detailed discussion of how Luhmann reformulates Hegel's project of a 'science of logic' with the theoretical means of the 20th century, and how exactly his notion of re-entry relates to Newey's notion of pow-

²⁴ See Newey 2014b, <https://www.lrb.co.uk/blog/2016/november/the-clean-hands-problem> [last accessed November 30th, 2019].

²⁵ Cf. Wittgenstein 2001, §217.

²⁶ Aristotle, *Politics*, 1252a, see for Luhmann's analysis (2009, 22-23).

²⁷ Luhmann's writings are hardly known in the Anglo-American world. On the notion of re-entry as a way to describe how society is perceived throughout the ages, see Luhmann 1994, 14-27.

er-loops for an implicit reason. Newey's answer is missing, though hopefully the sketch serves as an invitation for someone else to come to defend Newey and analytical political philosophy against the Luhmaniac spin.

7.

There is also an explicit reason why I have mentioned Luhmann, which brings us back to Plato. Luhmann freely explains that a re-entry brings a paradox to the theory. For ears trained in analytical political philosophy, the mere mentioning of a paradox is the worst possible mistake. It brings back memories of the beginning of analytical philosophy, of Bertrand Russell's short letter to Gottlob Frege, in which Russell detailed having derived a paradox from one of the axioms of the *Grundgesetze der Arithmetik*,²⁸ a paradox that has haunted formal logic and analytical philosophy ever since.²⁹ However, Luhmann understands a paradox differently. Instead of trying to block it, he explains that paradoxes are inevitable and need to be unfolded through hierarchisation or temporalisation. Alternatively, they can also be reflected by displaying them in the arts.

All of these strategies can be found in Plato, as he is very conscious about the limits of thinking. The following reading of Plato is therefore not simply a refutation of Newey's interpretation, but serves to show how Newey's ultimate concern can be integrated into the philosophical tradition – so that the summit talks among free spirits can continue.

At the beginning of the argument in *The Republic* that leads up to the building of the ideal state (*The Republic* 370c-372d), Socrates presents the outline of a comprehensive city, sometimes called the healthy city (characterised by moderate scarcity, division of labour, decent living conditions including figs for dessert), only to be interrupted by Glaucon. He complains that the city Socrates describes would be a city for pigs – displaying conditions of keeping livestock of the human kind – as it does not include the amenities he is used to, among them eating pork. It is seldom noticed that the further

²⁸ Russell's paradox is generated by asking whether the class of all classes that are not members of themselves is itself a member of itself or not: if it is, then it is not; and if it is not, then it is. Russell's letter is included in Frege 1976, 211.

²⁹ See Link 2004.

argument of *The Republic* depends on this intervention, so that Kallipolis is ultimately not Socrates's but Glaucon's city, a city in which Glaucon's appetite is included and tamed. The healthy city could, from a contemporary perspective, even be 'universalised', as no 'great evils' are found in this state of affairs.³⁰ Socrates would certainly be satisfied with figs for dessert. Plato thus resolves the paradox of all-inclusiveness – or as Newey calls it: the synoptic theory of justice – by temporalising it, describing the development of the institutional constraints of the philosopher's rule. The story starts with the all-encompassing, synoptic city, then (Glaucon's) appetite is introduced as something external and ultimately integrated into the city again. This manner of argumentation cannot be leapfrogged by presenting Plato's final or ideal theory, as the theory consists of the dialectical form of argument. Plato is also candid about the fact that, ultimately, he has no rational explanation for the 'feverish' appetite, it is an enigma that is simply there. Newey fails to notice, in his brief and un-dialectical discussion of Plato, that it is not just Glaucon's appetite that gets the dialectic going, but also in form of a downward spinning dialectics, the unruly reason of philosopher kings.

After the ideal city has been constructed, Socrates comes up with the thesis that the worst regime, tyranny, is established out of no other regime than democracy (*The Republic* 564a). This argument was, in Plato's time, directed against the democratic-minded *juste milieu*, and the thesis still works today as a provocation or warning.³¹ The entire argument is complex, as Plato mixes a psychological typology of leaders and citizens with playful references to historical developments and, of course, revilers of democratic rule were – horribly! – slaves and citizens, men and women who are treated alike (563b). It is to be noted that the entire dialectic of decline starts with a failing on the part of the philosophers, a failing of reason, and in particular reason in its purest form: mathematics. The philosophers who are trained for their entire life in

³⁰ According to Rawls, the great evils of human history will only be "eliminated" once a realistic utopia of a law of nations is established (1999, 7), which in its structure resembles the healthy state of affairs..

³¹ Especially after the election of Donald Trump, historians of ideas have made use of Plato again, in order to analyse the current situation. See e.g. D.L. Williams 2016, https://www.washingtonpost.com/news/monkey-cage/wp/2016/10/05/heres-what-plato-had-to-say-about-someone-like-donald-trump/?utm_term=.aadb476308b [last accessed November 30th, 2019].

rationality make an arithmetic mistake in calculating the correct number of citizens for the city – and so the decline starts. Again, the story displays the limits of all-comprehensiveness: this time, the limits of reason. The ‘outside’, the ‘other’ of reason, is the unreasonable, pure stupidity, the inexplicable mathematical error. Once the error is included in the city, the paradox that the rulers are reasonable and unreasonable at the same time unfolds over various stages. By describing how the various regimes (Aristocracy, Timocracy, Oligarchy, Democracy, and Tyranny) and their constituencies evolve out of each other, Plato manages to theorise something which, in Newey’s writings, always seem to be untheorisable: the ever-shifting conditions of politics, the neuroses of politicians, and populations (e.g. in Northern Ireland, one of Newey’s favourite examples), the demons of history, and mere historical accidents and shortcomings.³²

The conversation with Newey’s thinking over gaps of time and tradition thus shows that his political realism is not simply another hair-splitting critique of liberalism, like the communitarian or republican critique, but one that can be brought into dialogue with the ‘dialectical tradition’ of philosophy (commonly opposed to the ‘insular tradition’). The conversation is not fictitious but a conjecture, as Newey finds himself with the interpretation of Sophokles’s *Antigone* in the midst of this tradition.

8.

Writing about the arts, tragedy, and *Antigone* in particular is a genre of its own.³³ Therefore, I will not take up Newey’s interpretation but instead show that the arts are a kind of reflective attitude that, in the 20th century, complement the oblivion of power and politics in Rawlsian philosophy. In the 1950s and 60s, while Rawls reconstructed the Western liberal tradition, American Western movies showed liberalism’s concealed, darker side. John Ford’s late

³² There is one significant lacuna in Newey’s writings. He is cautious never to mention the Holocaust as an example, as he is sceptical even with regard to a reverse philosophy of history with the Holocaust as ultimate but obscure rock bottom. See Newey’s shattering review of Jonathan Glover’s *Humanity: A Moral History of the 20th Century* (Newey 1999a, 15-16).

³³ See Steiner 1984.

Western *The Man Who Shot Liberty Valance* (1962) reflects the paradox that liberalism must conceal the unruly violence it rests upon. James Stewart plays Ransom Stoddard, an idealistic young lawyer who comes into the stateless town of Shinbone to bring education and the rule of law. The town is held in the grips of terror by the gunslinger Liberty Valance. Only the lone cowboy Tom Doniphon (played by John Wayne) would have the guts to stand up to him, but he remains passive as he is planning to settle into the quietest of marriages with Hallie (Vera Miles), the daughter of the owner of the local chow house. The drama unfolds predictably. Ransom Stoddard falls in love with Hallie, Liberty Valance tortures and ridicules Ransom Stoddard, as he sees in him danger for his regime of violence. At first, Stoddard refuses to fight Liberty Valance, but sticks to his idealistic program. Only after Liberty Valance nearly kills a friend of Stoddard does his anger prevail (like in Glaucon), and he agrees to fight Liberty Valance, surprisingly killing him. The fame of being *The man who shot Liberty Valance* and his civic reforms propelled Stoddard's political career. The movie is told as a flashback, when he comes back as an esteemed senator to Tom's funeral together with his wife Hallie. The town has turned into a respectable, law-abiding city, connected by railway to civilisation, and in a long monologue Stoddard tells the editor of the local newspaper the origins of his affection for Tom. It was him who shot Liberty Valance during the gunfight in the back, so that Stoddard would survive, achieve fame, and marry Hallie. For the sake of the higher good, Tom has abandoned his love and receded into an outsider's existence. The moral of the story is told by the newspaper editor. After hearing the true story of the town's (and liberalism's) origin, he burns the notes his young employee has taken and declares: "When the legend becomes fact, print the legend!".

REFERENCES

- Chambers S. (2002), review of *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy* by G. Newey, *The American Political Science Review*, vol. 96, n. 4, pp. 808-809.
- von Daniels D. (2016), "On Monarchy", *Critical Review of International Social and Political Philosophy*, n. 19, pp. 456-477.
- Extinction Rebellion (ed.) (2019), *This is Not a Drill. An Extinction Rebellion Handbook*, London, Penguin.

- Frege G. (1976), *Wissenschaftlicher Briefwechsel*, ed. by G. Gabriel *et al*, Hamburg, Meiner.
- Gunnell J.G. (2002), review of *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy* by G. Newey, *The Journal of Politics*, vol. 64, n. 2, pp. 683-684.
- Luhmann N. (2009), *Einführung in die Theorie der Gesellschaft*, ed. by D. Baecker, Heidelberg, Carl-Auer.
- (1994), “Observing Re-entries”, *Protozoologie*, n. 6, pp. 14-27.
- Most G.W. (1993), “A Cock for Asclepius”, *The Classical Quarterly*, n. 43, pp. 96-111.
- Newey G. (1999a), “Effing the Ineffable”, *London Review of Books*, vol. 21, n. 23, pp. 15-16.
- (1999b), *Virtue, Reason and Toleration: The Place of Toleration in Ethical and Political Philosophy*, Edinburgh, Edinburgh University Press.
- (2000), *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy*, New York, Palgrave.
- (2014a), “Among the Axolotls”, *LRB Blog*, 7th November, <https://www.lrb.co.uk/blog/2014/november/among-the-axolotls> [last accessed November 30th 2019].
- (2014b), “The Clean hands problem”, *LRB Blog*, 7th November, <https://www.lrb.co.uk/blog/2016/november/the-clean-hands-problem> [last accessed November 30th, 2019].
- (2015), *Rogue Theodicy*, Unpublished Manuscript.
- (2018), *Realism and Surrealism in Political Theory*, in M. Sleat (ed.), *Politics Recovered: Realist Thought in Theory and Practice*, New York, Columbia University Press.
- (2019), “Real Legitimation, Anarchism and Power Loops”, *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 117-135.
- Rawls J. (1999), *The Law of Peoples with “The Idea of Public Reason Revisited”*, Cambridge, (MA), Harvard University Press.
- (2005), *Political Liberalism* (expanded ed.), New York, Columbia University Press.
- (2007), *Lectures on the History of Political Philosophy*, ed. by S.R. Freeman, Cambridge (MA) - London, Belknap Press of Harvard University Press.
- Steiner G. (1984), *Antigones*, Oxford, Clarendon.
- Williams B. (2005), *In the Beginning Was the Deed*, ed. by G. Hawthorn, Princeton, Princeton University Press.
- Williams D.L. (2016), “Here’s what Plato had to say about someone like Donald Trump”, *The Washington Post*, 5th October.
- Wittgenstein L. (2001), *Philosophische Untersuchungen*, ed. by J. Schulte, Frankfurt a. M., Wissenschaftliche Buchgesellschaft.

Michael Mosher

**Glen Newey's Brief Against
Comprehensive Justification**

I.

I begin with a bricolage of ideas from Glen Newey's papers and works: (1) power loops; (2) liberty as security; (3) the reiteration problem; and (4) walls, or the ethics of 'murality' as a response to Ingrid Creppell's ethics of 'mutuality'. These are the keys to unlocking Newey's complaints about (A) what he calls "comprehensive justification" (a too inclusive moral philosophy) and (B) about his framing of politics in *Rogue Theodicy* (Newey [2015]).

