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Introduction: Issues in Political Epistemology

Introduction: Issues in Political Epistemology

Amy Kings
Keele University

Ruhi Demiray
Freie Universität Berlin

This special issue comprises of papers first presented at two ECPR (European Consortium for Political Research) events in 2018 and 2019: the ECPR 'Summer School on Political Epistemology' at Siegen University and, respectively, the 'Kant on Political Change: Theoretical Grounds and Global Implications' workshop held at the ECPR's Joint Sessions at the Université Catholique de Louvain in Mons, both events organised by the Kantian Standing Group of the ECPR. The summer school was partly funded by the British Academy Newton Advanced Fellowship "Dealing Ethically with Conflicts between Deep Commitments"[1] which has served as the guiding inspiration for the theme of this volume and our emphasis on navigating real-world examples of political and ethical differences.

This volume demonstrates a wide array of approaches from our eight contributors, who come from a diverse range of academic and cultural backgrounds. Our contributors come from various stages in their careers and work all over the world pursuing political and philosophical studies in Australia, the USA, Pakistan and Europe including Denmark, Finland, the Czech Republic and the UK. Although the papers in this issue cover a wide range of topics and pursue different approaches, they all embrace the fundamental goal of understanding various aspects of political epistemology. Political epistemology is a relatively new field of inquiry, currently attracting more and more scholars. In the simplest term, it might be defined as the theory of knowledge as it is applied or relevant to political life. Each paper in this special issue can be seen as answering a central question about the acquisition and utilisation of knowledge within the political sphere. They can also be loosely grouped depending upon the type of question they seek to answer: higher-order, normative or applied. Higher-order questions examine what we mean by justice, tolerance, freedom and the concept of right in the first place (Wyrębska-Đermanović, Klix). Normative questions concern the viability of specific methodological approaches used in the acquisition of knowledge and the epistemological standards by which we are guided in making sound decisions in the political realm (Russell, Uhrenfeldt, Krepelova). Finally, applied questions attend to understanding how these concepts (justice, equality, etc.) can be employed in real-world scenarios (Muhammad, Vereb, Kings). Some of the papers focus on just one of these questions, while others touch upon all three.

The intricate links between each set of questions become clear through our contributors' careful analysis of some of the most important contemporary problems dominating political philosophy. For instance, Muhammad's examination of Pakistan's Lawyers Movement highlights the need for theory-driven methodologies to evolve alongside real-world applications, and Klix's discussion of the potentially negative connotations of tolerance illustrates how a refusal to interrogate assumptions surrounding higher-order concepts can help feed the negative public perception of minority groups. Likewise, Russell's illustration of the need to consider why the public contestation of credibility may peacefully co-exist with a deliberative democratic system and Kings's examination of the inadequacy of basing environmental judgments on beauty both demonstrate the need to challenge our methodological assumptions in order to make epistemologically sound decisions. This special issue highlights that high-order, normative and applied questions cannot be addressed without reference to each other: our aim has been to draw together scholars working on seemingly different topics to help demonstrate the need to work together going forward.

Matheson Russell's paper "The contestation of credibility and the deliberative model of democracy" considers the undermining of credibility in the public sphere and questions whether attacks on a public speaker's credibility can be accommodated within the framework of deliberative democracy. Whether it is the buffoonery on display in the House of Parliament or politically irrelevant attacks on a politician's character, open *ad hominem* attacks on public figures are a part of everyday political discourse. However, they are easy to dismiss as illegitimate forms of argumentation, especially when operating within a deliberative model of democracy. Russell argues that while contesting a person's credibility can intensify political divisions and contribute to nastiness in political discussion, there is also a good reason to think that the public contestation of credibility can have valuable epistemological and social outcomes.

We don't all have the time or resources to educate ourselves on every nuance of a political discussion. Often the best we 'ordinary folk' can do is to watch the news, do a bit of googling and then hop on down to the voting booth and hope for the best! In order to make more informed decisions, many of us (at some point) have relied on better-informed individuals or organisations, to help guide our decision-making strategy. For instance, the scientist who specialises in Green-energy technology helps us to decide whether to buy solar panels for our home, our doctor is trusted with knowing which supplements are best for our health, and we even (sometimes) trust when the weatherperson tells us to take an umbrella to work. This has a multitude of epistemological implications, in terms of warranted belief and the role of second-hand knowledge acquisition. However, in this paper, Russell focuses on the degree to which the contestation of a public figure's credibility (or trustworthiness) should be advocated in a deliberative democratic model of society – where the ramifications of trusting an untrustworthy public figure may have farther-reaching consequences than simply getting caught in the rain on your way home!

Russell takes for granted that people put their trust in public figures and that people will also continue to contest other's credibility: his pragmatic approach emphasises the role of this contestation and interrogates whether it can be helpful in advancing the aims of deliberative democracy by promoting greater transparency in political discourse.

Rasmus Uhrenfeldt's paper also considers whether an element of our everyday political system ought to be incorporated into a deliberative democratic framework. In his paper, "Deliberative Democracy and the Secret Ballot: Can we keep both? Three Areas of Tension," Uhrenfeldt examines whether the omnipresent secret ballot, a fixture of most modern democratic systems, is at odds with principles at the heart of deliberative democratic theory. In the same way as the public contestation of credibility is often regarded as antithetical to the aims of deliberative democracy, the secret ballot is often seen as exhibiting strictly non-deliberative properties.

If we take the central aim of deliberative democracy to be consensus-driven decision-making brought around by open discussion, then the presence of a secret ballot introduces issues of accountability and lack of voter engagement or justification in their voting choices. Uhrenfeldt argues that the practice of secretive voting may in some instances be in tension with some of the ideals of deliberative democracy, but that, if we take an epistemic view towards deliberative ideals, the tensions lose substantial power.

The epistemic rationale of this argument lies in the probability that the alternative to ballot secrecy – the public ballot – would not have significant epistemic benefits and may, in fact, undermine some of the work done by the deliberative system. The pressure on individual voters to justify their vote may lead to electors leaning on shallow or superficial reasoning, which, in Uhrenfeldt's words, "[...] threatens to flatten the discursive landscape." Even aside from the advantages of ballot secrecy, there may be serious epistemic downsides to abandoning secrecy within an epistemic approach to deliberative democratic theory. This paper brings into focus some key concerns and points of potential conflict between ballot secrecy and deliberative democracy and points the way towards areas which need further research.

The discussion surrounding deliberative democracy often focuses on the nuances of theoretical and normative parts of the concept, but understanding real-world examples of deliberation in political settings is equally important for the navigation and improvement of the system. Irfan Muhammad's paper "Pakistan Lawyers' Movement and Democratization: A Deliberative Perspective," examines the role of deliberation in the democratisation of Pakistan by focusing on Pakistan's Lawyers' Movement during the years 2007-2009 of the military dictatorship.

Muhammad's paper provides a compelling counterpoint to Western-centred accounts of deliberative democracy, which usually presume against a politically significant existence of deliberation in non-western authoritarian context and simply ignore any potential role it can play in those contexts. Focusing on the role of the Pakistan Lawyers' Movement, his paper draws attention to studies which have thus far failed to account for the deliberative aspect of this movement in Pakistan's transition to democracy. He suggests

that understanding how social movements help instantiate deliberative democratic ideals is an important aspect of democratisation studies which tend to be dominated by a focus on structural issues such as elections, constitutional preconditions, and the role of elites.

The Lawyers' Movement was highly instrumental in the development of the overall deliberative capacity of the Pakistani political system and helped Pakistan in its transition to democratic rule. Muhammad's paper highlights the importance of deliberation within the public sphere as well as the necessity of having robust systems of communications for successful mobilisation of the populace. Although the Lawyers' Movement began as an internal legal issue for Pakistan's lawyers to restore the Chief Justice, it soon became a national, social rallying cry for social justice and the restoration of democracy. Contrary to the prevalent tendency of the literature on democratisation in focusing upon the influence of the public sphere in increasing the amount of deliberation in 'empowered spaces' such as the courts and legislature, Muhammad contends that the reverse can also be true, i.e. that the transmission of deliberative capacity can also filter down from 'empowered spaces' to the informal public sphere with transformative social and deliberative consequences.

Not only the scope of concepts and words but also their very nature or essential meaning can be controversial in politics. Moreover, in certain cases, at least, the words we use have the power to either include those around us or induce a sense of segregation. Increasingly extreme and polarising political debates have led to progressively stronger and more radical language on both sides of the political spectrum and the normalising of such language in many areas of social life. For instance, the use of discriminatory language by the far-right provides an obvious counterpoint to the idea of tolerance, which at surface level is an innocuous and perhaps even beneficial linguistic and conceptual device to promote greater equality.

The aspirational use of the term 'tolerance' to describe an ideal state of society, whereby its members are accepting of those from other backgrounds, is ubiquitous in both the public and civil spheres. Dog-whistle politics and virtue-signalling allow politicians and public figures to pay lip service to the idea of tolerance while taking no long-term action against the root causes of discrimination. Nikolai Klix deconstructs this rush to tolerance in his paper, "On the Conceptual Insufficiency of Toleration and the Quest for a Superseding Concept" by opening up the negative foundation of the term toleration and proposing the term 'respectance' to be used in its stead.

The idea that we merely tolerate a person or group of people implies first that their existence is a nuisance and secondly that the best we can possibly hope to do is 'put up with them'. Given that the subject of tolerance is ordinarily an individual or group that already experiences marginalisation, Klix proposes that we choose a less loaded word in order to cease the perpetuation of negative attitudes through linguistic microaggressions. His paper explores the need to find a replacement for tolerance in a changing political landscape which does not inspire the same subject/object distinction as 'toleration' or does not promote further discrimination against minorities.

The sensitivity to the epistemological aspects in political theory triggers also reconsiderations of the general methodological problems of the discipline in more serious and extensive ways. It is well known that positivism as an attitude of abstention from strong metaphysical contentions has been prevalent in the western thought (including both philosophy and science) in 20th and 21st century. In contemporary political philosophy, we witness its influences in the form of new methodological approaches attempting to avoid what is considered as the subjectivist pitfalls of the discipline. Tereza Krepelova's paper "A Methodological Turn in Political Philosophy: Making Political Philosophy More Scientific?" provides a critical examination of such scientific approaches in the case of the particular method called reflective equilibrium. Her paper explores the development and use of reflective equilibrium in contemporary political philosophy and reflects upon the epistemic impacts of this methodological approach on the discipline as a whole. In particular, Krepelova focuses on the overestimation of its justificatory power and the over-reliance on its ability to provide non-subjective results which are in some cases even comparable with those of political science. Krepelova argues that preconceptions and normative distortions make the use of reflective equilibrium capable of undermining the discipline of political philosophy and its reflective, critical and analytical roles in political theory. Krepelova ultimately concludes that the epistemological soundness of this coherentist approach is unsatisfactory as it undermines much of political philosophy as a normative discipline.

Arguably, Goodman and Rawls never intended reflective equilibrium to be used in such a way or for the ultimate outcome of its use to be epistemic correctness. However, as Krepelova points out, the ability for reflective equilibrium to be action-guiding and provide justificatory power for political and moral judgments can be called into question on multiple accounts. In the realm of political philosophy, using an approach such as reflective equilibrium to help make sense of tangled belief systems and solve issues emerging from conflicting beliefs and values, may instead of providing clarity merely recapitulate the problems. Krepelova's paper draws together some of the key literature in this area and explores why the uncritical use of, and overreliance on, any methodological device or tool can have detrimental effects which are diametrically opposed to the desires of its creators or users.

As far as the high order theorizing examining the key concepts of politics is concerned, Kant's practical philosophy is still considered as one of the most essential sources of inspiration in western political philosophy. In her paper "The Moral Source of Kant's Concept of Right," Ewa Wyrębska-Đermanović revisits the big debate in Kant's political-legal philosophy, namely the relation between ethical normativity and political-legal normativity. She argues that Kant's concept of right is dependent upon the general principles of his practical philosophy and cannot (as some contend) be justified independently from this. Her argument stands in contrast with the idea that the claims contained in Kant's legal theory can be derived from within his legal theory alone without recourse to other parts of his practical philosophy, particularly to his ethical

philosophy. She focuses on showing the dependency of Kant's concept of right upon our moral obligation towards humanity both in oneself and in others, and counters one of the most prevalent objections to the dependency thesis, namely, that the use of coercion in the theory of right is grounded within the doctrine of right without help from his ethical philosophy. Wyrębska-Đermanović explores the relationship between the Categorical Imperative, and the conception of right and responds to criticism that the CI is not able to ground the concept of right due to the essential connection between coercion and the conception of right.

As it proposes a reading of Kant that emphasizes the integral unity of his practical philosophy, Wyrębska-Đermanović's paper suggests that there is a fundamental insight Kant provided in relation to political theory and political epistemology. It is the insight that there is a moral basis for political power and its limits, and thus a moral metaphysics of politics and law is the inevitable primary part of any sound political-legal philosophy.

In terms of the questions concerning the applied level, the one concerning the global climate change has turned out to be the most crucial one that contemporary political philosophy should tackle. The threat of global climate catastrophe looms large over many of the political and ethical decisions made by organisations, governments and individuals alike. Navigating the complexities of environmental decision-making is often a difficult and time-consuming process, especially when the decisions must be made to appease the varying views of a population. Alongside direct interest in human survival, appeals to beauty are a common feature in justification of environmental protections. In her paper "The danger of beauty alone: The limitations of beauty in environmental decision-making," Kings demonstrates the need to interrogate our assumptions concerning the role of beauty further when making judgments about the natural world. In particular, Kings focuses on instances of harmful beauty and helpful ugliness, in order to illustrate the inadequacy of beauty-only accounts of aesthetics and the subsequent flawed justifications for environmental protection (or lack thereof).

Zachary Vereb's paper "Moral Views of Nature: Normative Implications of Kant's Critique of Judgment," also grapples with motivating environmental protectionism, but through the lens of Kant. Vereb highlights the role of the *Critique of Judgment* in the rehabilitation of Kant's image, into a potential defender of action taken to mitigate the climate crisis. A Kantian moral view of nature seen through the Analytic of the Beautiful can provide good reasons for humans to appreciate the beauty in nature and can even lead to environmental protections resulting from the setting aside of human self-interest. Kings and Vereb touch on the historical significance of Kant's *Critique of Judgment* in environmental aesthetics and the importance of aesthetic disinterest as the basic starting point of environmentalism. However, both papers illustrate the inadequacies and limitations of using this approach alone and point towards different resources to overcome these challenges.

Vereb explores Kant's Critique of Teleological Judgment and its potential relationship with understanding and appreciating ecosystems as a whole, rather than

having to focus on the beauty of singular objects. His paper examines the capability of a moral view of the nature of ecosystems to be motivated through a Kantian framework. In theory, the role of teleological reflection allows for the appreciation of flora and fauna of an ecosystem in its totality – accounting for the beautiful, ugly and everything in between. This would help make environmental protections more robust and a Kantian defence (or even promotion) of such protections more feasible. While making Kant more amenable to environmentalism, Vereb's argument may also hold value for non-Kantians and even Gaians who wish to connect traditional enlightenment philosophy with modern-day holistic environmentalism.

We hope that this special volume of *Public Reason* offers some insight into the exciting and creative early-career research taking place in political philosophy and that this collection of papers will help inspire others to tackle the assumptions at the heart of their own political decision-making. We would like to thank the European Consortium of Political Science (ECPR), the ECPR Kantian Political Theory Standing Group, the Keele-Oxford-St Andrews Kantian Research Centre (KOSAK), Siegen University and the British Academy (BA) Newton Advanced Fellowship "Dealing Ethically with Conflicts between Deep Commitments". We would also like to thank our contributors – without whom the volume would not have been possible.

a.e.kings@keele.ac.uk

demiray@zedat.fu-berlin.de

The Contestation of Credibility and the Deliberative Model of Democracy

Matheson Russell
University of Auckland

Abstract: Political discourse is often dominated by attacks on credibility at the expense of discussions aboutpolicy proposals. Such attacks can exacerbate political division and undermine attempts to discuss difficult policy questions in the public sphere. While this is true, it is argued in this article that it is a mistake to simply dismiss all such attacks as irrational and illegitimate deviations from the norms of deliberative argumentation. Resolving questions about whom to trust is vital to our lives as social knowers. Furthermore, the influence enjoyed by speakers (individuals and organizations) is not always warranted and deserves to be challenged. Even though it strains the norms of civility, equality, and inclusion promoted by the deliberative model of democracy, the public contestation of credibility can serve epistemically and socially valuable ends. Thus, the contestation of credibility is a profoundly ambivalent phenomenon. Nonetheless, it has a central role to play in the social rationality of public discourse and merits greater attention by democratic theorists.

Key words: deliberative democracy, trust, credibility, power, ad hominem argumentation.

Political discourse is often dominated by attacks on credibility at the expense of discussions about policy proposals. Politicians seek to score points against their opponents, and journalists try to trip up public figures with embarrassing 'gotcha' questions. These tactics are widely criticised, and it is not hard to see why. They can be exasperating for observers, distressing or hurtful to public figures, and counterproductive from the point of view of policy debate. But if such tactics strain the norms of civility and hinder attempts to discuss difficult policy questions in the public sphere, why are they so ubiquitous? Escalating political polarisation has no doubt led to an increase in the prevalence and intensity of these tactics. Likewise, 'takedowns' are rewarded by attention in the mainstream media and by likes and shares on social media. But neither of these factors explains the existence of the phenomenon in the first place. In this article, I examine some instances of credibility attacks. I provide an analysis of what motivates them and consider how they should be conceptualised from the point of view of democratic theory. Drawing on observations about the social structure of our epistemic lives, I show why the contestation of credibility has a central role to play in the social rationality of public discourse and why it cannot simply be dismissed as an illegitimate deviation from the norms of civility and deliberative rationality.

I. THE CONTESTATION OF CREDIBILITY

On the 14th of February 2018, a 19-year-old gunman shot and killed 17 people, including 14 students, at Marjory Stoneman Douglas High School in Parkland, Florida. What made this school shooting different from so many other similar tragedies in the

US is that in the aftermath, students from the school found their voice. Parkland students – most prominently Emma González and David Hogg – organized rallies and press conferences, tweeted at President Trump and appeared on TV talk shows. Within a matter of days, these survivors of the Parkland shooting emerged as the new face of gun-control advocacy in the US media, and their message was breaking through in a way not seen for several years.

In response to this fresh wave of advocacy for gun control, defenders of gun rights swung into action, looking to cover their vulnerable flank. Here is a selection of the argumentative strategies unsympathetic commentators employed in the days immediately following the shooting to counteract the new wave of student-led gun-control advocacy:

(i) The Federalist published a piece by Chandler Lasch (2018) who warned that "Media tends to treat survivors like Hogg as if they are policy experts […] Yet enduring tragedy does not make anyone a source of wisdom on legislation."

(ii) Lucian Wintrich (2018), writing for Gateway Pundit, claimed of David Hogg that he had been "heavily coached on lines" and was "merely reciting a script."

(iii) Ben Shapiro (2018), writing for the National Review, argued that the activism of the students should be dismissed because in adolescence "the emotional centers of the brain are overdeveloped in comparison with the rational centers of the brain."

(iv) Dan McLaughlin (2018), also writing for the National Review, similarly opined that "if you have ever been, or known, a teenager, you know that even comparatively well-informed teens are almost always just advancing arguments they've heard from adults."[1]

Lasch, Wintrich, Shapiro, and McLaughlin all provide reasons to discount David Hogg's contributions to the public debate over gun violence: (i) students have no special insight or status in the debate; (ii) students are puppets being manipulated by others, others who may well have nefarious intentions and dangerous agendas; and (iii) students are just adolescents who don't have the cognitive capacities of adults and can't be treated as having reasoned views of their own.

These arguments are obviously not presented as reasons for or against any particular gun control policies. Instead, they are presented as reasons to disregard the students as credible contributors to the policy debate. This feature is what makes the arguments surveyed above instances of what I shall call 'polemical speech'.

To give a definition, 'polemical speech' refers to utterances whose purpose is to contest the credibility of some speaker in order to influence the degree to which an audience trusts that speaker and takes what they say as having epistemic authority or worth.

In contemporary English, the word 'polemical' has a broader range of application. An essay or public lecture can be described as 'polemical' if it is disputatious and seeks to

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[1] Here I am drawing on the work of journalist Jason Wilson (2018) who reported on these responses to the Parkland students for *The Guardian*.

stage a controversy, especially if it is framed in strong language or delivered with rhetorical embellishments. It is possible for a 'polemic' to be addressed against a person, but it is more typical for a 'polemic' to be addressed against an opinion or a doctrine. In my usage, speech is polemical if and only if it targets a speaker – that is, if it stages a challenge to the credibility of a person (or, equally, an artificial person such as a corporation, an NGO, or a political party).[2]

Even though I am using the word 'polemical' in a narrow and specialized sense which departs from ordinary usage, the word 'polemical' seems to me apt to pick out the kind of speech that I have in view. The Greek word $πόλεμος$ means war, fighting, struggle or conflict. And, in disputes over credibility, a conflict takes place: a social struggle for dominance between adversaries espousing different points of view. Words are used to seek advantage or dominance in the field of discourse by affecting the reputation or standing of certain speakers as a source of information or opinion. In these exchanges, the theatre of public debate is not merely a contest of ideas: it is a contest in which the credibility and reputation of participants are at stake. And if credibility and reputations are affected, then the social field is altered as a result. Participants enjoy enhanced or reduced epistemic authority or power. There are winners and losers. Hence, at least in a metaphorical sense, this is war. And this is indeed how we perceive it, as is evidenced by the fact that we routinely use the language of violence and combat to describe polemical speech: e.g., instances of polemical speech are 'attacks', 'hatchet jobs', 'character assassinations'.[3]

II. THE CONTESTATION OF CREDIBILITY AND THEORIES OF DELIBERATIVE DEMOCRACY

In general, deliberative democrats assume that public discourse has a legitimate role to play in identifying and policing false or deceptive contributions to discourse.[4] And yet, deliberative democrats have given little attention to the issue of how disputes concerning the credibility of speakers should be handled within deliberative politics. If the issue is touched upon at all, it is spoken of disapprovingly. It is stressed that all participants should be respected and included as equals in a collective and collaborative process of inquiry and decision-making. Hence, participants in public discourse are expected to show respect to all others (including opponents) according to the norms of civility and democratic

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2] Although it has long been recognized that political parties, churches, NGOs, businesses and other similar entities play an active role in civil society (Cohen and Arato 1992), the standing of artificial persons as contributors to political discourse and decision-making in contemporary democracies is an under-explored topic in deliberative theory. For a defence of the claim that group agents can be considered 'persons' in the sense of functioning as communicative agents, see List and Pettit 2011.

3] The Guardian article cited above is typical in this respect, characterizing the arguments of the rightwing commentators as "attacks" on Hogg and one of these attacks as a "hatchet job" (Wilson 2018).

4] This is implied, for example, in Habermas's characterisation of discourse as a "self-correcting learning process" (2008, 84).

inclusion. On this orthodox view, any attempt to discredit or marginalise certain voices within the realm of public discourse is *ipso facto* anti-democratic and illegitimate.

Among political philosophers, John Rawls is perhaps the most prominent defender of this orthodox position.[5] For Rawls, the political and epistemic goals of public deliberation can only be achieved if citizens are reasonable with each other. Reasonable citizens are committed to collective problem-solving. They are civil to each other. They show mutual respect, are open to considering other points of view, and recognise the possibility of reasonable disagreement. They conduct political arguments in a way that seeks to maintain good faith and solidarity despite their disagreements with each other.[6] Therefore, Rawls strongly counsels that:

> We should not readily accuse one another of self- or group-interest, prejudice or bias, and of such deeply entrenched errors as ideological blindness and delusion. Such accusations arouse resentment and hostility, and block the way to reasonable agreement. The disposition to make such accusations without compelling grounds is plainly unreasonable, and often a declaration of intellectual war. (Rawls 1989, 238)

Note that Rawls sensibly leaves open the possibility that there will arise situations in which we find ourselves having to accuse others of self- or group-interest, prejudice or bias, and so on. Nonetheless, he clearly presents this situation as extraordinary, marginal, and largely irrelevant to democratic theory.

To other democratic theorists, however, it seems evident that contesting the sincerity, motivations, and ideological biases of contributors to public discourse will be commonplace and, indeed, a necessary feature of public discourse in a democratic society.[7] James Johnson makes the case for this view succinctly when he observes in response to Rawls that:

> [...] political actors may, in fact, be driven by self-interest, blinded by prejudice, or deluded by ideology. It very plausibly is among the desirable features of democratic deliberation that it allows participants to raise this possibility, to challenge those to whom the charge in fact applies, and to do so publicly. (Johnson 1998, 166)

According to this view, credibility can and should be tested and contested in public discourse. Indeed, it is an act of democratic and epistemic responsibility for citizens to challenge the credibility that self-interested, prejudiced or deluded actors enjoy in the eyes of others. Acts of public criticism are the appropriate (non-coercive) means at the disposal of citizens in a democracy to oppose the social forces of falsehood, oppression,

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5] In recent years, Jeremy Waldron has taken up the mantle and defended the Rawlsian approach. See Waldron 2012.

6] In his late work, these moral obligations of democratic citizenship are encapsulated in the idea of "civic friendship" (Rawls 1996, li).

7] One might expect proponents of 'agonistic' models of democracy to align with such a position. However, to my knowledge this line of argument has not been developed by agonistic democrats as such.

and injustice.[8] In this article, I aim to motivate the Johnson-style view and to further explore why the orthodox view is inadequate.

III. AGAINST POLEMICAL SPEECH

I do not dispute that there are powerful justifications for the orthodox approach. There are indeed many good reasons to take a rather dim view of what I have called polemical speech, especially when it takes an overtly hostile form. War is not something we typically welcome, and even a war of words strikes us as unpleasant and undesirable (Cohen 1995). Rawls is right to charge that public contestation of credibility can "arouse resentment and hostility, and block the way to reasonable agreement" (1989, 238).

As a case study, consider the attacks launched against David Hogg discussed above. There are at least six distinct kinds of objection that could be raised in relation to these attacks.

1. *A moral objection.* The criticisms of David Hogg cited above may appear measured, even courteous, by comparison to other more hot-headed and aggressive instances of polemical speech (not to mention hate speech). Nonetheless, taking account of his personal experiences as a survivor of gun violence and his apparently well-intentioned efforts to advocate for the wellbeing of his fellow students, the dismissals of Hogg by these commentators can seem callous and hence morally objectionable.

2. *A political objection.* In addition to being morally objectionable, the attacks on Hogg could be seen as exclusionary and hence unjust. Hogg is marginalized and his voice silenced in the public debate. He is not respected as a victim of violence and as a fellow citizen who has relevant perspectives that should be considered in the common discussion of what the culture and laws of the society should be. We might say, in terms of the current philosophical literature, that the critics do not treat Hogg as an "epistemic authority" (Zagzebski 2012), and that, instead, he suffers what Elizabeth Anderson (2012, 166) calls "epistemic marginalization".

3. *A sociological objection.* The attacks on David Hogg are potentially socially divisive. Those who are sympathetic to David Hogg and to the experiences and perspectives he articulates are not likely to respond well to the "hatchet job" performed on him. When gun-control advocates see representatives of the gun-rights lobby working to disparage victims like Hogg, they are prone to become further entrenched in their disapproval of, and even disgust at, the pro-gun camp. The reason for this is straightforward. If person *A* seeks to dismiss the speech of someone, *B*, whom *C* believes, to be honest, and well-intentioned, from *C's* point of view this reflects poorly

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8] A similar line of argument is explored in Iris Marion Young (2001). On her analysis, when political discourse and decision-making is captured by hegemonic interests, public-minded citizens find themselves having to stage public protests aimed at exposing the self-serving motives, wrongful actions, and false claims of political actors.

on *A*. In fact, it presents to *C* a cue of *A's* hostility or poor judgment. And so, *C* has reason to treat *A* with suspicion and distrust. As a result, *C* might even be motivated to impose moral sanctions on *A* in order to hold *A* accountable for their (ostensibly) nasty and unjust behaviour. If *C* consequently reacts towards *A* with disapproval or criticizes *A's* actions, these behaviours can, in turn, be interpreted by *A* as a sign of *C's* hostility, and so on. For this reason, polemical speech begins to look like a causal contributor to a downward spiral of social discord and political polarization.[9]

4. A logical objection. Every philosophy undergraduate learns that ad hominem argumentation is fallacious: To impugn the character or motives of a person who makes a claim does not *per se* give a reason to reject the claim itself, and it is fallacious to think that you have refuted a claim by showing up some deficiency in the person who makes the claim. At first blush, the attacks on David Hogg might appear to be instances of the *argumentum ad hominem* fallacy. However, on closer inspection, this does not seem to be the case. While the arguments of the commentators quoted above are clearly 'ad hominem' in the sense that they are directed against the speaker rather than against what is said by the speaker, it does not appear to be the case that those criticizing Hogg believe their attacks *justify* a rejection of the views he is espousing. In other words, they don't obviously commit the ad hominem fallacy as classically defined. If ad hominem attacks of this variety are problematic from a logical point of view, then the next two objections seem to be more apposite.

5. An epistemic objection: crowding out. It is widely believed that there is (or should be) an epistemic purpose to public discourse: namely, the purpose of ensuring more rationally justifiable political decision-making through the circulation of relevant information and the critical assessment of arguments and counterarguments (Estlund 2008; Landemore 2012). Like all ad hominem arguments, ad hominem arguments of the kind directed against David Hogg derail public discourse by diverting attention away from the consideration of claims and arguments and miring participants in nasty, exclusionary, and divisive interpersonal conflicts. In this way, polemical speech diverts participants in public discourse from pursuing the epistemic goals they should be pursuing. There is an opportunity cost incurred. Polemical speech crowds out the more epistemically productive policy-oriented discussion.

6. Another epistemic objection: undermining. Relatedly, the epistemic marginalization of speakers such as Hogg, who we presume have relevant contributions to make to public discourse, risks undermining the epistemic goals of the policy-oriented discussion (to the extent that it still takes place). A discourse designed to achieve maximally rational (i.e., justifiable) outcomes must ensure that the process is open to proposals, information, and criticisms from all since we do not know in advance

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9] The recent literature on political polarization in the social sciences is extensive. Researchers are still working to understand the phenomenon of political polarization and its dynamics.

whose knowledge, insights or arguments will prove valuable (even decisive) in the course of deliberations. To exclude certain views in advance for ideological reasons, thus undermines the epistemic quality and reliability of the deliberative process.

The deliberative model of democracy promises to avoid the problems enumerated above. It asserts rights to participation in public deliberation to guarantee that no individual or social group is marginalized or excluded from public deliberations. It encourages disagreement but recommends civility and discourages nastiness. These standards are supposed to serve both social and epistemic goals. On the one hand, they ensure that every citizen is shown epistemic respect and that social solidarity is preserved. On the other hand, they ensure that the epistemic purposes of discourse are pursued with maximal effectiveness.[10] Confident in the practical and theoretical virtues of their model, it is no surprise therefore that political theorists have recently called for renewed efforts to strengthen the political culture along the lines recommended by the deliberative model of democracy and to reestablish norms of civility in public life.[11]

IV. JUDGMENTS OF CREDIBILITY

If public discourse in democratic societies could be pursued exclusively according to the orthodox model prescribed by Rawls and other deliberative democrats, there is little doubt that we could avoid the negative consequences that result from political discourse that is mired in polemical argumentation. However, the orthodox view fails to account for the full range of epistemic and social functions performed by public discourse in democratic societies, especially as it plays out in the mass media.

Most deliberative democrats acknowledge that the 'informal' or 'weak' public sphere of unconstrained public communication in the mass media has an important role to play in the system of democracy.[12] But the focus of deliberative democrats has been primarily on 'formal' or 'strong' public spheres: on the design and implementation of organised and controlled processes of deliberation and decision-making involving a relatively small number of citizens or their representatives. Deliberative processes are designed to ensure the equal standing of participants. They are designed to ensure that participants are provided with relevant information from reputable sources, that participants receive input from representatives of all relevant social groups, and that participants hear the

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10] Habermas (2008, 50-52), for instance, argues that we are justified in assuming that the process of deliberation secures rational outcomes only to the extent that the deliberations are inclusive, egalitarian, free of deception, and free of coercion.

11] See, for example, the recent public lecture by Jeremy Waldron (2017). For a critique of Waldron and a more nuanced defense of the virtue of civility and its relevance in the contemporary context, see Bejan (2017).

12] The term 'weak' public sphere, denoting communication among the general public, as opposed to the 'strong' public sphere consisting in forums empowered to make binding decisions, was coined by Nancy Fraser (1992).

best arguments from all sides on a given issue. Yet, in the 'weak' public sphere, none of these design features or controls are in place. There is no guarantee of equal standing or equal participation of all citizens; no one guarantees the quality of information that circulates or the availability of relevant arguments, or ensures fair representation of social groups and viewpoints. Thus, as participants in the political public sphere we are forced to answer for ourselves a series of questions that are taken off the table by architects of organised deliberative processes, including: Where should I source my information? Who should I take as a credible guide to factual and normative questions? Whose contributions to public discourse should I listen to?

To better understand the epistemic situation we find ourselves in as ordinary citizens, we need to turn to social epistemology. Our capacity to generate knowledge of the world as solitary inquirers is limited. Most of our knowledge of the world is generated by others and is communicated to us either verbally or via some other medium. Where were you born? Which planet is closest to our sun? Do you have a spleen? The knowledge we have on each of these topics has come to us from others; we have been told it or we have learned it from a written source. And our dependency as knowers is not restricted to simple matters of fact. It is also in play when it comes to more complex theoretical and practical judgments. Is the German economy performing well or poorly? Are we on track to exceed 2°C of warming globally? Has the treatment of asylum seekers and refugees on Manus Island by the Australian government amounted to a human rights violation? Questions such as these require a synthesis of multiple sources of information and, additionally, require the competence to perform specialized forms of inference. Very few of us will have the time or expertise necessary to form a competent and informed judgment for ourselves on such matters. Nonetheless, we can and do form opinions on such matters by allowing our opinions to be informed and shaped by the opinions and judgments of others who we take to be credible sources of expert judgment in the relevant subject area. We defer to others whom we take to be suitably placed to form an authoritative judgment.

Knowing on the basis of 'testimony' allows us to acquire knowledge cheaply, without having to expend the effort associated with generating the knowledge ourselves and without even having to independently assess the evidence or justification for what we are told. It would be practically impossible, not to mention pathological, to test everything we are told or to seek out independent and direct confirmation of it. And, by acquiring beliefs from trusted sources, we benefit from a remarkable and expansive division of epistemic labour (Webb 1993). Nonetheless, trusting others opens us to the possibility of being deceived or misinformed. Our success as knowers depends upon our ability to screen out deceptive sources and latch onto credible sources. As epistemic agents, therefore, we are inevitably engaged not only in the business of evaluating and sorting evidence and arguments for beliefs but also in the business of evaluating and sorting speakers in terms of their credibility and trustworthiness as sources of information, moral insight, prudent advice, and so

forth. For this reason, we are constantly forming and revising judgments of credibility. This is part of what epistemic responsibility requires of us (Sperber et al. 2010).

This is not to say that we generate a reasoned judgment about a speaker's credibility in each interaction. From infancy, we demonstrate a readiness to trust the words of others, and even in adulthood, we remain largely credulous and do not exhibit a global distrust of social sources. When it comes to trusting social sources beyond our local networks, we rely upon a variety of heuristic devices in order to calibrate our level of credulity. We follow some rules of thumb: be wary of claims that do not cohere with what we believe to be true of the world; be more suspicious when dealing with certain sorts of characters, e.g., used car salespeople or members of hostile social groups (Rini 2017). We also make heuristic judgments of trustworthiness based on reputations or credibility markers. Reputations are pieces of "second-hand information" circulating among social networks that aid us in our task of filtering social sources (Origgi 2012). Credibility markers are socially accepted or institutionally sanctioned symbols that are taken to indicate a certain standard of knowledge and/or reliability (Anderson 2012). The university graduate is assumed to be intelligent; the family doctor is assumed to be competent; the police officer is assumed to be honest. All of these heuristic devices are only reliable from an epistemic point of view to the extent that they track epistemic competence and performance.[13] Hence, habitual patterns of trust and even the heuristics used to judge credibility must be calibrated and recalibrated.[14]

My claim is that, as with other challenging tasks of rational reflection and self-correction, the task of calibrating our credibility judgments and heuristics is something we tackle in conversations with others. Just as we converse and reason with others about how the world is and how it should be, so we converse and reason with others about the credibility of speakers (including about reputations and markers of credibility). And given the central role that assessments of credibility play in our lives as social knowers, we should regard this as a perfectly legitimate and potentially useful topic about which to converse and argue. To the extent that polemical speech can be seen as a contribution to the process of *reasoning with others about the credibility of social sources*, it too is a perfectly legitimate and potentially useful type of deliberation.[15]

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[13] Obviously, markers of credibility do not always reliably indicate the capabilities of speakers, and reputations do not always reliably track the past epistemic performance of speakers. Indeed, supposed markers of credibility are notorious vehicles for the cultural embedding of bias and prejudice, as has been discussed in the recent literature on "epistemic injustice" (Fricker 2007; Dotson 2011; Medina 2013).

[14] There are complex and still contested epistemological questions at stake here which I will leave to one side. For an overview of the literature on the epistemology of testimony, including expert testimony, see Adler (2017).

[15] Not all verbal attacks on persons can be viewed as contributions to an argument about credibility. But, viewed charitably, even smears and slurs can, in some contexts, be taken as an inarticulate and nascent form of polemical argumentation.

V. POLEMICAL SPEECH AND THE CRITIQUE OF POWER

Speakers who are taken to be credible have the ability to inform and shape the beliefs and actions of those who take them to be credible, not only because those hearers will take what they say on trust but also because those hearers will preferentially attend to their words on a given topic over other potential sources of information or opinion. This social dynamic gives trusted speakers *power* of a particular kind: the power to cause hearers to believe p by asserting that p or to cause hearers to φ by recommending that they φ. Speakers who are trusted by a large number of people and who have the ability to communicate their beliefs and opinions to those people can accrue to themselves a significant degree of this kind of power. We call these speakers 'influential'.