(1) With the idea of 'power loops' that interfere with justification, Glen Newey pays homage to Thomas Kuhn and Michel Foucault. Power can be justified if it is consented to freely but is it justified if in fact power 'loops' around underneath the situation of justification in a way that may predetermine or pressure the outcome? If this is the case, there is no neutral ground upon which to assess the legitimacy of an actions because all such assessments are affected by the force field of an existing structure of understandings maintained ultimately by power. For Newey "the effect of force on the political context of justification" is pervasive. He argues for the "ineliminability, not simply of force itself, but of its effects on how that context is itself understood" (Newey, this issue, 118). With Kuhn, the presence of 'paradigms' in science enforces the outer boundaries of legitimacy which can be challenged only by a buildup of anomalies to the paradigm. With the early Foucault, the structure of the 'episteme' constrains what might be thought and argued at any given moment. In each case the 'loop' refers to the presence of power, in the form of a status quo structure or a pattern of indoctrination, that tends

to restrict dissent. In Kuhn science pedagogy is necessarily authority laden (or authoritarian) because solving problems in science can only proceed with one paradigm at a time, one set of problems and proposed solutions.

Anarchism, the idealized no-power situation, must be the logical fall back for liberal arguments that depend upon a notion of justification untainted by power just as untainted independent skeptical minds is the anarchist fantasy about the scientific community. On this understanding scientists as well as citizens should fortify themselves with sufficient skepticism to resist prevailing patterns of power loop/paradigm enforcement as though one could through an effort of will break through the force fields that sustain understandings.

Historical examples may tend to unravel this argument. There are many seductive messages that normalize inequality. Egalitarians need to resist this. But maybe detached skepticism is not the way to unloop power. Montesquieu argued that to the contrary it was in the egalitarian republic where "the full power of education is needed" (Montesquieu 1989, IV.5). There is no escape from paradigm enforcement. If we want to enjoy the charms of equality, we must first educate ourselves to perceive or to feel its charms and that requires participating in a structure of egalitarian feeling. Newey himself resists the implication of power loops. He was charmed, as we shall see, by the spectacle of the lone dissenter who embodies "wild freedom" (Newey [2015], 51).

(2) Nevertheless, whatever one may ultimately say about wild freedom, liberty in the ordinary sense for Newey is established by security. In an age marked by the threat of terror there are of course many examples of false security. Newey acknowledges this but makes the Hobbesian point that liberty flourishes only in structures that guarantee security. Newey need not just have cited Hobbes. Montesquieu, far closer to the heart of the liberal tradition, makes the security liberty link explicit: "Political liberty in the citizen is that tranquility of spirit which comes from the opinion each one has of his security" (Montesquieu 1989, XI.6, 158).

(3) The search for justification is also stymied by the 'reiteration problem'. If the justification of power arrangements requires a consensus, there is the problem of how to appeal across plural boundaries among different people and among their distinct values and interests. But underneath the search for conciliation across boundaries, Newey detects a more surreptitious activity. Instead of appealing to understandings that might be in effect neutral be-

tween dialogue partners, one (usually the dominant partner) will propose solutions that it is known in advance the other side will not or cannot accept. Instead of solving a problem, Newey claims, this only 'reiterates' it.

If, however, Newey is right, this exchange does solve a problem for the dominant partner. When as expected the other weaker partner rejects the proposal, the way is open for the first to argue that the other is being unjustifiably unreasonable (in contrast to the Rawlsian sense of 'reasonable disagreement') or is exhibiting intolerance, which, Newey sarcastically intones, is 'always unacceptable'. Of course the result could be mutual incomprehension: "From its own perspective, each side may see its opponents as unjustifiably intolerant and its own position as tolerant – or as justifiably intolerant" (Newey 2008, 372).

Manipulation is usually involved: "the content of toleration can always be retailored to fit whatever one now happens to believe is justified" (*ibidem*). The upshot is justified coercion (for whomever is dominant) the remedy for the presence among us of 'unreasonable' or 'intolerant' (or 'deplorable') citizens. For Newey, the invocation of Rawls's argument for reasonable disagreement is incoherent in the face of the claim of plural values (each perhaps worthy but significantly incompatible with one another) even if the invocation of unreasonable disagreement or intolerance is often a convenient way of marginalizing inconvenient citizens. Newey obviously thinks that these procedures for exclusion are sneaky, but does he think they are wrong? Not exactly. Instead he appeals to the picture of politics offered by Carl Schmitt: "Where it is an issue, toleration forces politics to distinguish friend and enemies" (Newey 2008, 367).

Newey's intention here is to remind readers that arguments about toleration can sometimes 'exclude conflict', which is always at the heart of politics. 'Conflict', he is persuaded is definitive of the political circumstances. One should cast suspicion at the central aim of contemporary moral philosophers which, as he put it, is "to endorse a permanent politic-juridical order enshrining the paramount moral value which can bind disparate groups to that order". By contrast he argues there may be no such solution: "disagreement may go all the way down" (Newey 2008, 377-378).

(4) The debate between Ingrid Creppel and Glen Newey is a marvelous set piece. It not only frames the issues Newey has with contemporary moral philosophy – his beef with comprehensive, 'omnicompetent' harmonization – but the positions of Creppel and Newey can be taken as symbols of two kinds of political order.

Ingrid Creppell's "Toleration, Politics, and the Role of Mutuality" could be taken as a frame for the utopian expectations of global order after 1989 (Creppell 2008). Although he could not have anticipated this, Newey's response, "Toleration, Politics, and the Role of Murality" could be taken as a symbol for events that occurred since his passing. For Creppell, toleration is more than a halfway house for the partly acceptable, partly deplorable – what toleration once meant, and what Newey claims it still means. For Creppell this early understanding of toleration was only the beginning in a process whose telos was 'mutuality' and 'the will to relationship'. The goal presupposes that there is a way of framing moral reconciliation which is the task of the philosopher to discover and us to acknowledge. Whether or not it adequately describes contemporary trends for comprehensive settlement among moral philosophers, the 'will to relationship' was an apt characterization of hopes for everyone-is-a-winner globalization. The will to relationship presupposed there is a moral order to which everyone could subscribe.

Not so with Newey's 'murality' with which he slyly sought to displace Creppell's 'mutuality'. For Newey 'walls' are appropriate metaphors for describing a world of plural and incompatible values where nevertheless people could possibly agree that, sufficiently enclaved, there are reasons to tolerate each other. Who occupied what enclave was of course always in dispute. We cannot assign credit or blame to Newey for the new symbolism behind the injunction to 'build that wall'. However, though the facts on the ground are skimpy and the motives misplaced – even then Newey noticed "security fetishism [suggested] cowardice and stinginess" – we make a mistake not to appreciate how powerful a symbol President Trump's new idea of 'the wall' has become in a world where people have lost confidence in everyone-a-winner globalism.

To great rhetorical effect, President Reagan said in Berlin, "Mr. Gorbachev, tear down this wall". The collapse of the Berlin Wall in 1989 and the collapse of (Western) communism inaugurated a world that, if Newey was right, analytical moral philosophers already inhabited: there was a story to tell about comprehensive justification in collective action that excluded no one. There was a story about justice applicable to all. To be sure, many moral philosophers were on the other side of the political or institutional story line: social democracy rather than neo-liberalism plus elections, but the idea of a comprehensive moral settlement, a 'permanent politico-juridical order' was not in question. Now it is.

2. III ROGUE THEODICIES OR ROGUE REBELS?

Even though Glen Newey is now gone, is there anything that he had written that might help us think through the moral consequences of the new world order that threatens to emerge? The obvious candidate is his long and magisterial essay, *Rogue Theodicy* (Newey [2015]). Through a comparison of contemporary moral philosophy, specifically that of Rawls, Dworkin and Cohen, with that of traditional understandings of theodicy, which he finds at work in Hobbes's *Leviathan*, the *Book of Job*, and Sophocles *Antigone*, Newey rehearses his complaints about the 'comprehensive' ambitions of moral philosophy which he thought had the unfortunate effect of sidelining freedom. Traditional theodicies by contrast celebrated freedom. Contemporary theories of justice are secular theodicies gone 'rogue'. Traditional theodicies were justifications for the presence of evil in a God supervised world. Even though God could have determined all human creatures to have pursued morally good lives, these lives would have lacked freedom which morality requires so God granted men and women freedom in full knowledge that some would pursue evil. Secular 'rogue' philosophy by contrast tries to fold freedom into the normative prescriptions of a comprehensive theory of justice and right action. This puts the ambitions of the moral philosopher, Newey suggests, on a level with God and in the grip of God-like cognitive certainty that he or she knows what the good life means.

There are virtues in this comparison but let me first rehearse the problems. At one level it seems perfectly reasonable for philosophers to try to say what a comprehensive morality is since every such effort, like every effort in science too, falls under the qualification that it may be provisional. What then really is wrong with prescribing to the best of our knowledge what ought to be done? The political philosopher Montesquieu expressed the desire eloquently: "In a society where there are laws, liberty can consist only in having the power to do what one should want to do and in no way being constrained to do what one should not want to do". He added, as a consequence that this means that "political liberty in no way consists in doing what one wants" (Montesquieu 1989, Book 11, ch. 3). In this passage, Montesquieu gives perfect expression to Newey's idea of a rogue theodicy. But the passage also suggests why it would be difficult not to apply these criteria in making laws: if one knew even in a provisional sense "what one should want to do", one should advocate it without fear one was unjustifiably restricting liberty. In

addition, God had hell and damnation awaiting miscreants – also prayer and forgiveness – so it is not exactly the case that for the sake of their freedom, God has given miscreants a free pass. The secular or ‘rogue’ philosopher has only education, ostracism, and, as Burke put it ‘the gallows’.

It is sometimes puzzling what Newey seeks in his animadversion to comprehensive justification. His point about over confidence in the power of philosophical reason is well taken. There *is* something megalomaniacal about philosophy, something that Plato was the first to teach. With rogue theodicies, Newey writes, “no justificatory space remains for the exercise of freedom outside the norms the theory lays down” (Newey [2015]). This seems to mean that the theory itself will not be open to amendment or to future rejection. This is unlikely unless – and it is key perhaps to his thinking – the confidence in the norms is dangerously utopian. The confidence of utopian thought leads its adherents to dispense with ‘wild freedom’ which it could then be argued suited an earlier less fortunate people but not one in possession of comprehensive justifications. As Newey’s approving citation of Berdyaev suggests: what is needed is “a less ‘perfect’ while also more free society”. Newey’s fear is of a totalizing intellectual commitment that undermines the freedom to amend, revise or reject.

What does the analogy between traditional and rogue theodicies reveal that is important to see? As the caveats to moral theorizing we rehearsed above indicate, there is often no clear way forward from norm to action. Justification is stymied by power loops. Structures and understandings underwritten by power may distort conclusions that (in some fantasy world) might have been made differently. The reiteration problem is also a roadblock. Sneaky offers that can’t be accepted leads to fraudulently justified coercion. This is the *secret inner life* that Newey saw in regimes of comprehensive justification. In these circumstances, reaching moral conclusions is less like tracking reason than making an existential decision. Moreover, the theme of enduring ‘conflict’ is always present in Newey’s writing so it makes some sense that he would invoke Schmitt’s ‘friends and enemies’ if only to remind the adherents to comprehensive justification that probably they have unjustifiably left someone out in the cold.

Newey had no interest in what drew most thinkers to decisionism (Schmitt or Weber), namely the existential choices of leaders, executive, presidents, prime ministers or dictators. His decisionism is that of the little guy. It involves saying no, foot dragging, dissent, rebellion, resistance. In the light

of his cynicism regarding the inner life of comprehensive justification, with its power loops and reiteration problems, Newey thought it important to preserve that "space", as he called it, for the "exercise of freedom" (Newey [2015], 43). In this respect his approach tracks that of Hannah Arendt. Politics requires the maintenance of the distance plural people and their conflicting perspectives need. Citizens need to stand apart in order to stand or, as Newey put it to 'coordinate' together.

The voice of comprehensive theory still haunts the argument. It will say that if people have good reasons to rebel or dissent, by the criteria of the best available norms they shall have the right to do so. This is not I think a bad response. It more or less repeats Montesquieu. There are moves to make from within a moral paradigm, which permits either dissent or acceptance. It is all that we have now and it is good enough. For Newey, however, this misses the untamed vitality of freedom, the source of each person's very power to devise and revise. Newey is holding out for metaphysical acknowledgment of the free imagination.

In this seemingly romantic undertaking, he found dangerous company. It was not only the company of Hobbes's 'rational fool' whose dissent from the 'will to relationship' (contractual obligation) cracked the fragile foundations of mortal i.e. political, salvation. It was also Hobbes acknowledgement that "the Kingdom of God could be gained by violence". Under the title, *Éloges de l'Injustice*, Celine Spector (2016) has assembled a whole panoply of potential villains under the heading of *l'insensé*, the senseless, foolish, mad, mindless man or woman who, notwithstanding these descriptions, were deep sources of philosophical anxiety as described by the subtitle to her text: *La Philosophie face à la déraison*. We have evidently backed into Rawls and consensus again, the problem of what is reasonable or unreasonable about 'reasonable disagreement'.

That is one side to the story, an affirmation of metaphysical rebellion on grounds of insufficient reasons to avoid the unreasonable. This is not an entirely satisfying back story for Newey, however. There is however a classical author who fully represents Newey's ambitions, namely G.W.F. Hegel. The *Philosophy of Right* may be exactly the sort of comprehensive moral and political philosophy that Newey was tempted to reject, but from his perspective the text possesses two redeeming features.

The first is its acknowledgment of the necessary incompleteness of its argument. After the fall of Napoleon and after the acknowledged failure of the Revolution, Europe found itself between two worlds, between a resurgent feudal absolutism bound to fail and the hopes of enlightenment inspired

rationalism and freedom whose initial fabrications had already failed. It is possible to read the *Philosophy of Right* not as a summary about life at the end of history but as an edifice of unstable and contradictory principles that urges cautious pragmatism in the face of an unknown future. In this respect Geoff Mann's *In the Long Run We Are All Dead*, is exemplary (Mann 2019). It compares Hegel (see especially 119-125) to Keynes. Both were post-revolutionary thinkers who understood that the very principles that ruined the revolution (misunderstood Enlightenment reason and freedom) were not optional adjuncts but a necessary part of the human condition moving forward.

Second, this reading of Hegel as pragmatist in the face of fragile constructions can be corroborated by digging down into his views on the role of subjective freedom. This is the freedom of the isolated and independent individual "where there is free play for every idiosyncrasy [...] where waves of passion gush forth, regulated only by reason glinting through them" (Hegel 2008, par. 184 Addition). Note that reason glints; it does not now dominate or command.

The sphere of 'civil society' situated between family and state is where these 'passions gush forth'. The principles that knit people together, the principles of 'ethical life' (*Sittlichkeit*) presides over family, state and civil society. Here we have another picture of comprehensive justification that Newey rejects. But what Hegel takes away, he also gives back. In the circumstances of a (civil) society of individualists, Hegel reaches the remarkable conclusion that here "the system of ethical order" lies in fragments (par. 184). "Ethical life is split into extremes and lost" (par. 184 Addition). For Hegel this is a loss of moral coherence, a rip in the fabric of comprehensive justification, if you will, but it is not a cause for regret. To the contrary it is necessary to acknowledge at the center of modern vitality, a spirit of liberty and reason that emerged in Reformation and Revolution and is still busy breaking things. In making these claims for freedom, Hegel frees himself from the rogue theodicies that Newey criticizes. Men and women *are* free to do evil as well as good. Without this acknowledgement, one would have no adequate understanding of the human being who was subjected to norms of ethical life.

Paragraphs 5-7 of Hegel's text (*Philosophy of Right*) announced the metaphysics of will or the metaphysics of the free personality, both in itself and in its relationship to others. It is the key to the whole text. The argument begins, paragraph five, with something like Newey's freedom as un-determination, which here becomes "my flight from every content as from a restriction," "neg-

ative freedom" and the "fact of consciousness" (par. 4). It is a picture of the instability of modernity. "It takes place in religion [Reformation] and politics [French Revolution] alike as the fanaticism of destruction" (par. 5 Addition). Without an acknowledgement however to this will to freedom – this Luther's "here I stand I can do no other" or Descartes's the thinking of existence – we do not have human being in sight.

But the naked will cannot stand alone for long (parr. 6-7). To invoke Ingrid Creppell, Newey's one-time dialogue partner, humans as such need to learn the equivalent of "mutuality". They need, if not a "will to relationship," the completion of the will *in* relationship. In his lecture notes, Hegel illustrates this accomplishment through the medium of "friendship and love". "Here," he writes, "we restrict ourselves gladly in relating ourselves to another but in this restriction know ourselves as ourselves" (par. 7 Addition).

Friendship and love are not politics and Hegel was no utopian philosopher. Nevertheless, the template of conciliation that he saw in personal relationship he also thought governed political relationship. If there is a key realist note in this otherwise romantic analogy, it lies in Hegel's additional comment that in friendship and love "one treats the other as other". One could interpret this as saying that the norms that guide lives – those bugbears of "comprehensive justification" that so annoyed Newey – should not expect us to stand so close that we share every value. We may not possess a consensus on justice and right. We may have only "mere toleration", halfway houses for people who are not enemies, but only distantly friends (or friends because they maintain distance). If, however, in whatever circumstance, we were expected to stand so close under the umbrella of comprehensive justification, Newey intimates that we might expect to witness a return of the explosive force of freedom as un-determination.

To return to the earlier speculation, is it possible that the debate between Creppell and Newey could be regarded as symbolic representation of two historical moments? One was marked by walls tumbling down. The ensuing will to relationship in ethics and the global order in politics nourished one set of utopian i.e. potentially or probably, illusory hopes. The other moment wants those walls to be rebuilt. If there are good reason for us to wall ourselves off from one another, on the ethical and political principles of differential loyalties and obligations, no doubt this will-to-difference nourishes another set of illusory expectations.

REFERENCES

- Creppell I. (2008), "Toleration, Politics, and the Role of Mutuality," in J. Waldron, M. Williams (eds), *Toleration and Its Limits*, New York, New York University Press.
- Hegel G. (1991), *Elements of the Philosophy of Right*, Cambridge, Cambridge University Press.
- (2008), *Outlines of the Philosophy of Right*, Oxford, Oxford University Press.
- Mann G. (2019), *In the Long Run We Are All Dead: Keynesianism, Political Economy, and Revolution*, London, Verso.
- Montesquieu C. (1989), *The Spirit of the Laws*, Cambridge, Cambridge University Press.
- Newey G. (2008), "Toleration, Politics, and the Role of Murality", in J. Waldron, M. Williams (eds), *Toleration and Its Limits*, New York, New York University Press.
- (2015), *Rogue Theodicy*, Unpublished Manuscript.
- (2019), "Real Legitimation, Anarchism, and Power Loops", *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 117-135.
- Spector C. (2016), *Éloges de l'injustice. La philosophie face à la déraison*, Paris, Seuil.

Glyn Morgan

**Glen Newey's Realism,
Liberalism and its Alleged
Suppression of Politics**

I. INTRODUCTION

Glen Newey was a persistent and forceful critic of modern liberalism. Like many realists, Newey's principal criticism was that liberalism suppresses politics by reducing it to morality.¹ "The major project in modern liberalism", Newey maintains, "is to use ethics to contain the political" (Newey 1998). Newey presses this argument with youthful vigour in his book *After Politics*, where we learn that canonical liberal political philosophers like John Rawls prescribe an idealized "state of the world in which politics as we know it no longer exists" (Newey 2001a, 3). On the face of it, there is little about this criticism that should trouble modern liberals. Politics as we know it is often a nasty business "the continuation of war by other means", as Newey elsewhere quips (Newey 2008).² What could possibly be wrong in appealing to some conception of fairness or equal respect to distinguish legitimate uses of political authority from illegitimate ones? Where lies the error in recommending institutions and policies that constrain rather than enflame political conflict? Furthermore, if politics is so unpleasant, why complain about its suppression? No one complains about the suppression of acne or hemorrhoids.

¹ For overviews of realism, see Galston 2010 and Rossi, Sleat 2014.

² To give the wider context for this remark: "To invert Clausewitz: politics is war by other means. This does not mean that it is a mere playground for psychopaths. Politics occupies the no man's land between reason and pugilism [...] [it] often gets going precisely where reasonable consensus fails" (Newey 2008, 386).

Newey's own answers to these questions are elusive and idiosyncratic. In its crudest form, Newey's hostility to modern liberalism proceeds from a thoroughgoing skepticism concerning any allegedly public or neutral standard of justification. "The fact of disagreement", Newey writes, "leaves a justificatory deficit, which can only be made up by political fiat" (Newey 2011, 363). This skepticism extends to any political theory that adopts a robustly corrective view of people's own moral judgements. Like Hobbes, Newey suspects that whenever anyone appeals to "right reason", they should be understood as appealing to their own personal reason.³ He is similarly suspicious of appeals to what "all reasonable people" think); and is positively scornful of the attempt to justify liberal political institutions by way of "moral ideals whose reasonableness stems from the fact that reasonable people (read: liberals) are disposed to accept them" (Newey 2001b).

Beyond this justificatory skepticism, the precise character of Newey's realism is somewhat hard to pin down. Part of the difficulty concerns Newey's account of politics. We know that he sees conflict and disagreement as central components. But beyond that, it is not altogether clear whether he thinks that politics is merely inescapable or whether he also thinks that there is something desirable about it too.⁴ He certainly thinks that the effort to suppress politics is misconceived. In a striking formulation of this point, Newey compares the suppression of politics to "squashing a ruck in the carpet". The ruck simply moves elsewhere. This is the case, he argues, when Law Courts become the venue for settling our most fundamental disagreements. "Kicking political decisions upstairs from the bear pit to the bench", as Newey puts it, "will not somehow make them not political" (Newey 2009a). But there is also a strain in Newey's writings where politics is not merely inescapable but actually desirable. This aspect of Newey's conception of politics comes across most unequivocally by way of his account of "freedom as undetermination" (Newey 2018). To fully appreciate Newey's realism, we need to bring into focus both his account of

³ Newey would often cite approvingly this passage from Hobbes: "When men that think themselves wiser than all others, clamor and demand right reason for judge; [...] [they] seek no more, but that things should be determined by no other men's reason but their own" (Hobbes 1996, ch. 5).

⁴ For Newey's discussion of the inescapability of politics, see Newey 2001a, 50-54.

the inescapability of politics and his account of the desirability of politics. Since Newey's account of politics is scattered across a number of different texts, this exegetical effort will require a certain amount of appropriative reconstruction. Following this reconstruction, which I undertake in the next section, I consider (in the second and third parts of the paper) the claim that liberalism suppresses the form of politics that Newey describes. The key issues to address here are whether Newey's suppression thesis applies to *all* or merely *some* forms of liberalism, whether liberal moralism is more or less suppressive than other features of modernity, and whether the suppression of politics is ever justified. I take up these issues by way of a comparison of Newey's realism with John Rawls's political liberalism and Jeremy Waldron's democratic liberalism.

2. NEWEY'S POLITICS

Some critics of Newey's earlier work have noted that while Newey is admirably clear in his critique of contemporary liberal political philosophers, his own conception of politics remains rather opaque. Part of the difficulty is that Newey, at least in his earliest work, presents politics as a residual, a remainder that lies beyond the reach of philosophical efforts to define or delimit it. "[P]olitics", he writes, "just is the public forum within which disagreement plays itself out, including disagreement about what *counts* as political" (Newey 2001a, 53). In her review of *After Politics*, Simone Chambers suggests that Newey has in mind "a Machiavellian view of politics" that sees the political realm solely as a matter of power and conflict. Chambers complains that Newey denigrates another understanding of politics: "political design [...] the way institutions shape and inculcate behavior and contribute to political stability" (Chambers 2002, 809).⁵ For reasons she finds unpersuasive, Newey tends to complain that the focus of liberal political philosophers on "political design" proceeds at the expense of an adequate understanding of the Machiavellian view of politics. This claim begs the question, as Chambers notes, why should we worry about the use of "political design" to mitigate a Machiavellian form of politics?

⁵ See the reviews of *After Politics* by S. Chambers (2002, 808-809) and J.G. Gunnell (2002, 683-684).

Other critics of Newey's earlier work on politics have raised questions about his understanding of the relationship between philosophy and politics. John Gunnell complains that while Newey criticizes the failure of political philosophers to "engage with politics", Newey himself – at least in *After Politics* – doesn't fare any better (Gunnell 2002, 684). For Gunnell, the root of the problem may "be less something peculiar to political theory than a syndrome characteristic of many second order practices and of the general relationship between the academy and public life" (Gunnell 2002, 684). This criticism has considerable force against the argument of *After Politics*, if only because Newey operates in that book not so much at a second-order level but at a third-order level – not at one but two steps removed from the politics he's after. In other words, if the real world of politics – constituted by the disagreements of actual political agents – occupies level one; and liberal political philosophers – who sedulously avoid those disagreements in favour of a pre-political conception of morality – occupy level two, Newey in his criticism of those liberal political philosophers occupies level three.