In the ideal case, where speakers who are in fact reliable sources of information or judgment are taken to be credible and hence influence the beliefs of others, then (all else being equal) the power of those speakers is legitimate. However, when speakers who make dishonest or unreliable claims are taken seriously – and hence enjoy influence – then (all else being equal) their influence is illegitimate. In the latter case, we have reason to worry that the deceptions of these speakers will be effective, that the misinformation they communicate will be accepted as truth, and that harm will result. Conversely, when speakers who are honest, reliable and have important information or judgments to communicate are not taken seriously – and hence do not enjoy the influence they should – we have reason to worry that ignorance or error will persist when it need not, and that harms may result.

No doubt each of us will be able to bring to mind individuals (or organisations) who are regarded by others to be sincere and knowledgeable, morally insightful or prudent, but whom we judge to be dishonest and/or unreliable, even deeply misguided. Conversely, each of us will be able to bring to mind individuals (or organisations) who are regarded by others to be deceptive, ignorant, morally misguided, or foolish, but whom we judge to be sincere and/or reliable. In such cases, we find ourselves in disagreement with others not merely over the truth of *claims*, but more fundamentally over the level of *credibility* that speakers claim for themselves or that hearers attribute to them. In these circumstances, we might be motivated to seek to influence others to revise their assessment of the credibility of these individuals. When we do, we find ourselves engaged in 'polemical' argumentation for reasons that seem to us to be both morally and epistemically justified: namely, in order to convince others to judge the credibility of some speaker differently so as to better track what is epistemically warranted. Disputes of this kind are intrinsically 'political' in the sense that convincing others to alter judgments of credibility has implication for the balance of *power* among speakers – i.e., for the relative levels of influence they enjoy – in the field of public discourse.[16]

16] Of course, disputes over credibility do not only occur in democratic contexts. This is because, as Hannah Arendt writes: "All political institutions are manifestations and materializations of power; they

This explains why disputes over credibility are often a central focus in political debate. It is possible, for example, to see the public interventions by the critics of David Hogg in this light. These critics understand that sympathetic audiences will be inclined to attend to and give weight to Hogg's public statements and that they may well have their opinions and judgments shaped by his words. They are worried, in other words, that this misguided soul, whom they take to be a profoundly unreliable source of opinion, will have an *undue influence* on the public debate. Therefore, they are motivated to demonstrate to Hogg's audience that he should not be taken that seriously. And so, they aim to cut him down to size in the eyes of his hearers and thereby nullify his influence. This is the goal of their arguments or 'attacks'. This underscores the point that we should not think that these critics are simply poor reasoners who have foolishly fallen into the logical fallacy of arguing ad hominem. Rather, they are launching a pre-emptive strike so that the audience is cautioned against giving this social source too much credence.

Of course, rightwing political commentators are not the only people who find themselves motivated to publicly contest the credibility of others on the basis of such concerns. To illustrate this point, let me introduce another example. In February 2018, the Alliance for Automobile Manufacturers in the United States published a Report calling into question impacts of climate change and tailpipe pollutants in an effort to undercut the need for fuel economy regulation (AAM 2018). In response, a physicist named Dave Cooke wrote a piece for the Union of Concerned Scientists in which he criticized the report. There are two main lines of argument in Cooke's piece. The first line of argument is that the authors of the report have an ideological agenda:

> The report funded by the Alliance was written by industry shills with ties to the Heartland Institute […] The group the Alliance funded to put together the report has a long history of working against environmental regulations – that's pretty much their schtick. Past clients include the American Petroleum Institute, the American Coal Council, the U.S. Chamber of Commerce, Monsanto, the American Enterprise Institute, and, of course, the Alliance. (Cooke 2018)

The second line of argument concerns the credibility of the contents of the report itself. Cooke argues that the report fails to fairly summarise the scientific literature. Instead, it cherry-picks results and even misrepresents the findings of the scientific studies that it does cite. Furthermore, the scientific research that is cited is suspect, he claims, because the people responsible for writing it have dependencies that place the impartiality of their work in question: "The papers cited to support weakening environmental protections are often paid for by industry and/or published in journals with weak peer-review standards and disclosure policies."

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petrify and decay as soon as the living power of the people ceases to uphold them. This is what Madison meant when he said 'all government rests on opinion,' a word no less true for the various forms of monarchy than for democracies" (Arendt 1972, 140).

Cooke provides examples and evidence to substantiate each of these criticisms. His writing is no less 'polemical' for this: in providing evidence and arguments, his goal is not simply to refute each claim but also to *demonstrate* that the report "tak[es] a page straight out of the disinformation playbook", that it "follows a familiar pattern, generally calling into question the science behind the health impacts of [insert pollutant here], frequently based on a convoluted and biased modelling effort masquerading as science." In other words, even when Cooke is debunking *arguments*, he has a *polemical goal* in mind: he is trying to discredit the report and its authors as a source of information and opinion.

By my lights at least, Cooke's piece is well-intentioned, its arguments seem more or less compelling, and it serves a useful social purpose, namely to expose the biases and hidden agenda in a report that represents itself as scientific and impartial but which, if taken seriously, could justify the weakening of important environmental protections. But even if this example does not satisfy the reader, it will be possible to find many other examples of polemical argumentation that could be judged in a similarly positively light: that is, as epistemically responsible, well-intentioned, and socially useful. It should be clear, then, that polemical speech can be (and often is) motivated by laudable moral and epistemic goals.[17]

VI. THE CYNICAL USE OF POLEMICAL SPEECH

It is manifestly true that polemical attacks can be used in ways that are neither well-intentioned nor aimed at serving worthy moral, political or epistemic goals. Polemical attacks can themselves be self-interested, prejudiced or deluded. They can also be made with cynical disregard for epistemic goals, simply aiming to damage the reputation of someone for personal or political gain.

In May 2018, as Special Counsel Robert Mueller's investigation into Russian involvement in the 2016 US Presidential elections was continuing, Donald Trump repeated his claims that the investigation was a "witch hunt" and implied that the investigation was an illegal or corrupt exercise by calling it "Spygate". Trump's lawyer Rudy Giuliani commented in a TV interview that their goal in making such claims was to undermine the credibility of the Mueller investigation. The former New York City major admitted to CNN that:

> It is for public opinion, because eventually the decision here is going to be impeach or not impeach. Members of Congress, Democrat and Republican, are going to be informed a lot by their constituents. So our jury, as it should be, is the American people. And the American people, yes, are Republicans (largely),

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17] When scholars and activists talk of 'the critique of power', it seems to me that they sometimes have in mind something like this phenomenon: the use of public criticism in order to undermine the credibility and epistemic power of a social institution or political agent, especially those whose epistemic power is used to justify oppressive social systems.

independents (pretty substantial), and even some Democrats now question the legitimacy of it. (YouTube 2018)

Michael Hayden, a former director of the CIA, was asked to comment on the same public comments and he said that Trump was "simply trying to delegitimize Mueller [...] and he's willing to throw anything against the wall" (McCarthy 2018).

Giuliani and Hayden are both clearly describing Trump's public statements as, in my terms, polemical speech. But, their comments suggest that Trump's public statements are instances of a cynical and calculated use of polemical speech. They are 'fake' polemical speech in the sense that they mimic sincerely motivated polemical speech. They challenge credibility simply in order to achieve the reputational damage that predictably follows from a public attack on the credibility of some person or agency by a trusted speaker (in this case, by the office of the US President). In such cases, it would be a mistake to treat polemical speech as though it made a worthwhile epistemic contribution to public discourse. But, of course, this is why cynical polemical speech presents itself as sincere: in order to be treated by hearers as though it were epistemically significant. Just as lies only function if they are told in the guise of telling the truth, so tactically motivated attacks only function because they don't present themselves as tactically motivated but present themselves as truth-telling exposés. Giuliani's confession that he and Trump were saying these things purely to try and discredit the Mueller investigation is the exception that proves the rule.

Unfortunately, it is not always possible to tell sincere from cynical polemical speech. What's more, many cases polemical speech will arise from mixed motivations: they will be motivated *in part* by a desire to promote one's own agenda by decreasing the influence of opponents and *in part* by a sincerely held belief that the opponent is speaking insincerely or falsely and is not to be trusted. There may be polemical speech acts that are *purely* cynical and calculating ('politically motivated', as we say), and even some that are *purely* sincere; but most polemical speech will sit somewhere in the middle. (It is possible that Trump's criticisms of the Mueller investigation fall into this middle category.) In any case, the point is that *conceptually* we should not conflate sincere polemical speech and cynical polemical speech any more than we should conflate honest assertions with lies. If we want to understand how 'politically motivated' attacks (including 'fake news' and other kinds of propaganda) function, we need to understand how sincere polemical speech functions; just as if we want to understand how lying functions, we need to understand how truth-telling functions.

VII. CONCLUSION

While norms of equality and inclusion in deliberative models of democracy are motivated by well-founded concerns about what I have called 'polemical' attacks on interlocutors, it is neither desirable nor possible to exclude polemical speech from public

discourse. This is because public discourse performs at least two important epistemic and social functions at the same time. First, it processes disagreements about how to understand the world and about what should be done. Second, it processes disagreements about whom to trust. Resolving questions about whom to trust is vital to our lives as social knowers, and ultimately, it is essential to the pursuit of the very epistemic goals that the deliberative model aims to promote. Thus, I have argued that it is a mistake to simply dismiss all polemical speech as an irrational and illegitimate deviation from the norms of deliberative argumentation. Even though it doesn't conform to the norms of mutual recognition (norms of equality and inclusion) promoted by the deliberative model, there is a *rationality* to polemical argumentation and it can serve epistemically respectable ends and ends of justice. Polemical argumentation is required to challenge unwarranted claims to credibility; and, conversely, it is required to challenge inegalitarian and exclusionary attitudes and behaviours of other speakers.

At the same time, I do not by any means intend to justify all and every polemical use of speech – quite the contrary. Nothing I have said about the epistemic and justice goals of polemical speech negates the fact that it can be (and often is) nasty, socially divisive, and politically polarizing. Nothing in what I have said negates the fact that polemical discourse is prone to distract us from debating the substance of knowledge claims or policy positions. Furthermore, while polemical speech can be used to challenge illegitimate power, it can also be used to perpetuate injustice and exclusion. The rhetorical strategies used to press disagreements over credibility can be just as unprincipled and unreliable as the false, ideological and self-interested contributions to public discourse they are ostensibly being used to expose.

Polemical speech is thus a profoundly ambivalent phenomenon, one we ought to treat with caution. Nonetheless, polemical argumentation is ubiquitous in public discourse. Disputes over credibility and influence continually arise both in 'weak' and 'strong' public spheres. We already navigate these disputes in practice as participants in public discourse. But we are far from having a satisfactory theoretical understanding of them. There is more work to be done to understand how polemical speech functions, how it malfunctions, and how it might be handled within democratic societies so as to achieve overarching epistemic and social goals while minimizing the negative consequences.[18] What is clear is that the orthodox view of democratic deliberation is inadequate and that we, as political theorists, will require a more sophisticated epistemic model of democracy if we are going to be equipped to contribute to the societal challenge of navigating a way through the contemporary (epistemic) crises of democracy.

m.russell@auckland.ac.nz

18] Studies that indirectly contribute to this research agenda can be found in the literatures on civility, hate speech, political polarization, epistemic bubbles, and epistemic injustice, among others. However, none of these existing literatures approaches the topic of public discourse from the angle articulated in this article, namely in terms of the negotiation and contestation of credibility through public discourse.

REFERENCES

AAM. 2018. https://www.regulations.gov/document?D=NHTSA-2017-0069-0176 (accessed 29 March, 2019).

Adler, Jonathan. 2017. Epistemological Problems of Testimony. In *The Stanford Encyclopedia of Philosophy* (Winter 2017 Edition), Edward N. Zalta (ed.), https://plato.stanford.edu/archives/win2017/entries/testimony-episprob/ (accessed 29 March, 2019).

Anderson, Elizabeth. 2012. Epistemic Justice as a Virtue of Social Institutions. *Social Epistemology* 26 (2): 163–73.

Arendt, Hannah. 1972. *Crises of the Republic.* New York: Harcourt Brace Jovanovich.

Bejan, Teresa M. 2017. *Mere Civility: Disagreement and the Limits of Toleration.* Harvard University Press.

Cohen, Daniel. 1995. Argument is War…And War is Hell: Philosophy, Education, and Metaphors for Argumentation. *Informal Logic* 17 (2): 177–88.

Cohen, Jean. L., and Andrew Arato. 1992. *Civil Society and Political Theory.* Cambridge, MA: MIT Press.

Cooke, David. 2018. Automakers Turn to Climate Deniers in Quest to Lower Fuel Economy Regulations. https://blog.ucsusa.org/dave-cooke/automakers-turn-to-climate-deniers-in-quest-to-lower-fuel-economy-regulations (accessed 29 March, 2019).

Dotson, Kristie. 2011. Tracking Epistemic Violence, Tracking Practices of Silencing. *Hypatia: A Journal of Feminist Philosophy*, 26 (2): 237–57.

Estlund, David. 2008. *Democratic Authority.* Princeton: Princeton University Press.

Fraser, Nancy. 1992. Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy. In *Habermas and the Public Sphere*, edited by Craig Calhoun, 109–42. Cambridge, MA: MIT Press, 1992.

Fricker, Miranda. 2007. *Epistemic Injustice: Power and the Ethics of Knowing.* Oxford: Oxford University Press.

Habermas, Jürgen. 2008. *Between Naturalism and Religion.* C. Cronin (trans.). Cambridge: Polity.

Johnson, James. 1998. Arguing for Deliberation: Some Skeptical Considerations. In *Deliberative Democracy*, edited by Jon Elster, 161–84. Cambridge: Cambridge University Press.

Landemore, Hélène. 2012. *Democratic Reason.* Princeton: Princeton University Press.

Lasch, Chandler. 2018. Shooting Survivors' Feelings Don't Legitimize Their Ideas About Politics. *The Federalist*, 19 Feb 2018. http://thefederalist.com/2018/02/19/shooting-survivors-feelings-dont-legitimize-ideas-politics/ (accessed 29 March, 2019).

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

McCarthy, Tom. 2018. Rudy Giuliani admits 'Spygate' is Trump PR tactic against Robert Mueller. *The Guardian*, 27 May 2018. https://www.theguardian.com/us-news/2018/may/27/rudy-giuliani-spygate-robert-mueller-donald-trump (accessed 29 March, 2019).

McLaughlin, Dan. 2018. Let the Kids Talk – but That's Not the End of Any Debate. *National Review*, 19 Feb 2018. https://www.nationalreview.com/corner/let-the-kids-talk-but-thats-not-the-end-of-any-debate/ (accessed 29 March, 2019).

Medina, José. 2013. *The Epistemology of Resistance: Gender and Race Oppression, Epistemic Injustice, and Resistant Imaginations.* New York: Oxford University Press.

Origgi, Gloria. 2012. A Social Epistemology of Reputation. *Social Epistemology: A Journal of Knowledge, Culture and Policy* 26 (3-4): 399–418.

Rawls, John. 1989. The Domain of the Political and Overlapping Consensus. *New York University Law Review* 64 (2): 233-55.

———. 1996. *Political Liberalism.* New York: Columbia University Press.

Rini, Regina. 2017. Fake News and Partisan Epistemology. *Kennedy Institute of Ethics Journal* 27 (2 Supplement): e43–e64. https://kiej.georgetown.edu/fake-news-partisan-epistemology/ (accessed 29 March, 2019).

Shapiro, Ben. 2018. Students' Anti-Gun Views. *National Review*, 20 Feb 2018. https://www.nationalreview.com/2018/02/students-anti-gun-views/ (accessed 29 March, 2019).

Sperber, Dan, Fabrice Clément, Christophe Heintz, Olivier Mascaro, Hugo Mercier, Gloria Origgi and Deirdre Wilson. 2010. Epistemic Vigilance. *Mind & Language* 25 (4): 359–93.

Waldron, Jeremy. 2012. *The Harm in Hate Speech.* Cambridge, MA: Harvard University Press.

———. 2017. Reclaiming respect in a time of polarized politics. 1 August 2017, https://youtu.be/Vjf4pnGVnbU (accessed 29 March, 2019).

Webb, Mark O. 1993. Why I Know About as Much as You: A Reply to Hardwig. *The Journal of Philosophy* 90 (5): 260–70.

Wilson, Jason. 2018. How right wing media is already attacking Florida teens speaking out. *The Guardian*, 20 Feb 2018. https://www.theguardian.com/us-news/2018/feb/20/how-rightwing-media-is-already-attacking-florida-teens-speaking-out (accessed 29 March, 2019).

Wintrich, Lucian. 2018. EXPOSED: School Shooting Survivor Turned Activist David Hogg's Father in FBI, Appears To Have Been Coached On Anti-Trump Lines. *The Gateway Pundit*, 19 Feb 2018. https://www.thegatewaypundit.com/2018/02/exposed-school-shooting-surviver-turned-activist-david-hoggs-father-fbi-appears-coached-anti-trump-lines-video/ (accessed 29 March, 2019).

Young, Iris Marion. 2001. Activist Challenges to Deliberative Democracy. *Political Theory* 29 (5): 670–90.

YouTube. 2018. Rudy Giuliani says 'Spygate' is a PR strategy. YouTube video posted 27 May, 2018. https://youtu.be/qBRzyA9hcPY (accessed 29 March, 2019).

Zagzebski, Linda. 2012. *Epistemic Authority: A Theory of Trust, Authority and Autonomy in Belief.* Oxford: Oxford University Press.

Deliberative Democracy and the Secret Ballot: Can We Have Both? Three Areas of Tension

Rasmus Uhrenfeldt
Aalborg University

Abstract: Recently, Bart Engelen and Thomas Nys have offered an analysis of some of the non-deliberative properties of the secret ballot. This marks an interesting theoretical approach that I will build upon in this paper. I do this by identifying and discussing three areas of tension between deliberative ideals and secretive voting. I divide these areas into three separate categories – which I label the justificatory tension, the self-regarding tension, and the sincerity tension. I argue that both the justificatory tension and the self-regarding tension signify substantial areas of tension between the current practice of secretive voting and some of the ideals within deliberative democracy. In the last section of the paper, I argue that one way to reduce the tension between the practice of secretive voting and deliberative ideals is to adopt an epistemic approach to deliberation.

Key words: deliberative democracy, secret ballot, public voting, ethics of voting.

Thomas Nys and Bart Engelen have recently argued that the practice of secretive voting is in tension with some of the values often encouraged within the theory of deliberative democracy (2013). For reasons I will describe shortly, this is a very interesting approach to adopt when analyzing our current practice of secretive voting. The approach that Engelen and Nys take is, self-admittedly, *not* an attempt to develop an extensive comparison between the theory of deliberative democracy and the secret ballot. (2013, 495). Instead, they use deliberative principles as their starting point for a critical evaluation of voter secrecy. It is my objective in this paper to provide some of what they have omitted, namely, an in-depth and more *theoretically specific* discussion of the relation between the secret ballot and deliberative democracy. That is, I try to argue how certain specific commitments in the theory of deliberative democracy ought to make us skeptical of the process of secretive voting. This approach is interesting for several reasons. First of all, it is surprising that one of the universal institutional structures in liberal democracies – secretive voting – has not undergone any full-fledged, systematic normative analysis from the vantage point of the ideals of deliberative democracy. This is striking, in part, due to the individual importance of both deliberative democracy and the secret ballot. The secret ballot, as an institutional design, is enshrined in Article 21 of the Universal Declaration of Human Rights and is at the center of the procedural workings of modern democratic systems of voting for citizens. Article 21, (3) states: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." (Universal Declaration of Human Rights 1948) Secondly, in the world of democratic theory, deliberative democracy is a major, and central, theoretical apparatus which commands the attention of several influential

scholars. (Elster, 2003; Gutmann and Thompson, 1996, 2004; Cohen, 1997; Bohman, 2000.) If there is real tension between a major theoretical framework, such as deliberative democracy, and the widespread form of secretive voting, then this seems worth exploring – if nothing else, so as to lay bare the reasons why such a tension is currently to be accepted as a political reality.[1]

From here on, my approach is the following. First, I will shortly describe some of the core normative features of deliberative democracy. I then identify and discuss three areas of tension between deliberative democracy and the secret ballot. The first tension concerns voter justification, the second self-regarding voting, and the third sincerity in voting. After arguing that these three aspects are in tension with the practice of secretive voting, I proceed to discuss various objections to the existence of these tensions. I conclude that these objections fail for various reasons, but that one way to relieve the tension is to adopt an epistemic approach to deliberative democracy.

I. WHAT IS DELIBERATIVE DEMOCRACY?

Deliberative democracy is a vast theoretical enterprise designating a multitude of normative positions and principles (Elster 2003; Gutmann and Thompson 1996, 2004; Cohen 1997; Bohman 2000). On a fundamental level, it is a theoretical view that emphasizes the importance of justifying public policy with reasons acceptable to all who are bound by those policies. Justifying the exercise of political power is to be done on the basis of reasoning among free and equal citizens (Gutmann and Thompson 1996, 52, Cohen 1997, 412).

One way to identify some of the values of the deliberative model is to contrast it with an aggregative model. On one influential understanding of these two models, voting is the mere aggregation of fixed preferences, while deliberation seeks to base political decisions on the collective and *preference-altering* nature of public deliberation (Elster 2003). That is, deliberation attends to the formation and justification of preferences, while aggregation compiles individual political preferences, typically through a voting process.

In this paper, what I want to draw attention to is not the general relationship between voting and deliberation, but the *secretive* aspect of voting and its relationship with deliberation. Secrecy is a distinct feature of voting that adds to the normative worries highlighted by deliberative theorists. It is those worries to which I will soon turn. However, in order to gain some conceptual precision for the analysis to come, I will first describe two different conceptions of the value of deliberative democracy as this will become important in the latter part of this paper. The first concerns political legitimacy, and the second concerns epistemic benefits.[2] For my purposes, this distinction between the

1] This is obviously not a tension *felt* by all, since not everybody ascribes to the principles of deliberative democracy.

2] This distinction does not imply that these two conceptions can always be kept separate. For

legitimacy approach and the epistemic approach to deliberative democracy is important. It is important because I will argue that the tension between the ideals of deliberative democracy and the secret ballot does not concern not a tension between an *epistemic approach* to deliberation and voter secrecy.

Legitimacy:

Joshua Cohen locates part of the central value of deliberation in the relation between the legitimacy of political outcomes and the deliberative activities of those who are bound by such outcomes. He writes: "In particular, outcomes are democratically legitimate if and only if they could be the object of a free and reasoned agreement among equals. The ideal deliberative procedure is a procedure that captures this principle." (Cohen 1997, 73). The free exchange of reasons, in which citizens partake, aims to establish *the legitimacy* of the outcome of the democratic process. These outcomes are to result from the free exchange of ideas, arguments, and justifications about what constitutes the common good of a given society. Since political decisions are binding on all, the legitimacy of the outcomes should, therefore, consist of the deliberation of all (Manin 1987, 352). Another value that the deliberative approach emphasizes is the *respect* citizens are shown when they are afforded a fair hearing in the deliberative process both preceding and following policy-formation. By letting people have their say in a deliberative interchange, their standing to make claims or offer reasons is acknowledged, and they are therefore being respected in a morally substantial way (Chambers 2017, 268).

Epistemic Approach:

Some also locate the value of deliberation in the epistemic benefits it can provide. For example, if participants, through the giving of arguments and the weighing of evidence, produce more accurate beliefs, then this is an epistemic benefit of the deliberative interchange (Peter 2016, 142). On one view, the deliberative model can be seen as a truth-tracking procedure, which functions properly when it provides increasingly reliable information about the proper or morally right outcomes of democratic processes. Such a view entails, roughly, that there are right and wrong answers to some political questions, and public deliberation is one reliable way in which we can come to some approximation of these answers (Landemore 2017, 284). Deliberation might accomplish this on the basis of enlarging the pools of ideas and information, weeding out bad arguments and leading to consensus on the most reasonable outcome (Landemore 2012, 97). This, however, does not imply that consensus is thought of as a requirement in order for there to be an epistemic benefit to deliberative procedures. It might be that even if disagreement persists, the deliberative process sheds light on *the reasons* for the disagreement and therefore knowledge as to why the disagreement has yet to be solved.

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example, one can hold that political decisions are only legitimate insofar as they are, to a certain degree, epistemically justified.

II. DELIBERATION AND (SECRETIVE) VOTING

The relationship between the principles of deliberation and the existence of majoritarian decision-procedures (i.e., voting) is a complicated one. It is, however, not difficult to see why deliberative democrats may regard secretive voting as problematic. This may stem from a more fundamental uneasiness between deliberation and voting in general. Jeremy Waldron sums up quite nicely what such uneasiness can consist of: "Voting shifts us from the qualitative consideration of substance to sheer quantitative business of seeing which proposition enjoys the support of the greatest number." (Waldron 1999, 212).

If what we value is the *substance* of the public arguments and viewpoints that are put forward in the democratic dialogue, then voting may be seen as a rather crude form of decision-making. It collectivizes our individual preferences, giving no special attention to what these preferences are, how they are formed, and whether they're justified. The crudeness of this aggregation of preferences consists, at least in part, in treating each and every input the same. The fact that voting is *also secret* only seems to add to this crudeness. Not only are individual preferences undifferentiated, but they are also tallied up anonymously – meaning that it is difficult to hold citizens accountable for their act of political influence, and to call upon them to justify themselves. If we are convinced that the exercise of power should be justified to the citizenry, that wielders of power should be accountable, and that choosing our leaders should be based on publicly debated reasons, then it is not initially difficult to see why we might be worried about with the non-deliberative and non-justificatory structure of voting secrecy.[3]

III. CLARIFYING THE ARGUMENT

As mentioned, I will structure the following discussion by building on some recent arguments and observations made by Bart Engelen and Thomas Nys (2013). To put their argument into context, it is important to note that they *are not* proposing that a commitment to deliberative principles implicates – in any form – the abolition of the secret ballot. Nys and Engelen discuss many substantial potential problems that accompany certain forms of public voting. For example, an open system will yield strong social pressure on those who are socially and economically least well off. This will lead to voter abstention, which will threaten the inclusive ideal of democratic participation (Engelen and Nys 2013, 501–2). Other worries include the possibility of citizens yielding to social conformity, or the possibility of an increase in political polarization, in which citizens become more staunch and unflinching in their political convictions (Engelen and Nys 2013, 501). I agree that these are considerable problems, which would need to

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3] Some praise the inclusive and egalitarian aspects of voting. (Mansbridge *et al* 2010, 85). This form of equal inclusivity – Mansbridge and others point out – "[…] makes a statement of equal respect parallel to, but qualitatively different from, the respect accorded by listening in deliberation." (Mansbridge *et* al 2010, 85)

be acknowledged if one is to make an argument for the practical implementation of some form of public voting. However, this paper is an analysis of how some of the ideals and principles of the deliberative model are in tension with the current and widespread form of secretive voting. In other words, the normative principles within deliberative theory should lead us to be very skeptical of the use of secretive voting.[4] The fact that public voting may currently be infeasible does not defeat the purpose of such inquiry. One way of seeking out potential problems with our current institutions is by seeing how they fall short of normative ideals.[5] Also, there are multiple circumstances relating to the process of voting, which might, potentially, be made more deliberative. Understanding how the current process of secretive voting holds up to the ideals of deliberative democracy is useful in exploring such circumstances.

IV. THREE AREAS OF TENSION

4.1. The Justificatory Tension

So, in what sense are the principles of deliberative democracy in tension with the secret ballot? First, Engelen and Nys stress that one of the central normative commitments of deliberative theory concerns the justification of our public policies to those who are bound by them. They state, for example, that: "[...] it is not sheer numbers, but the views and arguments of citizens that should matter in a democracy. Democratic politics is about justifying the exercise of power by means of reasons that all citizens can reasonably be expected to endorse." (Engelen and Nys 2013, 495). As Engelen and Nys point out, under a secretive system, voters experience little in terms of an incentive to justify or explain themselves. One of the problematic aspects of voter-secrecy, then, is that it helps to shield each voter from potential deliberative pressure of giving some explanation or justification for how they vote (Engelen and Nys 2013, 497). With no verifiable way to hold people to account for how they vote, they can cast their ballot however they like, for any reason they like. Now, this is obviously also possible in a non-secretive system, in which people can still vote for whatever reason they feel like. What seems to make up the central difference for Engelen and Nys is that secrecy denies us the possibility of *actually knowing* how people vote. If people actually were *to know,* they could hold others accountable for their choices in the voting booth.

It is important to distinguish two ways in which this will increase the deliberative circumstances of voting. First, citizens can now engage each-other after elections, and they can demand a justification – they will be able to say: "You voted for x, explain

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4] There is a slight terminological clarification to be made here: when it is suggested that some principles are in tension with some practice, it does not mean that those principles are therefore *themselves* endorsed. It means, instead, that *if* one endorses those principles, *then* these areas of tension arise.

5] Engelen and Nys also use it to show how demanding deliberative principles are for citizens.

yourself!" Such an interchange could, presumably, continue even after the election is over. Second, this will also create an increase in the internal deliberative workings of the voters *before the election*, since they now can *reasonably expect* to be asked to justify themselves. They will thus be faced with an incentive to think – from the perspectives of others – about how they will explain themselves, which will mark an increase in internal deliberation.[6] What I want to do now is to explicate how this tension relates directly to some of the core commitments of deliberative theory, and to draw some important distinctions based on this.

In order to do this, consider the following description of the notion of reciprocity from Amy Gutmann and Dennis Thompson: "Reciprocity holds that citizens owe one another justifications for the mutually binding laws and public policies they collectively enact." (2004, 98). Importantly, they add that very few traditions give the notion of reciprocity the same central role as it is afforded in deliberative democracy. (Gutmann and Thompson 2004, 98). Now, as they are formulated here, reciprocity and secrecy are not at odds with each other. It is certainly possible for citizens to offer justifications and reasons in a deliberative interchange, and then – assuming that deliberation does not yield agreement – use a majoritarian and (secretive) decision-mechanism. In this sense, secrecy and reciprocal justification are certainly not conceptually incompatible. Instead, the deliberative worry about voter secrecy is that voting is *part of the process* in which we choose not only political representatives but also public policy.

It is, therefore, proper to make the *circumstances* of the voting process *more* deliberative. On this view then, deliberation and voting co-exist: voting is an inherently non-deliberative way of (temporarily) ending the preceding deliberative interchange. What the position entails, instead, is a commitment to making the *circumstances* and the *process* of voting more deliberative by creating a greater incentive for deliberative interchanges and accountability on behalf of voters. By making the voting process more open, we are approximating the deliberative ideal that citizens should stand in a justificatory, reciprocal relationship with each other. Again, we can distinguish two dimensions of this claim. First, openness is conducive to an increase in both internal and external deliberative pressure, which can increase the public deliberative pressure on voters before and after elections. Second, openness makes voters accountable to each other, such that they must offer justifications for their acts of political influence. It is also important to note here that the *value* of voter justification can also be understood in several different ways. Justification may be valuable because it is instrumental in creating a valuable form of a political community. This form of a political community is one in which citizens show respect for each other when each seeks to justify the political influence they exert through voting. Secondly, voter justification may be epistemically valuable because it is conducive to creating better input for political decisions. On this second view, the value of an increase in justificatory deliberation consists in getting

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6] On the notion of internal deliberation, see Goodin 2000.

citizens to vote on the basis of the substantial arguments that 'survive' the justificatory process. The justificatory process is the process of internal reflection that voters undergo, and the justificatory exchanges they partake in with each other, before and after elections. The value of this deliberative increase consists of creating the best epistemic circumstances for citizens to cast their vote. I will explore this distinction in the last section of the paper.

Let me summarize this first area of tension: if what is normatively important is the substance of the reasons and justifications we give each other, then a system that makes it possible for citizens to offer no justifications at all, let alone reasons that all citizens can reasonably be expected to endorse, leaves much to be desired.[7] Again, it is certainly possible to value both the process of justification and also value secrecy. The tension that Engelen and Nys pinpoint, as I see it, is that secrecy de-incentivizes and reduces deliberative aspects of the voting process. Comparably, then, public voting is more conducive to at least some of the ideals of deliberative democracy. This tension can be labeled the *justificatory-tension with secrecy.*

4.1.1 Objections to the justificatory tension

One way to mount a general counter to the justificatory tension is to argue that there is a second-order deliberative justification for the non-deliberative circumstances of voting. (Mansbridge *et al.* 2010, 88) For example, if the *procedure* of voting has undergone proper public justification, then *the process* retains deliberative legitimacy – even if the *individual votes* can be cast without giving a justification. Similarly, it can be argued that secretive voting retains deliberative legitimacy because the process of secretive voting has undergone the proper public deliberative justification, even if the individual votes have not.[8] However, I do not believe that this response gets at the essential issue. First, the potential deliberative worry about secrecy is that the *votes themselves* are not exposed too much justificatory pressure. This worry seems to persist even if *the procedure* has undergone proper public justification. A slightly different proceduralist response to the justificatory tension is to suggest that as long as the proper deliberation has taken place, the outcomes are legitimate (Christiano 1996, 35). Again, I do not think this response poses a solution to the justificatory tension with secrecy.[9] This is because the justificatory tension does not assert that outcomes are to be deemed illegitimate because they have been chosen in secret. Rather, the point is that the secretive *procedure* limits important parts of the deliberative scheme: that of justification for, and accountability of, political actions that are collectively binding.

7] The non-deliberative structure of secret voting is also noticed by Frederick Schauer (1999, 20).

8] Whether or not this process has been publicly decided upon is an empirical question that I, at present, cannot attend to.

9] Nor is it directly intended to in this context. It is merely used as a possible objection.

Lastly, even if we do accept the procedural response, it only shows that we *can* make the procedures more deliberately justified, but it is not clear why we should not *also* make the votes *themselves* more deliberately justified.[10]

Moving away from procedural responses, we can question the justificatory tension with secrecy on more fundamental grounds. For example, Russel Hardin has argued that it is only public officials who should be expected to give reasons for their decisions and not citizens. It is inherent in the political role of public officials that the public can demand justifications, while citizens do not have such public obligations. (Hardin 1999, 221-2) If deliberative democracy concerns only the relationship between public officials and citizens, then claiming that citizens should justify themselves [and their votes] is surely an unwarranted extension of the principles of deliberation. However, Hardin's description of the obligations of deliberative democracy seems too restrictive. Indeed, as he himself notes, most normative theories of democracy place obligations of justification and accountability on behalf of public officials – surely, deliberative democracy must entail more than just this (Hardin 1999, 221).[11] On a very influential account, the task of justification is quite explicitly given to *both* officials and citizens (Gutmann and Thompson 1996, 52). Hardin is, of course, right in noticing that different obligations and demands of justification apply differently to citizens and public officials. However, citizens are most certainly to be included within the deliberative scheme, as it is their preferences, arguments, and proposals that the deliberative interchange seeks to establish and promote.

Therefore, these objections are not successful in countering the tension between secrecy and deliberation.

4.2. The Self-Regarding Tension

I will now turn to the second area of tension: the all-affecting nature of voting. How we act as a collective, especially in voting, is something that will impact the whole of society. We ought, therefore, to take into consideration the common good, instead of merely attending to our own personal preferences. This public-mindedness, also a virtue in deliberative democracy, is, according to Nys and Engelen – difficult to square with a secretive voting system. This is due to how secrecy makes voting a *private* act, while voting in public induces voters to attend to more public reasons for their vote (Engelen and Nys 2013, 496).

This privatization of motivation in voting runs counter to the public ideal of deliberation, in which citizens are to acknowledge and engage with other political actors to discover, or establish, what is of common interest to them. With an open vote,

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10] This argument is similar to the argument Jonathan Quong (2004) makes concerning the wide view of public reason.

11] Hardin leaves himself some room to ascribe obligations to citizens by saying 'primarily'. Also, it is possible that deliberative democracy does entail more than this, but not more in terms of obligating citizens.

on the other hand, people can face inquiries, questions or demands for justification for how they vote. Since citizens can verifiably know how people vote under such a system, there will be a stronger incentive for voters to offer reasons that others can understand or acknowledge since purely self-regarding political preferences will be harder to defend publicly (Nys and Engelen 2013, 496).[12] Due to this form of public deliberation, voters must think in terms of what other citizens are likely to appreciate or acknowledge. This pressures voters into adopting different viewpoints, enlarging the sense of what matters for the public good or society at large (Benhabib 1996, 72).

By making the voting process more deliberative in this way, there will be an increase in pressure to offer reasons *in* public, but also to offer reasons the *content* of which are public, in the sense of being acknowledged or understood by others. Obviously, there are empirical complexities that arise here. What if voters just conform to the prevailing social norms of their community? What if they cloak their essentially private interests as being 'in the name of the common good'? These are important questions, but as of now, what is of interest is the claim that some of *the principles* of deliberative democracy are more aligned with that of giving other-regarding or common-good reasons. This can be labeled the self-regarding tension with voter secrecy.

4.2.1. Objections to the self-regarding tension

One principled response, then, is to question the role of these self-regarding reasons in deliberative democracy. Jane Mansbridge has, for example, argued that self-interest has a legitimate place in democratic deliberation because it serves two important functions. By clarifying and exploring our private interests, we are identifying the different preferences that must be attended to when publicly deliberating on the common good – it thus helps to give us information about the particular interest that 'go into' the deliberative process. Second and more controversially, is the claim that self-interests are themselves justifications, and thus serve as *reasons* for implementing certain policies (Mansbridge et al. 2010, 73–74). Such an argument does not take us very far. The reason for this is that even if self-interest can play a legitimate deliberative role, they may continue to do so under public voting. So, even if we grant that self-interested reasons can serve as justifications, very little follows from this. The deliberative argument here must be that public voting is *more conducive* to the giving of public reasons – and this does not suggest that self-interested reasons can, or should, play *no role* in deliberative interchange.

There are, however, empirical reasons to be skeptical of the self-regarding tension. There is empirical data suggesting that citizens actually do not vote in self-regarding, or purely self-interested ways (Chong 2013, Funk 2000). Voting in secret, then, does not seem to purge us of altruistic or other-regarding concerns. This, however, only shows voters vote altruistically even when they do not vote publicly. This does not suggest that

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12] See Brennan and Pettit 1990 for a similar argument.

public voting will not yield *an increase* in the public *content* of reasons and an increase in the amount of *public discussion* of voters.