Paul Kelly makes similar criticisms of Newey's attempt to show that liberalism is anti-political (Kelly 2005). More than Newey's other critics, however, Kelly recognizes that Newey's hostility to liberalism combines two different lines of attack. Along one line, Newey complains that liberal political theorists simply fail to recognize the experiential reality of the political sphere. Kelly suggests that there are similarities here between Newey's position and that of Michael Oakeshott. Yet along another line, Newey charges liberal political theorists with having no valid justification in support of their preferred political structure. The reasons liberals offer in support of their political design are merely reasons for liberals. The whole liberal justificatory enterprise fails at the hurdle of endemic disagreement. Kelly notices that Newey presses this line of attack much further than other critics of liberalism, including John Gray who (in contrast to Newey) at least recognizes a set of universal evils that might form the basis of a Hobbesian *modus vivendi*.⁶ Kelly's response to the first line of attack is to protest that cooperation is as much a feature of our political experience as conflict. Newey, he complains, merely replaces one stipulative definition of politics with another. Kelley's response

⁶ I discuss Gray's critique of liberalism in Morgan 2007b. For Newey's position on Gray, see Newey 2007.

to the second line of attack – the more serious objection to liberalism – is to complain that even if liberals cannot conclusively justify their appeal to universal reasons, Newey cannot conclusively justify his claim that such reasons don't exist (Kelly 2005, 127). Kelly also questions Newey's approach to the motivations of political actors. For Newey, a normative theory that relies upon idealized motivations makes no sense. Kelly, in contrast – following Brian Barry, T.M. Scanlon, and others – thinks that liberal political theory need only specify a conception of justice and then rely upon the widespread motive to act justly (Kelly 2005, 130).⁷ For Newey, there is no such motive, and to think otherwise involves a form of delusion.

Granting (at least provisionally) the validity of these criticisms of *After Politics*, it is worth inquiring whether Newey overcomes these difficulties in his later writings. In many ways, I think he does. The difficulty in clarifying Newey's position arises from the fact that he presented his own ideas only very briefly and more often than not by way of a critique of other thinkers (including John Rawls, Jurgen Habermas, John Gray, Ronald Dworkin, Gerald Cohen, and Bernard Williams). Nonetheless by drawing upon his later essays, it is possible to find some answers to the criticisms of Chambers, Gunnell, and Kelly. My aim in what follows in this section is not to trace the emergence of his various ideas over the course of his career, but to present, what I take to be, the core of his realist account of politics.

Perhaps the best place to begin is with the very term “realism”, which Newey understands in a peculiar way. Realism, he argues, is not to be confused with *Realpolitik*, even if everyday politics typically takes place against the background of conflict, disagreement, and the deployment of power. In Newey's sense of the term, realism means something quite specific about the relationship between philosophy and politics. For Newey, it is of crucial importance to distinguish between (i) staking out a position *within politics* and (ii) taking a philosophical position *about politics* (Newey 2018, 50 and 67). Ultimately, realism, as he understands it, does not take a stance with respect to the positions of political protagonists; nor do realists (at least qua realists) themselves stake out a normative position within politics. This normative abstinence flows from

⁷ A concern with human motivation is a constant theme in much of Newey's work, even in his earliest (ostensibly non-realist) writings on toleration. See, for example, Newey 1998, 39–42.

Newey's emphasis upon, what he terms, "the facticity of motivation", the acknowledgement that the reasons people have for acting within politics are unlikely to match the reasons that political philosophers would ideally like them to have (Newey 2009b, 68). Political philosophers can take up a normative position within politics only at the price of becoming prescriptive anthropologists and disrespecting the people acting within politics. This point is worth emphasizing. Political philosophers fail, so Newey thinks, to pay sufficient attention to the deliberation of real political agents, who typically disagree about fundamental values and must resort to politics to resolve their conflicts. Political philosophy – or more generally, "theory" – has limited capacity to adjudicate these conflicts, which can only be resolved in practice.

For Newey, the central political question – the question that confronts the protagonists of the political realm – is *what do we do?*. This question arises when there is scope for concerted collective action, space for deliberation, and disagreement about the ends and means of that action. In illustration of what he has in mind, Newey poses the question – what would a world without politics look like? He illustrates his answer with reference to Hobbes's *Leviathan*:

Suppose, for instance, that there were no means for concerting collective action, a fantasy made vivid in accounts of the state of nature. In such a world, as Hobbes graphically described, there would be no room for deliberation over joint action, or for procedures to put decisions into effect. This would be a world without politics. It might well, as Hobbes emphasizes, contain power imposed by one individual on another; but that shows only that there are non-political uses of power, just as there can be non-political forms of collective agency, such as military command structures (Newey 2013, 24).

For politics to be possible, so it would seem, there must be space for open deliberation over a contested issue that can be addressed by organized collective action and procedures to implement the outcome of the collective decision. As Newey elsewhere puts it: "a world lacking the mechanisms for concerting collective action through deliberative channels would lack politics, as it is usually understood" (*ibidem*, 24). Or in another formulation of the same point: "'politics' is simply the label applied to public deliberation that is not immediately resolved but gives rise to deliberative remainders" (*ibidem*, 25). This is to say that no matter what the outcome of public deliberation, no matter how closely the chosen policy matches the ideal, there will

remain people and issues excluded or repressed.⁸ Newey accepts – perhaps more readily than other political theorists – that politics must inevitably then become a matter of *force majeure*.

In addition to what goes on *within politics* – a world where political protagonists struggle with the question, *what shall we do?* – there is also the broader institutional or political framework that sets the rules for that world. Newey focuses his critical sights on this broader political framework, especially when it takes the form of a pre-political moral framework that defines with a high degree of specificity how politics is to proceed within that framework. Newey tends to use the term “political design” to refer to, what he thinks of, as the wrong way to approach this broader political framework. Normative political philosophers, he complains, like to establish “a set of (say, moral) norms, resting on intuitively compelling premises, which determine basic political and civil rights and obligations, the design of key institutions and procedures, and the distribution of basic goods” (Newey 2010, 459). Newey’s objection to this approach concerns both the source and the specificity of political design. The source is objectionable, if and when it involves any appeal to a pre-political notion of morality. For Newey, moral normativity is itself oppressive and arbitrary. Here he shares much with his fellow realist Raymond Geuss, who complains that morality “is usually dead politics: the hand of a victor in some past conflict reaching out to try to extend its grip to the present and the future” (Geuss 2010, 42). To allow morality to constrain politics is to allow the dead to constrain the living. Ideally, the political framework that structures everyday politics should be the result of a collective choice, perhaps the result of a bargain struck between current protagonists, a *modus-vivendi*: all would be better than a political design grounded upon morality. Political design is all the worse, when it is coupled with a high level of specificity – i.e. when it structures in fine grain detail political practice. For Newey, the two political philosophers that embody the evil of political design are Plato in his *Republic* and Ronald Dworkin in all his writings. Both leave insufficient space for individuals to deliberate within the political realm and enact laws without the dead-weight of a totalizing morality. In one memorable message, Newey sums up his hostility to “political design” in the following way:

⁸ In his focus on “remainders”, Newey follows Bonnie Honig (1993).

The purpose of political design is to find a basis on which people's several wills can be combined – for instance, by subscribing to shared rules of justice – it is tempting to think that this single monolith can comprehend all relevant value. Normative remainders get rubbed out. It would be overstating things to say that the upshot is a totalitarian notion of justice. But the project of political design, so conceived, displays a totalising impulse. *A recurrent stress on doing justice obscures the fact that justice is also done to us* (Newey [2015], emphasis added).

The concluding words in that passage – “justice is also done to us” – underscores the extent to which Newey's position is so radically at odds with the dominant strain in western political thought, which from Plato to Rawls sees justice as the very basis of human flourishing. For Newey, in contrast, all standards of justice are arbitrary. Politics founded on justice is ultimately a politics founded upon someone's arbitrary standard. Once that arbitrary standard is locked in place in the form of “political design”, then the political scope for challenging that standard is correspondingly diminished.

Newey's hostility to political design is by no means idiosyncratic. Many radical democratic political theorists – including some who remain liberals – have criticized the role of Constitutions and Courts in unduly constraining political practice.⁹ This line of reasoning does, however, lead to the following puzzle. What happens if the political protagonists themselves want to enact laws concerning the political design – the overall framework in which politics takes place? And what if their preferred political design leaves very little space for subsequent collective action? Something like this occurs in Hobbes *Leviathan*, when the protagonists of the State of Nature establish an absolute Sovereign. It initially might appear that the Hobbesian Sovereign, as Newey puts it, “has rubbed out politics as we know it in liberal democratic states in its entirety”. Nonetheless, the Hobbesian Sovereign, at least on Newey's interpretation, still leaves room for some political activity, some “working through of the colliding interests of different individuals and groups who hold distinct and often conflicting schemes for public policy” (Newey 2014, 194). While the members of the Commonwealth will have no rights to a delimited sphere beyond the reach of the Sovereign, they can

⁹ Gunnell in his review of *After Politics* notes the similarity of Newey's position to that of many American political theorists influenced by Hannah Arendt and Sheldon Wolin.

expect the Sovereign to remain silent over a wide range of social activity. In this way, there exists space for politics in Hobbes's Commonwealth in a way that there isn't in the State of Nature.

This response, however, only goes some way to meeting the objection raised above. It still begs a cluster of related questions concerning the capacity of people to act anti-politically – as they do when they favor political design over deliberation and concerted collective action. So what happens if political protagonists acting *within politics* empower the Sovereign (or the Courts) to provide for their security, wealth, or happiness, even at the expense of their future capacity for political action? Does Newey's admonitions against prescriptive anthropology and corrective responses to other people's judgements hold firm even in a case of people repudiating politics? Are there limits to acting anti-politically from *within politics*? Newey's response to these questions would, I suspect, be that from a political point of view there are limits to what political protagonists can collectively agree to do. Here Newey wavers between a relativistic view that people can collectively agree to do whatever they like, and a transcendental view that politics has certain presuppositions.¹⁰ Ultimately, he embraces the transcendental view, which not only has the merit of providing answers to the questions posed above, but also because it identifies an important realist political position that is not obviously reducible to either relativism or liberal moralism (the two poles Newey wishes to avoid).¹¹ As he puts this point:

What seems to be required, for the practical question [i.e. “what is to be done?”] to be posed at all, is that those involved *see themselves as free to answer it*. That requirement does not mean that they can answer it in any way they like or do whatever they like. Here, as in all deliberative contexts, the practical landscape is shaped by various kinds of impossibility. All that is required is that those who put the question understand their capacity to

¹⁰ The key essays here are Newey 2010 – where he fears that the “holism advocated here lies open to the charge of ‘vulgar’ relativism, neatly encapsulated by Martin Hollis as ‘liberalism for liberals, cannibalism for cannibals’” (Newey 2010, 492) – and Newey 2018 – where he embraces a transcendental position to remedy that relativism. Newey is referring here to Hollis 1999.

¹¹ Newey's step away from relativism only becomes apparent in his most recent essays (Newey 2018). It is quite understandable why some commentators – Sigwart (2013) for example – have seen in Newey's earlier work a defense of “an unlimited moral relativism”.

answer it and act on the answer as not being fully determined in doing so (Newey 2018, 64, emphasis added).

This leads Newey to the position “that the freedom involved in political action is that of undetermination” (Newey 2018, 65). In short, politics involves the capacity to act freely in a joint project and not to be wholly determined to act by someone or something else. Indeed, Newey seems to think that this form of freedom is a condition of collective action. In order for someone to think of themselves as the author of a political community's actions, that person must be able to think of themselves as free, not fully determined by that community.

We are now in a position to make sense of Newey's realist perspective on politics. This perspective, in summary, rests upon a dualism – (i) a political realm of protagonists deliberating and enacting collective answers to the question *what shall we do?* and (ii) a philosophical position on the framework that makes (i) possible. Qua realist, the philosopher has nothing at all to contribute to (i) and defends (ii) through negative critiques of “political designs” – Plato's, Dworkin's, and perhaps that of all liberals – that jeopardize the political realm of locally situated political protagonists by elevating a fixed standard of morality to which political activity must conform. Newey thinks of this realist position as “normatively restrained”, but this is not to say that it is normatively void. He does take a position on the necessity and desirability of politics. In this respect, Chambers's suggestion that Newey's politics shares a lot with the Machiavelli of *The Prince* is not altogether correct. Nor is Gunnell's suggestion accurate that Newey fails to engage with politics. For Newey, politics is so important that institutions and morality must be stripped back to allow it space. Liberalism is at fault, because it is incapable of furnishing the space that politics needs. Newey's realism calls upon a particular form of freedom – “freedom as undetermination” – to challenge liberalism's hegemony. His suggestion is that modern liberalism determines us in a way that does not leave us genuinely free.

We are also in a better position now to understand Newey's rejection of “universal reasons” – one of the central points raised by Paul Kelly in his critique of *After Politics*. Newey takes much more seriously than most other theorists the distinction between the reasons that motivate actual political actors and the reasons that ought to motivate them. Where Kelly sees evidence in our political life of cooperation, which in turn suggests that we share cer-

tain albeit minimal common motivations, Newey thinks that when conflict breaks out – i.e. when matters turn political – the appeal to (non-existent) common motivations is hopeless. In Newey's judgement, the motivational reasons that liberals rely upon in their normative theories aren't present in most of the deep conflicts that divide us. These conflicts can only be resolved by real life political exchange, the presupposition of which is "freedom as undetermination". Newey's rejection of an idealized conception of the person and his commitment to, what he terms, "the facticity of motivation" clearly plays a central role in his claim that liberalism suppresses politics. The liberal commitment to political design achieves, so Newey argues, only a bogus form of cooperation that rests upon an arbitrary conception of the person. Unless liberals can justify this conception of the person, liberals cannot justify their preferred institutional scheme. In the next section, I want to consider some liberal responses to Newey's challenge.¹²

2. POLITICAL AND DEMOCRATIC LIBERALISMS

In *Theory of Justice*, Rawls had famously argued that justice was "the first virtue of social institutions". His *Political Liberalism* revises this argument by allowing that free institutions will not engender (as Rawls had initially believed) support for his preferred conception of justice, but – via. a process Rawls refers to as "the burdens of judgement" – will yield a variety of conflicting comprehensive political doctrines, so that it would be *unreasonable* to justify (as his earlier work had done) social and political institutions in terms of any particular comprehensive doctrine – even a liberal comprehensive doctrine. The new solution of *Political Liberalism* was to identify a political doctrine that that could form the basis of "an overlapping consensus" that all people embracing reasonable comprehensive doctrines could accept. In practice, this "overlapping consensus" contains two significant features of, what Newey terms, "political design". One, it gives primacy to a set of basic liberties, which are to be protected by a Constitutional Court against the arbitrary and unreasonable whims of democratic majorities; and two, it regu-

¹² Kelly criticizes both Newey and Rawls for rejecting such universal reasons. Yet he does not provide a justification for such reasons, merely asserting that such a justification is possible (Kelly 2005, 170).

lates divisive political issues by way of an idea of public reason, which in turn presupposes free and equal citizens who share a commitment to reciprocity. In effect, public reason ensures that people do not seek advantage over others for their own particular comprehensive doctrine. Not only would such action be unreasonable, it would be undemocratic. As Rawls says:

Those who reject constitutional democracy with its criterion of reciprocity will of course reject the very idea of public reason. For them the political relation may be that of friend or foe, to those of a particular religious or secular community or those who are not; or it may be a relentless struggle to win the world for the whole truth. Political liberalism does not engage those who think this way (Rawls 2005, 442).

From Newey's perspective, Rawls's effort to constrain the domain of politics by way of a conception of the reasonable – reasonable people who share a criterion of reciprocity, and who embrace only reasonable comprehensive doctrines – results in a domain without genuine dissent or disagreement – i.e. a domain without politics (Newey 2001b, 160). "The political agenda", Newey argues, "is in part determined by failure to agree, including failure to agree about what should be tolerated" (Newey 2009b, 150-151). By refusing to engage with the unreasonable (as Rawls defines them), Rawls's *Political Liberalism* suppresses politics. Moreover it does so in the name of, what Newey considers, a highly contestable account of the reasonable (Newey 2009b, 150).

The full dimensions of Newey's philosophical objections to Rawls's account of the reasonable need not detain us. Suffice it to say that Newey thinks that Rawls's political liberalism – like most works of liberal political philosophy – operates on the basis of "a set of reasons on which agents ideally would act, rather than those which are in fact motivationally effective" (Newey 2009b, 151). Newey illustrates this point with an example of religious disagreement that occur between liberals who favor a secular form of political design and religious people who think that state power can be used in support of their religion (say, by requiring prayer in public schools, or by allowing the Church tax exemptions). Religious people believe that their religion is true and draw a conception of ultimate goods from that belief. "There is no general or abstract standard by which the person who regards salvation in the hereafter as more important than security in the here and now can be judged unreasonable" (Newey 2009b, 152). Liberals like Rawls remain confident that their standard

of reasonableness can adjudicate disagreements between the religious and the secular, only because that standard of reasonableness has been pre-designed (or “filtered”, as Newey puts it) to privilege a liberal, secular order.¹³ For Newey, the disagreements between the religious and the secular cannot be resolved philosophically – or what he calls “pre-politically” – they can only be resolved politically i.e. by way of actual political exchange.

Underpinning the disagreement here between Newey and Rawls are two very different conceptions of the person. For Newey's critical argument to succeed, it must be the case that Rawls's conception of the person – the basis of the conception of the reasonable, which he relies so heavily upon in *Political Liberalism* – is arbitrary and lacking in any plausible justification. In some ways, however, Rawls's argument is much stronger than Newey recognizes. The first and most obvious point to note is that *Political Liberalism* abandons the universalism of Rawls's earlier work. The basic ideas that yield a reasonable agreement on political design are drawn from the public culture of a democratic society and the history that produced it. The gap between premises and conclusion has narrowed substantially between the *Theory of Justice* and *Political Liberalism*. Rawls now assumes as his audience a community of people who are “full participants in a fair system of social cooperation”, which in turn entails a form of reciprocity (Rawls 2005, 19). The commitment to uphold such a system of social cooperation is partly a function of the lessons of history. The Wars of Religion and other catastrophes have taught us the dangers of doctrinal absolutism. Rawls draws his conception of the person from this system of cooperation. What, he asks, must people be like in order to sustain such a system? His answer: people must have a sense of justice and a capacity to revise, when necessary, their conception of the good.

Newey might well object that Rawls's *Political Liberalism* assumes a form of cooperation – including a demanding form of reciprocity – absent in modern Western democracies. He might protest that Rawls helps himself to an account of human motivation, which is not only at odds with people in the real world but which many – especially those that consider their religion to be true and the ground of ultimate values – will reject. But at this point, it

¹³ As Newey puts this point: “The reasonable rejectability basis for justification cannot do its job of justifying liberal politics without relying on *a conception of the reasonable which has already been filtered for that very purpose*” (Newey 2013, 121, emphasis added).

is worth probing the conception of society and person that underpins Newey's argument. For Newey, there is no equivalent to Rawls's system of social cooperation still less any idea of reciprocity. Indeed, it is hard to get much sense of society at all from Newey's writings, other than as a locus for political conflict. What, we might ask, must people be like to sustain such a place? Newey's conception of the person appears to be one of fixed motivations with ideas and values drawn from sectoral or partial groups rather than society as a whole – hence the prevalence of conflict – and which remain relatively impervious to any change or modification, other than that brought about in the process of actual political exchange. As an interpretation of modern western democracies, Rawls's conception of society and person seems more familiar – and certainly more desirable – than Newey's. Furthermore, there is a coherence in Rawls's account of the person, his conception of society as a system of cooperation and his liberal politics that is absent in Newey's account.

Newey presents his “freedom as undetermination”, the core of his conception of the political domain, in total isolation from any social theory, any account of how societies cohere or change over time. Given Newey's account of the person, we can infer that societies are likely to be quite fractious places without much social trust. Yet granted the absence of durable form of social unity, we might question how likely it is that societies will operate without a substantial set of institutional constraints to prevent undesirable political outcomes. Doubtless, Newey would view such institutional constraints as the highly contestable impositions of this or that sectarian interest. Yet if he wants to suggest that “freedom as undetermination” can escape a similar judgement – because it is more “normatively restrained” – then he has another think coming. Newey's barebones conception of freedom – which aims to prevent a collapse into relativism – seems to demand either too little or too much. The worry that it demands too little concerns the plausibility of the claim that the basic political question (*what shall we do?*) presupposes that people “*see themselves* as free to answer it”. But that's a weird way of putting it. Why not pose the transcendental claim in the stronger form of requiring that people “are free to answer it?” Posed like that, we might plausibly argue that the political question presupposes a cluster of basic civil and political rights. Lending support to this stronger interpretation is the constant reference in Newey's account of politics to the centrality of deliberation. Again it seems implausible to think that any genuine form of deliberation about the basic political question is possible in the absence of such basic liberties as freedom

of speech and association. All of this is simply to say that thin procedural forms of politics such as that defended by Newey rarely make much sense in the absence of thick, substantial forms of liberal rights.¹⁴ Newey's aim to remain normatively restrained may be more difficult than he seems to realize.

From another perspective, Newey's account of politics demands too much and, even in its present form, is less normatively restrained than it seems. The difficulty here concerns the way that Newey singles out freedom as a necessary condition of collective authorship. But that's not obviously true. Newey's basic political question – *what shall we do?* – assumes, as he acknowledges “a collective subject” (Newey 2018, 64).¹⁵ In the realists' favourite place, the real world, the primary way of constituting a collective subject is by way of nationalism, which currently reigns triumphant over the modern political landscape. Efforts to found politics on a non-national “we” – the European Union, for example – have struggled to make headway. Given the readiness of people to embrace the national “we”, which typically entails a specific quite richly imagined pre-political community, Newey's “freedom as undetermination” might appear liberating – especially to a liberal. Yet to a nationalist, “freedom as undetermination” will appear threatening. The disagreement between the liberal and the nationalist cannot be settled by Newey's transcendental argument, not least because that argument begs the question in favour of the liberal.

In order to address the contradictory challenge that his conception of freedom is either too demanding or not demanding enough, Newey would have to say a lot more about democracy than he actually does. This point leads to a question about whether Newey's realist critique of liberalism also extends to the democratic liberalism of someone like Jeremy Waldron. A comparison of Newey and Waldron is important, because Newey often writes as if *all* forms of liberalism are equally vulnerable to his suppression of politics complaints.

¹⁴ Newey often cites approvingly the example of Stuart Hampshire's work – see, for example, Newey 2013, ch. 2. It is instructive here to recall Joshua Cohen's substantive critique of Hampshire's proceduralism much of which – as I discuss below – applies to Newey's normatively-restrained conception of freedom as undetermination (Cohen 1994).

¹⁵ In the earlier formulation of this point, he puts it this way: “The basic political question is *what do we do?* for some imputed but not necessarily determinate ‘we’” (Newey 2010, 459).

Waldron's position shows that this is not obviously true. In some ways, Newey and Waldron occupy common ground. Three commonalities immediately spring to mind. One, they both share Rawls's view that the fact of endemic disagreement rules out any effort to ground political legitimacy on a comprehensive political doctrine (such as the form of liberalism defended by John Stuart Mill, for example). Second, they both reject Rawls's attempt to ground political legitimacy on the basis of a shared agreement on a reasonable political doctrine. As Waldron notes, people are as likely to disagree about justice, the basic rules of society, as they are about comprehensive conceptions of the good (Waldron 1999, ch. 7). And third, they both fault contemporary political theorists for their failure to engage with politics in the real world (Waldron 2016). Yet beyond these important points of agreement, Newey and Waldron diverge completely. For Waldron, the answer to the problem of endemic disagreement is to refocus attention on such dimensions as political process, political institutions, and political structures. Newey, for reasons we have explored, simply dismisses political design as an imposition on our most important freedom – the freedom to ask, “what is to be done?”. Waldron's institutional approach, however, poses a difficulty for Newey's argument for at least two reasons. First, the institutional structures that might ameliorate the most divisive of our disagreements need not seek their justification in a contestable moral or political theory. They might instead appeal to pragmatic considerations, such as “they work”, “they've kept the peace”, “people trust them”. And second, these institutional structures contribute to a dimension of freedom that Newey tends to neglect – “participatory liberty”, as Waldron (2016, 34) terms it. Newey fails to explain why we should sour on functioning institutions that secure democratic participation for a more open-ended, unstructured freedom as undetermination.