4.3. The Sincerity Tension

One last area of tension I want to highlight concerns sincerity. Engelen and Nys suggest that the secret ballot can be seen as a corruptg influence on democratic citizens, as there is something deceitful about keeping voting shrouded in secrecy (2013, 496). Although they do not explicate or develop this point much further, I believe that more can be said for it. I think we can elaborate on it by summarizing it as a concern about *sincerity* (Gardner 2010, 936). Under a secretive system, there is no way of knowing whether citizens actually 'follow-through' on their convictions, ideas or expressed standpoints. Secrecy, then, allows for voters to take a public stance, and then to vote for something completely different (Gardner 2011, 931-32). This, Gardner suggests, has implications for some normative conceptions of deliberation:

> "Deliberative theories tend strongly to disfavor insincerity because it is a form of strategic behavior that is thought to undermine true deliberative engagement and thus to impair the ability of deliberators to reach a genuine consensus." (2011, 936)

A similar concern has been expressed by Rawls, namely that "[...] public discourse runs the risks of being hypocritical: citizens talk before one another one way and vote another." (2005, 215).

How does insincerity pose a possible problem if we want to satisfy the conditions of deliberation? Prima facie, it is not difficult to initially see why sincerity is a deliberative virtue. If we want to have policies and legislative changes publicly justified to us, and have the arguments of citizens publically heard and acknowledged, then we need to know about the truthful opinions and real circumstances of the lives of citizens in order for the deliberative enterprise to establish or clarify the policies that should pertain to these citizens. Being insincere can be a way of treating the democratic forum as an opportunity to advance one's interests on the basis of power or strategic manipulation, which runs counter to the normative ideal of trying to connect public policy to the outcomes of the honest argumentative back-and-forth of citizens. How, then, does insincerity pertain specifically to the question of secret voting? The worry, as stated above, is that secrecy allows for us to vote *not* on behalf of the preceding deliberative engagements, but for any reason – indeed, reasons that may run counter to our deliberative agreements or clarifications. Now, what does it mean to say that people can vote in a way that is not a continuation of the preceding deliberative interchange? I take it to mean that if we agree – through the use of public deliberation – that candidate A will best serve our interest, then the secrecy of the ballot allows for me to go vote for candidate B instead, thus not 'carrying out' the action that we agreed to be the best option. I have therefore been insincere in my public expressions of my support of candidate A, and this form of

insincerity is made possible because of the secrecy of the ballot.[13] This can be labeled as the sincerity-tension with voter secrecy.

4.3.1. Objections to the sincerity tension

I do not think that sincerity presents as substantial a tension as either the justificatory or the self-regarding tension. I will here present some reasons why I believe this to be the case.

First of all, it is not clear that it is voter *secrecy* that matters all that much in this instance. To better see this, contrast it with a public system. In a public system, you can, rightfully perhaps, impugn me for voting differently then what we publicly established to be the proper candidate. But, this does not show me to be insincere in the pre-voting process of the election. I may have come to realize that a different candidate is actually a better fit for the arguments and concerns we both deliberated on. Also, publicity in voting cannot – by itself – reveal what my *reasons* are for voting a certain way. They can only hide or publish *how* I vote. Open voting can only reveal that *at least some of my reasons* have changed, if my pre-election reasons included *my desire to vote for A*, and I ended up voting for B instead.

Lastly, there is a question concerning the size of the group doing the deliberation. Following Gardner, what is worrisome about insincerity is the *strategic* element of it (Gardner 2011, 931-32). This seems like a legitimate worry in smaller-scale settings. To better see this, imagine a small group of people facing a decision on how to allocate some limited amount of resources. They start off by trying to allocate these resources by public deliberation, by a fair and respectful weighting of the concerns of the members of the group. After engaging in this process, they find out that they will not be able to distribute the resources merely on behalf of public argument, so the process ends with a vote. Imagine this vote to be secret. If the deliberative process has yielded some preliminary agreements, such as a decision on how to allocate at least some of the resources, then if someone votes contrary to this agreement, she is not acting on behalf of their public considerations of how to achieve the optimal outcome. She may be more interested in voting in ways that serve her strategic goals, rather than to vote on behalf of their public agreements. This seems to hurt the deliberative process in this scenario, because the deliberative process is not, in the right way, causing, or influencing, the outcome that was publically decided on.[14]

Some problems arise when this strategic worry is applied to decisions in mass-democracies. First, if one's vote has limited causal power – such as in general elections in large democracies – then there are weaker reasons for one to vote strategically due to the diminishing returns of the vote. Second, it is not clear as to what constitutes

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13] Assuming, of course, that I knew I wouldn't vote for this candidate at the time of voicing my public support.

14] In this situation they only vote because of practical necessity.

the deliberative engagements that one must vote on behalf of in mass democracies. Is it troublesome to have citizens vote in a way that deviates from what was agreed on, or publicly argued for, in previous engagements with friends, family members or co-workers? I doubt that we have very strong intuitions in the affirmative here. Also, such engagements seem too far from removed from any concrete political change to be properly deemed *democratic* deliberation. Therefore, there seems to be an ambiguity as to how we are to understand what it means to vote on 'previous deliberative engagements' in mass democratic societies. This does not show that strategic voting cannot be a legitimate worry as it relates to secrecy; it only shows that such a worry relates to the electoral scale that is under discussion, from general elections in mass democracies to decisions undertaken in smaller electoral contexts. For these reasons, the sincerity tension might apply to a small-scale deliberative setting, while it seems less significant in mass-scale democratic settings. Hence, the sincerity tension, as presently stated, presents less tension than the justificatory and self-regarding aspects.

Let me take stock. So far, by attending to some of the comments by Engelen and Nys, I have identified three aspects of secretive voting which are in tension with some of the theoretical virtues of deliberative democracy. For the remainder of this paper, I suggest that an epistemic approach to deliberative democracy is one efficient way to relieve some of this tension.

V. WHY (SOME) DELIBERATIVE DEMOCRATS MAY NOT FAVOR PUBLICITY

At this point, I want to argue the three aspects of secretive voting under discussion are not in tension with some of the *epistemic aspects* of deliberative democracy. Simone Chambers has some very helpful distinctions relevant for this discussion. She points out that we may have reasons that are by their nature un-shareable, yet not selfish or purely self-regarding. These include, for example, comprehensive world-views that others, due to different metaphysical commitments, cannot accept (Chambers 2004). Likewise, she points out that the distinction between private and public reasons does not necessarily track any epistemic qualities. We can have well-reasoned, reflective forms of self-regarding justifications and have poorly-reasoned or shallow forms of other-regarding justifications (Chambers 2004). Opening up deliberation to a wider public may yield an increase in the *public* reasons offered under some circumstances, but this does not mean that these public reasons are epistemically sound or well-thought-out positions. Chambers puts her point like this:

> "The problems associated with going public are not problems of private reasons but rather the problem of shallow public reason: wanting to please the largest number of people possible or wanting to appear firm and decisive in the public's eye. Thus the appeal is general but the content is suspect." (2004, 394).

By opening up a deliberative process to the general public, an incentive can be created to meet the discursive demands by giving shallow or superficial reasons, which threatens to flatten the discursive landscape. Chambers calls this plebiscitary reason, and it consists of the following well-known strategies: manipulation, pandering, image-maintaining (2004, 398). Engelen and Nys are also aware of these potential epistemic pitfalls. They argue, for example, that public voting can lead to voters refusing to adjust or change their positions, due to not wanting to appear weak (Engelen and Nys 2013, 500). With this in mind, consider the two strongest tensions once again. The first is the justificatory tension, which is the tension between the normative deliberative requirement of giving reasons and a secretive voting process in which reason-giving is de-incentivized. One reason why deliberative democrats ought, in principle, to favor publicity is that the process of justification yields an internal and external increase in voter deliberation. Ideally, such a process promotes voting based on the arguments and reasons that emerge, and are promoted, in the public political arena, which is to be preferred to a system in which voters can choose to vote for whatever reason they like, for no reasons, or for bad reasons. Following Chambers, however, there may be worries about the possible epistemic effects of this. For example, citizens may pander by offering reasons their social surroundings find acceptable, or citizens may vote a certain way to maintain or regain a public image. If we're epistemic deliberative democrats, these circumstances are important. They are important because if the justificatory process is to yield epistemic benefits, then the process of voter justification must be exercised in the right way. Therefore, it is not sufficient that public voting induces both pre and post-electoral public deliberation by voters, because that deliberation may lack the prerequisite epistemic qualities.

Consider, now, the self-regarding tension. The principled deliberative worry about secrecy in this respect is that secrecy runs counter to understanding political decisions as a public, collective enterprise. Public voting is more in line with the goal of offering public reasons that others can acknowledge. Again, following Chambers, there are epistemic worries present here. For example, it might be that the deliberative interchange between voters is not conducive to advancing the best arguments. Perhaps voters will give any justification that grants them social acceptance. This does not necessarily mean that public voting cannot be conducive to reaping epistemic benefits. It merely suggests that if we value democratic deliberation because it is conducive to reaching epistemically justified outcomes, then there are *additional epistemic* circumstances that need to be spelled out in order to show that deliberative democracy is principally opposed to secrecy. Expressed differently, *epistemic deliberative democrats* are only principally opposed to voter secrecy insofar as secrecy yields an epistemic deficit – and it is not obvious that this is the case.[15] We need a richer description of the epistemic benefits of publicity to be able to argue that there is a principled discrepancy at work here.

15] That is: epistemic deliberative democrats are only opposed to secrecy *qua being* epis-

Some might find this claim puzzling. A skeptic might ask: If we are not in favor of increasing the deliberative circumstances of voting, because publicity may increase the risk of certain epistemic pitfalls, then is any deliberative claim being advanced at all? If the skeptic is right in claiming that no deliberative claim is made at all, then that is a problem for my argument. It is a problem because it would mean that I would be proposing to solve a tension between deliberative democracy and secret ballot by simply abandoning some central ideals in deliberative democracy – which is hardly a very satisfying solution.[16] However, I do not think the skeptic is right about this. I agree that it does seem puzzling to suggest that deliberative democrats may have reasons *not to* make some circumstances more deliberative, but such a position *is* possible from within a deliberative viewpoint. It seems puzzling only if we assume that deliberative theorists are committed to *making everything more deliberative*, rather than judging everything by deliberative standards (Gutmann and Thompson 1999). If the assumption that deliberative theorists are committed to making everything more deliberative is dropped, the position I have sketched appears much less problematic.

Another skeptical reply to my argument is to say that there is an epistemic uptake by virtue of there being an increase in justifications given, even if they are epistemically unsound, and as such, public voting *is more conducive* to the ideals of the epistemic approach to deliberation than secrecy. I partly agree with this reply. However, the strength of this reply would rest on the epistemic substance and the circumstances in which those justifications are given. It is not obvious that the increase in the giving of justifications equals an increase in epistemically qualified voter deliberation. Such a case would require additional argumentative support.

Therefore, in order to properly analyze the process of secretive voting from the vantage-point of deliberative principles, it is important to distinguish between valuing justification and the giving of public reasons for epistemic or non-epistemic reasons. What I have suggested is that if we take an epistemic approach to deliberation, both the justificatory and the self-regarding tension lose substantial steam.[17]

As mentioned, however, this is only true for the epistemic approach. The tension still exists, at least as I have argued, if we accept that justification and accountability are deliberative values which are not exhausted by their potential to yield epistemic benefits. For example, if we believe that justification and accountability have intrinsic value, then the mere fact that voters become accountable to each other, regardless of epistemic benefits, may have value within deliberative democracy. This area of tension

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temic deliberative democrats.

16] It is not unsatisfying because we necessarily should be adamant in upholding deliberative ideals. Rather, it is theoretically unsatisfying because my aim is to discuss the tension that exists when one wants to uphold values of deliberative democracy *and* the current practice of secretive voting. Simply abandoning either is not in any sense an interesting solution.

17] My argument does not warrant the conclusion that the tension is not there, but rather than there are insufficient reasons to believe that it is there.

between justification and secrecy is not dissolved by accepting the epistemic approach. The argument sketched here as to why epistemic deliberative democrats may not, principally, be opposed to secrecy, can vary in strength. A stronger version of this claim would be an argument showing that secrecy may, in fact, be *epistemically superior* to publicity in the context of voting. I have not defended this stronger version. I have instead raised some issues concerning some important distinctions between different versions of deliberative democracy and tried to show that there is insufficient ground for claiming there to be a principled discrepancy between secrecy and an epistemic version of deliberative democracy.

VI. CONCLUSION

I have discussed several parts of the relationship between deliberative democracy and the secret ballot. Voter secrecy has a multifaceted relationship with deliberative democracy. On the one hand, majority voting as an institutional design gives each political input the same weight. Each citizen that partakes in this process has an equal say. The secrecy of the ballot adds to this egalitarian inclusiveness by shielding voters from external social pressure. Each citizen partakes in the electoral process with no direct claim of justification or reason-giving required for this action, signaling that each adult can take part in the process, regardless of their reasons for doing so.[18] These inclusive aspects of secrecy also contain the non-justificatory elements – which I've suggested – are opposed to the ideals of deliberative democracy. Analyzing the relationship between secrecy and deliberation seems to bring out these different aspects – which I have outlined in three different ways – as the justificatory tension, the self-regarding-tension, and the sincerity-tension. I've suggested that both the justificatory and the self-regarding tension are significant tensions, while the sincerity-tension remains, at present, unpersuasive as substantially worrisome from the viewpoint of deliberative democracy. Lastly, I've argued that there are insufficient reasons to suggest that epistemic deliberative democracy is in tension with voter secrecy. Needless to say, such conclusions are merely preliminary, I hope, however, that they provide some conceptual tools for further analysis and discussion.

ru@learning.aau.dk

18] Annabelle Lever has argued that this egalitarian aspect of the secret ballot signals the inherent democratic value of voter privacy. (2015)

REFERENCES

Benhabib, Seyla. 1996. Toward a Deliberative Model of Democratic Legitimacy. In Seyla Benhabib, *ed., Democracy and Difference: Contesting the Boundaries of the Political*, Princeton University Press, 67-95.

Bohman, James. 2000. *Public Deliberation : Pluralism, Complexity, and Democracy.* MIT Press.

Brennan, Geoffrey, and Philip Pettit. 1990. Unveiling the Vote. *British Journal of Political Science*, 20: 311-33.

Brennan, Jason. 2012. *The Ethics of Voting.* Princeton University Press.

Buchstein, Hubertus. 2015. Public Voting and Political Modernization: Different Views from the Nineteenth Century and New Ideas to Modernize Voting Procedures. In John Elster ed., *Secrecy and Publicity in Votes and Debates*, Cambridge University Press, 15-51.

Chambers, Simone. 2004. Behind Closed Doors: Publicity, Secrecy, and the Quality of Deliberation. *Journal of Political Philosophy* 12 (4): 389–410.

———.2017. Balancing Epistemic Quality and Equal Participation in a System Approach to Deliberative Democracy. *Social Epistemology.* 31 (3): 266-76.

Cohen, Joshua. 1997. Deliberation and Democratic Legitimacy. In Bohman, W. Rehg eds., *Deliberative Democracy Essays on Reason and Politics*, Cambridge: MIT Press, 67-92.

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

Elster, Jon. 2003. The Market and the Forum: Three Varieties of Political Theory. In D. Matravers, J. Pike eds., *Debates In Contemporary Political Philosophy*, Routledge in association with The Open University, 325-42.

Chong, Dennis. 2013. Degrees of Rationality in Politics. In L. Huddy, D. Sears, J. Levy *eds., The Oxford Handbook of Political Psychology,.* Oxford: Oxford University Press, 96-130.

Engelen, Bart, and Thomas R.V. Nys. 2013. Against the Secret Ballot: Toward a New Proposal for Open Voting. *Acta Politica*, 48 (4): 490-507.

Funk, Carolyn L. 2000. The Dual Influence of Self-Interest and Societal Interest in Public Opinion. *Political Research Quarterly*, 53: 37-62.

Gutmann, Amy and Dennis Thompson. 1996. *Democracy and Disagreement.* Harvard University Press.

———.2004. *Why Deliberative Democracy?* Princeton University Press.

Goodin, Robert E. 2003. *Reflective Democracy.* Oxford University Press.

———.2000. Democratic Deliberation Within. *Philosophy and Public Affairs*, 29: 81-109.

Hardin, Russell. 1999. Deliberation: Method, Not Theory. In *Deliberative Politics: Essays on Democracy and Disagreement*, edited by S. Macedo. Practical and Professional Ethics Series, 103-123.

Landemore, Hélène. 2012. Democratic Reason: The Mechanisms of Collective Intelligence in Politics. In *Collective Wisdom: Principles and Mechanisms*, edited by H. Landemore, J. Elster. Cambridge University Press, 251-290.

———.2017. Beyond the Fact of Disagreement? The Epistemic Turn in Deliberative Democracy. *Social Epistemology*, 31 (3): 277-295

Lever, Annabelle. 2015. Privacy and Democracy: What the Secret Ballot Reveals. *Law, Culture and the Humanities,* 11 (2): 164–83.

Manin, Bernard. 1987. On Legitimacy and Political Deliberation. *Political Theory*, 15 (3): 338-68.

Mansbridge, Jane, James Bohman, Simone Chambers, David Estlund, Andreas Føllesdal, Archon Fung, Cristina Lafont, Bernard Manin, and José Luis Martí. 2010. "The Place

of Self-Interest and the Role of Power in Deliberative Democracy." *Journal of Political Philosophy*, 18: 64-100.

Peter, Fabienne. 2016. The Epistemic Circumstances of Democracy. M. Brady, M. Fricker eds., *The Epistemic Life of Groups*, Oxford: Oxford University Press: 133-50.

Quong, Jonathan. 2004. The Scope of Public Reason. *Political Studies* 52 (2): 233–50.

Rawls, John. 2005. *Political Liberalism*. New York: Columbia University Press.

Schauer, Frederick. 1999. Talking as a Decision Procedure. In S. Macedo *ed., Deliberative Politics: Essays on Democracy and Disagreement*, Practical and Professional Ethics Series, 17-28.

Universal Declaration of Human Rights. 1948. https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf (accessed 1.09.2019)

Waldron, Jeremy. 1999. *Law and Disagreement.* Oxford: Oxford University Press.

Pakistan Lawyers' Movement and Democratization:
A Deliberative Perspective

Irfan Muhammad
Luiss University

Abstract: This paper explores the role of deliberation in the democratization of Pakistan. It analyzes the case of the Pakistan Lawyers' Movement during the military dictatorship (2007-2009) and how it paved the way to the process of democratization in the country. Although the democratization of societies at large has always been at the core of deliberative theory, comparative studies of democratization have completely missed the deliberative aspect, which makes the transition to democracy possible. Through Dryzek's concept of deliberative capacity, this paper investigates the role of Pakistan Lawyers' Movement in building this capacity across different locations in the political system. This paper attempts to interpret the Pakistan Lawyers' Movement through the lens of deliberative theory. This Movement throws new light on the normative aspects of deliberative theory and also helps us to understand the nature of deliberation in an authoritarian non-Western context. The case of the Pakistan Lawyers' Movement provokes reflection on the normative principles of deliberative democracy, helps us to understand the nature of deliberation in an authoritarian context, and extends current scholarship on the comparative studies of democratization.

Key words: Deliberative Theory, Pakistan Lawyers' Movement, Democratization.

This paper focuses on the process of democratization in a non-Western and authoritarian context of Pakistan. In the initial studies of the 1970s and 1980s, democratization was understood as "simply a transformation of the political system from non-democracy towards accountable and representative government" (Grugel 2002, 3). Moreover, these studies relied on a process-oriented approach in order to explain the mechanisms and conditions that make democratization possible in the political system. They also distinguished between transition and consolidation. The transition marks the beginning of a democratic process in which political activities are fluid, and democracy is not fully assured, whereas consolidation is the success of democratic politics in which democracy becomes "the only game in town" (Linz and Stepan 1996, 5). The process-oriented approach does not clearly convey the meaning of 'democratization'. Indeed, the literature on democratization suggests that there is no consensus on its definition, and it is, like democracy, an essentially contested concept (Grugel 2002, 4). Many political scientists construe democratization as a continuum from the lowest level to the highest level. They determine the quality of democratization by positioning the regime on different points on the continuum. According to its minimal concept, democratization is understood as the regular holding of 'free and fair elections.' Normatively, until the end of the 20th century, political theorists assumed democracy in terms of liberal democratic order in the comparative studies on democratization. The deliberative aspect in the process of democratization provides a new perspective to understand the transition to a democratic form of government.

In what follows, I will first discuss the gap in the literature on democratization studies, which mainly focuses on free and fair elections, structural preconditions, and the role of elites. The mainstream research on democratization ignores the role of both deliberation and social movements in authoritarian contexts, which I argue merits academic attention. The role of social movements and deliberative practices in authoritarian regimes is an important aspect in order to understand the process of democratization in the Pakistani non-democratic context. This article is divided into three sections. In section one, I discuss how the main theories of democratization ignore the role of deliberative practices in their approach. Section two introduces the case of Pakistan Lawyers' movement. Section three analyzes the Movement in the context of recent developments in deliberative theory. Specifically, I discuss the importance of the systemic approach to understanding the process of democratization in Pakistan. The Pakistani context presents a case study to understand the reach and application of deliberative theory in a non-Western context.

I. THE NEGLECT OF DELIBERATION IN DEMOCRATIZATION AND SOCIAL MOVEMENTS STUDIES

The political upheavals responsible for the collapse of authoritarian rule in Pakistan are important in order to explain the democratic transition of the country. The transition in Pakistan from authoritarian rule to democratic government can be understood from both 'top-down' and 'bottom-up' perspectives. For Flynn and Curtao, transition is a dynamic phenomenon and does not merely entail change "from one form of government to another" because it also includes "broader social processes and trajectories" (O'Flynn and Curato 2015, 299). Democracy understood in deliberative terms focuses on the 'deliberative capacity' of the regime under the process of transition. This approach is different from the dominant approaches, which mainly focus on 'free election' and 'structural pre-conditions' as the only criteria for transition. As Elklit and Reynolds argue that "at the heart of democratization attempts lie competitive elections, which are often held during times of societal stress and under imperfect logistical conditions characterized by administrative unreadiness" (Elklit and Reynolds 2002, 86). They believe that the democratization process in the developing world can be strengthened by the proper administration of the elections. Comparative scholars like Adam Przeworski also believe that 'contested elections' is the only requirement for the transition from authoritarian rule to democratic one: "a regime in which governmental offices are filled as a consequence of contested elections. Only if the opposition is allowed to compete, win and assume office is a regime democratic." (Przeworski et al. 1996, 50). This is not to deny the importance of election in a democratic process but rather that deliberation is a more telling measure for the understanding of transition in Pakistan. In certain respects, deliberation is an

essential element to determine the democratic quality of the regime, and contested elections cannot produce democratic results in the absence of deliberation.

With respect to social movements, there are two issues which I will discuss here. First, the role of deliberation is ignored in social movement studies, and second, the role of social movements is also being neglected in democratization studies. As Nancy Bermeo argues: democratization literature mainly focuses on the elites rather than social movements (Porta 2013, 126). A few thinkers, for example, Charles Tilly, have emphasized the "broad correspondence between democratization and social movements" (Tilly 2004, 131). There is a need to address the impact of social movements on the process of democratization. The literature on democratization mostly deals with socio-economic conditions, institutional structure, and elite behavior and neglects the role of deliberation and social movements. In the same vein, the literature on social movements, until recently, mainly focuses on established democracies where conditions for social mobilization are conducive and tends to neglect the impact of social movements on the process of democratization in authoritarian regimes[1]. As Donatella Della Porta puts it: "even in established democracies, the relations between movements and democracy have mainly been looked at in terms of institutional opportunities for protest, rather than of the attitudes towards and practices of democracy by activists and their organizations" (2013, 132). However, some scholars working on the global justice movement have also emphasized the convergence between social movements and democratization[2]. In the last decade, there have been a few studies about social movements in authoritarian contexts.[3] However, within the classical formulation of mainstream theories of democratization, a very limited role is being assigned to social movements and protests. Protests have been understood as antithetical to the ideal of deliberative politics. Conventionally, scholars argue that since protests are adversarial in nature, they hinder the prospects of deliberative democracy. Some political theorists, for example, Chantal Mouffe, associate protests with the agonistic view of democracy (Mouffe 1999). However, the global justice movements provide a pioneering work on this neglected issue of deliberative aspects of social movements[4]. In my analysis of the Pakistan Lawyers' movement, I extend this scholarship by utilizing Dryzek's concept of deliberative capacity.

1] After the Arab Spring, there are few studies on social movements in authoritarian contexts, which attempt to explain the role of social movements in the process of democratization. For example, see Porta 2013, 124-49. Estlub et. all 2016.

2] For example, see Porta.2005a ; Haug and Teune 2008 and Porta and Rucht 2013.

3] For social movements in the Middle Eastern context, see Gunning 2007; Hafez 2003 and Wiktorowicz 2004. And, for the Asian and former Soviet Union contexts, see Boudreau 2004 and Beissinger 2002 respectively.

4] For details, see Porta 2005a; 2005b; and Haug and Teune 2008.

II. THE CASE OF PAKISTAN LAWYERS' MOVEMENT

The role of the judiciary in the democratization process has remained problematic throughout the political history of Pakistan. Historically, the courts have always provided judicial cover and legitimized the military rule in Pakistan. The Lawyers' Movement gave an opportunity to the Supreme Court of Pakistan to assert its deliberative capacity. Not only did the movement mobilize the judicial system, but it also paved the way for the Supreme Court to contribute to the democratization process in Pakistan. Although some scholars recognize the role of courts and lawyers in the democratization process in authoritarian contexts, these studies just focus on the institutional conditions which lead to the democratization process. I argue that courts and lawyers cannot play a pro-democracy role if they merely struggle within formal institutional structures. They need support from the informal public sphere in order to develop and assert their deliberative capacity, which is essential to the process of democratization. The Lawyers' movement was not merely confined to lawyers as it also included various civil society actors such as political parties, students, religious groups, women rights activists, and citizen groups. I argue that the success of the Lawyers' movement can only be understood if we also recognize the role of these other civil society actors. Civil society actors broadened the scope of the movement by situating its agenda within the larger informal public sphere. The existing scholarship on the Lawyers' movement ignores the role of this movement in the process of democratization and merely limits itself to the restoration of judiciary.

The Lawyers' movement started when General Pervez Musharraf, the Army Chief, suspended Chief Justice Iftikhar Muhammad Chaudhry on charges of misconduct. During Chaudhry's tenure, the Supreme Court began to assert its independence and created problems for General Musharraf's military rule. The Supreme Court's expansion of judicial power by means of 'public interest litigation' involved the Court's original jurisdiction, *suo motu* powers, under Article 184(3) of the Constitution of Pakistan. According to Article 184(3), the Supreme Court may assume original jurisdiction of any matter of public importance relating to the enforcement of Fundamental Rights enshrined in the Constitution[5]. The practice of 'public interest litigation' was not new in Pakistan but the way it was executed during the tenure of Chaudhry began to expose the unconstitutional acts of Musharraf, thereby threatening the military rule. After the forced dismissal of Chaudhry Iftikhar, the public reaction was negative, and the lawyers began to mobilize and protest against the illegal and unconstitutional dismissal of the Chief Justice. After two years of struggle, the Lawyers' movement succeeded, which rendered the judiciary an independent institution with power to implement rule of law in the country. Due to this movement, all sacked judges were restored to their previous positions.

5] See also, ICJ report, "Authority without accountability: The search for justice in Pakistan" at page 32.

III. POLITICAL DELIBERATION AND PAKISTAN LAWYERS' MOVEMENT

In this section, I interpret the Pakistan Lawyers' movement by using deliberative theory. Specifically, I will use the systemic strand of deliberative theory to understand deliberative practices and mechanisms in the Pakistani context. The Systemic Approach to deliberative theory is a macro-level analysis of deliberative practices. However, it is not just confined to macro locations of deliberative mechanisms, and it attempts to assess the whole 'political system'. In this way, one can combine micro, mezzo, and macro levels to understand the deliberative quality and potential of a political system. In the case of the Lawyers' movement, all three locations (micro, mezzo, and macro) are important. I also believe a more holistic approach towards deliberation, which is an essential aspect of the systemic strand, should combine these three venues of deliberation. There are many advantages of using the systemic approach to understand this case:

1. The systemic approach does not consider protests and social movements as antithetical to the deliberative model of democracy.[6] Pakistan Lawyers' movement involves both protests and disruptive politics. Therefore, systemic approach is preferred for its interpretation.

2. The comparative studies of democratization, which have ignored until recently the importance of deliberation, can benefit more from the systemic approach. Democratization understood in terms of broader social processes and trajectories (O'Flynn & Curato 2015) is a multilayered, complex phenomenon, and it requires critical analysis of the regime under consideration. Pakistan Lawyers' movement was instrumental in bringing about democracy in the country. The role of this movement in the process of democratization was an essential aspect of its success.

3. The systemic approach is not confined to liberal democracies in the West. It is also helpful in determining deliberative mechanisms in various historical contexts, such as non-Western, authoritarian, transnational, and global contexts. Pakistan Lawyers' movement arose in the authoritarian context. After two years it successfully ousted authoritarian rule and brought democracy back to the country: after ten years of military rule.

4. The systemic approach also recognizes the importance of culture and religion in shaping deliberative practices. For its broader success, Pakistan Lawyers' movement used all types of narrative like Martyred, Motherhood (for patriotic love), and Duty. The Islamic political party (Jamaat-e-Islami Pakistan) also joined this movement for the cause of democratization and the rule of law in the country. Pakistan Lawyers' movement relied upon all possible venues (civil society, academia, political parties, media, and international actors) to increase its strength and momentum for the success.

6] There are many studies on social movements and disruptive politics in the nexus of systemic approach. For example, see Owen and Smith 2015.

The democratization of societies at large has always been at the core of deliberative theory. From the outset, the concept of deliberation has been employed for the "democratic deepening" (Curato and Steiner 2018). It attempts to rehabilitate the political project of democracy by reinvigorating normative concepts, such as legitimacy, participation, equality, mutual respect, and the common good. Its basic goal is to empower citizens to achieve legitimacy in collective outcomes. The prospects of deliberative democracy, however, are not confined to already developed democracies. The deliberative model can also help us to critically evaluate fragile political contexts, such as authoritarian, hybrid, and non-democratic regimes. In this section, I attempt to analyze the process of democratization in Pakistani authoritarian context, specifically the role of Pakistan lawyers' movement in the democratization process. In order to do so, I interpret Pakistan lawyers' movement through the lens of deliberative theory.

3.1. Democratization and Pakistan Lawyers' Movement

The deliberative turn in the theory of democracy also helps us to understand democratic potential in authoritarian contexts. That is to say, deliberation in terms of deliberative capacity may exist in non-democratic settings. The study of democratic transitions is one of the important aspects of current academic discourse on politics. The social and political upheavals that delegitimize authoritarian regimes need to be explained in order to understand democratic transitions. The conditions which pave the way for democratic transitions are also significant in comparative studies of the process of democratization. The process of democratization can also be understood in terms of deliberative capacity-building in a political system. As Dryzek states:

> Deliberative capacity proves to be an important determinant of democratic transition and consolidation, such that the concept has substantial analytical and evaluative purchase. The ambit claim is that all democratization studies need to be recalled and reframed in a deliberative light, but even if this claim is resisted by traditional democratization scholars, the deliberative aspect merits attention. Countries such as China that resist democracy conceptualized in terms of competitive elections, constitutions, and human rights recognized by the state might nonetheless prove susceptible to a deliberative path of democratization. (2010, 16)

The above passage indicates the potential of the concept of deliberative capacity to understand the process of democratization in the non-Western context. Dryzek introduces the concept of deliberative capacity in extending the Habermasian critical theory tradition of deliberative democracy. Specifically, it is an extension of the two most important concepts of critical theory, namely, the public sphere and discursive democracy. According to John Dryzek:

> Deliberative capacity may be defined as the extent to which a political system possesses structures to host deliberation that is authentic, inclusive, and consequential. (2009, 1382)

In Dryzek's account, there is no institutional requirement for this capacity to exist in the political system. And a wide variety of political systems (liberal, electoral, authoritarian) can be explained through this perspective of deliberative capacity. Deliberative capacity points out at the capability of a particular political system to be deliberative and democratic. It is instrumental in democratic transition because it can be applied to any political setting. Furthermore, the three elements in the concept of deliberative capacity are:

1. Authenticity: It means the act of deliberation induces reflection in a noncoercive fashion. It also connects individual claims with general principles and brings about reciprocity in the political process.

2. Inclusiveness: It makes political systems inclusive by accommodating various interests and discourses that are politically significant in the system. The inclusion of different points of view is an important aspect that makes deliberative democracy a viable political project.

3. Consequential: It means the process of deliberation should directly or indirectly influence the collective outcomes (collective decisions).

For Dryzek, these three elements combined together help us in determining the deliberativeness of a political system: "a polity with a high degree of authentic, inclusive, and consequential deliberation will have an effective deliberative system" (2009, 1382). The process of democratization can be understood in terms of deliberative capacity-building. According to Dryzek, the deliberative system is made up of the following elements:

1. Public Space: It hosts a wide variety of communicative practices. It consists of various actors such as media, political activists, social movements, and ordinary citizens.

2. Empowered Space: Institutions that can produce collective decisions. In this space, deliberation takes place among actors who make a collective decision within the institution possible. Legislatures, constitutional courts, policy-making bodies are some of the examples of empowered space.

3. Transmission: It is a process in which public space influences the empowered space. Different deliberative practices in the public space need to be connected with the empowered space. There are various types of mechanisms that can transmit deliberation from the public space to the empowered one. Most notably, political/ social campaigns, social movements, and the use of rhetoric and new ideas for social causes are important ways to influence deliberation in the empowered space. Transmission can take various forms like "advocacy, or criticism, or questioning, or support, or some combination of all four" (Dryzek 2010, 11).

4. Accountability: It is a process in which empowered space provides answers to the public space. It helps to secure the legitimacy of collective decisions. Election campaigns can be one of the examples of this process. It may also involve simple justifications for collective outcomes.

5. Meta-deliberation: It is deliberation about the deliberative system itself. Meta-deliberation is a kind of deliberative capacity in which deliberative system can examine itself.

6. Decisiveness: The degree to which [the first] five elements (in combination) influence collective outcomes. Decisiveness shows to what extent "five elements together determine the content of collective decisions" (Dryzek 2010, 11).

The concept of deliberative capacity is distributed among all the six elements of the deliberative system. Specifically, a system is said to have deliberative capacity if:

1. It demonstrates authentic deliberation in the public space, empowered space, transmission, accountability, and meta-deliberation.

2. It demonstrates inclusiveness in public space and empowered space.

3. It shows decisiveness in terms of the whole political system – the collective outcomes produced during the process of deliberation.

Depending on the context, in real-world politics, a deliberative system may fall short on certain elements. These six elements, however, provide a theoretical framework to analyze the distribution of deliberative capacity in any political setting. This way, we can evaluate deliberative systems in real-world politics. It is precisely in this evaluative context[7] that "deliberative capacity-building provides the basis for a comprehensive approach to the study of democratization" (Dryzek 2009, 1387; 2010, 138-40). The process of democratization can be more rigorous if the six elements are present in the political system. Their presence is not tied to any institutional specifications, and they can be developed during the process of democratization itself, as the Pakistani case demonstrates. The shortcomings of deliberation in one location can be compensated through the presence of higher deliberation in other locations. That is to say; one should pay attention to the whole political system to understand the deliberative practices, which lead to the democratization of a regime.

3.2. The Emergence of Deliberative Capacity under Authoritarian Rule

The authoritarian regime of Musharraf, in which Pakistan Lawyers' movement arose, was the third military coup. Unlike previous military coups, Musharraf's takeover faced great challenges, not merely from the superior judiciary but also from the various social segments in the informal public sphere. These challenges were surprising for academic scholars because the legal community, specifically superior judiciary, have always legitimized military dictatorships in Pakistan. In this section, I discuss the emergence of deliberative capacity under Musharraf's autocratic rule. I will argue how the emergence of deliberative capacity paved the way for the process of democratization in Pakistan. The success of Pakistan Lawyers' movement should be understood in relation to the concept of deliberative capacity.

7] Dryzek's concepts of deliberative capacity and deliberative system provide a certain set of criteria for the evaluation of the democratic potential in any regime.

According to Dryzek, the transition to democratic rule is more likely to occur if deliberative capacity already exists in the old regime (2009, 1388). This article argues that the emergence of deliberative capacity in a political system is another important aspect, which helps us to understand the process of democratization in a more comprehensive manner. The authoritarian regime under Musharraf's rule functioned under certain concepts that helped the deliberative capacity to emerge. Pakistan Lawyers' movement played a double role in this context: first, it was instrumental in the development of deliberative capacity in the political system; second, it made the transition to democratic rule possible.

Before going into the details of this double role of the Lawyers' Movement, I first explain important concepts that distinguish Musharraf's autocratic rule from previous military takeovers. General Musharraf's policies created a context in which deliberative capacity was likely to emerge in the authoritarian context of Pakistan.

(i) **Liberalization of the Authoritarian Regime:** Unlike previous military coups, Musharraf's regime was celebrated by liberals, or what Akbar Zaidi calls "lifestyle liberals" (Zaidi 2008, 38-9). Due to the liberalization policies of Musharraf's regime, different social forces, such as lawyers, judiciary, civil society actors, and media acquired considerable autonomy that led to the emergence of deliberative capacity in which Pakistan Lawyers' movement was able to bring about democracy in the country. Indeed, during his rule, Musharraf tried to promote the project of "enlightened moderation" (2004) through various means, including media. After 9/11, Musharraf introduced the political-social project of modernization in Pakistan due to Western pressure, especially as a result of U.S. policy towards War on Terror. Moreover, he started granting civil liberties within the framework of authoritarian rule in order to liberalize the regime[8]. Pakistan's civil society was instrumental in promoting Musharraf's agenda of modernization (Zaidi 2008). Musharraf's liberalization project softened his image as a dictator among liberals in Pakistan and provided some legitimacy, perhaps perceived, to his regime. People also started to contrast his dictatorship with previous military takeovers. Specifically, they contrasted Musharraf's rule with General Zia-ul-Haq's Islamization policies. They thought Musharraf's regime was truly committed to modern liberal values, and he would rectify the political crisis very soon by giving space to democratic forces. Indeed, Musharraf promised that his rule was for a certain period of time and soon (December 2007) an election would be held. From the outset, Musharraf called his authoritarian rule as a form of democratic governance, which would lead to a full-fledged liberal style democracy in a few years. Such a stance was radically different from previous military dictatorships in Pakistan. Although, it helped Musharraf to legitimize his rule for a certain period of time, as soon as the superior judiciary began to assert its power, he unleashed his dictatorial power

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8] Political liberalization is distinct from democratization. Authoritarian regimes can grant civil liberties in order to get legitimacy. For example, see O'Donnell et. all 1986.

to undermine this judicial activism. The project of 'enlightened moderation' was not only conceived to soften Pakistan's image in the international community but also to combat Islamic militancy at home. The path to enlightenment, modernization and liberalization created a space in Pakistan where it was difficult for authoritarian powers to theoretically resist values like democracy, the rule of law, and equality. It is precisely in this context that Pakistan's Supreme Court achieved considerable autonomy and started creating legal issues for the authoritarian rule. Rather than providing legitimacy to the military dictatorship, the Supreme Court started to challenge the legality of authoritarian rule. The doctrine of the separation of powers, which lies at the heart of modern democracies, ultimately began to appear in the political debates in Pakistan. This way, the liberalization of the regime under authoritarian rule helped the deliberative capacity to emerge, which I argue, provided the impetus for the success of Pakistan lawyers' movement.