Much more needs to be said about the points of contrast between Newey's political realism and Waldron's *institutional realism*, as it might be termed. Yet even in the brief account provided here, it should be clear that some liberal political theorists (if we can count Waldron as an example) cannot be charged with ignoring or suppressing politics. In the next section, I want to argue that on some occasions the suppression of politics is not always a bad thing. But before doing so, I want to conclude by registering a note of disagreement with a position that Newey, Waldron, and even Rawls all share: that given the fact of endemic disagreement, comprehensive liberal political doctrines cannot play a central role in legitimating or guiding our political

institutions. Newey refers to the appeal to comprehensive doctrines in this context as “hearkening to one’s inner Ayatollah”; and questions why anyone’s moral thoughts should enjoy special authority over others. Rawls thinks that once liberalism becomes takes a comprehensive form – as it does in Mill’s work – then it becomes just another comprehensive doctrine.

3. LIKE ACNE OR HEMORRHOIDS

Critics of liberalism have always proceeded by identifying some estimable practice, institution, or way of life that liberalism denigrates. In this respect, Newey’s realist critique of liberalism merely adds *politics* to a long list that has variously included – tradition, community, the patriarchal family, religion, the aristocratic virtues, intermediate associations, a sustainable environment, multicultural societies, pre-modern tribal cultures, inter-racial harmony, material equality, national solidarity, and sexual modesty. Standard critiques of liberalism tend to suffer from either or both of the following failings: (i), they fail to define with sufficient clarity the term “liberalism”, so that it remains unclear whether the fault lies primarily with liberal theories (and which specific ones?) or liberal societies; and (ii), they fail to clarify whether the negative impact of liberalism is *causal* or *permissive*.¹⁶ This latter distinction is important. Some practices or ways of life cannot co-exist with liberal legal order. Such is the case, for example, with the legally defined patriarchal family – i.e. the type of family Mill criticized in *The Subjection of Women* (Mill 1988) – which must be prohibited in any liberal state worthy of the name. To the extent that the patriarchal family has disappeared, liberalism is, at least in part, causally responsible. Other practices (or ways of life) might be legally permissible, but not fare well simply because of the free choices that individuals make and have made. Religious denominations and minority cultures can die out, merely because insufficient numbers choose to keep them alive. In such cases, liberalism might have permitted the outcome, but it cannot be judged causally responsible.

Taking stock of Newey’s claim that liberalism suppresses politics, it should now be clear that his argument escapes both of these failings. He defines with sufficient clarity the type of liberalism he finds wanting – basically, any form

¹⁶ For an exemplary display of these failings, see Dineen 2018.

of liberalism that constrains political activity by way of a legal or institutional order ("political design"). Furthermore, the negative impact of liberalism on politics is, he argues, causal. While liberalism leaves some space for political activity, it prevents our deepest political disagreements to come to the surface and find resolution in actual deliberation, compromise, and – as last resort – *force majeure*.

Yet while Newey's position has the merit of a certain clarity, his position remains open to the challenge that the suppression of politics is on occasion both necessary and desirable. For all his emphasis upon the real world, Newey develops his case against liberalism not by paying any close attention to the way actual liberal societies operate, but by a focus on liberal theory. For Newey, the suppression of politics takes place not at the hands of the bureaucratic state nor the capitalist economy, but at the hands of liberal political philosophers – John Rawls and his followers in particular – and the legal-institutional order they recommend. Against those critics of Newey who contend that his conception of politics – which emphasizes conflict and power rather than cooperation and reasonable agreement – is no less arbitrary, no less stipulative, than those liberal theorists that he criticizes, I have tried to show that at the core of Newey's account of politics there lies a commitment to "freedom as undetermination". Newey's hostility to "political design" stems from his fear that a liberal constitutional order is inimical to the form of freedom he values. (A similar point informs Waldron's critique of liberal constitutionalism, although it is not "freedom as undetermination" that is under threat but democracy).

By way of conclusion, I want to suggest that Newey places too much emphasis on the threat of "political design", while paying insufficient attention to the threats to freedom emanating from other features of modern society. Furthermore, once we register the significance of these societal threats, I think we will come away with a very different assessment of the constraints imposed by political design. My argument here is, as we shall see, illustrative rather than comprehensive. I merely want to highlight an area of social and political inquiry that Newey ignores, and which complicates his argument that the liberal form of political institutional design is flawed because it suppresses politics.

Following Weber, one way of conceptualizing modern society is to focus upon the presence of a set of differentiated sub-systems – whether (at the most general level) the capitalist economy and the bureaucratic state or

(at a more specific level) the modern corporation, the law courts, the military, schools, hospitals, and prisons – each of which operates on the basis of its own internal logic, its own specific values, customs, and practices.¹⁷ We spend most of our lives within one or more of these sub-systems, which determine how we behave, which modes of thought and action are rewarded, and which penalized. Given these differentiated sub-systems, any complete form of “freedom as undetermination” is next to impossible, whether individually or collectively. If political design constrains this form of freedom, it does so in conjunction with many other institutional features and sub-systems of modern society. This sociological fact certainly complicates Newey basic political question – *what shall we do?* – because much of what anyone can do is done by and through these institutional sub-systems.

This is not to say, however, that modern society precludes the possibility of a worthwhile form of freedom. We have it in our corporate power as citizens and social activists to modify and reform the rules governing these sub-systems. Consider, for example, the way that the modern feminist movement has in some countries forced changes in the way that business corporations and universities operate. Likewise, we have it in our corporate power to remove some sub-systems from playing a dominant role in society. There is no better example here than the way that the military has been dislodged in modern society – especially in Europe. For much of modern history, the modern state functioned as a war machine and the lives of ordinary people took place in the shadow of conscription and war. One of the great historical achievements of post-war Europe was to reduce the significance of the military, an achievement that required a transformation in international relations.

There are many reasons why post 1945 Europe is less war-prone than pre-1945 Europe. But clearly one important factor has been the creation – especially, the widening and deepening – of the European Union (Morgan 2007a; 2018). The success of the EU in this period has, however, been purchased at the price of various so-called “depoliticization strategies”, which have included, “techniques such as de-emphasizing the issue of European integration in national elections [...] sidestepping treaty changes in order to avoid referendums (as in the case of the Fiscal Compact), [and] delegation to so-called

¹⁷ See here Weber's exploration of the tensions between various religious ethics and the economic, political, and erotic spheres (Weber 1946, 323-359).

'non-majoritarian', technocratic supranational institutions" (Kriesi 2016).¹⁸ Doubtless, Newey would judge these depoliticization strategies negatively. Yet there are three features of the European example that present problems for his – and all political realist – arguments that liberalism employs a form of moralism (an "ethics-first approach", as some call it) to suppress politics.

First, the suppression of politics does not always involve morality. There are many suppressive mechanisms in modern society and the realist's focus on law, morality, and constitutionalism seems unwarranted. In this respect, Newey and other contemporary realists narrow the focus of their attacks much more so than earlier realists like Carl Schmitt and the Italian sociological realists. Thus for Schmitt, "liberal concepts typically move between ethics (intellectuality) and economics (trade). From that polarity liberals attempt to annihilate the political as a domain of conquering power and repression" (Schmitt 1976, 29). In other words, the repression of politics has sources other than liberal morality. Indeed, one of the most important non-political institutions in modern societies is an independent central bank. Whatever we think of the merits of a non-majoritarian institution setting interest rates, this institution, which clearly is suppressive of politics, has nothing at all to do with liberal morality.

Second, the suppression of politics – contrary to Newey and other realists – can have positive consequences. Sometimes intricate institutions with multiple veto players can bring about a peaceful resolution of conflict when a direct and transparent exchange cannot. One example here is the Good Friday Agreement that brought about the end of the Civil War in Northern Ireland. That Agreement was undoubtedly suppressive of politics, but it has worked.

Third, Newey's conception of "freedom as undetermination", which lends an indispensable substance to his account of the political domain, is (at least in its present form) too vague, too imprecise, to allow us to make judgements about the tradeoffs between depoliticization and other the values that we might care about.¹⁹ One dimension of this problem concerns the individualist and collectivist dimensions of "freedom as undetermination". Traditional

¹⁸ Compare here also Zurn 2019.

¹⁹ Newey's unpublished – and as yet unrecovered – manuscript *Eleutheria: Politics as Transformation* (Newey [2017]) – appears to contain a book-length discussion of "freedom as undetermination".

non-realist liberals have always been nervous in allowing unimpeded scope to the demos to regulate our social life. Their worry, not altogether without justification, is that the demos will either interfere in a ham-handed fashion into the differentiated sub-systems that allow a modern society to flourish or will crack-down upon misfits, oddballs, and minorities. Nothing Newey says about “freedom as undetermination” removes this concern.

Notwithstanding my own (liberal) misgivings concerning the position that Newey and other political realists defend. Enough has been said in this paper to establish two points. One, Newey's version of political realism is among the most important available. His arguments about the nature of societal disagreement and the intractability of human motivation pose searching questions for all political theorists. And two, Newey himself – for all the abuse he heaps upon liberals – remains at heart an ardent fan of freedom. To quote the great man himself: “Freedom is at the center of [my] account, but it is a normatively reduced understanding of freedom. The ambiguity of stances – between staking out a position within politics and taking a philosophical position about politics – necessarily arises from the orientation of politics towards freedom” (Newey 2018, 50).

REFERENCES

- Chambers S. (2002), review of “After Politics: The Rejection of Politics in Contemporary Liberal Philosophy” by G. Newey, *The American Political Science Review*, vol. 96, n. 4, pp. 808-809.
- Cohen J. (1994), “Pluralism and Proceduralism”, *Chicago-Kent Law Review*, vol. 69, n. 3, pp. 589-618.
- Dineen P. (2018), *Why Liberalism Failed*, New Haven, Yale University Press.
- Galston W. (2010), “Realism in Political Theory”, *European Journal of Political Theory*, vol. 9, n. 4, pp. 385-411.
- Geuss R. (2010), *Politics and the Imagination*, Princeton, Princeton University Press.
- Gunnell J.G. (2002), review of “After Politics: The Rejection of Politics in Contemporary Liberal Philosophy” by G. Newey, *The Journal of Politics*, vol. 64, n. 2, pp. 683-684.
- Hobbes T. (1996), *Leviathan*, Cambridge, Cambridge University Press.
- Hollis M. (1999), “Is Universalism Ethnocentric?”, in C. Joppke, S. Lukes (eds), *Multicultural Questions*, Oxford, Oxford University Press.

- Honig B. (1993), *Political Theory and the Displacement of Politics*, Ithaca, Cornell University Press.
- Kelly P. (2005), *Liberalism*, London, Polity Press.
- Kriesi H. (2016), "The Politicization of European Integration", *Journal of Common Market Studies*, vol. 51, n. 1, pp. 32-47.
- Mill J.S. (1988), *The Subjection of Women*, Indianapolis, Hackett.
- Morgan G. (2005), "The Realism of Raymond Guess", *Government and Opposition*, vol. 40, n. 1, pp. 110-120.
- (2007a), *The Idea of a European Superstate, Public Justification and European Integration*, Princeton, Princeton University Press.
- (2007b), "Gray's Elegy for Progress", in J. Horton, G. Newey (eds), *The Political Theory of John Gray*, London, Routledge.
- (2018), "Alexis de Tocqueville, the Modern Democratic Nation-state, and its Competitors", *The Tocqueville Review*, vol. 39, n. 1, pp. 11-24.
- Newey G. (1998), *Virtue, Reason, and Toleration*, Edinburgh, Edinburgh University Press.
- (2001a), *After Politics, The Rejection of Politics in Contemporary Liberal Philosophy*, London, Palgrave.
- (2001b), "How do you Like your Liberalism, Fat or Thin?", *London Review of Books*, vol. 23, n. 11, 7 June 2001.
- (2007), "Gray's Blues, Pessimism as a Political Project", in J. Horton, G. Newey (eds), *The Political Theory of John Gray*, London, Routledge.
- (2008), "Toleration, Politics, and the Role of Murality", in J. Waldron, M. Williams (eds), *Toleration and Its Limits*, New York, New York University Press.
- (2009a), "Ruck in the Carpet", *London Review of Books*, vol. 31, n. 13, 9 July 2009.
- (2009b), "John Rawls, Liberalism at the Limits of Intolerance", in S.P. Young (ed.), *Reflections on Rawls. An Assessment of his Legacy*, Ashgate, Routledge, pp. 131-152.
- (2010), "Two Dogmas of Liberalism", *European Journal of Political Theory*, vol. 9, n. 4, pp. 449-465.
- (2011), "Toleration as Sedition", *Critical Review of International Social and Political Philosophy*, vol. 14, n. 3.
- (2013), *Toleration in Political Conflict*, Cambridge, Cambridge University Press.
- (2014), *Hobbes and Leviathan*, London, Routledge.
- (2015), *Rogue Theodicy*, Unpublished Manuscript.
- (2017), *Eleutheria, Politics as Transformation*, Unpublished Manuscript.
- (2018), "Realism and Surrealism in Political Philosophy", in M. Sleat (ed.), *Politics Recovered, Realism Thought in Theory and Practice*, New York, Columbia University Press.

- (2019), “Real Legitimation, Anarchism, and Power Loops”, *Biblioteca della libertà*, vol. LIV, nn. 225-226, pp. 117-135.
- Rawls J. (1971), *A Theory of Justice*, Cambridge (Ma), Harvard University Press.
- (2005), *Political Liberalism*, New York, Columbia University Press.
- Rossi E., Sleat M. (2014), “Realism in Normative Political Theory”, *Philosophy Compass*, vol. 9, n. 10, pp. 689-701.
- Schmitt C. (1976), *The Concept of the Political*, Chicago, University of Chicago Press.
- Sigwart H. (2013), “The Logic of Legitimacy, Ethics in Political Realism”, *The Review of Politics*, vol. 75, n. 3, pp. 407-443.
- Waldron J. (1999), *Law and Disagreement*, Oxford, Oxford University Press.
- (2016), *Political Political Theory: Essays on Institutions*, Cambridge, Harvard University Press.
- Weber Max (1946), *From Max Weber, Essays in Sociology*, ed. by H. Gerth, C. Wright Mills, New York, Oxford University Press.
- Zurn M. (2019), “Politicization Compared, at National, European, and Global Levels”, *Journal of European Public Policy*, vol. 27, n. 7, pp. 977-995.

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Book Review

Justification, Legitimation, and the Self¹

by Corrado Fumagalli

In six hundred sixty-two tiny-typed pages, Sebastiano Maffettone covers a variety of traditions, authors, and topics. The book is organized in fifteen chapters, including an introduction that defines concepts and locates the book in the territory of Habermas and Rawls. The first part “Big Themes” features chapters on topics as diverse as Democracy, Utilitarianism, Republicanism, Feminism and Gender Theory, Global and International Relations. The second part “Great Authors” has critical analyses of John Rawls, Jürgen Habermas, Michel Foucault, Amartya Sen, and Karl Marx. The third part “Comparative Political Theory” deals with Multiculturalism, Postcolonial Theory, Chinese Political Thinking, Contemporary Indian Political Theory, Islamic Political Thought.

There is a serious risk of getting lost in such an intellectually expansive text. Maffettone offers an introduction to key issues in contemporary political theory. He also engages with the cultural, economic and political challenges of our time. This is a formidable task. It's one thing to write a textbook. It's quite another to be able to have a sustained argument. And yet, *Politica* does the two things. While presenting ideas and concepts in an accessible way, Maffettone argues that if we want liberal democracy to survive these times, a few changes in the Rawls-Habermas paradigm need to be made.

The book starts from two convictions. The liberal democratic model is in crisis (xi). And, the liberal democratic model is worth defending (xx). Among the causes of this crisis, Maffettone lists several factors: a chronic defi-

¹ The review is on Sebastiano Maffettone's *Politica. Idee per un mondo che cambia* (Milan, Le Monnier, 2019).

cit of consensus on collectively binding decisions, the impact of superpowers on public communications, structural asymmetries of powers between the wealthiest and the vast majority of the population, lack of trust in the institutions and the subsequent electoral success of political leaders with populist and hyper-nationalist features, the faces of the 2008 financial crisis, with its vocabulary of 'winners', 'losers', and 'left-behinds', eco chambers, social withdrawal, the digital divide, tracking and microtargeting (74-91). For those who are familiar to the genre, this diagnosis reads as a systematic compendium of turn-of-the-century pessimism. In the age of Donald Trump, Viktor Orbán, and the likes, references to the death of the democracy, to the perils of democracy, to the failures of liberalism are strong selling propositions. For those who are not familiar to the literature, the text offers an engaging and easy-to-read reconstruction of the debate. The key question is whether and how political philosophy should enter into these dangerous waters (xii, 49). Maffettone's answer is on the affirmative, and, here they come the two normative arguments of the book.

The first thesis is Rawlsian in spirit. It revolves around two concepts: justification and legitimation. Justification makes a State morally acceptable (21). What we may want to call a 'higher level justification' is universal. It should lead to fundamental moral principles that all human beings can accept. What we may want to call a 'lower level justification' is local. It should square such moral principles by the reasons of a specific culture. Legitimation makes power relations acceptable among those affected. What we may want to call a 'global legitimation' is trans-contextual. It should validate rules that have a widespread and long-lasting support across the world (human rights are the main example of the book). What we may want to call 'local legitimation' is regional or national. It should reaffirm such rules within different contexts. On this view, there is justification when States treat all citizens with equal concern and respect; there is legitimation when a unifying and homogeneous narrative makes rules acceptable despite the fact of pluralism (27-31).

According to Maffettone, justification and legitimation should combine in such a way to enhance the quality of each other (21), but ours is an age of unbalanced political institutions (91). This is an important point, and a big problem for liberal democracies. Here is one way of putting it. (I) Justification prescribes how all citizens should be treated. (II) A liberal democratic State ought to treat citizens with equal concern and respect. (III) For justification to be capable of persuading people, citizens should see themselves as part of a community of

equally respected members. Therefore, the first core question is: Do citizens see themselves as members of a community of equally respected individuals? No, they do not (93-94). Hence, (IV) from the perspective of citizens, liberal democratic states lack justification (or they seem unjustified according to their own terms). As the argument goes, (V) citizens search for equality elsewhere, such as procedures, processes and discourses that promise equal concern and respect for all members of the political community. In this way, (VI) citizens see processes of legitimation, rather fundamental principles, as the ones being conducive to equal respect and concern. According to Maffettone, (VII) such a surplus of legitimation is a proof of an ongoing democratic crisis where populisms and nationalisms can promise to fill the gap between day-to-day political practices and the egalitarian aspiration of liberal democratic institutions (95).

Against this background, many responses to the democratic crisis have searched for ways to represent different interests and preferences. Others have tried to construct new collective identities. Someone has tried to find responses to sharp inequalities. We have recipes for all tastes. Maffettone warns readers not to take justification and legitimation as two separate silos. A response to the crisis of liberal democracies should reaffirm (not only ostensibly, but actually) the very fundamental commitment to justice. It should also make certain that in increasingly plural societies, citizens are in the position to recognize the merits of this model. A big takeaway is that a legitimised liberal democracy, in fact, needs to be just.

The second thesis is one you would not expect from a well-established Rawls scholar. The reader will find hints at this argument across the book, but especially in the chapters dealing with Chinese political theory, Foucault, and Indian contemporary philosophy. According to Maffettone, liberal democratic institutions have formalized a divorce of the self as a spiritual subject from the political domain (367, 535, 567). What characterizes the liberal democratic model is an extreme legalism that inhibits agency and cause estrangement (368). A low degree of integration and a high degree of distance between individuals and institutions may denote situations in which norms have broken down, but a good liberal democracy stands in need of virtuous citizens (537).

On these grounds, Maffettone calls for a rethink of the distinction between morality and ethics through spirituality (531-537). Political philosophy should recognize that spiritual transformation of the subject has consequences on the ways one performs her rights as a citizen (367). As meaningful alternatives, he discusses the Foucaultian term 'care of the self', as the practice

of contemplating past and present actions (367), Confucian conception of harmony (367), as a way to combine individual transformations with truth and action (535), and Gandhi's notion of *swaraj* (self-rule), as an example of how individual morality can give politics truth and dignity (554).

Someone might wonder whether these two theses are compatible. Actually, they intersect in a proposal that comes and goes in many passages of the book (95, 282, 366-67, 538, 567, 588). According to Maffettone, virtuous and vicious dispositions have an effect on how citizens make use of available norms and recognize the merits of their institutions. Therefore, by educating individual qualities, we would revitalize our liberal democracies. The lesson is clear: liberal democracies are in troubles, but a way out is at hand. But how soon we get there will be at least partially predicated by how we bring truth, justice and the good into harmony with our institutions and social practices (538). The claim is thought-provoking. It recognizes that spiritual education can orient our public actions and reconcile us to the political order. In this vein, if political philosophy is to inspire an effort to bring about a more just liberal democracy, it must be capable of stimulating our inclination to be moved by moral considerations.

To some readers of Rawls, Maffettone tries to show that spiritual education can promote the sense of justice that a polity needs to be stable despite new and old challenges. But, doesn't spiritual transformation overtake the present state of affairs? How could we avoid the danger of solipsism? What does spirituality add to the Rawlsian progression towards the development of a sense of justice? To readers external to the paradigm, Maffettone reads the liberal-democratic model as an axiomatic truth. But, how do we know that all liberal-democracies are worth-defending? For some, Maffettone will be a virtuoso, whose acts of intellectual bricolage are a breath of fresh air. Someone else will complain about cherry picking.

Notwithstanding our sides on these disputes, this text has the merit of generating philosophical, political and methodological questions. The argument is fascinating. The very broad scope of the book and its ambitious theses make this a meaningful read for scholars and students. Maffettone untangles philosophical problems and introduces difficult concepts with clarity. He gives us good reason to think that many resources can be found outside our philosophical comfort zone. His explanation of the democratic crisis is plausible and worthy of attention. In short, *Politica* delivers on its promises, providing a committed defence of liberal democracies and ideas for a changing world.

Kenneth Baynes

Public Reason's Faith

Glen Newey has questioned whether toleration is a relevant political value for a democratic polity or merits the importance assigned to it in Rawls's political theory. After reviewing the relation between religion and the state in some recent interpretations of the First Amendment and their implications, this essay argues that Newey may be correct about the value of toleration in a liberal democratic polity, but if so, it is for very different reasons than those emphasized by him.

Richard Bellamy

Lies, Deception and Democracy

This essay explores how far democracy is compatible with lies and deception, and whether it encourages or discourages their use by politicians. Neo-Kantian arguments, such as Newey's, that lies and deception undermine individual autonomy and the possibility for consent go too far, given that no democratic process can be regarded as a plausible mechanism for achieving collective consent to state policies. However, they can be regarded as incompatible with a more modest account of democracy as a system of public equality among political equals. On this view, the problem with lies and deception derives from their being instruments of manipulation and domination. Both can be distinguished from 'spin', with a working democracy being capable of uncovering them and so incentivising politicians to be truthful. Nevertheless,

while lies and deception will find you out, bullshit and post truth disregard and subvert truth respectively, and as such prove more pernicious as they admit of no standard whereby they might be challenged.

Giulia Bistagnino

Glen Newey and the Concept of the Political

In “Real Legitimation, Anarchism and Power Loops”, Glen Newey proposes a criterion to identify the space of the political. According to him, *what do we do?* is the basic political question which captures what is essential about politics. In this article, I draw on and develop this suggestion by elucidating how different conceptions of politics meet the basic political question. My aim is to show how Newey has pinpointed an innovative and powerful way to understand what are the basic conditions for assessing what falls within the realm of the political.

Detlef von Daniels

Realism, Power-Loops, and Re-Entry. An Imaginary Conversation with Glen Newey over the Gaps of Time and Traditions

In this article I show how Newey’s political realism can be brought into fruitful conversation with continental traditions of philosophy. I criticism of Williams, exampe extinction rebellion, I go on topics fundamental problem also in Luhmann exemplified by reading of Plato. Instead of Antigone I end with a reading of movie the other, darker side, of liberalism.