(ii) Civil Society and the Public Sphere: In deliberative theory, the importance of the public sphere cannot be ignored in any context. From Habermasian philosophy to current debates on systemic approaches, the public sphere remains one of the main locations of deliberative practices. A vital civil society is considered an indispensable element for the constitution of the public sphere that hosts deliberative practices and transmits them to the formal state institutions such as legislatures and courts. In Habermas' two-track model of deliberation, the public sphere is an essential part of deliberative democracy (1996, 367). In the deliberative model of democracy, both civil society and the public sphere are instrumental in democratic government. In the same vein, other deliberative theorists, such as Dryzek, Mansbridge, Parkinson and Goodin, also believe in the significance of the public sphere in the deliberative model of democracy. Contrary to this trend, the case of civil society in the Pakistani context has been quite different from the developed liberal democracies in the West. As Akbar Zaidi writes:

> The classic, overwhelmingly Western literature on civil society suggests that by virtue of being "against" the state (by which is often implicitly meant the state at its most autocratic and undemocratic) civil society must necessarily favor some form of democratic disposition. Such was not the case in Pakistan for most of Musharraf's reign, however, when what constitutes "civil society" by most definitions of the term laid aside aggressive support for democracy in favor of support for liberalism (or at least its image) in the person of the seemingly forward-looking General, with his dogs, his golf shirts, and his crisply efficient manner. For Pakistani civil society, whether Westernized or Islamized, the issue, in short, was not democracy versus non-democracy, but rather liberalism versus some variously interpreted set of Islamic symbols and values (Zaidi 2008, 39).

The public sphere, during the authoritarian rule of Musharraf, was not conducive to democracy. The main forces in the public sphere accepted the autocratic rule due to the regime's liberalization policies. During the authoritarian rule, the main discourse in the public sphere was not framed in terms of democracy vs. non-democracy. Rather, it was framed in terms of liberalism vs. Islamic fundamentalism. Pakistani civil society

supported the undemocratic regime because of its liberal tendencies. Since the concepts of civil society and the public sphere are historical concepts stemming from the Western political theory, therefore, they change their meaning in the non-Western contexts. Moreover, when it comes to Muslim countries, the situation becomes more complicated. Indigenous culture and Islamic beliefs influence the fundamental basis of civil society in the non-Western world in general and the Muslim world in particular. The concept of rational public sphere understood in the context of European Enlightenment is no longer helpful to understand the function of civil society and how it impacts the political project of democracy. Although, Muslim countries like Pakistan have embraced the project of modernization at various levels, for example, education, politics, the use of science and technology, still local narratives, religious affiliations, and indigenous beliefs lie at the heart of everyday life, which are constitutive (at least partially) of the civil society. In the philosophical literature, the concept of civil society is a contested notion, and the various meanings of civil society depend on the historical context[9]. However, there is a minimal concept of civil society, which one can point out in order to explain its role in contemporary social-political order. According to Zaidi, "Civil society is necessarily supposed to be outside, and perhaps preferably in opposition to, or in contradiction with, the state. In order to define civil society, it is a requirement that the organizations and actors of civil society not be controlled by the institutions or actors of the state. This 'autonomous' requirement is a necessary condition to distinguish civil society from the state [...] civil society must necessarily be a democratizing force" (Zaidi 2008, 14). With Musharraf's authoritarian rule, the role of civil society turns out to be surprising for many political theorists. It also reveals the unsettled contradictory nature of civil society in Pakistani politics. The military coup of 1999, which created an autocratic regime in Pakistan, was legitimized and supported by civil society. Due to this undemocratic disposition of Pakistan's civil society, it was not possible to contest autocratic rule in public discourse. Indeed, civil society changed (or manipulated) the public discourse through framing political issues in terms of liberalism vs. Islamic fundamentalism, rather than democracy vs. authoritarianism. Moreover, the deliberative practices in the Pakistani public sphere were supporting the authoritarian regime. Since the public discourse was not directed towards democratic ideals, empowered spaces like the Supreme Court had always consolidated military coups in the political history of Pakistan. The status of civil society as an autonomous institution has always been problematic in Pakistan. The persistence of authoritarian rule for more than three decades in Pakistan had ushered us in a condition where the discourse on democracy was almost absent in the public sphere. The depoliticization of the public sphere is one of the outcomes of this historical development of civil society, which has, for the most part, helped authoritarian rule to sustain in the country. In short, Musharraf's autocratic regime survived because of the legitimacy it received from the undemocratic,

9] For the various meanings of the concept of civil society, see Kaviraj and Khilnani 2001 .

so-called liberal civil society and the depoliticized public sphere in which contestation of political discourses was not possible.

According to deliberative theorists, the public sphere is the most fundamental location that hosts deliberative practices, and it should be conducive rather than an impediment to the democratic process. The preceding events prior to lawyers' movement, which I call judicialization of politics during the authoritarian rule, initiated various discourses such as separation of powers and the rule of law in the public sphere. The suspension of Chief Justice questioned the legality of the autocratic rule and gave rise to public discourse concerning the powers of the military and its role in politics. There are broadly two phases of the lawyers' movement. In its first phase, the lawyers' movement was merely confined to lawyers, and its agenda was to restore the Chief Justice. From the outset, this movement was not for the restoration of democracy but for the protection of the legal community's own professional interests (Zaidi 2008, 41). After the restoration of Chief Justice in July 2007, the judicial activism of the Supreme Court did not merely start delegitimizing the military regime, but it also created support of the supremacy of law in the public realm. In the second phase, after the 'State of Emergency', the lawyers' movement gained real momentum.[10] In its second phase, the movement became a broader social mobilization in which opposition political parties, media, journalists, students, and other civil society actors participated.

The lawyers' movement produced a kind of deliberative culture that was missing in the public sphere. The legal community also realized that the supremacy of law and the prospects of political liberalization of the regime would not be possible without the support from the public sphere. For this reason, they were compelled to expand the main agendas of the movement to get public support. In its second phase, the main agenda of the movement included:

(a) Independence of judiciary

(b) The rule of law

(c) Restoration of democracy

(d) Social justice (the phenomenon of 'public interest litigation' facilitated this narrative).

The Pakistan lawyers' movement politicized the public sphere that paved the way for the democratization process in the country. Through the lawyers' movement, civil society actors started to contest discourses on military dictatorship, democracy, the rule of law, separation of powers, etc. The emergence of deliberative capacity that led to the democratization process was not possible if the lawyers' movement was merely confined to the legal community with their professional, institutional interests. The motivation of civil society actors was different from that of lawyers. The mobilization of different civil society actors for the broader cause of democratization created an environment in which Musharraf was not able to sustain his authoritarian rule. Despite "huge diversity of ideological interests, including those of women activists, labor unions, students, Islamist

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10] It is a kind of martial law by another name.

groups, professional associations including those of doctors, leftist groups, and others" (Shafqat 2017, 16-7), civil society was able to organize around a single agenda, that is, breakdown of authoritarian rule for the restoration of democracy. Indeed, the restoration of judiciary, for civil society actors, was a means to bring about democracy in the country. Leadership within the legal community also accepted that their success was not possible without support from other civil society actors, which created a public discourse about the political alternatives in Pakistan during the authoritarian rule.

The liberalization of the regime and politicization of the public sphere were both instrumental in the emergence of deliberative capacity in Pakistan. These events occurred due to the diverse policies (often contradictory) of Musharraf's autocratic rule. The first event, liberalization of the regime, helped the authoritarian regime to get legitimacy, and the second event, politicization of the public sphere, created an environment in which military rule began to delegitimize itself. The emergence of deliberative capacity can be attributed to these two notions that appeared during the authoritarian rule of Musharraf. The success of Pakistan lawyers' movement lied in its ability to initiate discourse upon autocratic rule, democracy, the supremacy of law, and separation of powers, although it was not possible without a pro-democracy civil society and the public sphere.

IV. CONCLUSION

Democratization understood in the context of deliberative capacity-building attempts to search the democratic potential in the political system. In order to locate democratic potential in the Pakistani authoritarian context, we need to understand the distribution of deliberative capacity in the system. Pakistan Lawyers' movement was instrumental in connecting the six elements of the deliberative system (See section three of this article). Although the Lawyers' movement originated in the institution of the judiciary, it became successful when it was carried out in the public sphere (Zaidi 2008; Shafqat 2017). In the political history of Pakistan, empowered spaces like courts have always legitimized autocratic rule. Moreover, before the Pakistan Lawyers' movement, there were no effective social mobilizations for the politicization of the public space during both democratic and authoritarian rules. It is due to the persistence of authoritarian rule for more than three decades in the history of Pakistan that the military has successfully managed to keep empowered spaces and public space at a considerable distance. It is beyond the scope of this article to explain the history of democracy in Pakistan, which is, to a larger extent, also a history of the country's military and its failures. The case of Pakistan Lawyers' movement shows that if public space is conducive to various deliberative practices, then an empowered space like the Supreme Court can also assert its deliberative capacity. In deliberative theory, thinkers normally argue that the informal public sphere causes deliberation in empowered spaces such as courts and legislatures. The case of Pakistan Lawyers' movement shows that the transmission from the empowered space to the public sphere is also possible, and the cause of deliberation is

not confined to one location. Specifically, the growing phenomenon of the judicialization of politics is quite helpful to understand the influence of courts on the public sphere. The Pakistani case suggests that in order to assert its deliberative capacity, the Supreme Court needs legitimation in the public sphere. Pakistan Lawyers' movement enabled empowered space to connect with the public space. This very connection between the two spaces produced deliberation in the overall political system, which paved the way for the democratization of the regime. This missing connection was one of the main causes of the persistence of authoritarian rule in Pakistan. Moreover, the emergence of deliberative capacity during the autocratic rule of Musharraf strengthened the deliberation of the overall political system. The success of Pakistan Lawyers' movement lies in its ability to distribute the newly emerged deliberative capacity in the whole political system. Despite the fact that this movement was not for the restoration of democracy but for the protection of legal community's professional interests, it made the transition to democracy possible because of the development of deliberative capacity in the overall political system. Lawyers' movement is an empirical case that helps us to understand the tradeoff between deliberative capacity in the public space and the empowered space.

The case of Pakistan's lawyers' movement shows that deliberative capacity is instrumental in democratic transition. It can be applied to all kinds of political settings, such as liberal states, authoritarian regimes, and new and old democratic states. While looking for the democratic potential in authoritarian contexts, deliberative theorists ought to pay attention to deliberative capacity and the deliberative system.

irfan.mohd@icloud.com

REFERENCES

Beissinger, Mark R. 2002. *Nationalist Mobilization and the Collapse of the Soviet State.* Cambridge: Cambridge University Press.

Boudreau, Vincent. 2004. *Resisting Dictatorship: Repression and Protest in Southeast Asia.* Cambridge: Cambridge University Press.

Curato, Nicole, and Jürg Steiner. 2018. Deliberative Democracy and Comparative Democratization Studies. In *The Oxford Handbook of Deliberative Democracy.* s.l.: Oxford University Press.

Dryzek, John S. 2009. Democratization as Deliberative Capacity Building. *Comparative Political Studies,* November, 42 (11), pp. 1379-1402 .

———. 2010. *Foundations and Frontiers of Deliberative Governance.* Oxford: Oxford University Press .

Elklit, Jørgen and Andrew Reynolds. 2002. The Impact of Election Administration on the Legitimacy of Emerging Democracies: A New Comparative Politics Research Agenda. *Commonwealth & Comparative Politics,* 40 (2), 86-119.

Elstub, Stephe, Selenand Ercan and Ricardo Fabrino Mendonça. 2016. The Fourth Generation of Deliberative Democracy. *Critical Policy Studies,* 10 (2), 139–51.

Flynn, Ian, and Nicole Curato. 2015. Deliberative Democratization: A Framework for Systemic Analysis. *Policy Studies,* 36 (3): 298-313.

Grugel, Jean, and Matthew Louis Bishop. 2002. *Democratization: A Critical Introduction.* s.l.: Palgrave.

Gunning, Jeroen. 2007. *Hamas in Politics: Democracy, Religion, Violence.* New York: Columbia University Press.

Haug, Christoph, and Simon Teune. 2008. Identifying Deliberation in Social Movement Assemblies: Challenges of Comparative Participant Observation. *Journal of Public Deliberation,* 4 (1): 1-35.

Kaviraj, Sudipta, and Khilnani Sunil. (eds). 2001. *Civil Society: History and Possibilities.* s.l.: Cambridge University Press.

Linz, Juanan, and Stepan Alfred. 1996. *Problems of Democratic Transition and Consolidation: South Europe, South America, and Post-Communist Europe.* Baltimore: Johns Hopkins University Press.

Mouffe, Chantal. 1999. Deliberative Democracy or Agonistic Pluralism?. *Social Research,* vol. 66, 745–58.

Musharraf, Pervez. 2004. *A Plea for Enlightened Moderation.* s.l.: Washington Post.

O'Donnell, Guillermo, Philippe Schmitter, and Laurence Whitehead (eds.). 1986. *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies.* Baltimore: Johns Hopkins University Press.

Owen, David, and Smith Graham. 2015. Survey Article: Deliberation, Democracy, and the Systemic Turn. *The Journal of Political Philosophy.* 23 (2): 213-34.

Porta, Donatella della. 2005a. Deliberation in Movement: Why and How to Study Deliberative Democracy and Social Movements. *Acta Politica,* 40 (3): 336–50.

———. 2005b. Making the Polis: Social Forums and Democracy in the Global Justice Movement. *Mobilization: An International Quarterly,* 10 (1): 73-9. 2013. *Can Democracy Be Saved? Participation, Deliberation and Social Movements.* Cambridge: Polity Press.

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

Shafqat, Sahar. 2017. Civil Society and the Lawyers' Movement of Pakistan. *Law & Social Inquiry.* 43 (3): 889-914.

Tilly, Charles. 2004. *Social Movements: 1768–2004.* s.l.: Paradigm.

Zaidi, Akbar S. 2008. *The Political Economy of Military Rule in Pakistan: The Musharraf Regime,* s.l.: ISAS Working Paper (NUS. 2008. Pakistan After Musharraf: An Emerging civil society?. *Journal of Democracy,* 19 (4): 38-40.

On the Conceptual Insufficiency of Toleration and the Quest for a Superseding Concept

Nikolai Klix
Tampere University

Abstract: The concept of toleration occupies an important position in contemporary societal debates. I will analyse the concept by considering the apparent inconsistency between what I regard as the genuine meaning of the concept of toleration and the prevalent common perception of toleration. One essential factor in the concept of toleration is the negative evaluation of the subject matter. However, this decisive feature appears to have become obsolete in the prevalent common perception of toleration. I will examine the normative implications of the imprecise usage of ´toleration´/´tolerance´ caused by the vague perception of the concept. Furthermore, I argue there to be a significant, yet underemphasised linguistic power inherent to ´toleration´/´tolerance´, which is influential in how it perpetuates negative attitudes towards various minorities and maintains thereby unjust societal relations. Since ´toleration´/´tolerance´ appears insufficient to address the changed social reality in which attitudes towards minorities have remarkably progressed, I will adopt the approach of conceptual engineering to outline a concept capable of replacing ´toleration´/´tolerance´. I suggest that a new concept to supersede toleration should carry the ethos of respect, yet have the conceptual scope and precision of tolerance/toleration, to be intuitively appealing to replace it. I propose to replace ´toleration´ with ´respectation´ and ´tolerance´ with ´respectance´.

Key words: toleration, tolerance, respect, linguistic power, conceptual engineering, political philosophy of language.

SECTION 1 – ON THE SOCIETAL STANDING OF THE CONCEPT OF TOLERATION

On a general note, different conceptions of words and concepts are pivotal in the way they have normative implications on our thinking. In the sphere of charged concepts in morally and politically relevant discourses, I consider the concept of toleration as particularly significant, since different conceptions of toleration are consequential in societal terms.

Issues around toleration are substantive in the 21st century. Due, for instance, to growth in immigration numbers, many contemporary Western societies HAVE diversified significantly in recent decades. Moreover, the gained acceptance of various minority groups seems to motivate the usage of the concept of toleration all the more, since there appear to be good grounds to argue that these societies have become more tolerant.[1]

Nevertheless, the reputation of toleration/tolerance as a contemporary common virtue that is celebrated among liberals is inconsistent with the original meaning of the word which is rooted in a negative evaluation of the subject matter.[2] Despite this obvious

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1] Although the expression "more tolerant" seems perfectly plausible in common language, I find it ultimately unclear.

2] I want to emphasise that since ´toleration´ is the established notion to be utilised in liberal discourses regarding minorities, it appears understandable that ´toleration´ or ´tolerance´, is the term still

discrepancy, ´toleration´/´tolerance´ has become a code word that sets the paradigm for political discourse particularly in contemporary liberal debates on minority issues.[3] One notable outcome from the benevolently used, yet imprecisely perceived concept of toleration, is that ´toleration´/´tolerance´ has become overused. Moreover, it appears to be the only recognised, if not the best conceivable concept to indicate an affirmative attitude or acceptance of minorities.

When elaborating on *tolerance* and the societal standing of the concept, the topic of *intolerance* looms unavoidably as a concern to be acknowledged. Therefore, it appears understandable that toleration/tolerance is considered a safeguard to protect from intolerance. I argue, nevertheless, that in many Western societies the current social reality has developed remarkably further so that the general attitude towards many minorities has evolved beyond mere tolerance. I find the following sentence, foregrounded on the website of the US-based educational project *Teaching Tolerance*, revealing. "Tolerance is surely an imperfect term, yet the English language offers no single word that embraces the broad range of skills we need to live together peacefully." (Teaching Tolerance, 2019)

The circumstance that the English language is lacking a word for such essential competences in the 21st century, calls for an engagement in conceptual engineering to search for a suitable word.[4] Towards the end of this paper, I will outline a concept which is also not perfect, but could perhaps more adequately fulfil the conceptual task of ´toleration´/´tolerance´.

SECTION 2 – ON THE SHIFTED PERCEPTION OF THE CONCEPT OF TOLERATION

I will begin my exploration of the shifted perception of toleration with a definition of the concept. A concise formal definition of the concept goes as follows:

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resorted to in references to various minority groups.

3] I consider a possibly perceived difference between *toleration* and *tolerance*, as merely technical without any conceptual difference between the two terms. The similarity of *toleration* and *tolerance* becomes manifest also by the circumstance that they are being used interchangeably. In this paper, I will mainly utilise the compound form: ´toleration´/´tolerance´, to cover the whole range of the concept with both TERMS.

Nevertheless, there are some authors, who conceptually differentiate between *toleration* and *tolerance*. Notable examples are Balint (2017, 26), who argues that while in specific acts of *tolerance* an objection is required, in the general practice of *toleration* it is not; and Zucca (2012, 5), who in contrast considers *toleration* to be a moralising attitude, whereas he regards *tolerance* as a natural disposition to cope with diversity. However, I consider such a differentiation between *toleration* and *tolerance* arbitrary, since both *toleration* and *tolerance* share the word stem *toler-* (from the Latin verb *tolerō* – to bear, endure, tolerate – see also n. 7 below).

4] *Conceptual engineering* or *conceptual ethics* is an emerging field in recent contemporary philosophy. It is a practice of assessing the scope of concepts, analysing if a certain concept is adequate to indicate a particular meaning, and whether this concept can be extended and improved. A good introductory account on conceptual engineering is given by: Cappelen 2018. *Fixing Language – An Essay on Conceptual Engineering,* and Burgess, Cappelen & Plunkett, (forthcoming).

(Condition 1): X has a negative evaluation of Y

(Condition 2): X has the potential to interfere with Y

(Condition 3): X refrains from interfering with Y

This definition constitutes, what is being called the ´standard notion´ of toleration.[5] The dynamics of the three conditions involved in the standard notion, interplay in such a way that the acceptance component, which is the result of Condition 3 does not cancel out, but overrides the objection component, which is the result of Condition 1. This constellation leads to toleration of the subject matter in question. (Forst 2013, 20)

Even if the function of ´toleration´ as a socio-political linguistic operator to indicate a certain disposition, has remained the same in common discourses, the common perception of toleration appears to have somewhat shifted. Concerning the hypothesised shift in the common perception, the crucial point is that the first condition: X has a negative evaluation of Y, is not considered as being essential to the concept of toleration anymore.

I hypothesise that, in liberal discourses, two overlapping and mutually reinforcing tendencies in the usage of the term ´toleration´/´tolerance´ have occurred, which cause the gradual change in the common perception of toleration. First, when ´toleration´/´tolerance´ is utilised in common usage, i), the negative evaluation of the subject matter has often gradually weakened or may have even disappeared. Moreover, there seems to be ii) a decreased awareness about the negative evaluation of the subject matter being present in the concept.

I hypothesise that the development in which many minorities have become accepted and gained recognition in Western societies in recent decades, has facilitated the described shift in the perception of the concept. As a result, the prevalent common perception of toleration seems to have departed from the original conception of the concept to such an extent that now it does not necessarily involve a negative evaluation of the subject matter, for instance, a particular minority.

In a certain sense, the general attitude customarily referred to with ´toleration´/´tolerance´ seems to have evolved beyond the linguistic term that ought to describe that attitude. However, if one still acknowledges the standard notion of toleration which is bound to a negative evaluation of the subject matter, then there seems to emerge an inconsistency between the evolved i) general disposition or common public attitude, in which the negative evaluation of the subject matter may, or may not have become omitted, and the ii) label: ´toleration´/´tolerance´ given for that disposition.

Since the concept of toleration is so consequential and important in contemporary societal discourses, it becomes crucial whether the concept in its various instantiations is perceived to involve a negative evaluation of its respective

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5] For instance, Galeotti (2015, 94) refers to the 'standard notion'.

subject matter. Therefore, I argue it to be critical that the evaluation of the subject matter (negative or non-negative) can be construed correctly according to the intention of who is utilising ´toleration´/´tolerance´. In the next section, I will elaborate on what I consider the genuine meaning of the concept of toleration.

<div style="text-align:center">

SECTION 3 – ON THE GENUINE MEANING OF THE CONCEPT OF TOLERATION

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In this section, I will apply the approach of conceptual engineering to examine the conceptual scope of toleration, and the reasonable extension thereof. I will analyse the concept by seeking to dismantle it into its i) semantic content and ii) form, to explore the malleability and the plausible conceptual limits of toleration.[6] I aim to examine, if the first condition of the standard notion of toleration: a negative evaluation of the subject matter, is ultimately essential to the concept itself.

Let´s assume that when referring to a certain minority group, or a specific feature attributed to that group, that the agent using ´toleration´/´tolerance´ would hold a neutral or positive evaluation about the minority group or the attributed feature in question. If one construes the concept of toleration to be profoundly indeterminate and unbound to a particular evaluation, then it seems hypothetically plausible that the evaluation of the subject matter (in this example case, neutral or positive) would be considered as predicating the semantic content of toleration.

I argue, nonetheless, that in the particular case of ´toleration´, the concept cannot exhaustively be disentangled into its semantic content and form, since the i) linguistic form of the concept shaped by the word stem toler*, is fundamentally constitutive also for the ii) semantic content of the concept. I consider the stem *toler** in the word ´toleration´/´tolerance´ as decisive since it predicates the meaning of the concept in that it signifies enduring, forbearing and sustaining hardship.[7]

Therefore, despite the apparent shift in the prevalent common perception of toleration, I defend the position that the concept of toleration has a certain definite meaning that is constituted primarily by the form of the word, prefixed with *toler**. Thus, it becomes intuitively evident in a linguistic sense that the concept of toleration is intrinsically marked by a negative evaluation of the subject matter, which is implicitly present in the concept and should not be overlooked. I argue that the meaning of the concept of toleration is bound to the roots of the expression that are given by its Latin origins, from which also the English word ´toleration´/´tolerance´ is derived.

As the prefix *toler-* postulates the meaning of the concept of toleration, the differing evaluations (negative, neutral, or positive) of the subject matter that may

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6] By i) semantic content of the concept, I refer to the meaning the concept indicates. By ii) form of the concept, I refer to the shape of the concept, as it appears as a particular word.

7] The word stem *toler-* is derived from the Latin verb tolerō: Oxford Latin Dictionary, 2012.

lay behind the application of the term ´toleration´/´tolerance´, become eventually subjugated to what I consider as a primordially essential part of the concept of toleration, namely the negative evaluation of the subject matter.

As a conclusion of this section, I argue that the traditional conception or standard notion of toleration reflects the genuine meaning of the concept of toleration, whereas the prevalent common conception does not. Particularly since issues in which the concept of toleration is frequently utilised are often pivotal in societal discourses in contemporary Western societies, it makes the concept influential in the moral and political realm. Therefore, the utilisation of ´toleration´/´tolerance´ should be strictly reserved for instances in which there is a negative evaluation of the subject matter. Otherwise, there is the risk that the concept of toleration becomes perceived as vague and unclear.

SECTION 4 – ON THE IMPLICATION OF THE OBJECTION COMPONENT IN ´TOLERATION´/´TOLERANCE´

In this section, I will inspect the significance of the objection component which results from the negative evaluation of the subject matter, for expressions containing ´toleration´/´tolerance´. I will analyse two different interpretations of how the meaning of the concept of toleration can be construed, by means of an example sentence. The first interpretation is based on the i) prevalent common perception of toleration in which the objection component is omitted. The second interpretation is based on the ii) traditional conception in which the objection component is assumed to hold. Thus, the decisive factor between the two interpretations regards whether or not the objection component is assumed.

Think of the following plausible sentence: "Same-sex marriage laws in Western countries are legal manifestations of societal tolerance". Let´s assume for the sake of a thought experiment that the agent utilising "tolerance" in the sentence, does not hold a negative but a neutral or positive evaluation of two persons of the same sex getting married.[8]

I hypothesise that two different basic interpretations, according to differing conceptions of the concept of toleration, may emerge about the sentence. According to i) the prevalent common perception of toleration which has omitted the objection component in the concept of toleration, the ´tolerance´ in the sentence is presumably construed as indicating a neutral or positive evaluation of same-sex marriage laws. According to ii) the traditional conception, on the other hand, the meaning of ´tolerance´ in the sentence is construed as indicating a negative evaluation of same-sex marriage laws.

8] Thus, my example sentence is a more concrete explication of the constellation outlined in a more abstract form in section 3.

Thus, a presumable interpretation of the sentence, along the lines of the traditional conception of toleration could be as follows: "Same-sex marriage laws in Western countries, are a legal manifestation of the acceptance of same-sex couples getting married, even if the possibility of same-sex couples getting married is generally unwanted in the society".[9] Although this interpretation of the sentence may appear overly literal, it is perfectly in line with the traditional conception of toleration. Since according to the traditional conception, the term ´toleration´/´tolerance as a conceptual tool is inclining the recipients of a sentence in which ´toleration´/´tolerance´ appears, to form a negative evaluation of the subject matter in question.

I argue that the crucial condition about the two different interpretations of the sentence is that there is no decisive internal factor in the sentence which would incline towards one of the interpretations. All that matters, seems to be whether one holds the i) prevalent positively laden conception of toleration which has omitted the negative evaluation of the subject matter, or the ii) traditional conception of toleration. I find, however, that the concept of toleration is societally too significant, to be exposed to arbitrary variables, such as educational background or political views that lead to holding one of the two conceptions of toleration.

One can probably comprehend that the circumstance regarding two different conceptions of "societal tolerance" in the example sentence, is unbearable particularly for the ones exposed to it, namely same-sex couples who want to get married. This calls to settle the incompatibility between the two conceptions of toleration. I argue that the traditional conception is ultimately more convincing since it is faithful to what the concept of toleration was originally used for, namely to indicate acceptance of a particular subject matter, despite a negative evaluation of it. Moreover, the traditional conception of toleration functions conceptually in simpler terms than the prevalent ambiguous conception, in that it does not involve any omitting of the basic premises of the concept.

In this section, I have shown through an analysis of the example sentence that the mere appearance of ´toleration´/´tolerance´ in an expression, has the potential to restore the value evaluation of the subject matter in question as negative. There is always the possibility to construe a negative evaluation about the particular subject matter, referred to with ´toleration´/´tolerance´, irrespectively of the intentions of the agent utilising ´toleration´/´tolerance´ and regardless of whether the agent themselves may hold a neutral or positive evaluation of the subject matter. Thus, I argue that the concept of toleration as a linguistic tool is essentially independent from how the concept is used and perceived.

9] I consider the mentioned interpretation ("Same-sex marriage laws in Western countries are a legal manifestation of the acceptance of same-sex couples getting married, even if the possibility of same-sex couples getting married is generally unwanted in the society") should not be ruled out, if only to retain the liberty to express one´s hesitation about same-sex couples' getting married.

**SECTION 5 – ON THE USAGE OF ´TOLERATION´/´TOLERANCE´ IN THE PREVALENT
COMMON CONCEPTION**

Although I take a quite literal view about the meaning of the concept of toleration, I acknowledge that in the contemporary social reality, the common perception of ´toleration/tolerance´ is on the contrary rather indeterminate, as I showed in Section 2. Therefore, I consider it worthwhile to examine further the shifted prevalent conception of toleration and the implications of the usage of a shifted version of ´toleration/tolerance´. In the prevalent conception the features which I hypothesise to contribute to the popularity of the usage of ´toleration´/´tolerance´ are particularly noteworthy, and therefore I will focus on them.

The trait in the prevalent conception of toleration which emphasises the acceptance, and downplays the objection component, seems to facilitate the usage of ´toleration/tolerance´. Thereby, the elevated reputation of the concept of toleration enables to draw the attention to one´s acceptance of e.g. a certain minority group while disguising, and yet maintaining one´s negative evaluation of that minority group. This feature in the usage of ´toleration´/´tolerance´ is an element which obviously charges the concept of toleration with significant power.[10]

I find Foucault´s well-known observation that the success of power is proportional to its ability to hide its own mechanisms, highlights an important aspect in the common usage of ´toleration/tolerance´. (1980, 86) Regarding the feature of hiding the mechanism of power in the prevalent usage of ´toleration/tolerance´, there seems then to occur a disguising operation which functions; by i) bracketing the negative evaluation in the concept, or rendering it as merely implicit, and by ii) highlighting the acceptance of the subject matter in question: for instance, a certain minority.

Considering the power component in the common usage of ´toleration/tolerance´ seen from a Foucauldian perspective, I hypothesise the power component to function the better the objection of the subject matter is disguised. I hypothesise, furthermore, that the present distorted perception of toleration is not just an arbitrary collateral consequence of the imprecise usage of the concept but a significant, yet underemphasised reason behind the popularity of the usage of ´toleration´/´tolerance´ in liberal discourses. Perhaps the most significant feature in the prevalent conception of toleration is the ambivalence regarding the negative evaluation of the subject matter, since eventually the acceptance component overrides any possible objection component.

Another important characteristic with the prevalent common conception of ´toleration´/´tolerance´ is the tendency to utilise ´toleration´/´tolerance´ in a general manner without any reference to a particular subject matter e.g. a certain

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10] I will further explore the aspect of power in the concept of toleration, in Section 6.

minority group. I find the following definition given by the UNESCO about the "Meaning of tolerance", a prime example of this "Tolerance is respect, acceptance, and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human". (UNESCO, 1995)

The concept of tolerance is used here as a reification of universal goodwill towards diversity *per se*. The sentence is, moreover, an example of the shifted common perception of toleration, in which the objection component has completely disappeared since there is no negative evaluation about any subject matter to be found in the sentence. One could possibly argue that UNESCO's definition of tolerance is a counterexample of a real transformation of the concept, examined in Section 2. In the claimed transformation, ´tolerance´ need not involve a negative evaluation anymore, if only it is reframed in context with concepts which are not based on a negative evaluation. However, I consider already the beginning of the sentence "Tolerance is respect…" contradictory, since ´tolerance´ is genuinely based on a negative, yet ´respect´ is genuinely based on a neutral or positive evaluation of the subject matter. Moreover, if the asserted "respect, acceptance and appreciation of the rich diversity [...] of being human", would be sincere, there would be no need to describe this attitude as ´tolerance´.

SECTION 6 – ON THE ELEMENT OF POWER IN THE CONCEPT OF TOLERATION

In the philosophical literature on toleration, the prevalent usage of the concept is taken as a given mode of discourse in societal debates, and the insufficiencies related to the concept have not been properly addressed. Particularly the element of linguistic power inherent to the concept has been underemphasised. By linguistic power in the concept of toleration, I refer particularly to the i) negative evaluation of the respective subject matter which, I argue, is always latently present in the concept and cannot be neglected, and the ii) normative implications that derive from its usage.[11] Given that the standard notion of toleration is assumed to hold, these implications involve the reinforcement and perpetuation of negative evaluations of, for instance, various minorities by referring to these minorities with ´toleration´/´tolerance´ in common public debates. Accordingly, I argue that adherence to ´toleration´/´tolerance´ risks the possibility of maintaining pernicious societal power relations.

Nevertheless, a few authors, notably Emanuela Ceva and Wendy Brown, have indeed addressed the power dimension in the concept of toleration. I will elaborate on their respective accounts in the following. The ´standard notion´ of toleration acknowledges the power component in terms of Condition 2 (X has the potential

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11] With being latently present, I refer to the condition that the negative evaluation of the subject matter is in some instances assumed, whereas in others it is omitted.

to interfere with Y). Ceva adds as a complementary note a further condition to it, which stipulates that the relation between the tolerating agent and the tolerated subject(s) is unequal. (2011, 6-7) She recognises the linguistic aspect of power in that the framing of, e.g. minority issues in terms of toleration, "legitimises" the idea that the issue at stake, is an object of a negative evaluation. (2011, 15)

Brown, for her part, emphasises the strong rhetorical aspect of toleration in specific historical and cultural power discourses. (2006, 9) She argues, in a discernibly Foucauldian fashion, that attention should be paid to how the usage of toleration constitutes social, political, religious and cultural norms, and how it structures practices of permission and regulation. (2006, 13) Brown asserts that discourses of toleration and the usage of the concept of tolerance not only alleviate, for instance, racism, homophobia, and ethnic prejudices, but also maintain these attitudes. (2006, 10) Here, I consider the alleviating element as an improvement in contrast to discourses of intolerance. However, the usage of ´tolerance´ also maintains these negative attitudes, since it reinforces the unequal relation between the tolerating and tolerated subjects.

I follow Brown´s argument that sentences of historical and cultural power discourses, in which the concept of tolerance appears, represent discourses of power. However, in contrast to Brown´s somewhat imprecise reference to "discourses of tolerance", which renew and reinforce societal power relations, I would argue that the power component in ´toleration´/´tolerance´ originates primarily from the concept itself. The rationale to locate the crux of the power component in the word ´toleration´/´tolerance´, is that the negative evaluation about the respective subject matter is eventually postulated by the word stem *toler** in the concept of toleration.

Ceva brings up the pernicious implication of utilising ´toleration´/´tolerance´ by remarking that the concept of toleration presupposes a negative attitude that people in the social reality otherwise may, or may not have. (2011, 16) Thus, applying the concept of toleration may arguably restore and perpetuate negative attitudes, which would otherwise be already overcome. Brown notes regarding the structuring feature of utilising ´toleration´/´tolerance´ that discourses of toleration sustain an arrangement into subjects of tolerance who are inferior, deviant or marginal to those practising tolerance. (2006, 13) The people of the tolerated minority group receive by the expression of ´tolerance´ a negative evaluation which has detrimental impacts, particularly if members of the minority internalise the negative evaluation of themselves.[12]

The disguising of the negative evaluation of the subject matter, addressed in Section 5, comes close to Brown´s assertion that discourses related to tolerance have a strong tendency of depoliticisation. This depoliticisation functions by

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12] On internalised racism, internalised oppression, and internalised dominance, see DiAngelo: *What Does It Mean to Be White? Developing White Racial Literacy.*

construing inequality, subordination, marginalisation, and social conflict, as personal or individual, or as natural, religious or cultural. Brown argues further that in discourses around tolerance, group conflicts are cast in religious, ethnic, or cultural differences. (2006, 15) For Brown *difference* as such becomes the subject of tolerance, as she argues that: "[a]n object of tolerance [...] is identified as naturally and essentially different from the tolerating subject; in this difference, it appears as a natural provocation to that which tolerates it". (2006, 15)

Developing Brown´s thoughts further, I argue that the mere expression of ´toleration´/´tolerance´ triggers a dynamics of an uneven power relation. Consider a general statement such as: "We should foster tolerance in education". I argue that it creates an attitude of reservation towards anything different in the context of education. In turn, when ´tolerance´ is utilised with a particular subject in mind, it triggers a power relation between the agent who employs ´tolerance´ and the designated subjects referred to with the term. Hereby, the agent utilising ´tolerance´, i) posits themselves above the subject(s) of toleration, ii) assumes the right to make a negative evaluation about the subject(s), and, furthermore, ii) posits the subject(s) as exposed to being tolerated.

SECTION 7 – ON THE INSUFFICIENCY OF THE CONCEPT OF TOLERATION

In this section, I will elaborate further on what I consider being significant weaknesses of the concept of toleration. These deficiencies motivate to reconsider the utilisation of ´toleration´/´tolerance´ in many instances. In addition to the intrinsic power component in the concept which posits the subjects of toleration as inferior and perpetuates unjust societal relations, there are further aspects related to the common prevalent usage of ´toleration´/´tolerance´ that makes the concept insufficient for contemporary demands. Regarding, for instance, the assumed progressiveness of the concept of ´toleration´/´tolerance´, Ceva´s remark is revealing that in appeals for toleration, it is far from clear and uncontroversial what such appeals actually mean and require. (2011, 1)

I will explore the asserted inadequacies of the concept of toleration by continuing to examine some examples concerning the utilisation of ´toleration´/´tolerance´. I will begin with the example sentence invoked in Section 4: "Same-sex marriage laws in Western countries are manifestations of societal tolerance". Let´s assume according to my example sentence that someone who does not have a negative but a neutral or positive evaluation of two persons of the same sex getting married, nonetheless utilises ´toleration´/´tolerance´ to express their evaluation about two persons of the same sex getting married.[13] If we assume further the traditional conception of toleration (in

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13] I want to emphasise, however, that the adherence to the usage of ´toleration/tolerance´ is rather to be conceived as a lack of deliberate choice, since no alternative concept is yet

which the negative evaluation of the subject matter is a basic premise) to hold, this will then lead to a misrepresentation about the evaluation of the subject matter.

The misrepresentation emerges, in that the evaluation of the subject matter (in this case about the possibility of two persons of the same sex getting married) is positive but the traditional conception of toleration presents the evaluation as negative.[14] However, more significant than the misrepresentation in the descriptive sense *per se* is how it affects the normative level by restoring the negative evaluation of a particular subject matter.

I argue that along the lines of the traditional conception of toleration, the restoration of the negative evaluation occurs by resorting to ´toleration´/´tolerance´ when referring to a particular subject in common language usage. Thereby, the negative evaluation of the subject matter, e.g. a certain minority group, becomes perpetuated which has pernicious implications on how the particular minority group is regarded in the common public.

My second example sentence comes from the following newspaper headline: "Why Ireland leads in tolerance towards immigrants". (McWilliams, 2018) The relevant essence of the headline is its latter part: "tolerance towards immigrants". This formulation is invoked frequently, since immigrants are typically considered as being a plausible subject matter of tolerance. One can plausibly conceive that the way the sentence is interpreted depends on whether in this case the notion of tolerance is, or is not considered entailing a negative evaluation of immigrants. Thus, the crucial factor regards the conception of tolerance and whether it is considered to involve the first condition of the standard notion of toleration: X has a negative evaluation of Y.

I argue, that the sentence illustrates the intrinsic power of the concept of toleration, as it may, or may not indicate a negative evaluation of immigrants, according to whether one´s conception of the concept of toleration includes a negative evaluation of the subject matter. I argue that the subjects of tolerance, in this case, immigrants, have a legitimate interest in knowing whether the ´tolerance´ they are subjected to is, or is not grounded on a negative evaluation.

The third example I will cite, regards the standing of ´toleration´ as the apparently most positive conceivable concept to indicate a common societal disposition which signifies acceptance of minorities. Think about the popular, yet vague expression: "tolerant society". The content of the phrase is condensed and functions on implicit assumptions concerning primarily: the content of the ´tolerance´ at stake, what a tolerant society is, and what the subjects of tolerance in such a society are. I assume it is

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acknowledged, let alone established.

14] Thus, someone who holds the traditional conception of toleration, construes ´societal tolerance´ in the sentence: "Same-sex marriage laws in Western countries are manifestations of societal tolerance", to indicate a negative evaluation of the possibility of same-sex couples getting married, even if the one referring to ´societal tolerance´ in the sentence would aim to indicate a neutral or positive evaluation of that possibility.

safe to suggest that the various minorities living in a tolerant society, are regarded here as subjects of toleration. Moreover, I suppose that one important tacit assumption is that a "tolerant society" is regarded here as the preferable alternative to an "intolerant society". I argue that the benevolent sounding expression "tolerant society" enjoys such a good reputation, since a society that is tolerant, is in the prevalent political imagination apparently the morally and politically highest stage OF a society THAT people can conceive of.

I argue that the evaluation behind the common disposition towards minorities which so far has been called ´toleration´/´tolerance´, has evolved remarkably further without this progression having led to an appropriate new concept to express this disposition, which is based on a neutral or positive evaluation, instead of a negative one. The concept of toleration is, nonetheless, understandably still deployed in common discourses, since there is no acknowledged concept available yet, to replace ´toleration´/´tolerance´ in these instances which are i) based on a neutral or positive evaluation of the subject matter, and in which ii) the agent has had to resort to ´toleration´/´tolerance´ finds the concept not adequate, since it misrepresents the evaluation they want to indicate about the subject matter.

Ceva proposes to make the move from ´toleration´ to ´respect´ by suggesting that, minority issues should generally be framed rather in terms of ´respect´ than ´toleration´. (2011, 14) Considering the apparent development of the common societal attitude towards various minorities which may have been grounded mainly on a negative evaluation, but which has changed and has become gradually more based on a neutral or positive evaluation; it appears that utilising the concept of ´toleration´/´tolerance´ in describing this societal attitude has become outdated and maintaining its usage seems misplaced. Brown, in contrast, explicitly discourages replacing ´tolerance´ with some other term or practice. She suggests rather a positive political strategy of counter-discourses, alternative political speech and, practices. (2006, 205)

In contrast to Brown, I argue that it is crucial to jettison ´toleration´/´tolerance´ where the evaluation of the subject matter is not negative. Since the societal discourses in which ´toleration/tolerance´ is utilised are significant in the ethical and political dimension, there is an urgency to consider a concept capable of replacing ´toleration´. In the next section, I will examine the conditions of such a replacement.

SECTION 8 – AN OUTLINE FOR A NEW CONCEPT TO SUPERSEDE ´TOLERATION´/´TOLERANCE´

In this section, I will apply the approach of conceptual engineering to outline a concept which is suitable to supersede ´toleration´/´tolerance´ in the relevant contexts. As I noted in section 7, the improved attitudes towards minorities have not yet been explicated consequently on a conceptual level. Thus, there is a need

to articulate this progression with a concept which distinctly indicates a neutral or positive evaluation of minorities.

I find the concept of ´respect´ promising as a possible replacement of ´tolerance´. Ceva notes that respect-based relations are characteristically equal relations between the respecter and the one who is respected. She summarises that in a democracy, the commitment to respect translates into the imperative of treating all citizens as equals. (2011, 7) In addition to being based on equality, respecting tacitly includes the idea of being likewise respected. Thus, the notion of respect is essentially carried by reciprocity. In contrast, the concept of ´toleration´ is intrinsically characterised by an unequal and non-reciprocal relation between the tolerating agent(s) and tolerated subject(s), since the very utilisation of ´toleration´/´tolerance´ triggers an unequal power relation. I conclude that a concept based on the idea of respect is therefore more appropriate and morally justified to be used to refer to minorities.

Thus, I am sympathetic of Ceva´s suggestion that a concept with the ethos of ´respect´ should replace ´toleration´ as its´ neutral or positive counterpart. Nevertheless, despite their similarity I argue that ´toleration´ and ´respect´ also differ in their scope as concepts decisively, thus averting a straightforward replacement, in which ´respect´ could directly take the place of ´toleration´/´tolerance´.[15] I suggest as a possible solution, to outline a concept which is a more fine-grained and linguistically flexible variation of ´respect´. However, I will begin with giving a rationale as to why I consider the concept of ´respect´ incapable of directly occupying the conceptual space of ´toleration´/´tolerance´ and assume the position and role ´toleration´/´tolerance´ has taken in societal discourses.

First, the concepts of ´toleration´ and ´respect´ are dissimilar in their range of expression. ´Toleration´ is far more pointed than ´respect´, and its domain of application is narrower. The narrower domain of ´toleration´, is grounded on its conceptually predetermined purpose to indicate accepting, despite a negative evaluation of the subject matter. This makes ´toleration´ as a conceptual tool more specific than ´respect´ and limits the conceptual scope of ´toleration´.[16] In contrast, the concept of respect is more general and broad. This circumstance becomes illustrated, by that you can meaningfully speak about respect, for instance, towards i) nature, ii) elderly people, and iii) religions. The *respect* disposition involved is very different in all three cases. In contrast, I argue that the *tolerance* disposition, however, is always more of the same type, even if its subjects are different.

15] ´Toleration´ and ´respect´ are similar in their content as concepts, as they both indicate acceptance. Nevertheless, they also have a categorical difference, in that ´toleration´ is, and ´respect´ is not based on a negative evaluation of the respective subject matter.

16] Therefore, ´respect´ cannot directly replace ´tolerance´ in the cited definition of tolerance of UNESCO, since it would then be phrased: "Respect is acceptance and appreciation of the rich diversity [...]" I argue that ´respect´ is conceived in too broad terms to express the intention here.

Another challenge for the replacement of ´toleration´/´tolerance´ with ´respect´ is that the concept of toleration has received the status of a reification of an abstract idea of goodwill. This has facilitated the possibility of utilising ´toleration´/´tolerance´ autonomously without a reference to any particular subject matter. As noted in Section 1, ´toleration´/´tolerance´ has made its way into educational programmes. In these programmes, ´toleration´/´tolerance´ is being used in a reified form in which ´toleration´/´tolerance´ assumes the role of a concept, which has wondrous pacifying qualities applicable in all kind of conflicts.[17] I doubt that ´respect´ could be conceived in a similar manner as a replacement of ´toleration´/´tolerance´.

Although, I have argued above that a direct replacement of ´toleration´/´tolerance´ by ´respect´ is conceptually not plausible, I do think that a linguistic variation of ´respect´ which has been modified through conceptual engineering, could be suitable to supersede ´toleration´ and ´tolerance´. I outline that the linguistic variation should have the i) content and ethos of respect, yet as the word a similar ii) form and shape than ´toleration´ and ´tolerance´ to be conceived as a potential replacement of them.[18]

Another central criterion for a concept suitable to supersede ´toleration´/´tolerance´ is that it should be characterised by the conceptual scope and precision of ´toleration´/´tolerance´. Furthermore, it should have the conceptual expressiveness of toleration/tolerance, to be apt to perform similar conceptual tasks than ´toleration´/´tolerance´. By conceptual expressiveness, I mean the capability to indicate distinct evaluations of different subject matters e.g. different minority groups.

Given these criteria, I propose as a replacement of ´toleration´/´tolerance´ a conceptually engineered amalgam of toleration/tolerance and respect. My suggestion is *respectation* instead of *toleration*, and *respectance* instead of *tolerance*. I find the coinage: ´respectation´/´respectance´ is in conceptual terms capable of superseding ´toleration´/´tolerance´, since it i) resembles the latter word pair in its form and shape, so that ´respectation´/´respectance´ can be conceived as replacing ´toleration´/´tolerance´ when it appears in discourses. I hypothesise, moreover, that ii) ´respectation´/´respectance´ fits into the conceptual space in which ´toleration´/´tolerance´ operates and is therefore suitable to assume iii) the conceptual expressiveness of ´toleration´/´tolerance´.

Obviously, my coinage needs to stand critical testing. First, ´respectation´/´respectance´ should be able to maintain the whole range of applicability that ´toleration´/´tolerance´ has. In the following, I will apply

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17] I refer here to such projects as the one mentioned in section 1: *Teaching Tolerance* by the Southern Poverty Law Center, and *Strategy: Diversity and Tolerance Education in Schools* by the National Crime Prevention Council. Both projects are based in the US.

18] By having the content and ethos of respect, I mean that the replacing concept is grounded on a neutral or positive evaluation.

´respectation´/´respectance´ to sentences cited in this paper. It should, for instance, be sufficiently versatile to be utilised independently and in reified forms without a reference to any particular subject matter. Thus, the expression: "tolerant society" should be able to be rephrased into "respectant society", and the latter expression should, furthermore, be conceived as replacing the former.

Another examples of rephrasing would be: ´Same-sex marriage laws in Western countries are legal manifestations of societal respectance´, ´Respectance towards immigrants´, and the cited UNESCO definition would be reformulated: ´Respectance is acceptance and appreciation of the rich diversity of our world›s cultures, our forms of expression and ways of being human´.

However, a change from ´toleration´/´tolerance´ to ´respectation´/´respectance´ implies certainly more than just a shift of vocabulary. In section 6, I posed the hypothesis that since the component of linguistic power is intrinsic to the concept of toleration, and the mere expression of ´toleration´/´tolerance´ in discourses thereby triggers an unequal power relation, a replacement of ´toleration´/´tolerance´ by a respect-based term would involve a deliberate relinquishment of power by the ones who thus far have been utilising the concept of toleration. I hypothesise, moreover, that my proposed substitution would discharge the power relation upheld by resorting to ´toleration´/´tolerance´, since the concept of respect and its linguistic variation respectation is, unlike the concept of toleration, based on an equal relation. Moreover, ´respectation´/´respectance would release the tense reservation maintained by ´toleration´/´tolerance´ in societal discourses.

Nevertheless, the most momentous implications of a possible replacement in the usage of *toleration* with *respectation* and tolerance with *respectance*, are in the moral and political dimension. I hypothesise that ´respectation´/´respectance´ would in a conceptually similar way than toleration´/´tolerance reinforce common attitudes towards minorities. Only that these attitudes would be neutral or positive, according to the neutral or positive evaluation on which ´respectation´/´respectance´ is grounded. Therefore, I consider that the possible substitution of ´toleration´/´tolerance´ with ´respectation´/´respectance´ has significant emancipatory potential.

nikolai.klix@tuni.fi

REFERENCES

Balint, Peter. 2017. *Respecting Toleration: Traditional Liberalism and Contemporary Diversity,* Oxford: Oxford University Press.

Brown, Wendy. 2006. *Regulating Aversion: Tolerance in the Age of Identity and Empire,* Princeton: Princeton University Press.

Burgess, Alexis, Herman Cappelen, and Plunkett David. *Conceptual Engineering and Conceptual Ethics,* Oxford: Oxford University Press (forthcoming).

Cappelen, Herman. 2018. *Fixing Language – An Essay on Conceptual Engineering,* Oxford: Oxford University Press.

Ceva, Emanuela. 2011. A Matter of Respect – Conflicts over Mosques and the Treatment of Minorities URL = http://www.eui.eu/Documents/RSCAS/Research/MWG/201011/05-11-Ceva.pdf (accessed 21.11.2019).

Di Angelo, Robin. 2012. *What Does It Mean to Be White? Developing White Racial Literacy.* New York: Peter Lang.

Forst, Rainer. 2013. *Tolerance in Conflict,* Cambridge: Cambridge University Press.

Foucault, Michel. 1980. *The History of Sexuality,* Volume I: An Introduction. Translated by Robert Hurley. New York: Vintage.

Galeotti, Anna Elisabetta. 2015. "The range of toleration: From toleration as recognition back to disrespectful tolerance"*, Philosophy & Social Criticism,* Vol 41, Issue 2: 93 – 110.

McWilliams, David. 2018. "Why Ireland leads in tolerance towards immigrants." The Irish Times, September 29, 2018.

National Crime Prevention Council. 2017. "Strategy: Diversity and Tolerance Education in Schools" https://www.ncpc.org/resources/bullying/strategies/strategy-diversity-and-tolerance-education-in-schools/# (accessed 21.11.2019).

Oxford Latin Dictionary (2nd edition), 2012 Edited by P. G. W. Glare Oxford: Oxford University Press.

Teaching Tolerance. 2019. "About" https://www.tolerance.org/ (accessed 21.11.2019).

UNESCO. 1995. *Declaration of Principles on Tolerance*: http://portal.unesco.org/en/ev.php-URL_ID=13175&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed 21.11.2019).

Zucca, Lorenzo. 2012. *A Secular Europe: Law and Religion in the European Constitutional Landscape,* Oxford: Oxford University Press.

A Methodological Turn in Political Philosophy:
Making Political Philosophy More Scientific?[1]

Tereza Křepelová
Masaryk University, Brno

Abstract: The emergence of the first literature concerning the methodology of political philosophy, which we have witnessed over the last decade, indicates a general methodological shift within the discipline. This shift can be interpreted as a sign of the ongoing adjustment of political philosophy to the domain of science that had already begun when analytical political philosophy incorporated from logical positivism the premise of the unity of method of science and philosophy. The urge to have an epistemic source of justification for normative political theories lead analytical political philosophy to the development of various methodological frameworks from among which reflective equilibrium became the most influential one and nowadays it is being considered as the most widely used method in the contemporary political philosophy overall. Reflective equilibrium aims to provide knowledge that falls into the same category as scientific knowledge; however, it can also lead to various normative distortions resulting in the elimination of metaphysics, meta-ethics and religious claims from the normative part of political philosophical theorising. These normative distortions not only can result in epistemically wrong conclusions; above all, they implicitly affirm the normative propositions of political conceptions of liberalism. Hence, the prevalence and uncritical use of reflective equilibrium might narrow the topical scope and undermine the reflective and critical role of the discipline of political philosophy itself.

Key words: political science, political philosophy, methodology, analytical political philosophy, logical positivism, political liberalism, epistemic value, epistemic justification, reflective equilibrium, philosophy of science.

The past decade in the discipline of political philosophy was marked by new thought-provoking phenomena as we witnessed the emergence of the first propaedeutic literature summarising methods and methodological frameworks, mostly dedicated to analytical approaches (see e.g. Blau 2017, Floyd 2017, List and Valentini 2016, Leopold and Stears 2008, Dowding 2016). This trend indicates a shift towards a method-based (or even a method-driven) inquiry, which can be interpreted as a sign of an ongoing tendency to establish a more scientific political philosophy and to affirm its status in science in general. To understand the cause of this methodological shift, we need to see it in the broader context linked to the problematic position of political philosophy within political science and the system of science as such, which can be partly attributed to the general separation between the domains of philosophy and science. This separation is mirrored in their institutional division into the sciences and the humanities. That, however, does not usually apply to political philosophy, which is more often based in institutions' political

science departments.[2] It is their common subject of study – politics – which links political philosophy to political science rather than to philosophy. For this reason, the problem of the epistemic status of political philosophy within political science becomes even more apparent as the growing discrepancy between the disciplines negatively influences political philosophy in many practical aspects.[3]

While political science justifies and legitimises its epistemic authority by referring to its methods, which should lend its inquiry basic replicability and validity, in political philosophy the vast majority of authors still do not perceive their endeavour as a methodologically-based process (Leopold and Stears 2008, 1). Consequently, political philosophy lacks a wide consensus on existing methodological approaches and frameworks (Dryzek et al. 2006, 6) that would provide a clear idea of how it should be done and subsequently how its outcomes can be assessed. Political philosophy is divided by its inner ideological tensions and, owing to this, has become fractured into 'a number of parochial professionally and intellectually inspired discursive enclaves' (Gunnell 1993, 268). Gunnell's point refers to the fact that the often-disputable normative outcomes of political philosophy are for many (scholars and the general public as well) indistinguishable from the subjective political preferences hidden in the complicated philosophical language. These facts, in many ways, result in a confusing discussion within political philosophy itself, as it is not clear which disagreements are caused by misunderstanding the disputed matter, which can be attributed to the form of its justification and which are a consequence of the un-reflected and un-explained methodological presuppositions. This, subsequently, contributes to overall non-transparency which decreases the trustworthiness and epistemic authority of the whole discipline.

There is empirical evidence for this trend. A survey conducted among American political philosophers found that only 24 per cent of them agreed with the statement: 'Political philosophy is respected among political scientists' (Moore 2010, 266). The survey also revealed that political philosophers think that their publication and conference opportunities are low compared to those of empirical political scientists; accordingly,

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2] In this regard, see also the professional academic organisations of political science (e.g. ECPR, APSA, IPSA) which usually have a sub-section dedicated to the discipline of political philosophy/theory, (see Kaufman-Osborne 2010, 659). Furthermore, Kaufmann-Osborne describes the political philosophy/theory as one of the substantive subfields of political science, that reflects common status within the region of the United States (Kaufman-Osborne 2006, 44).

3] The growing gap between the disciplines already negatively influences the quality of knowledge that both disciplines produce. While political philosophy, in general, ignores the findings of empirical political science and political philosophers predominantly comment on their own works (the so-called narcissistic attribute of political philosophy) and consequently its outcomes lack social and scientific relevance, political science, on the contrary, faces banality of part of its research, which is conducted with a view to methodological feasibility, rather than the palpability of a particular issue or examined phenomenon (see Shapiro 2005, 179). Similarly, Gerring and Yesnowitz stressed that in political science we encounter the accumulation of socially irrelevant researches, whose authors in many respects lack the theoretical guidance not only for their interpretation, but for the very justification of their realisation (Gerring and Yesnowitz 2006, 104).

they hold the view that political philosophy overall is under-represented within political science (see Moore 2010). A second survey (Moore 2011) on political philosophy teaching practices found that 26 per cent of schools that teach political science have no political philosophy on the curriculum (Moore 2011, 124). Based on this survey, it is clear that political philosophy is being treated as non-essential in a large proportion of political science departments (Moore 2011, 124). This problem was also reflected in the discussion about the marginalisation of political philosophy in the American academic environment (see e.g., Kasza 2010, Hawkesworth 2010, Brown 2010).

The current methodological discussion can be thus interpreted as an effort by political philosophers to adjust to the domain of science rather than philosophy, in order to restore and secure political philosophy's position within political science. This article outlines the historical context of the division between political science and political philosophy, which will clarify where the discussion on methods within political philosophy comes from. In particular, I discuss the heritage of logical positivism's claim on the unity of method of science and philosophy, which analytical political philosophy has adopted. I also examine the current dominant methodological framework of analytical political philosophy – reflective equilibrium – which aims to provide knowledge that falls into the same category as scientific knowledge. Nonetheless, due to its epistemic desiderata it leads towards various normative distortions that favour the political conceptions of liberalism and therefore negatively influence the critical role of political philosophy by putting it in an affirmative position towards a particular ideology. Thus the paper outlines the sources of these normative distortions and examines the general overlap between the heritage of logical positivism and analytical political philosophy, its methods and political liberalism. This general outline provides a comprehensive view of the changes through which political philosophy as an academic discipline is passing. This should aid self-reflection within political philosophy – one of the signs of healthy development in any academic discipline.

1. CONTEXT: THE DEATH AND RESURRECTION OF POLITICAL PHILOSOPHY

Although the roots of political science can be traced with confidence to ancient Greek political philosophy, its current practice is most influenced by the birth of the social sciences in the 19th century (Berg-Schlosser and Stammen 2000, 16) when it was emancipated from philosophy and emulated the natural sciences to reach the status of an authentic science (Winch 2003, 1). While *science* can be defined as 'a cumulative way to reach the objective truth through formal argument and regulated observation' (Leca 2010, 530), political philosophy, on the other hand, has a more ambivalent character. As a *philosophy,* it could be considered as part of the *vita contemplativa* that is formed by purely thinking about, critically evaluating, and persistently doubting, the limits of our knowledge (Leca 2010, 526). The adjective *political,* however, implies that it is also linked to the *vita activa* – the world of real politics, to which it aims to serve as a guide (Leca 2010, 526). This subsequently implies that the normative, prescriptive and evaluative ambitions

of political philosophy are inherently problematic for the (alleged) norm-neutrality declared by contemporary political science (see e.g. Kellstedt and Whitten 2013, 18). Max Weber defined the vocation of political science as the study of 'what is' rather than 'what ought to be', which belongs to the domain of politics itself (Gunnell 2010, 1397). The normative status of political philosophy is therefore linked with the normative status of politics. For this reason, the position of political philosophy in the system of science became dubious.

The revolutionary tendencies in the social sciences that called for the strict separation from philosophy were, however, rather a 'Jacobin affair' (Godin and Klingeman 1996, 10). This label refers to the ruthless and remorseless way in which the new-born social sciences, rooted in positivist epistemology, treated the 'ancien régime' of the branches with philosophical foundations. One of the memorable features of this debate was Peter Laslett's famous quotation: 'For the moment, anyway, political philosophy is dead' (1956, 6). According to him, the 'death' of political philosophy was partly caused by the terrible experience of World War II, which engendered a sceptical reaction to great political-philosophical projects. Sociological thinking, flourishing at the time, suddenly explained the problems of political philosophy as mere epiphenomena of socially-determined facts, which could be revealed exclusively through the empirical analysis of society. Laslett largely blamed logical positivism for this 'death', because it questioned the status of ethical judgments and raised the question of whether political philosophy is possible at all (see Laslett 1956, 9). Similarly, Leo Strauss emphasised that behind the decline of political philosophy stood positivism, which rejected political philosophy as unscientific and therefore illegitimate (1988, 346).

Nonetheless, to understand the genuine cause of the decline of political philosophy (and subsequently also the cause of its resurrection), we need to focus on its state in the middle of the 20th century. If we compare the influence and importance of interwar political-philosophical endeavour, we will hardly find any works that could equal the importance of pre-war or turn-of-the-century output (Wolff 2013, 7). This idea was expressed by Isaiah Berlin, who in a 1962 article claimed that the 20th century had so far produced no distinctive set of influential canonical works that would raise any innovative and fundamentally important thoughts to stimulate the discipline intellectually. Brian Barry pointed out that political philosophy was established on the study of past writers (1970, 1). Similarly, David Easton, from the behavioural side of the barricade, attributed the 'poverty of political theory' to its devotion to historical analysis (1951, 36). Thus the alleged death (or decline, to be more precise) of political philosophy in the last century can be explained not only as the consequence of the rise of logical positivism, the behavioural revolution and the overall triumph of science over philosophy, but also as a result of its own degeneration, intellectual staleness and lack of development. Nonetheless, subsequent global cultural-political changes brought new stimulus to political philosophical theorising as political philosophers were challenged by the question: how can we live together in pluralistic and heterodox societies, divided as they are by the deep

political disagreements[4] of their citizens? Thus the subsequent rebirth of the discipline in the early 1970s can be interpreted as a reaction to the limits of behavioural and purely empirical research that was unable to provide answers to the normative questions that were previously presented in political science (Heywood 2005, 25).

2. THE NEW SCIENTIFIC POLITICAL PHILOSOPHY

2.1. Positivism and political philosophy: friends or foes?

However paradoxical it may appear, and despite Laslett's claim that it was largely logical positivism that killed political philosophy, it was also logical positivism that created a new political philosophy, the so-called analytical political philosophy that quickly became one of the most influential and dominant strands within political philosophical theorising. As noted in the introduction, the first literature on the methods of political philosophy is mostly concerned with its analytical branch. The reason the discussion of methods within political philosophy is centred on this approach will be clearer when we look at the intellectual heritage of logical positivism, which analytical philosophy incorporated. As one of the most prominent representatives of logical positivism, Bertrand Russell, stated: 'Modern analytical empiricism […] is thus able, in regard to certain problems, to achieve definite answers which have the quality of science rather than of philosophy' (1945, 834).[5] The unity of scientific method that would be applicable to both domains of knowledge (philosophy and science) is the idea that actually opened the door for (political) philosophy to acquire a similar epistemic status to the one the social sciences gradually gained during the 20th century. The unity of scientific method required a solid and consensually-accepted definition of what qualified as 'scientific' – the so-called demarcation principle that would serve as a criterion upon which we can distinguish scientific from pseudo-scientific arguments (Moses and Knutsen 2012, 39). This demarcation principle was for the logical positivists the criterion of verification, which excluded pseudoscientific, ethical and metaphysical claims that were considered meaningless because they could not be subjected to finite and evident testing that would conclusively identify them as true or false[6] (Moses and Knutsen 2012, 39; Hacking 1975, 94). As one of the intellectual fathers of logical positivism, Rudolf Carnap, stated:

4] The deep political disagreement can be (drawing on R. Talisse) linked to the persistent disagreements over fundamental moral doctrines that can be hold by sane, intelligent, sincere, and informed persons, therefore for 'every citizen holding a plausible doctrine, there are other citizens holding opposing but also plausible doctrines' (Talisse 2009, 13).

5] Russell's term 'modern analytical empiricism' can be used interchangeably with logical positivism – see e.g. Creath 2017.

6] This did not disqualify philosophy as such, the key role of which – according to the logical positivists – was to determine and bestow the meaning of language as a representation of the empirical (sensually perceptible) reality (Schwartz 2012, 63; Pincock 2016, 94).

'In the domain of metaphysics, including all philosophy of value and normative theory, logical analysis yields the negative result that the alleged statements in this domain are entirely meaningless. Therewith a radical elimination of metaphysics is attained.' (Carnap 1932: 60-61, in Hacking 1975: 96) The heritage of positivism can be summarised as the insistence that statements be testable – and consequently verified, confirmed or shown to be false. The 'new' philosophy that was supposed to fulfil these criteria is generally known as analytical philosophy and, in the field of political science, this role was assigned to analytical political philosophy.

As the term suggests, analytical political philosophy is part of a general philosophical strand known as analytical philosophy, linked to the Anglo-Saxon philosophical tradition and nowadays it is the dominant philosophical tradition in the English-speaking world (Beaney 2013). Thus analytical philosophy can be perceived as a methodological counterpart to the tradition of phenomenological philosophy – especially concerning the role of the individual philosopher and his or her subjective perspective from which analytical philosophy tries to abstain. Analytical philosophers, unlike phenomenologists, do not believe that philosophy is immersed in subjectivity; indeed, philosophy should abstain from it. The starting point, where, according to analytical philosophy, subjectivity ends, is language (Peregrin 1992, 8; Dummett 2014, 5).

Nevertheless, it is questionable to what extent analytical political philosophy has been influenced by analytical philosophy. Jonathan Wolf (2013, 4) defined three main intellectual sources that analytical political philosophy incorporated from analytical philosophy. First, the rejection of idealism (in a Hegelian sense) associated with the idea of social holism that society or the state exists as an independent moral and metaphysical entity that needs to be studied within its own autonomous levels of macroscopic analysis (Fay 2002, 67). This feature is clearly visible in contemporary Western political philosophy, which is predominantly individualistic as it considers the individual as the main entity of political philosophical theorising. Second, the emphasis on logical consistency – therefore the requirement for internal validity of normative propositions, e.g. 'ex falso quodlibet' (statements are capable of being simultaneously true) and deductive closure (the requirement that any statement that is logically entailed by the theory also belongs to the theory) (for more, see List and Valentini 2016, 14-15). Third, the conceptual analysis, since the concepts are the main building units of our thinking represented by language.

According to the claim for the unity of method in science and philosophy raised by the logical positivists, analytical political philosophy aims to gain knowledge that falls into the same broad category as science (McDermot 2008, 11). As noted above, its domain is primarily normative, so while social scientists try to determine the facts about empirical reality, analytical political philosophers concentrate on what ought to be done in the light of these facts (McDermot 2008, 11). On this count, analytical political philosophy exceeded the expectations of logical positivists in many regards. Conceptual analysis, logical consistency and methodological individualism became important though not the only components of the new political philosophical theorising. More importantly,

analytical political philosophy combined two seemingly incompatible elements –
logical analysis and normativity, which became embedded in the new way of 'scientific'
moral theorising linked to the method-based inference of normative statements and the
method-based justification of normative political theories. Therefore the main features
of contemporary analytical political philosophy (drawing on Miller and Dagger, 2003,
446–9) can be defined as follows:

> (1) It is essentially separate from deep metaphysical questions about the meaning of
> human life,
> (2) It involves conceptual clarity and argumentative rigour,
> (3) It is normative,
> (4) It addresses a plurality of competing values, and
> (5) It aims to serve as the public philosophy of a society of free and equal citizens
> who have choices to make about how their society is organised.

2.2. The elimination of metaphysics as a shared viewpoint of political liberalism and analytical political philosophy

When we examine the aforementioned features of analytical political philosophy,
we find a normative overlap with the requirements of political liberalism. It is the
combination of methodological individualism and the aspiration to formulate normative
and prescriptive theories to address deep disagreements in society that is, in many regards,
also the starting position of political liberalism. The underlying aim of philosophical
endeavour in the liberal political perspective is not to determine 'what we ought to do' but
rather 'what we ought to do when we don't agree on what we ought to do'. This is reflected in
Miller and Dagger's fourth point, in which they stated that analytical political philosophy
addresses a plurality of competing values that result in deep disagreement in society. Their
first point, about the separation of analytical political philosophy 'from deep metaphysical
questions', is the inevitable consequence of the aspiration to address deep disagreement
that emerges in the sphere of metaphysics and as such cannot be conclusively resolved,
verified or falsified.

Political liberalism proposes a similar requirement for the avoidance of metaphysical
doctrines in the sphere of 'the political' (Nussbaum 2011, 16), which can best be
understood in contrast with perfectionist[7] or comprehensive liberalism. Drawing on
Rawls, political liberalism aims for 'a political conception of justice as a freestanding view.
It offers no specific metaphysical or epistemological doctrine beyond what is implied by
the political conception itself' (Rawls 1995, 10). This refer to the general liberal idea of
desirability of the neutral state, that should be 'neutral among different conceptions of
the good life and comprehensive doctrines' (Wall 2015, 163). 'Freestandingness' - as the

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7] Perfectionist liberalism can be defined as a 'family of views regarding the conception of the
good life, and not just our role as citizens'; or views about 'the ultimate nature of the human good'
(Larmore 1996, 122, 132).

core element of the neutrality of the state - can be therefore attributed to the way these doctrines are derived (thus by the method through which we derive such doctrines, norms and normative theories). For Rawls in particular, 'freestandingness' was guaranteed by the 'neutrality' of the original position (Gaus and Van Schoelandt 2017, 8-9).

Gerald Gaus made the point that political liberalism 'seeks to return liberalism to its founding insight that we must live together without sharing our deepest visions' (2011). For this reason, advocates of political liberalism usually propose it as an alternative to the ideological sectarianisms within political philosophy (Gaus 2011). Political liberalism therefore shields itself by, and derives its legitimacy from, the method-based process of justification that aims at a superior normative status, since it refers to some common ground (e.g. rationality, reasonableness, intelligibility, reasons all can accept etc) that can be objectively determined through its methods. The elimination of metaphysics from the sphere of political theorising is therefore one of the shared standpoints of political liberalism and analytical political philosophy. This can be attributed to the heritage of positivist thinking on verifiability. In the context of political philosophy this implies that the statements are being tested upon some shared norms and beliefs, which in this process play similar role as empirical data in empirical research. The metaphysical propositions that are subject of the deepest political disagreements cannot however serve this way since there is no conclusive way of determining their correctness. The deeper indeterminacy between the elimination of metaphysics and the methodological basis of analytical political philosophy and political liberalism will be examined in the following section.

3. THE METHOD OF REFLECTIVE EQUILIBRIUM AND ITS EPISTEMIC IMPACT ON THE DISCIPLINE OF POLITICAL PHILOSOPHY

The urge to have an epistemic and method-based source of justification for normative political theories leads analytical political philosophy to the development of various methodological frameworks (partially by emulating the methods of empirical sciences – for example, by pursuing thought experiments). One of the most influential methods in contemporary analytical political philosophy (and political philosophy as a whole) is reflective equilibrium[8] (McPherson 2015, 652; Cath 2016, 2014; Sinnott and Armstrong et al. 2010, 246; MacMahan 2013, 110), mostly known from the Rawlsian tradition.[9] Reflective equilibrium is considered an epistemic methodological tool, that is a tool that aspires to formulate epistemically correct theories, therefore true theories,

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8] One can doubt how much this method is actually used, since most political philosophers do not explicitly indicate their use of it (or any other method, in fact). However, as many theorists point out, recent moral theorising has a salient and implicit imperative for using this method (Kappel 2006, 133, Kagan 1998, 16).

9] We need to take into consideration that the method itself was already present in philosophy before Rawls; the method itself – without being called reflective equilibrium – was 'invented' by Nelson Goodman.

theories that are likely to be true or theories that we have good reason to regard as true or likely to be true (Kappel 2006, 134).

The epistemic capacity of the reflective equilibrium is linked to the assessment of the external and internal validity of normative political theories. Owing to this fact, it has basically the same form as scientific inference (Peregrin and Svoboda 2017, 94) and it reflects the theory-testing methods of science (Dowding 2016, 240). Although logical consistency and internal validity are necessary criteria for the epistemic correctness and intelligibility (see Gaus 1996: 102) it cannot be considered as a sufficient criterion since it represents only internal relation of propositions. As G. Gaus points out: 'If one begins with a body of belief without any initial credibility, making it all fit together could not introduce credibility' (1996, 102). The external validity therefore relates to the initial credibility in terms of correspondence between the representing and the represented. As Valentini and List claim: 'Any theory is intended to represent, summarize, or capture something *"outside the theory" itself* [...] *Thus, it may capture this correctly, in which case the theory is true, correct, or externally valid, or it may fail to do so, in which case it is false, incorrect, or externally invalid*' (2016, 14-15). Therefore, the external validity determines the epistemic correctness of normative political theory.

The method of reflective equilibrium is based on harmonising our considered judgments with the general principles we recognise as right. This process aims to achieve an acceptable coherence among them that requires these judgements to provide support or the best explanation of each other (Daniels 2018). Reflective equilibrium can be, thus, attributed to the mentalist approach to moral and political theorising. According to mentalism, political philosophers should aim at discovering and applying principles that are already implicit in our normative thoughts (see Floyd 2017, 16). This tendency, according to Floyd, leads to the persisting disagreements since these principles contradict each other and there is no clear justified requirement of how this should be sorted out (Floyd, contrary to this, holds a view that political philosophy should take into account actual behaviour and actions of real citizens). For this reason, there is no consensus about the proper employment of the method of reflective equilibrium, which can be considered as both a cause and the consequence of the lack of transparency in the community of political philosophers over the question of its methods and methodology. Regarding the existing fussiness over the proper use of the method, we need to differentiate between two aspects that are subject to criticism, each for different reasons. The first aspect concerns the inputs of the whole process, the second concerns operations that are performed with them (McPherson 2015, 657). Through these two dimensions, we can examine the possible distortions that are linked to the use of the method of reflective equilibrium.

3.1. The ontological basis of the initial inputs

When employing the method, we need to address the epistemic status of our initial inputs (e.g. considered judgements, beliefs or moral intuitions) and their relation

to objective reality, so we can subsequently asses the external validity and epistemic correctness of the reflected normative theory. In this regard, the method faces a paradox because its epistemic capacity can be justified only with reference to the nature of these initial inputs, which have to be considered as epistemically self-justificatory (see e.g. McPherson 2015). This implies that using reflective equilibrium as a methodological tool providing epistemically correct theories is burdened with the following presuppositions: (1) There is some objectively existing subject of inquiry, (2) this subject is epistemically attainable.