Dimitrios Efthymiou

Political Lying in Newey and Bellamy

The article provides a qualified defence of Newey’s work on political lying and defends a revamped version of his position from several objections. The structure of the article is as follows. Section 2 lays out Newey’s consent-based argument against political lying as well as his views on when political lying is permissible. It provides an analytic and revamped reconstruction of that argument that remains faithful to what it takes to be the key normative kernel of his critique of political lying and it distinguishes between three types of qualifications to its scope. Section 3 shows, contra Bellamy, why Newey’s argument does not constitute “too high a standard” but a rather moderate, if not too timid one by showing that Newey’s core argument i) survives a rejection of a consent-based objection to political lying as a violation of the

agreed terms of democratic association; ii) it is in some respects less realist than Bellamy's preferred approach while more demanding in others; iii) it leaves enough space for civic virtue as a means to robustly safeguarding democratic politics from deception and finally; iv) it provides us with more robust safeguards from political rhetoric and spin than Bellamy's preferred approach creating in that sense the needed space for genuine agreement based on rationality and empirical knowledge consistent with the democratically approved wishes of the electorate.

Greta Favara

Glen Newey's Critique of Legitimacy: An Assessment

In "Real Legitimation, Anarchism and Power Loops" (this issue), Newey examines whether the use of force in political circumstances could be disciplined by drawing clear boundaries between its admissible and inadmissible uses. The question, as Newey recognizes, is about the very possibility of offering a sound theory of legitimacy. Are there any uses of force that we can deem legitimate, and hence acceptable, as opposed to illegitimate ones? According to Newey, a theory of legitimacy can never achieve what it promises: since politics redefines the conditions upon which justifications can be found legitimating, politics constantly interferes with theoretical definitions of the boundaries of legitimacy. Force, as Newey points out, "destroys legitimacy". Yet, Newey's argument works exclusively if we accept that some suitably defined descriptions of politics can ground political normativity. In the specific case considered, if we believe that actual or hypothetical conditions of legitimations have a role in determining the normative criteria for the legitimate use of force. But this is far from obvious.

In this comment, I examine the strength of Newey's general claim on legitimacy by clarifying how the interplay between political reality and political normativity should be interpreted, and what role it is supposed to play, in Newey's analysis. In particular, the paper is structured in two main sections. In the first section I recall in a more detailed way Newey's argument in support of his general conclusion, and I show that, despite its initial ambition, such argument can counter only theories of legitimacy which consider actual or hypothetical legitimations as grounds of legitimacy. However, in the second section, I propose a new argument in support of Newey's general claim. More specifically, I explain that such defense can be built starting from scattered suggestions already contained in Newey's discussion.

Rainer Forst

Toleration, Power and Reason: Continuing a Dialogue with a Political Realist Friend

In this essay, I continue a dialogue with Glen Newey about the normative and political possibility of a conception of toleration that aims at a higher-order justification of its grounds and limits. I argue for such a conception, Glen remained skeptical about it.

Anna Elisabetta Galeotti

Glen Newey's Critique of Political Toleration

In this paper, I would like to rescue political toleration from the corrosive force of Newey's reasoning, while honoring his memory by engaging in a thorough discussion on his challenging views. In the first section of this paper, I shall briefly rehearse Newey's view on toleration both as a moral virtue and as a political issue, focusing especially on the problems that toleration encounters in the political realm of liberal democracy. In the second section, I shall highlight what I take to be the critical aspects of his view, and in the third part of the article, I shall argue for my response to Newey's challenge. More specifically, Newey contends that political toleration is awkward and that its room is just in the interstices of democratic states' action. Though Newey is right in drawing a clear distinction between the circumstances of toleration in social intercourse and in political relations, I argue that, contrary to what he thinks, this difference should lead to different conceptions of toleration, according to whether it applies horizontally or vertically. He moreover contends that political decisions settling issues over toleration of a contested practice are never tolerant, but coercive. No one denies that state decisions are coercive, and yet a clear distinction can be traced between decisions in favor of permitting the contested practice and decisions prohibiting the same very practice. Finally, he claims the accusations of intolerance are circular, and in fact both parties are intolerant. I have rebutted this claim with a conceptual analysis providing clear criteria for setting apart toleration from intolerance and intolerable.

Federica Liveriero

Newey and Rawls in Dialogue: The Limits of Justification and The Conditions of Toleration

In this essay I analyse Glen Newey's reading of John Rawls liberal theory of justice. Newey specifically focuses on strategic differences between A Theory of Justice

and Political Liberalism, and he acutely highlights some tensions that are intrinsic to Rawls's justificatory framework. I share many of Newey's concerns, primarily regarding the necessity to take into account the motivational constraints when outlining a theory of liberal justice. Against Newey, however, in the second section of the paper I clarify some aspect of Rawls's (hidden) epistemology, in order to make sense of the role that the virtue of toleration plays within his paradigm.

Glyn Morgan

Glen Newey's Realism, Liberalism and its Alleged Suppression of Politics

A central claim of political realists is that liberalism suppresses politics. Glen Newey places this claim at the center of his rejection of contemporary political liberalism. For Newey, liberalism suppresses politics in the name of a pre-political conception of morality. This paper defends liberalism from this charge. The modern liberal state allows much more scope for politics than realists like Newey recognize. If politics is suppressed, this is more likely the consequence of political and social institutions rather than morality. Furthermore, the suppression of politics is not always a bad thing.

Michael Mosher

Glen Newey's Brief Against Comprehensive Justification

For Glenn Newey, the abiding temptation of the moral philosopher (which the year 1989 seemed almost to affirm on the political front) was to believe in the idea of a comprehensive moral settlement, a "permanent politico-juridical order" arising with the dawn of a new day. This was for Newey to overplay the only cards that had been dealt. The gamble on finding legitimate moral consensus too frequently turned up the hand of power. *Rogue Theodicy* became for Newey a symbol for overreaching rationality blind to the effects of power in moral argument and blind to the sheer appeal of 'wild freedom'. The debate between Creppell and Newey, between the utopia of 'mutuality' and the realism of 'murality' now can be taken to illustrate the historical arc of the last 30 years. In a similar post-revolutionary moment gone sour, Hegel's *Philosophy of Right* (1821) exhibited how to combine 'comprehensive justification' with 'wild freedom'.

Enzo Rossi

On Glen Newey's Prescient Political Realism

In this paper I trace some key realist themes in Newey's work, to try and show how his realist insights preceded the explicit realist revival, and how they then

developed in dialogue with the growing realist literature. I then place Newey in a taxonomy of realisms, to the extent that his often illuminatingly contrarian positions allow for such an exercise. Finally, and more speculatively, I consider some of Newey's posthumous work, to try and see where his unique approach to realism might take us next.

Kenneth Baynes is Professor of Philosophy at Syracuse University in New York and the author, most recently, of *Habermas* (Routledge, 2016).

Richard Bellamy is Professor of Political Science at University College London (UCL), University of London. His publications include *Liberalism and Pluralism: Towards a Politics of Compromise* (Routledge, 1999), *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy* (Cambridge University Press, 2007) and, most recently, *A Republic of European States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU*, (Cambridge University Press, 2019) and (with Dario Castiglione) *From Maastricht to Brexit: Democracy, Constitutionalism and Citizenship in the EU*, (ECPR Press/Rowman and Littlefield, 2019). He is currently co-editing *The Cambridge Handbook of Constitutional Theory* and working on a book on democratic ethics.

Giulia Bistagnino is Postdoctoral Research Fellow in Political Theory and Adjunct Professor of Political Philosophy for the Ph.D. programme in *Political Studies* at the Department of Social and Political Science of the University of Milan. She holds a Ph.D. in Political Studies from the University of Milan and a M.Litt. in Philosophy from the University of St. Andrews. She was junior visiting scholar at Nuffield College, Oxford and at the Hebrew University of Jerusalem. Among her most recent works, there are: “Disagreement, Peerhood, Compromise” appeared in *Social Theory and Practice* (2018), written with Federico Zuolo, and “Liberalism, pluralism, and a third way”, forthcoming in *What is pluralism?* (Routledge, 2020).

Detlef von Daniels is a Visiting Fellow at the Centre of International Studies (CIS) at the London School of Economics. He is interested in the intersections between legal theory, international relations, and philosophy, both in current theorizing and in the history of ideas. He is the author of *The Concept of Law from a Transnational Perspective* (Ashgate 2010) and has published articles on transnational legal theory, Kantian political philosophy, and the impact of classical ideas on current debates in political theory.

Dimitrios E. Efthymiou is a Postdoctoral Research Fellow in political theory at Goethe University Frankfurt's Centre for Advanced Studies Justitia Amplificata. His current research project examines whether the European Union constitutes an institutional order where duties of transnational social justice and *solidarity are relevant. He has published articles in Political Studies, European Journal of Political Theory, Res Publica and Jurisprudence.*

Greta Favara is a Postdoctoral Fellow at San Raffaele University (Milan). She obtained her PhD in Political Studies at the Graduate School of Social and Political Sciences of the University of Milan with the thesis "Political Possibility. A Research into the Methods of Normative Political Theory" (2018). Prior to that, she was visiting researcher at the Centre for Philosophy of Natural and Sciences of the London School of Economics and Political Sciences (2014 and 2015).

Rainer Forst is Professor of Political Theory and Philosophy at Goethe University Frankfurt and is co-director of the Research Centre Normative Orders and of the Centre for Advanced Studies Justitia Amplificata. In 2012, he was awarded the Gottfried Wilhelm Leibniz Prize of the German Research Foundation. Among his works that have recently appeared in translation are *The Right to Justification* (2012), *Tolerance in Conflict* (2013), *Justification and Critique* (2014) and *Normativity and Power* (2017).

Corrado Fumagalli is a Fulbright Scholar at the Political Science Department of Brown University and a Post-doctoral Researcher in Political Philosophy at LUISS-Guido Carli. His work appeared in *Biblioteca della libertà, Representation, Political Studies, Public Administration and Development*, and the *European Journal of Political Theory*.

Anna Elisabetta Galeotti is Full Professor of Political Philosophy at the University of Eastern Piedmont, Vercelli. Her research interests range from toleration, multiculturalism, equal respect, to deception and self-deception in politics. Among her English publications: *Toleration as Recognition*, Cambridge University Press (2002); “Self-deception: Intentional plan or mental event?”, *Humana Mente* (2012); “Liars or self-deceived. Reflection on political deception”, *Political Studies* (2014); “Autonomy and cultural practices: The risk of double standards”, *European Journal of Political Theory* (2015); “The range of toleration”, *Philosophy and Social Criticism* (2015); “The attribution of responsibility to self-deceivers”, *Journal of Social Philosophy* (2016); “Cultural conflicts: A deflationary approach”, *Critical Review of International Social and Political Philosophy* (2017); *Political Self-Deception*, Cambridge University Press (2018).

Federica Liveriero is Lecturer (RTD-A) in Political Philosophy at the Department of Political Science, University of Campania, Caserta. Her main areas of interest are normative theories of justification and public reason; legitimacy of political authority and procedural justice; social epistemology and meta-ethics. Her publications have appeared in various journals, among which *Critical Review of International Social and Political Philosophy*; *Philosophy and Social Criticism*; *Social Epistemology*. Recently, she published a monography *Decisioni pubbliche e disaccordo* (LUISS University Press, 2017) and she co-edited a volume, *Democracy and Diversity* (Routledge, 2018).

Glyn Morgan teaches Political Science at the Maxwell School, Syracuse University, where he serves as co-Director of the Moynihan Center of European Studies. He is the author of *The Idea of a European Superstate* (2007) and is currently writing a book on the ethics and politics of vaccination.

Michael Mosher is Professor of Political Science, University of Tulsa. With Anna Plassart he is bringing out *The Culture of Democracy in the Age of Enlightenment* (Bloomsbury). An historian of ever changing political ideas, he occasionally tracks the missionary universals of political philosophy, for instance, “Political Philosophy” in *The Encyclopedia of Political Thought*, 2014; “Are Civil Societies the Transmission Belts of Ethical Tradition?”, in *Alternative Conceptions of Civil Society*, Princeton, 2002; and “Boundary Revisions: The Deconstruction of Moral Personality in Rawls, Nozick, Sandel, and Parfit”, *Political Studies*, vol. 39, n. 2.

Enzo Rossi is an Associate Professor of Political Theory at the University of Amsterdam, and the co-editor of the *European Journal of Political Theory*. He has published widely on diversity, realism, and legitimacy. His current work focuses on radical realist ideology critique.



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