This problem is subsequently reflected in the two different ways of conducting reflective equilibrium, as proposed by T. M. Scanlon, who distinguished between a descriptive and a deliberative account of reflective equilibrium. While the former aims to characterise the conception of justice (justice serves as an example here; in general, it can be substituted by any moral theory or thesis on which we are reflecting) held by a certain person or group, the latter should help us figure out what to believe about justice (Scanlon 2003, 142-43). These two different accounts have different implications for the role of 'considered judgements' or initial inputs in general. While, in the deliberative account, considered judgements are our beliefs about some question or problem (morality or justice), the descriptive account presupposes that these judgements somehow represent our moral intuitions, our moral sensibility or moral truths in general (Scanlon 2003, 142-43). In the case of the descriptive account of the method, the outcome theory is not normative or justificatory in the sense that it would include some deontic operator or imperative. Rather, it is descriptive or explanatory in relation to moral truths, which as such do not imply any particular normative proposition. That being said, this implies that reflective equilibrium can be used in both senses as two subsequent phases. In the first – descriptive – phase we aim to reveal moral truths, while in the second – deliberative – phase we aim to formulate a normative theory based on those truths. These two accounts of equilibrium are worthy of note, since they mirror the differences between empirical and normative theory and the Humean 'is-ought' problem, represented by the question of the extent to which the "ought" can be defined based on an "is" and accordingly what the relation between facts and norms is. Despite the fact that some authors stress (see e.g. G. A. Cohen 2008, 257) that the normative principles may have the status of ontological truths as well, the ontological status of normative propositions is itself a metaphysical question on which there is deep disagreement (Nussbaum 2001, 890).

3.2. Epistemic desiderata of reflective equilibrium

In regard to the epistemic desiderata of the method, we arrive at the problem of the meta-justification of reflective equilibrium that can provide a convincing explanation as to why the mechanism and operations performed through the method lead to epistemically correct outcomes. For this, we need to identify the general epistemic desiderata of the method. Drawing on McPherson (2015, 652), we can define plausibility, vindication and adjudication as the most general desiderata of any philosophical (methodological)

theory. However, there are also desiderata that depend on the meta-justification of the particular method itself. With regard to reflective equilibrium we can, according to Kappel (2007, 132), define the following desiderata: consistency; systematicity (a belief set should contain explanatory relations); generality (a belief set should cover a larger area rather than a smaller one); simplicity (general explanatory beliefs should be few and simple rather than many and complex); intuitive acceptability (a moral belief set or moral theories should fit our considered moral judgements); and the last desideratum is linked to the trade-offs between previous desiderata in order to maximize their overall effect.

The first four desiderata are linked to the previously mentioned internal validity and general logical consistency and as such can be more or less assessed objectively by all agents in the same way, according to the rules of logic. Yet the assessment of the fifth and sixth desiderata is not connected to the reflected theory itself, but rather to the individual agents and their sets of beliefs. Therefore, the assessment of whether these desiderata have been met can be interpreted differently by the individual agents and analogically can be prone to subjective distortion. Naturally, due to the inclusion of these desiderata, reflective equilibrium can be prone to confirmation biases of our prior beliefs or hypotheses, as we tend naturally to prefer those principles and those outcomes of equilibrium that are convenient to our individual interests, values or cultural background.

A more implicit normative distortion, linked to the method itself and its epistemic desiderata, is the tendency to favour arguments and theories that are separated from the domains linked to the deep disagreement. This is one of the main intrinsic methodological problems of reflective equilibrium: even though the process through which we are reassessing our judgments and principles might end with persisting incoherence – so we will not be sure which one of the reflected variants is correct – in general, we aim to find a conclusion and decide which of the reflected variants is correct or how we should define our moral conception towards some particular problem. As Jaroslav Peregrin emphasises, reflective equilibrium makes sense only when the theory or thesis is very well confirmed and the contradictory cases are few and not crucial (Peregrin and Svoboda 2017, 92). Therefore, if we have a well-confirmed general theory that is already consistent at many levels, yet we still have some counterexamples that disprove or falsify the theory, we may consider either excluding counterexamples or adjust the theory so it grasps these counterexamples (usually at the expense of its generality). This, however, might be a moment where the implicit distortion of reflective equilibrium emerges. This issue is linked with our aspiration to achieve a final and definite statement. As Wayne Norman noted (1998), to do this, we have to avoid inherently problematic questions and judgements on which there is likely to be disagreement – those linked to the 'metaphysics, meta-ethics, religion and "speculative" theories of the human sciences and linguistics' (Norman 1998, 284).

This inherent feature of reflective equilibrium is paradoxical, in that the method was developed to provide a basis for the formulation of general rules on how society should be organised in the context of pluralist, heterodox states divided by the deep disagreements

of their citizens. Nevertheless, it appears that the way to solve this disagreement is to exclude it by narrowing the scope of reflected domains and issues to the less problematic ones. This tendency can be subsequently attributed to the heritage of positivist thinking that treated questions linked with metaphysics and meta-ethics as illegitimate, since they could not be conclusively falsified or verified. For a similar reason, political liberalism also requires separation from metaphysics, as that is (from the perspective of political liberals) the only way to evade deep disagreement. We can conclude that reflective equilibrium serves affirmatively towards the normative requirements of political liberalism as it basically reproduces its normative propositions. As such, it cannot provide a freestanding justification because the epistemic desiderata of the method are not epistemically justified themselves and lead to various normative distortions.

3.3. How to incite epistemic capacity of reflective equilibrium?

One possible way of dealing with the distortions inherent in the method is to challenge its individualistic account. Alice Baderin argues that reflective equilibrium should be used as a public method of inquiry, in the modest sense (2017, 3) because of the superiority of public opinion over philosophical opinion. Furthermore, there might also be epistemic reasons for using reflective equilibrium on the public account. We can relate to the arguments proposed by proponents of epistemic democracy usually linked to Condorcet's jury theorem[10] and the importance of dispersing knowledge which should magnify the epistemic diversity of the initial inputs of reflective equilibrium.[11] As David Estlund puts it:

> It is natural to suppose that there would be even more epistemic value if each, incorporating his or her special self-regarding information into an overall view, were to apply intelligence directly to the question 'What ought we to do?' Not only might each come to a more accurate view on that question but also now they are in a position to reason with each other about a common topic. (2007, 177-78)

The use of reflective equilibrium on the public account can therefore not only increase its epistemic correctness by including diverse inputs at the initial phase, but also tackle the problem of confirmation biases linked to the strictly individualistic and subjectivist use of the method and the tendency of agents to affirm the arguments and norms that favour their own interests. Furthermore, the public use of the method is the only justifiable way of determining whether the questions linked to the deep comprehensive views (that is, the previously mentioned metaphysical, meta-ethical or religious questions) of individual

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10] 'If each member of a jury has an equal and independent chance, better than random but worse than perfect, of making a correct judgment on whether a defendant is guilty (or on some other factual proposition), the majority of jurors is more likely to be correct than each individual juror, and the probability of a correct majority judgment approaches 1 as the jury size increases. Thus, under certain conditions, majority rule is good at "tracking the truth" (List 2013).

11] This idea was originally proposed by F. A. Hayek with respect to the free-market mechanism, however nowadays it is also one of the main arguments of the advocates of deliberative models of democracy.

agents are truly unresolvable or whether we can find some overlapping consensus and minimal agreement on some basic norms, principles and reasons. In other words: in order to be able to conclude whether there really are some shared reasons or reasons that 'all can accept', we need to actually include and ask 'all', rather than theorise about this matter from a strictly individualistic perspective.

4. CONCLUSION AND FINAL REMARKS: WHY WE NEED MORE PROFOUND DISCUSSION ON METHODS IN POLITICAL PHILOSOPHY

In this paper, I argued that the discussion concerning the methods of political philosophy should not be separated from the discussion about the position and role of political philosophy within political science (and science in general). The current discussion on the methodology of political philosophy indicating a general shift to the method-based process of inference within political-philosophical theorising can be a sign of ongoing 'positivisation' and the efforts of political philosophers to adjust political philosophy to the domain of science. This process had already begun as the analytical political philosophy incorporated premises from logical positivism about the unity of method of science and philosophy. The heritage of logical positivism that is visible in contemporary analytical political philosophy can be attributed to the insistence on the verification and assessment of external validity of normative political theories in order to provide a scientific type of knowledge.

This tendency, however, affects the overall topical scope of the discipline and results in its 'de-metaphysication', since metaphysical statements cannot be conclusively verified or falsified. I have outlined the limitations of the method of reflective equilibrium, which, due to its epistemic desiderata, results in evading issues producing deep disagreement – typically those linked to metaphysical questions. For this reason, the uncritical use of reflective equilibrium can undermine the critical role of political philosophy, as it leads to an implicit affirmation of the normative stance of political liberalism, which is to eliminate metaphysical sources of justification from the political.

I have argued that the epistemic capacity of reflective equilibrium is not separable from the presupposition about the ontological basis of the initial inputs as well as from its overall epistemic desiderata. For this reason, it is questionable to what extent reflective equilibrium produces epistemically correct outcomes solely on the grounds of its own mechanism since epistemic correctness derives from the presupposition about the initial inputs and epistemic desiderata of the whole process. For this reason, it also seems indefensible to use reflective equilibrium as a justificatory basis providing the 'freestandingness' of a political justification within political liberalism (or elsewhere).

Nonetheless, the criticism of reflective equilibrium and the analytical branch should by no means serve as an argument for refuting this branch and its methods (or discussion on methods in political philosophy) *en bloc*. Rather, a further rethinking of the proper employment of the method is necessary. Regarding the epistemic aims of the

method, it is important to recognise the impossibility of a conclusion as one of the possible epistemic outcomes. For the discipline of political philosophy, this means accepting deep disagreements and essential pluralism not just as the initial problems that should be solved through the method-based process of inquiry but also as the possible and legitimate outcome of it. As McPherson states, one of the reasons we need a methodology of political philosophy is to determine whether the central substantive disagreements can be attributed to the methods as such or to the disagreeing parties (see McPherson 2015, 654).

Nevertheless, the establishment of the criteria for the assessment of the reliability and epistemic capacity of the methods of political philosophy is a task still to be done. Largely, it is dependent on the habits, practices and standards of the community of political philosophers, which would, indeed, benefit from greater transparency and methodological clarity not only for the sake of those who want to engage with the discipline themselves (the political philosophers to be) but also for anyone (whether they are academics, politicians or members of the general public) who would like to establish their knowledge of politics on philosophical foundations. To systematically and explicitly reflect how we formulate our normative propositions is the first step towards regaining and securing the credibility of the discipline of political philosophy and consequently also towards restoring its epistemic authority and relevance in the system of science.

krepelova@mail.muni.cz

REFERENCES

Baderin, Alice. 2017. Reflective equilibrium: Individual or Public? *Social Theory and Practice*, 43 (1), 1-28.

Barry, Brian. 1970. *Sociologists, Economists and Democracy*. London: Collier-Macmillan.

Berg-Schlosser, Dirk a Theo Stammen. 2000. Úvod do politické vědy. Praha: Institut pro středoevropskou kulturu a politiku.

Berlin, Isaiah. 1962. Does Political Theory Still Exist? By Isaiah Berlin. In *Philosophy, Politics and Society (second series)*. Oxford. Basil Blackwell.

Blau, Adrian. 2017. Introduction: A How-to Approach. In *Methods in Analytical Political Theory*. Cambridge University Press.

Brown, Wendi. 2010. Political Theory Is Not a Luxury: A Response to Timothy Kaufman Osborn's "Political Theory as a Profession. *Political Research Quarterly*, vol. 63, no. 3.

Cohen, Gerald A. 2008. Rescuing Justice and Equality. Cambridge, MA: Harvard University Press.

Creath, Richard. 2017. Logical Empiricism. *The Stanford Encyclopedia of Philosophy.* edited by Edward N. Zalta.

Daniels, Norman. 2018. Reflective Equilibrium. *The Stanford Encyclopedia of Philosophy.* edited by Edward N. Zalta.

Dowding, Keith. 2016. *The Philosophy and Methods of Political Science*. London: Palgrave Macmillan Education, Political Analysis.

Dryzek, John S., Bonnie Honig, and Anne Phillips. 2006. Introduction. In *The Oxford Handbook of Political Theory*. Oxford: Oxford University Press.

Dummet, Michale. 2014*. Origins of Analytical Philosophy.* London. Bloomsbury Academic Publishing.

Easton, David. 1951. The Decline of Modern Political Theory. *The Journal of Politics*, vol. 13, no. 1, 36–58.

Estlund, David. 2008. *Democratic authority: a philosophical framework.* Princeton, n. J.: Princeton University Press.

Fay, Brian. 2002. *Současná filosofie sociálních věd: multikulturní přístup.* Praha. Sociologické nakladatelství.

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

Gaus, Gerald, Chad Van Schoelandt. 2017. Consensus on what? Convergence for what? Four Models of Political Liberalism. *Ethics.* 128:1, 145-72.

Gaus, Gerald. 2011. The Range of Justice (or, How to Retrieve Liberal Sectual Tolerance). Cato Unbound a Journal of Debate.

Gerring, John, Joshua Yesnowitz. 2006. A Normative Turn in Political Science? *Polity.* Vol. 38, Issue 1, 101–133.

Gunell, John. 2010. Value-free Social Science. In *Encyclopedia of Political Theory,* edited by Mark Bevir, vol. 1-3. Thousand Oaks, ca: Sage publications.

———. 2011. *Political Theory and Social Science Cutting Against the Grain.* Palgrave Macmillan. New York. St. Martin's Press.

Hacking, Ian. 1975. *Why Does Language Matter to Philosophy?* Cambridge University Press.

Hasan, Ali, Richard Fumerton. 2018. Foundationalist theories of epistemic justification. *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta.

Hawkesworth, Mary. 2010. From Constitutive Outside to the Politics of Extinction: Critical Race theory, Feminist Theory, and Political Theory. *Political Research Quarterly* 63 (3). University of Utah, Sage Publications.

Heywood, Andrew. 2005. *Politická teorie.* Praha: Eurolex Bohemia.

Kappel, Klemens. 2006. The Meta-justification of Reflective Equilibrium. *Ethical theory and Moral practice,* 9 (2), 131-47.

Kasza, Gregory J. 2010. The Marginalization of Political Philosophy and its Effects on the Rest of the Discipline. *Political research quarterly* 63 (3). University of Utah, Sage Publications, inc.

Kaufman-Osbourne, Timothy. 2006. Dividing the domain of political science: on the fetishism of subfields. *Polity*, 38 (1), 41-71.

———. Timothy. 2010. Political theory as a profession and as subfield? *Political Research Quarterly*, vol. 63, no. 3, 655-73, published by sage publications, inc.

Knight, Karl. 2017. Reflective equilibrium. In *Methods in Analytical Political Theory,* edited by Adrian Blau. *Cambridge University Press.*

Larmore, Charles. 1996. *The Morals of Modernity*, Cambridge University Press.

Laslett, Peter. 1956. *Philosophy, politics and Society.* 1st Series Oxford, UK: Basil.

Leca, Jean. 2010. Political Philosophy in Political Science: Sixty Years on. *International Political Science Review* 31 (5), 525–38.

Leopold, David, and Marc Stears. 2008. *Political Theory: Methods and Approaches.* Oxford: Oxford University Press.

List, Christian, Social Choice Theory, *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), edited by Edward N. Zalta, URL = https://plato.stanford.edu/archives/win2013/entries/social-choice/ (accessed 21.11. 2019).

List, Christian, and Laura Valentini. 2016. Methodology of political theory. In *The Oxford Handbook of Philosophical Methodology*, edited by Herman Cappelen, Tamar Gendler and John Hawthorne. Oxford: Oxford University Press.

McDermott, Daniel. 2008. Analytical political philosophy. In *Political theory: methods and approaches*, edited by Leopold, David and Marc Stears. Oxford: Oxford University Press, 2008.

Mcpherson, Tristram. 2015. The Methodological Irrelevance of Reflective Equilibrium. In *The Palgrave Handbook of Philosophical Methods* edited by Chris Daly. Palgrave Macmillan. 652-74.

Miller, David, and Richard Dagger. 2003. Analytical Political Philosophy. In *The Cambridge History of Twentieth-century Political Thought*, edited by Terence Ball and Richard Bellamy. Cambridge: Cambridge University Press.

Moore, J. Matthew. 2010. Political Theory Today: Results of a National Survey. *Political Science and Politics*, vol. 43, no. 2.

———. 2011. How (and what) Political Theorists Teach: Results of a National Survey. *Journal of Political Science Education*, vol. 7, no. 1: 95-128.

Norman, Wayne. 1998. Inevitable and Unacceptable? Methodological Rawlsianism in Anglo-american Political Philosophy. *Political studies*. xlvi, 27. 294.

Nussbaum, Martha C. 2001. Political Objectivity. *New literary history*. 32: 883–906.

———. 2011. Perfectionist Liberalism and Political Liberalism. *Philosophy & public affairs*, vol. 39, no. 1: 3–45.

Peregrin, Jaroslav. 1992. *Historický úvod do analytické filosofie.* Praha: Herrmann a synové.

Peter, Fabienne. 2013. Epistemic Foundations of Political Liberalism. *Journal of Moral Philosophy.* 10 (5): 598-620.

Pincock, Christopher. 2016. Logical Empiricism. In *The Oxford Handbook of Philosophical Methodology, edited by* Herman Cappelen, Tamar Gendler and John Hawthorne. Oxford: Oxford University Press.

Rawls, John. 1995. *Political Liberalism.* New York: Columbia University Press. John Dewey Essays in Philosophy.

Russell, Berthrand. 1945. *A History of Western Philosophy.* New York. Simon & Schuster.

Scanlon, Thomas Michael. 2002. Rawls on Justification. In *The Cambridge Companion to Rawls. Cambridge Companions to Philosophy*, edited by Samuel Freeman, 139-67. Cambridge: Cambridge University Press.

Schwartz, Stephen. 2012. *A Brief History of Analytic Philosophy from Russell to Rawls.* Sussex. John Wiley & Sons.

Shapiro, Ian. 2005. *The Flight from Reality in the Human Sciences.* Princeton University Press.

Simons, Peter. 2013. Metaphysics in Analytic Philosophy. In *The Oxford Handbook of the History of Analytic Philosophy*, edited by Michael Beaney. Oxford University Press.

Strauss, Leo. 1988. *What is Political Philosophy?* University Chicago Press.

Talisse, B. Robert. 2009. *Democracy and Moral Conflict.* Cambridge University Press.

Wall, Steven. 2015. The *Cambridge Companion to Liberalism.* Cambridge: Cambridge University Press,. Cambridge Companions to Philosophy.

Wolff, Jonathan. 2013. Analytic Political Philosophy. In T*he Oxford Handbook of the History of Analytic Philosophy*, edited by Michael Beaney. Oxford University Press.

The Moral Source of Kant's Concept of Right

Ewa Wyrębska-Đermanović
University of Bonn

Abstract: In this paper, I argue in favour of dependency of Kant's concept of right and his entire legal theory on the general concepts of Kant's practical philosophy, i.e. his account of practical freedom and moral law, categorical imperative, autonomy and his theory of agency. My arguments are directed against claims that Kant's legal theory can preserve its normative potential without being grounded in his ethics. While presenting my interpretation I address the most common objection to the dependency thesis, i.e. I aim at showing that Kant did provide some evidence to justify the use of coercion in the theory of right without the latter being independent of his demanding ethics of moral motivation. I investigate the distinctions in Kant's Introduction to the Metaphysics of Morals to conclude, that the conceptual justification of right as coercion lays in Kant's version of the Ulpian duties of right. I argue that the dual obligation towards humanity both in oneself and in others results in the necessity of creating a rightful condition and therefore makes space for legitimate institutional coercion. In the last step of the argumentation, I show that innate right to freedom, which in Kant's legal theory is the basis for the entire structure of rights, is inconceivable or purely arbitrary in abstraction from Kant's practical philosophy as developed in the *Groundwork of the Metaphysics of Morals* and the *Critique of Practical Reason.*

Key words: Kant's concept of right, autonomy, agency, coercion, dependency.

In this paper, I aim at showing the dependency of Kant's concept of right on the general principles of his moral theory.[1] My arguments for the interpretation of the source of right in Kant's practical philosophy presented in this paper contribute to the ongoing debate upon the systematic connection between categorical imperative and Kant's legal theory (so-called dependency/independency debate), especially between Guyer, Willaschek and Nance.[2] I do not intend to provide a *derivation* of the Universal Law Formula *from* the Categorical Imperative[3], because, in my view, such procedure is neither possible nor necessary for proving that Kant's legal theory rests on the general principles of his moral theory. Some very weak connection of this sort has not been denied even by the most vigorous opponents of the 'dependency thesis,'[4] yet in my reading proposed

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1] Immanuel Kant's works are referenced to 'Akademie-Ausgabe' edition of *Kants Gesammelte Schriften* (with pagination and abbreviations) of Prussian Academy of Sciences (Berlin: 1902 ff), with the exception of *Critique of Pure Reason,* cited in accordance with the page number of the first and second edition of the work (A/B). The translation cited in this text comes from *The Cambridge Edition of the Works of Immanuel Kant*, volume 'Practical Philosophy', translated by Mary J. Gregor and edited by Allen Wood, New York: Cambridge University Press, 1996 ff.

2] The discussion of the non-critical and non-moral source of Kant's doctrine of right among Kant scholars has begun much earlier, as it is described by Oberer (1973). H. Oberer also took part in the debate, arguing against Georg Geismann, see Oberer 2010.

3] There have been numerous attempts to do it, e. g. Guyer 2002 and Michael 2012.

4] See Willaschek 2012. Note that this author enters the discussion with a claim that Doctrine of Right does not belong to the metaphysics of morals at all (Willaschek 1997) but eventually admits, that the source of Kant's concept of right needs to be found in practical rationality, i. e. the sphere of morals,

below the moral law presented to humans as categorical imperative remains the supreme principle for the entire theory of morals (which, for Kant, encompasses both ethics and law) and not just one of the many practical postulates that lack further proof.

The main problem I aim to address is the relation between the general concept of right in Kant's legal theory and the categorical imperative, understood in a sense, which Kant uses in his writings. Willaschek, as the representant of the independency thesis, claims that both concepts are independent of each other, since one cannot derive the concept of right from the concept of the moral law. Moreover, he claims that coercion – the crucial element of the concept of strict right cannot be reconciled with Kant' moral theory from *Groundwork* and second *Critique*.[5] In this paper, I aim to propose an interpretation that opposes these two claims. The traditional reading, which stands for dependency thesis and is represented by Guyer and Nance acknowledges the problem recognized by Willaschek and aims at providing a (more or less) indirect derivation of the concept of right from the categorical imperative. Nevertheless, I consider these attempts flawed because both authors fail to provide arguments that are not circular.

My reading of Kant can be somewhat categorized as defending the dependency thesis but drawing on the vital input of Willaschek's interpretation. In arguing against his conclusions, I want to highlight two important aspects of Kant's conception of right. Firstly, in every legal theory, it is vital to give an account of an individual, who is acting, i.e. there is a need for some theory of agency. If the *Doctrine of Right* were considered independent of Kant's concept of practical rationality, or worse, reduced to instrumental rationality of hypothetical imperatives, the normative potential of such a theory is drastically reduced. One reason for this is that the (non-arbitrary) source of validity of norms would be missing since it is not lawgiving of practical reason, which commands what is just, good, right. Secondly, because there is no justification of why freedom must be the core value of the system of juridical laws, freedom as the founding concept of Kant's right becomes replaceable with anything else (e.g. security, happiness, order, tradition), as long as such other 'core value' can be agreed upon in a contract. I do not claim, that Willaschek and the adherents of the 'independency thesis' really do not care for protecting freedom or agency while objecting to the connection of the *Doctrine of Right* to Kant's ethical theory: nevertheless if one rejects one source of normativity and theory of agency, one must provide something in its place. Willaschek, whose work I take as an essential reference for this paper, suggests at the end of his meticulous critiques of 'standard interpretations', that Kant's concept of right must rest on some rational agency and autonomy[6]. Yet, this agency and autonomy must be *different from the ones which ground Kant's ethics*, because Willaschek

although in parallel and not dependency relation to the categorical imperative.

5] See Willaschek 2009.

6] See Willaschek 2012.

aims at developing the juridical sphere without referring to the categorical imperative as the *ratio cognoscendi* of freedom. In my view, such an approach is not sufficient to prevent a collapse of Kant's legal theory into Hobbesian-style contractualism. The above-listed issues are an incentive to look for interpretation overcoming the problems of traditional reading without depriving Kant's theory of its normative potential.

For the purpose of my analysis, I use Kant's account of the categorical imperative from the *Groundwork* and later works, as well as his conception of freedom as developed in the *Critique of Practical Reason.* I will elaborate upon the connection between moral law as the fact of reason and the practical freedom[7] (the one which allows humans to act freely, i.e. from duty) presented by Kant in the *Second Critique.* My analysis aims at showing that, in Kant's theory, the general basis of all normativity is moral law, which is universal, necessary and delivered to us by the autonomous activity of lawgiving reason. Further, I discuss various divisions of duties that Kant provides in the Introduction to the Metaphysics of Morals. I claim, against Willaschek, that the table of the division of duties is not coextensive with Kant's division of types of lawgiving into juridical and ethical since the first is a logical division[8] and the second is not. I rely here on the interpretation of the systematicity of duties provided by B. Ludwig[9].

By drawing these distinctions, I show that Kant's notion of right corresponds to the protection of freedom in both internal and external relations, but the strict right only concerns the interpersonal external relations. Because of that fact, this class of duties has a different status from all other duties, which are obliging to adopt moral motivation. Nevertheless, I argue while following the reading of Willaschek, who criticizes the positions of Guyer and Nance,[10] that the exercise of freedom in external relations and freedom as a right are not identical and therefore one cannot perceive internal and external freedom as two sides of the same coin. I argue that freedom as a right *in a strict sense* (connected to the permission to use coercion) must be introduced and justified on further grounds, and there I refer to Kant's account of Ulpian division of duties of right. Still, I do not deny that right as a normative concept (so Kant) is a postulate 'incapable of further proof', just as all practical (moral) laws in Kant's moral philosophy (AA RL 6:225 and 231).[11] In the last step, I reflect upon the concept of right in general and the innate right

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7] As we know, Kant also develops an empirical concept of practical freedom, presented in the Canon of *Critique of Pure Reason* (KrV, A 802/B 830–A 804/B 832). About this issue see most recently Kohl 2014. In my text, I refer to the notion 'practical freedom' in a sense developed by Kant in the *Critique of Practical Reason* and continued in the *Metaphysics of Morals.*

8] About logical divisions see for example I. Kant, AA Logik, 9:146.

9] See Ludwig 2013.

10] But also other adherents of the standard interpretation, see for example Oberer 2010.

11] Willaschek (2002) grounds his argument of non-prescriptive character of the duties of right on Kant's assertion that the freedom *is* by its definition limited by freedom of others and therefore no moral

to freedom as the source of all further rights. I argue that in Kant's theory, these normative notions would not be reasonable if not for the particular account of moral agency and autonomy built upon the concepts of freedom and moral law. I propose a different strategy of justification of coercion, by means of presenting a more complex and comprehensive understanding of the concept of right than the one, which is used by Willaschek. I intend to show that although the emergence of *right* cannot happen by means of *derivation* of the Universal Principle of Right *from* Categorical Imperative, the concept of right rests on the fundamental concepts of Kant's moral philosophy: his account of practical freedom, his theory of agency, and his understanding of moral laws as such.

Freedom, Moral Law, and Human Agency

After establishing the categorical imperative as the supreme principle of morality in the *Groundwork to the Metaphysics of Morals,* Kant moves on to the analysis of practical reason in the *Second Critique.* He forgoes the justification of categorical imperative *via* the idea of freedom (presented in GMM) and instead introduces the *fact of reason,* which roughly speaking is the representation of moral law within us in the form of CI, and the starting point of his practical philosophy (AA KpV 5:31). Only this *factum* can give objective (practical) reality to the concept of freedom (as it is the *ratio cognoscendi* of freedom), whereas the *ratio essendi* of Kant's moral philosophy is practical freedom (AA KpV 5:4, footnote).[12] Practical freedom has both a negative and a positive component. The negative freedom allows us to remain independent of any empirical determination of the will, while the positive freedom – which can be considered as the essence of pure practical reason – allows the will to be determined solely by the representation of moral law. Moreover, according to Kant, the positive aspect of freedom, exercised by practical reason, is the autonomy, i.e. self-lawgiving (AA KpV 5:33). The concept of freedom is not only grounding for the moral law (*Sittengesetz*), but also Kant's theory of agency.

Let us extract the most fundamental features of Kant's theory of agency for the purpose of my argument. The human being as an agent is constructed from an irrational and rational component. As embodied beings, humans follow their instincts, desires and needs, but they also develop preferences, just as many other animal species. As rational beings, humans can set goals and implement proper means

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incentive is needed. Taken the context, in which Kant presents the universal law of freedom as practical postulate, the argument fails to be convincing. Although right does not require the inner motivation of the agent, its fundamental principle is *per se* normative, just like the postulate of intelligible possession and of public right. Otherwise we would have to do with practical postulates that are subjective, such as the ones introduced for the sake of Kant's concept of The Highest Good in the *Second Critique.*

12] In this paper, I generally hold on to a presupposition that Kant's transcendental account of both practical freedom and moral law is not a failed project. For arguments against this claim, see for example Guyer 2007.

for these goals. Further, they can recognize the necessary moral laws (by means of the *fact of reason*), consider themselves as their authors (to the extent that the reason is something common to all humans), as well as act according to these laws, just because they are moral (i.e. with no additional incentive). Freedom in a negative sense means that whatever needs and wishes humans have, they do not necessarily determine human conduct (although they might, and in fact, very often they do). Without the negative freedom, we would merely be more complex animals: although some of them have an ability to follow specific rules, they act on instinct, and so they cannot be held accountable for their deeds. We do not put animals on trial, even when they do not follow some learned rules, but we do impute deeds to persons (as the authors of the deeds) equally and without reference to their empirical character. The freedom of persons is the basis of their personality and consequently, their imputability (AA RL 6:223). This means that humans can have duties only because they are capable of fulfilling them. Without negative freedom, we could hardly be considered authors of our deeds, i.e. agents. We would instead do as our nature dictates us to do, and the responsibility for our actions could not be attributed to us.

My claim is that this conception of accountability for one's deeds is a fundamental basis for the entire moral theory, including the *Doctrine of Right*. The adherents of the independency thesis would want to consider Kant's legal theory as based on some weaker type of agency, which does not rest on practical freedom, but rather on the faculty of choice alone, which to a certain extent is also a feature of animals other than humans.[13] In my view, without reference to the *positive freedom* (the positive aspect of practical freedom in Kant's terms), the *Doctrine of Right* would need to be reduced to a contractualism hardly different from the theory developed by Hobbes.

The positive aspect of freedom presents human agency as not only independent of any empirical, pathological or even goal-oriented reasons for action, but also as capable of autonomy and morality. For our purpose, it is crucial to differentiate these two concepts. Autonomy means that reason, both in theoretical and in practical use, is always lawgiving, i.e. it gives universal laws not only in theoretical sense (the spontaneity of intellect), while constituting human experience, but also in a practical sense, defining the 'laws of noumenal nature' or laws of freedom. In lawgiving of reason, Kant sees the ultimate chance of humans to be truly free. If moral laws were given by God or normatively understood nature, freedom as such would not be possible, because humans would always be subordinated either to their own needs and desires or the external lawgiving authority (God or Nature). Therefore the proof of the existence of internal

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13] If so, then it would be difficult to rationally justify why we consider some animals (humans) accountable for their deeds, while other animals are denied such accountability. Kant himself claimed that without practical freedom, normativity would be inconceivable since laws of nature would fully determine human conduct and applying sanctions for breaking laws would be no different from putting on trial animals.

lawgiving authority of reason in practical use is the most important topic of the second *Critique* (AA KpV, 5:42, 4-8). The moral law is the product of reason, and only while acting on it as the only incentive, human beings can be both free and moral. The morality of an action and an agent is bound to humans not only having the capacity to be free (because of the autonomy of practical reason), but also to them realizing this capacity.[14] The autonomy of a human is merely the ability of giving universal practical laws. Both concepts – autonomy and morality – make up for Kant's account of positive freedom, which is the foundation of normative laws of reason:

> On this concept of freedom, which is positive (from a practical point of view), are based on unconditional practical laws, which are called *moral.* For us, whose choice is sensibly affected and so does not of itself conform to the pure will but often opposes it, moral laws are *imperatives* (commands or prohibitions) and indeed categorical (unconditional) imperatives. As such they are distinguished from technical imperatives (precepts of art), which always command only conditionally. By categorical imperatives, specific actions are *permitted* or *forbidden,* that is, morally possible or impossible, while some of them or their opposites are morally necessary, that is, obligatory. AA RL, 6:221

The binding force of all laws must, therefore, be freedom in a positive sense. Freedom in a practical sense means that we can act according to the rational norms without regard to all of the empirical conditions connected to our empirical nature. Moreover, reason commands moral norms in the form of imperatives, because our sensuous nature can incline us to act against reason and this is the core of Kant's concept of autonomy.[15] We have a choice either to follow rational prescriptions (i.e. moral laws) or to subjugate ourselves to our impulses and urges, always present due to our anthropological profile. Therefore, in Kant's theory of internal morality, there arises the concept of inner coercion. We must force ourselves to act morally, i.e. rationally in the Kantian sense. In the sphere of legality, the coercion will also be institutional and external, although the justification for this is far more complex. What is essential for further reflection is to establish that

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14] Acting only in accordance with moral laws, but on some external incentives is called legality of actions. Willaschek claims that Kant presents two different versions of morality and legality in *Critique of Practical Reason* and *Metaphysics of Morals,* which I do not find convincing. While his argument is rather complex, I do not see a substantial difference between obeying and acting in accordance with an imperative, if the legality is concerned. If I respect a promise because I am afraid of being caught lying or because it serves me right in the given situation does not matter – the law (moral law, no matter if ethical or juridical) has not been violated. Moreover, I do not agree that in the *Metaphysics of Morals,* Kant only attributes legality to the sphere of 'right'. We may perform all different kinds of acts, which may seem 'moral', but are done with the absence of moral motivation. There, their 'legality' means that we comply with moral law, but we do not act 'morally'. The confusion with the term 'law' in reading Kant lays in his usage of the term *Gesetz,* which means 'norm', 'normative prescription' and may have absolutely nothing to do with the juridical or political domain. Yet, it is also common to call Kant's philosophy of right 'legal theory', since this is the area of research relevant to his *Doctrine of Right.* See Willaschek 2002.

15] Katrin Flikschuh argues, conversely, that autonomy needs not to be the vital source of the obligatory character of norms. See Flikschuh 2010.

the binding force of all normative laws is practical reason itself and its ability to fully determine the will. In order to demarcate the sphere of strict right, which in Kant's works is connected to the use of external coercion, we need to analyze Kant's division of duties and his consideration of forms of lawgiving.

Categorical imperative and categorical imperatives

Before we analyze Kant's system of duties, we must consider in what way Kant uses the term 'categorical imperative', especially since the debate around the normative source of the concept of right focuses on the connection of the latter to the Formula of Universal Law. There is a tendency to consider CI as *only* the formulas, as presented by Kant in the *Groundwork* and second *Critique*. While analyzing the various formulas of the CI from *Groundwork*, one can get a better understanding of what moral law – the most general practical principle – really commands. First, we know that moral law is the law of the noumenal world, analogous to laws of nature in the empirical world. Therefore, it is universal and necessary (human beings experience this necessity as internal coercion/necessitation). Moreover, it prohibits the instrumentalisation of any member of humankind (because of their practical freedom, which gives them unconditional worth). Finally, it provides us with all rational rules of conduct (completeness of moral law).[16] Yet, all that knowledge concerning moral law does not exhaust how Kant construes the concept of CI. Namely, also in the *Groundwork,* he claims that a norm, which presents itself to reason as good in an unconditional way (without reference to some end, like in the case of hypothetical imperatives: technical rules and rules for bringing about happiness), is called categorical imperative (AA GM 4:414). So, while Kant uses this term *also* to describe the formulas, which would allow us to test our maxims for their morality, he considers all practical laws to be *categorical imperatives.*

Imperatives, which oblige us not to lie, respect the freedom of others and foster their happiness as well as leave the state of nature and establish a rightful condition are all categorical imperatives in Kant's vocabulary.[17] They are normative prescriptions of reason, which command unconditionally. This means that they are obligations even in the absence of any statutory laws, and the permissibility of coercion (in certain instances of those imperatives) does not deprive them of their universal validity. The CI as the general principle of moral theory (*Sittenlehre*) needs not to be considered as the one, which generates moral laws via testing of maxims. The categorical imperative is rather the form,

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16] See Kant, GMM, 4:421, 429-34.

17] For further reference why all laws, both juridical and ethical, are categorical imperatives, see also Oberer 2010. Note that Oberer that internal freedom (which is a capacity) and external freedom (which is a right) are just two aspects of one concept (of freedom) applied to internal and external use of it respectively. I argue that external freedom as a right cannot follow from the external *use* of freedom as a capacity. See my argumentation below.

in which humans *recognise* moral law that in abstraction from the human condition, has only one feature: it is universal. For humans *in concreto*, reason commands to act on a maxim, which can be universally employed by all people in such a way that they exercise their practical freedom, i.e. they follow universal laws given by (their) reason.

Nevertheless, in the application of the universality of moral law to human condition we need to take into account two most essential aspects of our empirical reality, namely that we are embodied, which means we have needs and our inclinations influence our conduct and that we are living among other human beings on a limited space (planet Earth).[18] The moral law gives us duties, which apply to those facts, and therefore, we have duties both to ourselves and to others. Moreover, the duties commanded by reason refer not only to the inner nature (which is freedom) of humans but also to our empirical conditions: being embodied, having needs, desires and the physical impossibility of avoiding any human interaction. Otherwise, for Kant, there would be nothing moral about pursuing the ends of others or natural ends in us (for example by cultivating our talents) – but we learn from Kant's *Doctrine of Virtue* that these are our moral duties. In his paper, Nance argues that the derivation of the concept of right from CI becomes possible when one adds the social dimension of normativity to the individual one.[19] In my view the social context of human life cannot be the condition that would enable a *derivation* of the Formula of Universal Law from Categorical Imperative, as an extension of (inner) morality by a social domain of rights. It cannot be a successful stategy, because the concept of categorical imperative cannot be reduced to one single principle, but conversely, encloses it all: the principle, all its specific formulas, as well as all normative moral prescriptions generated by lawgiving reason. Moreover, a brief look at Kant's theory of ethics (of inner morality) starting from the *Groundwork* makes it clear that it *already* presupposes not only individual but also the social dimension of human existence. While I believe that Nance fails in his strategy, I want to propose a different one, which may succeed in connecting CI to the concept of right.

For this purpose, let us consider the table of the division of duties dictated by moral law as presented in the *Introduction to the Doctrine of Right*. According to Kant, three different logical divisions of all duties can be carried out. First, one can divide all duties into obligations towards oneself and towards other people – so we have to deal with internal (towards oneself) and external (towards others) duties. Second, both types of duties are either perfect or imperfect. Kant explains elsewhere (e.g., AA TL 6:380 ff)

18] It is a rather sad observation that while discussing Kant's moral theory, especially with regard to its fundamentals, the attention is given mostly to the individual aspect of *the morality* of a person, i.e. one investigates what makes up for the *moral worth*, which was the focus of the first part of *Groundwork*. The social dimension of morality understood broadly (*Sittlichkeit*) is often overlooked and neglected. Although it is important to mention that for Kant *moral worth* of action comes from the inner motivation of the agent, Kant is also very much interested in the social domain of both the duties of right and duties of virtue. The exercise of morality is directed towards others, which can be well inferred from the humanity formula of CI.

19] See Nance 2012.

that the perfect duties always command a specific action (command or prohibition).[20] Imperfect duties, on the contrary, do not command any specific action, but only a maxim according to which we should act. These last duties allow, therefore, a space for different ways of fulfilling such duties (*latitudo*). This division is co-extensive with the third division, namely, the division into duties of right and duties of virtue. All the duties of right are perfect, and the duties of virtue are imperfect.[21] These operations bring about four classes of duties: perfect duties of right towards oneself, perfect duties of right towards others, imperfect duties of virtue towards oneself, imperfect duties of virtue towards others.

Duty to oneself	Perfect duties				Duty to others
	The right of humanity in our own person	(of right) Duty (of virtue)	The right of human beings		
	The end of humanity in our own person		The end of human beings		
	Imperfect duties				

Table 1. Kant's table of division of duties: objective relation of law to duty[22]

Kant did not explain further the table of divisions in the text of *Metaphysics of Morals* but did so in his lectures, and a thorough discussion of it can be found in his lecture's notes (especially in *Metaphysik der Sitten Vigilantius*). These divisions, in my opinion, allow a clear interpretation of the difference between duties of right and duties of virtue. Kant claims that the duties of virtue concern the goal of humankind (in our person as well as in other people) and that duties of right correspond to the right of humankind. The former are imperfect, as they command to pursue specific ends and the latter are perfect because they command and forbid specific actions. What Kant aims at showing with this table of divisions is how moral law in the form of categorical imperatives presents itself to free and autonomous subjects in the manifold of duties. Not all of them must be fulfilled because of inner, moral motivation. The sphere of

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20] In the case of duties of right towards others, there is also the *permissive* law. It may be argued that permissive law, which allows a unilateral acquisition of objects, can also be formulated as a command since this permission is always accompanied by reason's command to enter the rightful condition. The main difference between duties, which are perfect and imperfect lays in the fact that the latter ones oblige us to pursue certain ends, whereas the first ones state the general framework for pursuing whatever ends we please.

21] I abstain here from discussing the problematic issue of perfect duties towards oneself, which Kant introduces in his *Doctrine of Virtue*. There are many attempts to solve this issue, and I follow a version of the interpretation by Ludwig (2013) , who claims that these duties are protecting freedom and hence must be considered duties of right in some sense. In my view they belong to the *Doctrine of Virtue* since the lawgiving for these duties must always be internal and so must be the coercion (internal coercion).

22] Source: AA RL 6:240.

legal relations, which emancipates itself from the necessity of inner motivation and autonomy of practical reason, can be discerned on the basis of different forms of lawgiving (*Gesetzgebung*), for which the source of duties (lawgiving of practical reason) and the fact that they can be duties at all (because of human personality, which entails imputability) remains unchanged.

The forms of lawgiving and the duties of right

The second division brought about by Kant in the *Introduction to the Metaphysics of Morals* concerns not the duties, their character and content, but the forms of lawgiving. I claim that not the division of duties, but the recognition of two possible forms of lawgiving determines the structure of the *Metaphysics of Morals*, where Kant discusses *strict* right in the *Doctrine of Right* and the rest of the duties, to which only the internal, ethical lawgiving can be applied, in the *Doctrine of Virtue*. For Kant, any lawgiving, understood both as the result of the spontaneity of (practical) reason and as the activity of an external authority, can only be constructed out of the following elements: first there is a law, and second, there is an incentive to obey this law. The first element is the theoretical recognition of what is objectively necessary, what is the prescribed law. The second element, which is the incentive, binds the law to the subject and creates an obligation. If the incentive is the representation of the law, i.e. it is internal, then we have to do with ethical lawgiving. If, however, the incentive is external (for example, the threat of punishment or the hope for remuneration), then the lawgiving is called juridical (AA RL 6:218-219). Although we do not yet know what these laws are, the names 'ethical' and 'juridical' already suggest particular contents. It is so because this dichotomy does not constitute a logical division in the sense that the sets created by the division exclude each other. While juridical legislation only concerns a particular set of practical laws, all laws may be subject to ethical legislation:

> Duties in accordance with rightful lawgiving can be only external duties, since this lawgiving does not require that the idea of this duty, which is internal, itself be the determining ground of the agent's choice; and since it still needs an incentive suited to the law, it can connect only external incentives with it. On the other hand, ethical lawgiving, while it also makes internal actions duties, does not exclude external actions but applies to everything that is a duty in general. But just because ethical lawgiving includes within its law the internal incentive to action (the idea of duty), and this feature must not be present in external lawgiving, ethical lawgiving cannot be external (not even the external lawgiving of a divine will), although it does take up duties which rest on another, namely an external, lawgiving by making them, *as duties,* incentives in its lawgiving. (AA RL, 6:219)

Kant writes again at the end of this section: "So while there are many *directly ethical* duties, internal lawgiving makes the rest of them, one and all, indirectly ethical." (AA RL, 6:221) From the penultimate quote, we can draw two valuable lessons concerning Kant's sources of normativity. First, we already know that the juridical lawgiving is connected to the domain of law ('obligations under the legal legislation'). However, this does not

mean that legal/juridical lawgiving constitutes the most important feature (or indeed the *differentia specifica*) of the legal norms (and consequently also duties of right). Kant's argument is indeed the opposite: duties under juridical lawgiving can only be external duties because in this form of lawgiving, the incentive for action is also external. So, we could imagine an objective law that prohibits hitting others with a stick. Of course, such a law can be subject to both internal and external legislation. If it is a subject of juridical lawgiving, the incentive is external (threat of punishment), but such lawgiving does not by itself determine the character of the law (if this law belongs rather to legal or ethical domain), because it is not the incentive but the substance of the law that decides upon it. Second, we may infer that since all the duties belong to ethical lawgiving, the source of such norm (and what makes it a rational norm) always needs to be considered internal, even if the incentive remains external. Hence, all moral laws (i. e. rational laws, which belong to both legal and ethical domain) are categorical imperatives, and the external incentive does not make them any less 'moral' than the laws, which are only subject to internal lawgiving.

Let us finally investigate what exactly determines whether a law belongs to the domain of what is right or to the domain of virtue, as indicated in the *Metaphysics of Morals*. Kant provides us with the division of the duties of right,[23] in which we find the third (after perfect duties towards ourselves and towards others) category of such duties, namely the duty to establish a rightful condition, i. e. to arrange interpersonal relations in such a way, that no person is being treated as a mere means:

> One can follow Ulpian in making this division if a sense is ascribed to his formulae which he may not have thought distinctly in them but which can be explicated from them or put into them. They are the following:
>
> 1) Be an honorable human being (honeste vive). Rightful honor (honestas iuridica) consists in asserting one's worth as a human being in relation to others, a duty expressed by the saying, "Do not make yourself a mere means for others but be at the same time an end for them." This duty will be explained later as obligation from the right of humanity in our own person (Lex iusti).
>
> 2) Do not wrong anyone (neminem laede) even if, to avoid doing so, you should have to stop associating with others and shun all society (Lex iuridica).
>
> 3) (If you cannot help associating with others), enter into a society with them in which each can keep what is his (suum cuique tribue) – If this last formula were translated "Give to each what is his," what it says would be absurd, since one cannot give anyone something he already has. In order to make sense it would have to read: "Enter a condition in which what belongs to each can be secured to him against everyone else" (Lex iustitiae). (6:236-37)

23] For a more exhaustive interpretation of Kant's Ulpian duties see for example Pinzani 2005.

The first type of duties of right expresses duties that an individual has towards herself. The most of these duties, otherwise called internal/perfect duties to oneself, cannot belong to the *Doctrine of Right*, as Kant claims that the strict concept of right is interested only in external duties in relations with other individuals (AA RL 6:232). Nevertheless, one of the duties belonging to this class has an interpersonal significance, namely: we must *never* let others treat us as mere means. The further two types of duties refer to legal obligations with regard to others and the general duty to exit the state of nature. I will aim to prove that the third of these duties, which, so Kant, *is derived from the two former* determines the construction of the entire concept of *right* in the *Doctrine of Right.* This is a special duty, that is necessary if we cannot avoid interpersonal interaction and must not (1) treat others as means and (2) allow others to treat us as means. From this double obligation (based on the formula of the humanity of CI), we can observe the *emergence of the juridical dimension.* Kant states that the third type of duty is *necessary* in order to fulfil the two previous ones jointly. From this duty, jointly with both previous ones there arises the postulate incapable of further proof: 'Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.' (AA RL, 6:230). Only if we take a *strict right* as a concept that arises from the Ulpian division of duties, or more precisely, from the conclusion that can be drawn from the two previously recognized (in the table above) types of duties of right, we can understand why coercion is *analytically* derivative of the concept of right.

The Universal Law Formula, which I quoted above, commands harmonization of freedom of choice of all persons because arbitrarily denying choice to another human being is the most grievous example of instrumentalization. In order for such harmonious state to emerge, all people must enter a *rightful condition* or *condition of distributive justice.* In Kant's theory, people do have rights in abstraction from being either in state of nature or a civil union.[24] Nevertheless, these rights are only granted under the requirement of establishing a rightful condition. Moreover, the concept of the rightful condition is the reason why the structure of 'right' must entail the element of external coercion. The *rightful* use of coercion is never an interpersonal act, as Willascheck would argue,[25] it must always be mediated by the idea of general united will and exercised by state institutions. Coercion is only then justified as an indispensable element of the concept of right if this concept entails the necessity of a rightful condition, in which such coercion can take place in a legitimate way.

24] See section on Innate Right and Private Right in the *Metaphysics of Morals.*

25] Willaschek (2009) seems to suggest that we can use coercion in our private matters, even if the institutions of distributive justice are present and well-functioning, i. e. in a rightful condition. I believe it is false, for coercion in the concept of right is only legitimate in the rightful condition. What is more, according to Kant, there can be no coercion in the state of nature, only violence. See Willaschek 2009, 56, and for comparison Kant, AA RL 6:307.

With this analysis of the concept of right that entails presupposition of a state and *therefore* also of rightful coercion I address the main objection of Willaschek to the dependency thesis. Taking only bare definitions from the *Introduction to the Doctrine of Right,* it may seem hard to reconcile the necessary element of coercion with the freedom of everyone. Coercion, even if understood as mechanistically as Kant presents it,[26] is the opposite of freedom, unless it has been legitimized in some way. My argument is, that the idea of general united will, which is a concept provided by Kant to replace the actual procedure of giving consent to any limitation of freedom is also the necessary element of giving consent to the use of force for the sake of protecting rights. And as consent is the expression of choice, Kant uses the Latin formula *volenti non fit iniuria* to claim that adding external incentive to the normative laws in the case of external use of freedom does not annihilate this freedom. This is precisely the point Willaschek misses in his critique of Guyer, even though he is right when he claims that not every violation of rights is a crime.[27] From such interpretation of the concept of right (as entailing three Ulpian duties and therefore presupposing coercion only in an institutional context), one can easily understand how external lawgiving determines the scope of the whole *Doctrine of Right.* External lawgiving binds the subject with the norm in such a way that it appeals rather to her pathological than rational nature. It is permitted or even necessary in the case of harmonization of the freedom of choice, i.e. in all the moral, rational laws that are dictated within the sphere of external use of freedom.

The innate right to freedom and other rights

If my argumentation is correct, then the claims about the independency of Kant's theory of right from his previously developed moral theory are far less convincing. As many have mentioned before (Guyer, Nance, Willaschek) I also believe that the source of all these difficulties is that Kant's analysis in the *Doctrine of Right* does not entail the justification of the transition from inner freedom of the will to external freedom understood as a right. As Kant claims, the only innate right that every person possesses by virtue of her humanity is freedom, which he initially defines as 'independence from being constrained by another's choice' (AA, RL 6:237). The question that arises here is the justification of this right with reference to the categorical imperative. According to the latter, the exercise of freedom entails acting on moral maxims and for the sake of moral

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26] 'Resistance that counteracts the hindering of an effect promotes this effect and is consistent with it. Now whatever is wrong is a hindrance to freedom in accordance with universal laws. However, coercion is a hindrance or resistance to freedom. Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it'. Kant, AA, RL, 6:231

27] See Willaschek 2009.

law alone. If this is the essence of morality, we do not need external freedom to be moral beings and act on duty,[28] we also do not need even to consider any external actions as based on Kant's moral theory alone, because some duties do not command actions, but rather pursuing certain (moral) ends. Nevertheless, this can only hold if one focuses solely on the individual aspect of Kant's moral theory. For a monk or a prisoner, it is perfectly possible to be a moral person without interacting with other persons, because the inner freedom is not affected by external circumstances. Yet, Kant addresses his moral theory not only to renunciates and eremites, but to humans in general, and people, in general, do not live in isolation from each other.

In the last step of my argument, I will try to show that, for the adherents of the independency thesis, assuming that freedom is the most fundamental and inalienable right is purely arbitrary. Namely, I argue that accepting the right to external freedom as the very basis of Kant's legal theory and source of all further rights must appear to be anything but self-evident, *if we do not take into account* the theoretical background of this theory, i. e. fundamental concepts of Kant's practical philosophy. Being devoid of the justification of the profound significance of freedom with reference to the inner morality and considering humans only in their empirical nature and empirical character, it must be challenging if not impossible to prove that freedom is the foundational political value. We can observe in many well-functioning empirical legal systems that they can exist with sufficient justification and without considering freedom as a core value to be protected. If we conclude that happiness is the primary goal of these systems, because it is also the natural goal of humans, freedom can be considered merely superfluous.[29]

If the original right to external freedom is not necessary for exercising morality and cannot be inferred from the phenomenal nature of humans, there arises the need to justify it on different grounds.[30] I argue that the only plausible justification of this right rests on the application of Kant's formula of humanity to empirical circumstances of the human condition. I have argued above that practical freedom is necessary to ground any norms because of the imputability of persons and that moral law is the only source of the obligatory character of norms. Those two concepts play an equally fundamental role in the justification of freedom as an external right. First, practical freedom constitutes the moral personality of all human beings and therefore turns them into ends-in-themselves.

28] To a certain extent, I agree here with Willaschek 2012.

29] See Kant's reflections on the paternalistic government in the essay *On the common saying: That may be correct in theory, but it is of no use in practice*, AA TP, 8: 290-91. As an example of a rational justification of legal system which existed without freedom, we can bring by many apologies of feudalism performed in the Middle Ages, which did not question in any fundamental way the inner freedom of individuals as the children of God.

30] More about the innate right, and its moral status one can read in Höffe 2002. About the issue of "postulate incapable of further proof" and justification of the right to external freedom see Ripstein 2009.

Second, the categorical imperative in its 'formula of humanity' forbids to instrumentalise human beings for any purposes, even if the goal of the conduct were their happiness. If we consider humans as embodied creatures, which by the power of free choice, act on their interests and strive to fulfil their desires, the first rational norm is the prohibition of treating others as mere means – because this violates their humanity. Constraining the will of others is the most grievous example of instrumentalization because it is equal with turning persons into objects, as their free choice (but indeed not their inner freedom) is annihilated by such conduct. Violation to innate right to freedom is not equal with depriving persons of their (practical) freedom but taking away their free choice must be nevertheless ruled out because it fails to acknowledge them as persons and not objects.

Further, we need to mention that Kant's right to external freedom is not one that permits unlimited use of it (like it is the case with Hobbesian freedom of individuals in the state of nature), but it is always limited by the same extent of freedom of everyone else. The question, which arises here is why the freedom as right needs to be distributed equally to everyone, even though experience teaches us that people are so different in many ways and so it might be beneficial to every particular person and the society as a whole to give different scopes of freedom to different individuals? Based on empirical knowledge alone and with happiness as the main goal of building a just society, we will not be able to justify equality as the inherent element of freedom sufficiently. But if we refer to Kant's metaphysical source of moral philosophy, then we are reminded that the shared feature of humans is their humanity understood as practical freedom, i.e. the ability to act morally, which also builds the very ground of the right to external freedom. Therefore, if external freedom is given to anyone as a legal title (a right), then it must be given to every person in an equal share.

While reconstructing Kant's application of his pure moral concepts to the human condition, we have arrived at the fundamental right to external freedom. Kant defines it in a republican way as non-domination,[31] i.e. being independent of an arbitrary will of another person. Yet, in the reflections following the definition he equips this right with further elements – human beings are therefore originally granted the right to equality (in being bound by others in a reciprocal procedure), being one's own master, being beyond reproach (often explained as legal innocence) and being authorized to do anything they please as long as they do not infringe upon the right of others. All the further elements must be considered an extension of this original right to freedom (AA RL, 6:237-38), but it is evident that they are a result of inferences drawn by Kant, who is applying external freedom to empirical conduct. We must not, therefore, be obstructed in our free choice by the domination of others and this rule applies equally to establishing legal relations (such as a contract), being held responsible for only one's own deeds and doing anything

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31] I refer here to the new version of the classical republican account of freedom presented by Petit 1997.

we are pleased to (also while violating moral duties), as long as we respect the equal freedom of others. By means of the innate right to freedom Kant grounds his system of all further rights, which constitute the entire (rational) juridical domain and I agree that this one right, while applied to the human condition, is sufficient to ground Kant's entire legal theory. Therefore, external freedom, understood as innate right, is a necessary and sufficient condition to secure the use of free choice by embodied creatures such as humans, and even this would not be justified if not for the practical freedom as the fundament of humanity,[32] autonomy and agency.

CONCLUSIONS

I argued that Kantian concept of right rests on the moral identity of a human being, but in the end unveils a system of external laws that have juridical character and are bound to the state's monopoly for the use of coercion. This by no means undermines the rational source of Kant's doctrine of right, which can only be grounded in practical freedom and derived from the pure concept of the moral law. The connection between categorical imperative as we know it from *Groundwork to the Metaphysics of Morals* and *Critique of Practical Reason* and the concept of right is far from evident and straightforward. I argued that the dependency of the latter on the former is much more plausible than the opposite view.

ewa.dermanovic@uni-bonn.de

REFERENCES

Flikschuh, Katrin. 2010. Justice without virtue. *Kant's Metaphysics of Morals. A Critical Guide.* L. Denis, ed. Cambridge: Cambridge University Press: 51-70.

Guyer, Paul. 2002. Kant's deductions of the principles of Right. *Kant's Metaphysics of Morals. Interpretative Essays.* Timmons, Mark, ed. New York: Oxford University Press, 23–64.

———. 2007. Naturalistic and Transcendental Moments in Kant's Moral Philosophy, *Inquiry*, Vol. 50, No. 5, 2007: 444-64.

Höffe, Otfried. 2010. Kant's innate right as a rational criterion for human rights. *Kant's Metaphysics of Morals. A Critical Guide*, Lara Denis, ed. Cambridge: Cambridge University Press, 71-92.

Kohl, Markus. 2014. Transcendental and Practical Freedom in the Critique of Pure Reason. *Kant-Studien* Vol. 105 (3): 313-35.

Ludwig, Bernd. 2013. Die Einteilungen der Metaphysik der Sitten im Allgemeinen und die der Tugendlehre im Besonderen (MS 6:218 – 221 und RL 6:239 – 242 und TL 6:388 –

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[32] I mentioned humanity, because of the formula categorical imperative best suited to justify external freedom: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means" (AA GMM, 4:429). This formula dictates that we must never violate the humanity (understood both in the narrow sense, which is equal to practical freedom as well as broader sense derived from empirical knowledge) of all persons.

394, 410 – 413. Trampota, A., Sensen, O., Timmermann, J., eds. *Kant's "Tugendlehre". A Comprehensive Commentary.* Berlin, Boston: De Gruyter, 59-84.

Nance, Michael. 2012. Kantian Right and the Categorical Imperative: Response to Willaschek. *International Journal of Philosophical Studies*, Vol. 20 (4): 541-56.

Oberer, Hariolf. 1973. Zur Frühgeschichte der Kantischen Rechtslehre, in *Kant-Studien*, Vol. 4 (1): 88-102.

———. 2010. Noch einmal zu Kants Rechtsbegründung, *Kant-Studien*, Vol. 101: 380-93.

Pinzani, Alessandro. 2005. Der Systematische Stellenwert Der Pseudo-ulpianischen Regeln in Kants Rechtslehre. *Zeitschrift Für Philosophische Forschung* 59, no. 1: 71-94.

Ripstein, Arthur. 2009. *Force and Freedom. Kant's Legal and Political Philosophy*. Harvard University Press, 355-87.

Willaschek, Marcus. 1997. Why the Doctrine of Right does not belong in the Metaphysics of Morals. On some basic distinctions in Kant´s moral philosophy. *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics*, Vol. 5: 205–227.

———. 2002. "Which Imperatives for Right? On the Prescriptivity of Juridical Laws in Kant's Metaphysics of Morals", in *Kant's Metaphysics of Morals. Interpretative Essays,* M. Timmons (ed.) (Oxford: Oxford University Press), 65–85.

———. 2009. "Right and Coercion. Can Kant's Conception of Right be Derived from his Moral Theory?", in *International Journal of Philosophical Studies* Vol. 17 (1): 49-70.

———. 2012. "The Non-Derivability of Kantian Right from the Categorical Imperative: A Response to Nance", in üpol Vol. 20 (4) 557-64.

The Danger of Beauty Alone: The limitations of Beauty in Environmental Decision-Making

Amy Kings
Keele University

Abstract: The protection of non-human nature is often grounded with an appeal to beauty. Focusing on the beauty or aesthetic value of nature means basing the decision of whether to preserve an environment on whether or not it is beautiful. In this paper, I will argue that basing environmental protections solely upon aesthetic value is not only insufficient in providing an adequately robust foundation for protecting the environment but potentially deleterious to this aim. I will demonstrate the need to problematise our understanding of beauty and its role in motivating environmental preservations. In justifying this, I will appeal to the subjectivity of beauty standards and the tendency for human conceptions of beauty to mask crucial issues of environmental relevance, which can lead to shallow and inappropriate decision-making. Cases of environmentally harmful beauty and potentially beneficial ugliness are particularly at risk of being overlooked if beauty is used as the primary justification for environmental protectionism. I will argue that the notion of aesthetic disinterest is a useful tool in helping to background our most obvious self-interested motivations and preconceptions about both nature and beauty. However, it is only with a robust cognitive component that this approach would be able to provide an epistemologically sound strategy for reliably grounding the protection of non-human nature.

Key words: aesthetic value, beauty, disinterest, environmental ethics, aesthetics, cognitivism, protectionism.

Positive aesthetic experiences are an important part of life, and the natural environment is a primary source of such experiences. These positive aesthetic encounters contribute to the happiness and well-being of individuals and can promote social cohesion and economic prosperity within a community. The foundation of positive aesthetic responses relies upon the perception of beauty, this much is uncontroversial, but I want to posit that one's perception of beauty should not be the sole basis for justifying environmental protections.[1] This point may seem self-evident to many environmentalists, but the overwhelming evidence suggests that beauty is still given precedence when it comes to persuading people of the need to make certain changes in order to protect nature.[2] Negotiating environmental disputes and justifying certain

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[1] The way in which the perception of beauty works and how this feeds into the making of a positive aesthetic judgment are the subject of much discussion, but it is not my intention to discuss them here. See Guyer 1979, Allison 2001 and Ameriks 2003 for broad overviews of a Kantian approach to the issue.

[2] In the context of climate change, the most obvious reason for protecting the environment is having an interest in humanity's continued survival. I do not wish to deny this; I would only claim that the 'final persuasion' of a call to action most often lies in an appeal to beauty – a tool used to convince even those sceptical of the climate crisis. However, the focus of this paper does not concern how to correctly justify taking action on climate change – at this point, the subjective reasons for why people take action are less important than the action-taking itself. My discussion here is focused on understanding how we come to distinguish between the various parts of nature and how this leads us to decisions about which parts

natural protections through the lens of beauty leads to the protection of things we find aesthetically valuable and the dismissal or avoidance of things which we do not. This approach poses significant problems for eco-aesthetics[3], and yet it has a long historical precedent in environmentalism and politics.

Throughout history, the human preference for a certain kind of beauty, i.e. unspoiled natural landscapes, has been a primary factor behind environmental protectionism, as well as the avoidance or disregard of ugliness. We can observe this in advertisements, parliamentary policy documents, political speeches, charity appeals, literature, television and the like. For instance, the Sierra Club was designed to promote wilderness, The National Trust was set up to protect places of natural beauty, and Greenpeace and the WWF regularly make emotional appeals based on the destruction of beautiful scenery/creatures (National Geographic 2019; The National Trust 2017; Harvey 2011, respectively). Additionally, so-called 'beautiful legislation' is passed in Papua New Guinea, The Ocean Foundation claims that development must be slowed down to preserve natural beauty, and even businesses pay lip service to an obligation to pass on the beautiful environments to future generations (Woods 2019; Harvey cited in Whittaker 2019; Pacific Engineering Corporation, n.d. again respectively). The U.S. Endangered Species Act of 1973, does not cite intrinsic worth or instrumental value as reasons for protecting the environment, but instead explicitly recognises that endangered and threatened species are of "[...] [a]esthetic [...] value to the Nation and its people" (U.S. Fish and Wildlife Service 1973).

It is not merely the appreciation and preservation of existing natural beauty which organisations like The National Trust are advocating; it is also the creation of an even more beautiful environment (The National Trust 2017). Humanity's infatuation with beauty extends to the categorisation and classification of natural beauties, to the point of creating specific checklists to denote the requirements of natural beauty, which are 'deserving' of protection.[4] Under this model ugliness is either an irrelevance or something to be avoided at all costs, in 1965, President Lyndon Johnson gave a special message to Congress on the subject of conservation and the restoration of natural beauty; he went so far as to say, "Ugliness can demean the people who live among it. What a citizen sees every day is his America [...] If it is ugly, it can degrade his existence." (Johnson 1965). Aside from the patriotic overtones, if what was meant here, is that living in environments made up of

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to protect and which parts to destroy. I take it for granted that parts of nature will always be destroyed to accommodate new buildings etc., and used to advance aesthetic ideals, in this light it becomes necessary to rely on something other than beauty (for reasons which will be elaborated).

3] I have not come across this term in the literature, but it is a straightforward way of describing the attempt to combine aesthetics and environmentalism.

4] Good examples of this are the AONB and UNESCO: at the moment nearly 1/5th of the landmass of the UK has been designated as outstandingly beautiful, and a total of 46 Areas of Outstanding Beauty (AONB) are protected by legislation (The National Association Areas of Outstanding Natural Beauty, 2017). Additionally, in order to become a UNESCO World Heritage Site, an area of nature must meet specific criteria, one of which is that it " [...] contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance." (UNESCO 2017).

only human-made buildings and objects *may* reduce a person's quality of life, then I am in agreement. However, the interpretation of this message hangs upon the definition of ugliness, and it is only through understanding what is meant by beauty (and non-beauty) that we can begin to unravel this complex relationship.[5]

Promoting beauty and minimising ugliness is the central aim of a governmentally established independent organisation (up until recently chaired by the former UCL professor, philosopher and aesthetician Roger Scruton) called the 'Building Better, Building Beautiful' Commission. The Commission is tasked with acting "[...] as champions and advocates for the Government's commitment to beauty in the built environment." (GOV. UK 2018). Interestingly, the document gives some real insight into the government's motivations for commissioning such an initiative in the first place. On one (perhaps cynical) reading, the commission appears as no more than an attempt to discover how to mitigate public disagreement about state-funded building developments. The UK government likely has little interest or desire in making council estates beautiful, but it certainly does have an interest in minimising public backlash to changes that they wish to make. The 'Terms of Reference' state that the Commission is tasked with discovering what would deliver greater community/popular consent about decisions concerning land which is "brought up for development" (2018, 1). Of course, the assumption here is that there is a consensus to be discovered in the first place and that one only needs to go out and pluck from the minds of the British. If the aim is to learn what the majority of people think beauty is à la Hume, then a survey would probably be less costly and provide more conclusive results than a group of architects and academics. Even so, what would happen should (as is likely) there be no consensus? What if 52% of the population prefer post-modern designs while 48% have more brutalist leanings? Ultimately someone (government, land developers, architects, i.e. those with the money) would be left to decide which option is better based upon arbitrary or financial criteria combined with their aesthetic sensibilities. This approach also assumes that if a consensus were to be established, then this would be an epistemologically sound methodological approach to the making of decisions which affect our natural and non-natural surroundings alike.

Aesthetic value plays an essential role in many people's emotional attachment to nature and thus their justification for wanting to protect it, but this does not mean that it can provide an adequate framework through which we can decide why some nature deserves to be protected, and other parts do not. Founding environmental policy on natural beauty, tends to imply that we all have the same idea about what constitutes 'beauty', which is very far from the truth – even when we are discussing beauty within

5] The philosophical discussion of ugliness is multi-faceted and wide-ranging; I cannot hope to do it justice in the space I have here. Instead, I refer to ugliness in order to highlight the insufficiency of non-cognitive aesthetic approaches to nature, but it should be noted that the dismissal of ugliness and/or its conflation with evil/harmfulness etc. is deeply problematic for both ecoaesthetics and nature in general. I will elaborate upon this, but only with the limited intention as expressed above, to highlight the limits of beauty and the need for a cognitive account of environmental aesthetics.

nature. In this context, one's conception of beauty, defines the ethical parameters by which we operate, but if no single account of beauty exists, how can we be confident that environmental policy, resting on such aesthetic consideration, will stand the test of time, or even last into the middle of next week? It is well-known that when the economy suffers, so too does the environmental movement (Gallup News 2015). Basing an environmental ethic on beauty alone does not necessarily provide the moral impetus to do much about it, especially when times are tough, or other self-interests override aesthetic considerations.

One's conception of beauty is undoubtedly influenced by one's upbringing; an economically disadvantaged person, for instance, is less likely to have experienced beauty in the natural environment, or in as wide of a variety of settings (i.e. music, film, theatre, opera, art) than those who are college-educated (Ipsos MORI 2010, 19). A study conducted by Ipsos Mori in Sheffield, England, discovered that 65% of people had experienced beauty in the natural environment, which increased to 82% amongst the more socially advantaged members of the study.[6] Beauty is invariably connected to the environment, in fact, the two words most commonly associated with beauty (amongst the 1043 respondents) were 'natural' and 'clean' (2010, 19-22). The socially and economically advantaged are significantly more likely to favour beauty over either affordability, sustainability or functionality in their local environment. However, on average, when it comes to deciding what type of new buildings are built, more people are likely to agree that affordability, sustainability and functionality should be prioritised over beauty (2010, 49) suggesting that aesthetic considerations are less central to people's decision-making process than economic necessities, and feelings of ethical obligation towards the environment. For instance, in areas which rely on environmental destruction for employment, such as Oregon State, USA (where the logging/timber industry is essential to the local economy) people are more likely to be supportive of anthropogenic policies which favour traditional forest management, over biocentric/preservationist policies, favoured on a more nationwide scale (Steel et al. 1994, 150).

Differing conceptions of natural beauty, vary not only according to economic and social status, but also geographical location and ethnic identity. North American and European emphasis on wilderness, as the optimum form of the natural environment, is not necessarily shared by the rest of the world. Studies have shown that race is a far stronger predictor of the type of natural landscape people prefer than either age, class or gender. A study, conducted in 2009, explored the differences between native-Dutch persons and immigrants from Islamic countries and found significant differences between their versions of the image of nature and subsequently, their landscape preferences (Buijis, et al. 2009). It was found that among the predominantly white native-Dutch population, a more ecocentric, wilderness image of nature made them more likely to favour natural

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6] Amongst the more socially and economically disadvantaged group the figure was 55%. The more socially advantaged group were also more likely to have experienced beauty in a larger variety of settings (Ipsos MORI 2010, 9-10).

models of landscaping. Whereas, the non-Dutch natives expressed a more functional and anthropogenic view of nature, and preferred more managed landscapes (2009, 221) over wild and unmanaged landscapes, like marshes and dunes[7]. This result replicated earlier studies conducted in North America and Europe, which found that Anglo-Americans tend to prefer a more wild, natural environment, whereas African Americans and Latin-Americans prefer a more developed and managed setting (Virden and Walker 1999; Kaplan and Talbot 1988). Different preferences in landscape management, probably stemming from varying images over 'ideal nature' have been linked to research showing that African Americans and immigrants are less likely to visit nature reserves than Caucasian American people (Johnson et al. 2004).[8]

The often-implicit assumption running through much of eco-aesthetic discourse is that 'naturalness' is the primary tool by which we can assess beauty, but this seems only true when it is viewed through a particular social and cultural framework. Living in a multicultural and diverse social landscape means that environmental policy based on preserving natural beauty, often culminating in projects of conservation, risks alienating those who do not adopt the same narrowly defined conception of beauty. It also means that the outcomes of projects like the 'Building Better, Building Beautiful' Commission will ultimately come to reflect the views of those holding the purse strings.[9] Of course, it may be possible to find a middle ground between polarised views or enact a first-past-the-post system to decide which aesthetic idea 'wins', but the problem of the relativism of aesthetic standards still stands, likely meaning that everyone ends up only 'half-way happy'. Class, ethnicity, location, upbringing, nationality etc. all influence how a person conceives of beauty and what level of importance they attach to aesthetic considerations. Certainly, our beliefs and interests are formed through a combination of genetic and environmental factors; this is not a problem in and of itself (it is hard to imagine it being any other way), but it becomes an issue when we are making interest-influenced decisions which affect other humans, animals, as well as non-human nature.

A potential solution in overcoming the relativism of beauty standards or at least the parts influenced by self-interested desires is through the application of aesthetic

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7] In this study, immigrants also expressed less interest in non-urban landscapes, as well the 'wilderness image' of nature. A finding which is reflective of the use of nature in urbanized areas in the Netherlands, and the rural-agrarian cultures, which many of the surveyed immigrants (from Turkey and Morocco) had lived in (Buijs et al. 2009, 115).

8] This probably has more to do with economic circumstances and geographical distance than with the aesthetic preferences of people with African heritage living in the USA. Applying the aesthetic preferences from relatively small sample groups to whole sections of society categorised by their racial or ethnic heritage is problematic, but the above examples do successfully highlight the complexity of the issues involved and the risks involved with their oversimplification.

9] There is also the issue of framing to consider i.e. are decisions being made on an individual, local, national or international level? It becomes even more challenging to overcome the differences and reach a middle ground the higher up you go and the more people it affects. This often leads to prevarication, inaction and stagnation in the taking of positive action.

disinterestedness. Aesthetic disinterest is not a new concept; it has existed in various guises for centuries, but mostly with reference to the traditional arts. Aesthetic disinterest has formed a major part of the philosophy of art and aesthetics since the mid-to-late eighteenth century.[10] Aesthetic disinterest has featured in the works of Schopenhauer, Mendelssohn and Nietzsche, but it is Immanuel Kant's version of disinterested judgment which has dominated Western aesthetics since its publication, and his definition of disinterest is the most commonly referenced:

> [...] only the liking for taste in the beautiful is disinterested and free; since we are not compelled to give our approval by an interest, whether of sense or reason. (Part 1, §5, 210) [...] Taste is the ability to judge an object, or a way of presenting it [...] devoid of all interest. (Part 1, §5, 211).

The role of interest distinguishes aesthetic judgment from judgments of other kinds. To be clear, disinterest does not necessarily denote a 'lack of interest' in the object of contemplation; rather it requires the 'backgrounding' of one's subjective desires and interests. Contemplating an object of art requires a different approach than the one we take in contemplating the contents of our refrigerator. The specific phenomenological experience of aesthetic contemplation has been associated with a certain level of disinterestedness in the perceived object. We look at the contents of our refrigerator because we are hungry (or bored) and, after carefully considering the potential utility of each item of food, we choose which foodstuff would most satisfy our given level of hunger and boredom. The theory suggests that viewing a piece of artwork, or listening to a recorded symphony, with the same self-interested tendency ought not to be a feature of aesthetic judgment. In fact, under some interpretations, the experience would only be branded as 'aesthetic', if it meets the condition of being disinterested, i.e. the judgment is not dependent upon the artwork's ability to satisfy one or more of a person's interests.

There are compelling reasons for thinking that aesthetic disinterest can (and should) be applied to human approaches to the environment. In an age which will be defined by our relationship with non-human nature, its potential import to the field of environmental philosophy and eco-aesthetics has meant an increased amount of research in the area. Far from being a trivial or frivolous way of exploring our relationship with non-human nature, environmental aesthetics offers a possible method of grounding an ethics of the environment, without relying on an abstraction of moral duty. Environmental aesthetics and in particular, the concept of disinterested judgment could have deep normative implications when applied to issues of environmental preservation. The prevalence of self-interested environmental decision-making is the primary reason for the

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10] Aesthetic disinterest was influenced by the works of Dennis, the third Earl of Shaftesbury, Addison, Alison and Hutcheson, and although these thinkers may not have used the term explicitly, they certainly influenced those who did. Miles Rind offers an interesting critique about the traditional account of disinterest's genealogy (Rind 2002) noting that these thinkers were not using 'disinterest' as it is currently used in aesthetics, namely as a mode of perceptual awareness (2002, 67).

continued increase in the rate of environmental damage to our planet (Jones 2015). As the world falls behind on pledges to decrease CO_2 emissions and governments back out of sustainable energy solutions, the need for a non-instrumentalised and non-self-interested view of nature becomes increasingly important if we are to meet targets designed to prevent further environmental degradation.[11] Aesthetic disinterest requires the removal of one's self-interested desire, in order that we do not predicate properties onto natural phenomena, especially ones which are motivated by the amenity value of nature. When I speak of being disinterested in nature, I do not mean that I do not care for it, but rather that, when contemplating nature, I refrain from imposing my own desires upon it or viewing it in terms of its potential utility. Applying the notion of disinterest to nature would theoretically make judgments about the beauty of nature more objective and allow for more consensus and agreement in making decisions about the environment.

The successful application of disinterest to the aesthetic judgment of nature is limited by the degree to which one is able to set aside personal interests and desires. Some biases are so deeply concealed in our subconscious that we could not (at least without great difficulty) become aware of them in order to 'set them aside' in the first place. This is a familiar criticism to proponents of aesthetic disinterest, but it stems from a misunderstanding concerning the level of disinterest required in making an aesthetic judgment, i.e. it rests on the assumption that the bar is set unrealistically high. However, disinterest does not require a complete eradication of desire or an instantiation of will-lessness in order to be useful to eco-aesthetics.[12] The value of disinterest lies in the 'simple' task of checking one's motivations and desires when it comes to engaging with nature and artwork. My aim is not to offer a defence of disinterest, but to illustrate one of the central inadequacies of an aesthetic approach to the environment which cannot be solved through an appeal to disinterest, and to offer the beginnings of an alternative. If, for the sake of the argument, we assume that it is possible to background selfish desires in order to make aesthetic judgments and that, by doing so, a greater consensus about what constitutes beauty can be reached, then where does this leave nature?

Disinterest has a negative role in the making of aesthetic judgments, i.e. it theoretically maintains the purity of the judgment but adds nothing to it.[13] It is a self-checking mechanism, through which a person can come to realise whether their judgment

11] Canada is likely to miss the 2020 Copenhagen target, whilst Australia falls behind on the Paris agreement. In October 2017 Pruitt confirmed that the Trump administration will roll-back Obama's clean power plan in the USA. (Friedman & Plumer 2017).

12] This stems from a misunderstanding of disinterest as the blank cow-like stare. See Emily Brady's work for more discussion of this and other common misconceptions surrounding disinterest (1998).

13] Some commentators attach more of a positive dimension to the notion of disinterest. For instance, Jerome Stolnitz regards it not only as involving a 'backgrounding' of egoistic desire but also an ability to approach the aesthetic art object or nature with a kind of sympathetic attention by meeting it on its own terms. Although I am sympathetic to this interpretation, I am wary of the metaphysical implications of statements of this sort and the epistemological dilemma which an attempt to justify this link creates.

is being clouded by self-interested desires, e.g. interest in the potential utility value of the object of contemplation. When applied to the realm of eco-aesthetics, disinterest serves as a useful, but ultimately limited tool, especially as a solution to understanding and tackling environmental degradation. The role of beauty is still central to disinterested aesthetic judgments of the natural environment. Disinterest helps to reduce the amount of subjectivity in these aesthetic responses, meaning that natural beauty is more easily recognised, and it is easier to draw a consensus in environmental decision-making. However, without understanding the scientific, social and historical factors related to a particular natural phenomenon, we cannot hope to have adequate epistemological grounding for reaching decisions relating to the environment. Deprived of such knowledge, many necessary environmental protections will not be implemented, and actions which damage nature will be overlooked. This is why in order for eco-aesthetics to be a viable tool in motivating environmental protections, another element is required.

A knowledge-based approach to aesthetics, reinforced by a healthy dose of disinterestedness, works to illuminate the impact of human behaviour on beautiful phenomena (whether natural or human-made), by promoting awareness of potentially harmful human actions. Without an understanding of the damage which noise pollution from aircraft, causes in the Grand Canyon, regulations would still not reflect this issue.[14] Ever-increasing numbers of tourists are drawn to the beauty of the Canyons, but a lack of knowledge about potential degradation means that this area of outstanding beauty, may not be around for future generations to appreciate. The effects of seemingly innocuous actions are left to go unchecked and even measures taken to curtail noticeable degradation may ultimately be misguided.

Roger Clark of the Grand Canyon Trust states that "Our greatest challenge is making people understand just how truly vulnerable this place actually is." (Fedarko, 2016). The scale and grandeur of the National Park lull visitors into thinking that it is somehow invulnerable to damage, yet the consequences of constant tourism mean that it has been subject to noise, water and air pollution. Native flora and fauna compete against non-native plants, uranium mining erodes the landscape and contaminates drinking water, nearby power-stations drift air pollution into the Canyon, and a 22 mile stretch of land with unlimited air traffic, known locally as Helicopter Alley, shatters the peaceful solitude of the area. Although much has been done over the past thirty years to reduce the effects of tourism, increased economic pressure and an inability to comprehend the potentially devastating damage which seemingly harmless activities have on the landscape, mean that environmental damage has become the rule rather than the exception.

14] Although recent changes in regulation mean that more aircraft will be allowed to fly in the Grand Canyon, incentives are being given to 'quiet' planes/helicopters (Dungan 2017). The original regulations, and no-fly zones, were also influenced by several plane crashes in the area.

Taking a 30-minute helicopter ride over the Grand Canyon, to further appreciate the natural beauty of the reserve, may seem inoffensive, especially if the ride takes place in a new 'quiet' type of aircraft. However, the consequences amount not only to a contribution towards noise and air pollution, but also to an increase in the demand for such services to be continued, whilst also supporting the expanding tourist industry in the area.[15] Our need to appreciate this beauty (from a distance that is) may become a case of loving something to death, as investors and developers cash-in on this supposedly harmless desire.

The need for using a cognitive component in aesthetic judgment is also present in more traditional settings. On a visit to the Vatican, these were the words of a sign: 'Silencio. No photo. No video.'[16] The whispers of a confused tourist make it clear that they do not understand why they have been stopped from taking a photo inside of the Sistine Chapel, especially since there are no rules about photography throughout the rest of the Vatican. Despite signs and security officers, making it clear that photography is not allowed in the chapel, many people still attempt either surreptitiously or blatantly to take a photo. Lack of knowledge concerning the potential damage caused by hundreds of flashbulbs going off daily means that ignorance will continue to inspire stupidity. Even if it can be proven that flash-photography does not damage paintings, knowledge concerning one's environment and even one's fellow visitors must be factored into the decision-making process.[17] In this instance, not taking photographs [...] in a chapel, which could potentially disturb the aesthetic experience of others, combined with the knowledge that damage could be caused to Michelangelo's work, would result in fewer people attempting to take photographs, both in order to preserve the work for future generations, and out of respect for ourselves and others – to help to enrich the aesthetic experience.

The insufficiencies of a beauty-only account of eco-aesthetics (even if supplemented by disinterest) are further highlighted when we consider instances of 'harmful' beauty

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15] Including plans for hotel resorts, tramways, more cafés, restaurants at the top of the tramline, holiday complexes etc. This is in addition to the increased tourism resulting from the 2007 opening of the Skywalk at Eagle Point (Dungan 2017).

16] The term 'cognitive' of course refers to the role of the rational self in applying instances of knowledge to a given judgment, but it should also be seen in the context of Kant's strict non-conceptual requirement for pure aesthetic judgments. For Kant, allowing a cognitive component to be involved in making a judgment of beauty, would destroy any claim to universal (but subjective) validity. However, there may be a certain amount of compatibility between these two positions, it is technically possible for the initial aesthetic judgment/response to be pure in a Kantian sense, but become impure (not necessarily bad) in a second phase which applies an aesthetic component to knowledge about a given object. The initial response requires no 'outside information' and can still be democratic but we must concede to impurity in the second phase – at least if we want to remain Kantian.

17] Although recent evidence suggests that damage caused by flash photography has been grossly overestimated (Evans 2013). In the case of Sistine Chapel, there have been other reasons, namely Nippon TV's photography exclusivity – but the copyright has long since elapsed.

and 'helpful' ugliness. From childhood we are taught not to judge a book by its cover; we are told that the real value of the book lies within and it is only through reading the words on the page that we will be in a position to properly judge it. This should also apply to how we make environmental decisions, but if we let beauty be our sole guide, then many things which are extremely harmful to the environment will be left to proliferate unchecked, and those things which are enormously beneficial will be unknowingly destroyed.

The degradation of nature can sometimes be beautiful or have effects which are considered as beautiful; the most obvious example of finding beauty in a degraded environment is in so-called pollution-sunsets. Sunsets are often made redder by aerosol gases, which are released into the atmosphere (Ballantyne 2007). Some aerosols occur naturally (forest fires, volcanic eruptions, sandstorms, dust) but in big cities, human use of aerosols vastly outnumber the impact of aerosol gases from natural sources. The beauty of a crimson sunset is directly related to the degradation of the environment, yet without understanding the scientific nature of light refraction, sunsets, and aerosols, and applying this information to our experience of a sunset, we would remain none-the-wiser about the damage it results from. Knowing that our beautifully watered, manicured lawns, are not as harmless as they first appear, and then changing the way we behave accordingly, relies on our application of scientific facts. Our perfect lawns, not only waste water (which becomes a bigger problem in areas prone to drought) but also release a huge amount of CO_2 into the atmosphere, whilst pesticides disturb local ecosystems, and fertiliser run-off enters the water table, contributing to eutrophication and hypoxia.[18]

As important as it is to consider that beauty itself may be the result or the cause of environmental degradation, it is not only beautiful environments whose disturbing, and often damaging, causes are overlooked by beauty-alone approaches to nature but ugly, disgusting and non-beautiful phenomena. Not only can knowledge help to illuminate why certain things we don't think are bad for the environment actually are, but also that things which do not appeal to our own subjective sense of beauty can be interesting, important and essential to maintaining an ecosystem (and perhaps beautiful in their own way). The late botanist and ecologist, Sir Harry Godwin, said: "Any fool can appreciate mountain scenery. It takes a man of discernment to appreciate the Fens." (Coles & Coles 1989, 58). Whilst it doesn't necessarily take a fool to appreciate the beauty of a mountain-scape, it does (more often than not) take an informed mind to appreciate the beauty in something which is not typically beautiful. Just as a romantic attraction is not necessarily dependent upon a person's physical attributes, aesthetic appreciation need not be completely dependent upon whether or not we find something physically appealing. By itself, beauty cannot provide a stable environmental ethic, and neither can an imagination or emotion-based account, but the combination of these, plus scientific knowledge, can help open us up to the plurality of aesthetic responses. In popular culture, swamps and marshes are

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18] Every year the Gulf of Mexico hypoxic zone, in part resulting from excess nutrients from fertilisers entering the Gulf (Environmental Protection Agency 2017).

often portrayed negatively, whether it is *Labyrinth's* Bog of Eternal Stench, or the 'Dead Marshes' in Tolkien's Lord of the Rings: swamps are the place of monsters, demons, and the dead. Holmes Rolston III saw the main challenge for environmental aesthetics did not have to provide good reasons to protect the naturally beautiful (which it seemed to do without much effort on our part), but to use it to motivate the protection of things we don't find aesthetically beautiful (Rolston III 2000). Rolston claimed that with "[...] increased ecological sensitivity, the system takes on the qualities of a kaleidoscope [...]" (Rolston III 1987, 260). The same can be said for any natural phenomena (including humankind) which do not meet the 'criteria' of beauty; this includes that which is non-beautiful, ugly, disgusting, dull and uninteresting. Swamps and marshes are hives of ecological activity, with a wide array of biodiversity on display (due to increased levels of nutrients) yet they are at best dismissed and at worst destroyed.

The aesthetic appreciation of traditional art objects can help to illustrate how knowledge can be applied when making an aesthetic judgment. For instance, we are capable of looking at 'ugly' art and appreciating it, perhaps because of our emotional response to it, or because of the meaning behind it. Having more knowledge about a particular piece of art or natural object has only ever enhanced my experience of art and nature, especially where I would otherwise have dismissed it out of hand. On a visit to the Tate Modern, I was fortunate enough to see Sheela Gowda's 2009 installation *Behold*; I must admit that on the first inspection, I found it underwhelming. Most likely, a combination of sore feet, hunger, and worry over what time I needed to get my train contributed to an 'interested' approach to the artwork. It certainly is not a 'beautiful' piece by traditional standards, and admittedly I still do not regard it as a particular favourite, but there is no doubt that learning more about the installation (as well as backgrounding my own self-interested concerns) helped me to appreciate the artwork on a level which I would not have done, had I not taken the time to gain more knowledge about the piece, and the artist who created it. It would have been easy to disregard *Behold,* as an underwhelming piece of modern art, and walked through the installation to find something more appealing, or easier to grasp. However, knowing that the installation was inspired by Gowda's life in Bengaluru, where talismans of human hair are regularly knotted around car bumpers to supposedly ward off bad luck (Tate Modern 2017), appreciating the intense effort involved in its creation (4000 metres of hair were hand-woven) and the social and political observations behind it' enriched my aesthetic experience immensely.[19] Knowing more about an art object often enhances our appreciation of it, and the same should also be true for our aesthetic experience of the natural world, especially as it pertains to making decisions which affect the environment.

19] The hair comes from local temples, where it is cut off as a sacrificial offering when pilgrims fulfil sacred vows. "The fragile hair supports the stronger, heavier metal, just as it is believed to protect the techno-logically advanced machine [...] the [...] process-driven approach highlights the precarious state of manual labour and human effort in an increasingly globalised and interconnected world." (Tate Modern 2017).

Only a (disinterested) cognitive model of the aesthetic appreciation of nature can overcome the issues which focusing on the beauty of the natural environment can lead to, i.e. relativism and decisions based upon inappropriate or shallow interpretations of aesthetic response. Allen Carlson is perhaps the best-known proponent of the cognitive model of the aesthetic appreciation of nature; he states that "[t]o aesthetically appreciate nature, we must know the different environments of nature and the systems and elements within those environments." (Carlson 1979, 273). And although I agree that cognition is an important part of aesthetic appreciation of nature, I disagree that it is a necessary condition for making an aesthetic judgment; there are many ways to appreciate nature aesthetically, a lack of knowledge does not invalidate them. There are several compelling non-cognitive approaches to the environment, including those which focus on the roles of emotional arousal (Carroll 1993) and the imagination (Brady 1998). These approaches are helpful to the making of aesthetic judgments generally, but their usefulness is limited when it comes to environmental decision-making. They also highlight the importance of taking a disinterested perspective, without which, utility-driven judgments will continue to instrumentalise nature, leading to further degradation. However, a solely imagination- or emotion-based approach to environmental aesthetics cannot capture the full 'picture' of nature, and it is certainly not sufficient if we are to utilise aesthetic response to help conserve natural landscapes and prevent further degradation.

I will briefly consider two potential objections to the cognitive account of eco-aesthetics, which I have argued should be preferred over a beauty-based model of environmental appreciation. The first objection relates to the age-old concern that understanding precisely how a piece of art was created, the materials used, the methods enacted etc. could devalue the aesthetic experience, by demystifying the artistic process. This potential demystification ought not to decrease the potential pleasure or appreciation involved in making an aesthetic judgment. At least no more so, than understanding how the refraction of light effects the formation of a rainbow – has a negative impact on one's aesthetic response to a rainbow. Yet, some would still hold that understanding the process or the creative vision of the artist is detrimental to the aesthetic experience, in the same way, that scientific explanations of natural phenomena detract from their beauty, e.g. the formation of rainbows.[20] My own aesthetic experiences have only ever been enhanced by learning about the science and/or background of the object I am responding to, e.g. learning about the complexity of the honeybee waggle dance only adds to my aesthetic admiration for bees and their hives. Knowledge adds a new layer to our collective and individual appreciation, which in 'ordinary' aesthetics is valuable, but when applied to eco-aesthetics, is invaluable. The ability to differentiate between harmful beauty, helpful

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20] Keats famously wrote: "Philosophy will clip an Angel's wings, / Conquer all mysteries by rule and line, / Empty the haunted air, and gnomèd mine—/ Unweave a rainbow, as it erewhile made." (Keats 1884). This is a commonly held view throughout historical writing; William Blake is also known to have commented that "[...] art is the tree of life. Science is the tree of death." (Blake 2014). For a 'beautiful' reply to this criticism of 'cold philosophy' see Richard Dawkins' *Unweaving the Rainbow* (Dawkins 1998).

ugliness and everything in between – is essential to utilising aesthetics for environmental aims. Without this, serious questions about the viability of eco-aesthetics would be raised, with no satisfactory answer.

A second and related objection, concerning the over-intellectualisation of aesthetic judgment, holds far more weight than fear about the potential for knowledge to impoverish the aesthetic experience. Any cognitive, aesthetic account is subject to the same criticism: the idea that taking something which taps into a deeply personal part of our emotional life and making it cold and clinical by applying logic and science to it is somehow doing a disservice to what it means to have an aesthetic response, i.e. it removes some of the 'magic'. This leads to the problem of elitism within aesthetics.[21] One of the primary advantages of disinterestedness in aesthetic judgment (and Kant's brand of non-cognitivism) is that it has an enormous democratising effect on the making of aesthetic judgments. Each person has the same ability to recognise beauty, as it is not reliant on having knowledge of the object in question. If we require knowledge to inform the aesthetic judgment, the fear is that this could lead to a kind of class system of responses: resulting in an elite group of aestheticians whose responses are deemed correct and all those which are in disagreement merely incorrect for not having the right kind of knowledge and being able to apply it in the right kind of way. This is not a problem to take lightly, and I agree that if the above were true, then it would be problematic. But this is not the kind of account I am advancing. The initial aesthetic response does not actually have to conflict with a secondary level of response informed by knowledge. It is possible that a person's immediate response to a piece of art (or natural object) would be left intact and unaffected, but is afterwards supplemented with the addition of knowledge aiming at the further appreciation of the object. This supplement is not a necessary criterion of making a judgment about an aesthetic object; one can certainly make a judgement without it, but it is available to the subject as a way of making a more informed judgment. I make no claim as to the 'need' for a cognitive component to be present at each and every instance of aesthetic response, only that within eco-aesthetic discourse (which has the aim of motivating environmental protections) knowledge should be used alongside our initial intuitive responses to better inform them, enrich our aesthetic experiences and ultimately protect the environment by informing our decision-making process.

In this paper, I have argued for the need to go beyond beauty in eco-aesthetics and beyond the inability of a disinterested approach, in order to overcome the issues presented by a beauty-alone account (which nevertheless can somewhat help to surmount the problems caused by the relativism of beauty standards). Whilst the results of misunderstanding or misjudging a piece of artwork are minimal (a disagreement with a friend perhaps) the consequences of underestimating certain natural phenomena are potentially profound. Appeals to beauty cloud the stark and often damaging realities of

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21] See Eaton (1998) for more about her defence and development of Carlson's cognitive/science-based approach (Carlson 1993).

human action (and inaction) on the natural world and lead to overlooking potentially important phenomena. The subjectivity or beauty standards and the tendency for a focus on beauty to mask crucial instances of harm mean that a more complex eco-aesthetic approach must be invoked. The aesthetic appreciation of the environment requires us to approach nature without the baggage of our desires, i.e. disinterestedly. However, making this adjustment is not sufficient, and we must also look beyond beauty if we hope to make use of aesthetics in motivating environmental protections and prevent further degradation to the human and non-human world alike. I have argued that going beyond beauty in eco-aesthetics requires a cognitive component. Otherwise, it is impossible to make sense of instances of harmful beauty, helpful ugliness and the vast amount of non-human nature which fits somewhere in between.

a.e.kings@keele.ac.uk

REFERENCES

Ballantyne, Coco. 2007. *Fact or Fiction?: Smog Creates Beautiful Sunsets.* https://www.scientificamerican.com/article/fact-or-fiction-smog-creates-beautiful-sunsets/, (accessed 15 November, 2017).

Bell, David. 1992. The Art of Judgment. In *Immanuel Kant: Critical Assessments, Vol. I,* edited by R. F. Chaddwick and C. Cazeaux, London & New York: Routledge, 13-38.

Berleant, Arnold. 1994. Beyond Disinterestedness. *British Journal of Aesthetics,* 34 (3): 242-54.

Brady, Emily. 1998. Imagination and the Aesthetic Appreciation of Nature. *The Journal of Aesthetics and Art Criticism,* 56 (2): 139-47.

———. 2003. *Aesthetics of the Natural Environment.* Edinburgh: Edinburgh University Press.

———. 2006. Aesthetics in Practise: Valuing the Natural World. *Environmental Values,* 15 (3): 277-91.

Budd, Malcom. 2000. The Aesthetics of Nature. *Proceedings from the Aristotelian Society,* 100 (1): 137-57.

Buijis, Arjen E., Birgit H. Elands and Fransje Langers. 2009. No wilderness for immigrants: Cultural differences in images of nature and landscape preferences. *Landscape and Urban Planning,* 91 (3): 113-23.

Bullough, Edward. 1912. 'Psychical Distance' as a Factor in Art and Aesthetic Principle, *British Journal of Psychology,* 5 (2): 87-118.

Carlson, Allen. 1979. Appreciation and the Natural Environment. *Journal of Aesthetics and Art Criticism ,* Vol. 37: 267-76.

———. 1993. Aesthetics and Engagement. *British Journal of Aesthetics,* 33 (3): 222-27.

Carroll, Noël. 1993. On Being Moved by Nature: Between Religion and Natural History. In *Landscape, Natural Beauty and the Arts,* edited by S. Kemal and I. Gaskell. Cambridge: Cambridge University Press, 244-66.

Coles, Bryony and John Coles. 1989. *People of the Wetlands: Bogs. Bodies and Lake-Dwellers.* London: Thames an Hudson.

Daniels, Paul. 2008. Kant on the Beautiful: The Interest in Disinterestedness. *COLLOQUY: text theory critique,* Vol. 16: 198-209.

Dawson, Sheila. 1961. Distancing as an Aesthetic Principle. *Australasian Journal of Philosophy,* Vol. 39: 155-74.

Dungan, Ron. 2017. *Grand Canyon air tours: Conservationists hear noisy flights, tribe sees economic returns.* http://www.azcentral.com/story/news/local/arizona-

environment/2017/09/29/grand-canyon-air-tours-conservationists-hear-noisy-helicopters-tribe-sees-economic-returns/588119001/, (accessed 12 November, 2017).

Eaton, M. Marcia, 1998. Fact and Fiction in the Aesthetic Appreciation of Nature. *The Journal of Aesthetics and Art Criticism,* 56 (2) :149-56.

Environmental Protection Agency, 2017. *Mississippi River/Gulf of Mexico Hypoxia Task Force.* https://www.epa.gov/ms-htf/history-hypoxia-task-force, (accessed 15 November, 2017).

Evans, Martin. 2013. *Amateur Photographers in Art Galleries: Assessing the harm done by flash photography.*http://people.ds.cam.ac.uk/mhe1000/musphoto/flashphoto2.htm, (accessed 15 November, 2017).

Fedarko, Kevin. 2016. *Are We Losing the Grand Canyon?.* https://www.nationalgeographic.com/magazine/2016/09/grand-canyon-development-hiking-national-parks/, (accessed 11 November, 2017).

Fisher, John. 2003. Environmental Aesthetics. In J. Levinson ed., *The Oxford Handbook of Aesthetics*, Oxford: Oxford University Press.

Friedman, Lisa and, Brad Plumer. 2017. *E.P.A. Announces Repeal of Major Obama-Era Carbon Emissions Rule.* https://www.nytimes.com/2017/10/09/climate/clean-power-plan.html, (accessed 12 October, 2017).

Godlovitch, Stan. 1994. Icebreakers: Environmentalism and Natural Aesthetics. *Journal of Applied Philosophy,* 11 (1) : 15-30.

GOV.UK, 2018. *Building Better, Building Beautiful Commission –Terms of.* [Online] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792148/terms_of_reference.pdf, (accessed 3 February, 2019).

Hettinger, Ned. 2008. Objectivity in Environmental Aesthetics and Protection. In *Nature, Aesthetics, and Environmentalism: from beauty to Duty,* edited by A. Carlson, and S. Lintott. Columbia: Columbia University Press.

Ipsos MORI, 2010. *People and places: Public Attitudes to Beauty. A Commission for Architecture and the Built Environment.* http://www.designcouncil.org.uk/sites/default/files/asset/document/people-and-places.pdf, (accessed 5 October, 2017).

Johnson, Cassandra, John M. Bowker, and Ken Cordell. 2004. Ethnic Variation in Environmental Belief and Behavior: An Examination of the New Ecological Paradigm in a Social Psychological Context. *Environment and Behavior,* 36 (2): 157-86.

Johnson, B. Lyndon. 1965. *54 - Special Message to the Congress on Conservation and Restoration of Natural Beauty.* http://www.presidency.ucsb.edu/ws/?pid=27285, (accessed 15 November, 2017).

Jones, Jeffrey. 2015. *In U.S., Concern About Environmental Threats Eases.* http://news.gallup.com/poll/182105/concern-environmental-threats-eases.aspx?utm_source=Politics&utm_medium=newsfeed&utm_campaign=tiles, (accessed 15 November, 2017).

Kant, Immanuel. 1790. *Critique of Judgment.* 1987 ed. Indianapolis: Hackett Publishing Company.

Kaplan, Rachel, and Janet Talbot. 1988. Ethnicity and Preference for Natural Settings: A Review and Recent Findings. *Landscape and Urban Planning,* 15 (1-2), 107-117.

McKibben, Bill. 2011. *Bill McKibben's Speech at Power Shift 2011.* https://350.org/bill-mckibbens-speech-power-shift-2011/, (accessed 16 November, 2017).

Nietzsche, Friedrich. 1971. *The Birth of Tragedy.* New York: Vintage.

Parsons, Glenn. 2015. Why Should We Save Nature's Hidden Gems?. *Journal of Applied Philosophy,* 32 (1): 98-110.

Rind, Miles. 2002. The Concept of Disinterestedness in Eighteenth-Century British Aesthetics. *Journal of the History of Philosophy,* 40 (1): 67-87.

Rolston III, H. 1987. Duties to Ecosystems. In: J. B. Callicott, ed. *A Companion to a Sandy County Almanac: Interpretive and Critical Essays.* Wisconsin: University of Wisconsin Press: 246-73.

———. 2000. Aesthetics in Swamps. *Perspectives in Biology and Medicine,* 43 (4): 584-97.

Schopenhauer, Arthur. 1969. *The World as Will and Representation.* New York: Dover.

Steel, Brent, Peter List and, Bruce Shindler. 1994. Conflicting Values About Federal Forests: A Comparison of National and Oregon Public. *Society and Natural Resources,* 7(March):137-53.

Stolnitz, Jerome. 1960. *Aesthetics and Philosophy of Art Criticism.* Boston: Houghton Mifflin Company.

Tate Modern, 2017. *Sheela Gowda.* Available at: http://www.tate.org.uk/visit/tate-modern/display/materials-and-objects/sheela-gowda, (accessed 15 November, 2017).

The National Association of Areas of Outstanding Natural Beauty, 2017. *Landscapes of Nature.* http://www.landscapesforlife.org.uk/, (accessed 5 October, 2017).

The National Trust, 2017. *Our plan to restore nature at our places.* https://www.nationaltrust.org.uk/news/our-plan-to-restore-nature-at-our-places, (accessed 3 February, 2019).

U.S. Fish and Wildlife Service, 1973. *ENDANGERED SPECIES ACT OF 1973 As Amended through the 108th Congress,* Washington D.C: Department of the Interior.

UNESCO, 2017. *The Criteria for Selection.* Available at: http://whc.unesco.org/en/criteria/, (accessed 5 October, 2017).

Virden, Randy, and Gordon J. Walker 1999. Ethnic/Racial and Gender Variations Among Meanings Given to, and Preferences for, the Natural Environment. *Leisure Sciences,* 21 (3) :19-239.

Moral Views of Nature: Normative Implications of Kant's

Critique of Judgment

Zachary Vereb
University of South Florida

Abstract: Kant has traditionally been viewed as an unhelpful resource for environmental concerns, despite his immensely influential moral and political philosophy. This paper shows that Kant's *Critique of Judgment* can be a valuable resource for environmental ethics, with methodological implications for political action and environmental policy. I argue that Kant's *Analytic of the Beautiful* and *Critique of Teleological Judgment* provide philosophical tools for valuing nature aside from interest and for developing forms of environmental protectionism. My approach differs from other Kantian accounts that discuss our moral relations to nonrational nature, since these usually rely on Kant's limited statements about flora and fauna in his *Lectures on Ethics, Metaphysics of Morals,* and the *Analytic of the Beautiful.* Though we can defend indirect duties toward animals and beautiful plants, as these accounts convincingly show, they rarely engage with the possibility of us having moral views of ecosystems. Moral views of nature can be useful as methodological heuristics for mobilizing and instituting environmental policies regarding climate change such as biodiversity loss, and this paper will provide a defense of a Kantian moral view of nature from which subsequent climate-related actions can be motivated.

Key words: Kant, teleology, environment, *Critique of Judgment.*

Kant has traditionally been viewed as an unhelpful resource for environmental concerns, despite his immensely influential moral and political philosophy.[1] This paper shows that Kant's *Critique of Judgment* can be a valuable resource for environmental ethics, with methodological implications for political action and environmental policy. I argue that Kant's *Analytic of the Beautiful* and *Critique of Teleological Judgment* provide philosophical tools for valuing nature aside from interest and for developing forms of environmental protectionism for human and non-human related reasons.[2] Kant's natural aesthetics and regulative teleology can be used to prepare humanity for appreciating nature disinterestedly and fulfilling its duties toward itself and with regard to flora, fauna, and ecosystems. Kantian commentators in environmental aesthetics stand to gain much by incorporating elements from the *CTJ*, since Kant's view of nature's systematicity is one way for valuing ecosystems and non-beautiful creatures. Environmental ethicists stand to benefit from Kant's regulative teleology, since it provides a heuristic for viewing nature holistically while avoiding metaphysical

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1] A dismissive attitude toward Kant is widespread in animal and environmental ethics circles (Hoff 1983; Regan 2004; Singer 2009). Recent literature shows that Kant is relevant to contemporary global problems, but these rarely involve discussions of climate change (e.g., Roff 2013; Reglitz 2016).

2] Parenthetical references to Kant's writings give the volume and page number(s) of the Royal Prussian Academy edition (*Kants gesammelte Schriften*), with the following abbreviations: *MM = Metaphysics of Morals*; *LE = Lectures on Ethics. CJ = Critique of Judgment* which includes *CTJ = Critique of Teleological Judgment*; *AB = Analytic of the Beautiful*; *AS = Analytic of the Sublime.*

problems of constitutive teleology (Svoboda 2015).[3] My approach differs from other Kantian commentators that discuss our moral relations to nonrational nature, since these usually rely on Kant's limited statements about flora and fauna in *LE* (27:459; 710), *MM* (6:443), and his views of natural beauty and morality in *CJ*.[4] Though we can defend indirect duties toward animals and beautiful plants, as these commentators convincingly show, they rarely engage with the possibility of us having broader moral views of nature (including ecosystems) from a Kantian perspective. By moral views of nature, I simply mean ways of relating to flora, fauna, and ecosystems with non-exploitative concern.[5] Moral views of nature can be useful as methodological tools for mobilizing and instituting environmental policies regarding climate change such as biodiversity loss, and this paper will provide a defense of a Kantian moral view of nature from which subsequent climate-related actions can be motivated.

This paper is divided into four parts. Part 1 briefly considers a paper by J. L Bilbro critical of Kantianism, using it as a foil to investigate how and to what extent Kant's *CJ* can be an environmental resource. Part 2 examines Kantian beauty, highlighting its ethical connections for the environment. Part 3 looks into the *CTJ* to address limitations in Kant's account of beauty vis-à-vis the environment. Finally, Part 4 concludes by highlighting the implications of this approach, specifically as regards to how Kant may be valuable for climate change by way of his regulative teleological view of natural systems. Though Gaian-style thinking is helpful in environmental ethics, Kant's account is superior for climate change insofar as it has been (and still is) more influential in moral and political discourse, while still being able to approximate a Gaian view of nature. These moral views of nature, developed from the spirit of Kant's philosophy, are one among many resources which we can use in promoting protectionism in the Anthropocene.

My argument proceeds in three main moves: First, I show that reflection on beautiful natural objects can promote an environmentally helpful, non-instrumental relationship between humanity and flora and fauna and that it can facilitate us in discharging our indirect duties regarding them. Second, I explore in a novel way Kant's views on natural systems, by juxtaposing them with his account of beauty; in practical discussions of nonrational nature, commentators typically focus either on beauty or

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3] Environmental philosophers often utilize constitutive teleology to persuade individuals to care about nature. Since we are part of one purposive organism, in destroying nature we shirk our responsibility to the whole. As Svoboda (2015) notes, teleology can be helpful for defending indirect duties to flora and fauna, but a constitutive teleology runs into metaphysical problems, including incompatibility with contemporary scientific accounts of evolution. Kant's *regulative* teleology, as Svoboda shows, avoids these problems since it is of mere heuristic value, and in this paper I suggest that it can be of additional use for considering the value of natural systems such as ecosystems, rather than simply flora and fauna.

4] See, for instance, Guyer 1993; Wood 1998; Korsgaard 2004; Svoboda 2015.

5] I do not set out for myself the unlikely task of showing that Kantians can respect nature or have direct duties in regard to it; rather, what I aim to show is that we have good moral and aesthetic reasons for viewing natural objects in non-instrumental terms, and these imply certain ways of treating them.

teleology in Kant but rarely do they explore their environmental value in tandem. Finally, I connect the non-exploitative attitude toward flora and fauna that judgments of beauty support with the holistic view of natural systems developed in teleological judgment, to promote a non-exploitative relation of humanity to ecosystems.

I. INITIAL OBSTACLES

In environmental philosophy and environmental aesthetics, Kant has been and remains a marginalized philosopher. This is exemplified quite well in a paper entitled "Sublime Failure: Why We'd Better Start Seeing Our World as Beautiful" (2015) by J. L. Bilbro. In the paper, Bilbro argues that beauty (of the non-Kantian variety) can be valuable for fostering humility and opening pathways for responsible environmental action. Though Bilbro primarily engages with literature in ecocriticism and aesthetics, he begins his discussion with a jab at Kant's sublime. Accounts of sublimity, such as Burke and Kant's, which elevate autonomous humanity above nature, can only promote mastery over nature and technological-fixes to ecological problems (Bilbro 2015, 134). Bilbro does not seriously engage with Kant scholarship vis-à-vis environmental protectionism; instead, he uses Kantian sublimity as a foil for his own ends. Nonetheless, I think his deeper worries about Kant's philosophy can be informative for understanding why Kant has been marginalized. Despite Bilbro's explicit focus with problems of Kantian sublimity, his readers may easily be led to generalize further, concluding that Kant's anthropocentrism makes his philosophy anathema for protectionism. Yet, the sublime is only a small part of Kant's aesthetics.[6] Moreover, Bilbro fails to consider the *CTJ*. I grant that Kant's account of sublimity may, at first glance, appear unhelpful for protectionism.[7] Still, Bilbro and his readers need not conclude that it is justified to reject the *CJ* in its entirety, especially Kant's accounts of beauty and teleology.[8] Kantian beauty, to the contrary, facilitates a disinterested relationship toward beautiful objects of nature. Indeed, on Kant's view, we are to value the beautiful in nature not for what it can do for us, but for its own sake, even if we cannot regard it as an end in itself. I concede to Bilbro that beauty can be important for protectionism (though his view of beauty differs from the Kantian one). I also concede that Kant's account of sublimity is problematic for a healthy relationship to nature. Where I disagree regards what I take to be an underlying suspicion he and others have of Kant, namely that the anthropocentrism of Kant's general philosophy is what leads inexorably to his environmentally problematic account of sublimity. I

6] Kant even claims that the *AS* is a "mere appendix" to his project (*CJ* 5:246).

7] See Brady (2013) for an environmental defense of Kantian sublimity.

8] See Biasetti (2015) for an environmental defense of Kantian beauty, where the ecological potential of Kant's teleology is mentioned but not explored in any detail (2015, 153n67).

submit that Bilbro is both right and wrong about Kant – right about his limitations regarding sublimity, but wrong insofar as Kant's *CJ* can still be a resource. We should not rule out the *CJ* wholesale since Kant's accounts of beauty and of natural systems hold promise for the development of moral views of nature.

II. KANT, BEAUTY AND THE ENVIRONMENT

As has been noted in the literature, there are several ways in which Kant's *CJ* can be of use for thinking about humanity's relationship to nature in non-instrumental terms. One approach focuses on Kant's account of natural beauty. This view hinges on beauty as a symbol of morality (*CJ* 5:351-354) and is often supplemented with similar passages from *MM* (*MM* 6:442-43). In brief, a disinterested appreciation of natural beauty functions as moral preparation for acting humanely to ends in themselves and discharging our indirect duties regarding non-rational nature. This can be understood, as some have called it, as an environmental ethic of enlightened anthropocentrism (Sandler 2018, 116). According to Kant in *AB*, we disinterestedly value beautiful nature when we reflect upon it. The cultivation of a reflective appreciation for beautiful nature has affinities, on Kant's view, to moral feeling: "[...] to take a *direct interest* in the beauty of *nature* [...] is always a mark of a good soul; and [...] if this interest is habitual, if it readily associates itself with the *contemplation of nature*, this indicates at least a mental attunement favorable to moral feeling" (*CJ* 5:298-9). When we cultivate aesthetic feelings in our disinterested appreciation of nature, we develop an *attitude* favorable to morality: "[...] if someone is directly interested in the beauty of nature, we have cause to suppose that he has at least a predisposition to a good moral attitude" (*CJ* 5:300). The reflection of nature's beauty can instil in us, according to Kant, an aesthetic disposition to appreciate the seeming purposiveness and harmony of nature. Appreciation for nature's beauty and harmony can thus allow us to view nature with disinterest (and even with love)[9] in addition to its capacity to cultivate in us an attitude favorable to performing our duties regarding nature, such as the preservation rather than wanton destruction of nature.[10] Destruction of beautiful nature, on Kant's view, degrades

9] Though Kant argues that "true love" (i.e., practical love) is based on equality and hence obtains only among rational agents (*LE* 27:65), Kant suggests that "The beautiful prepares us for loving something, even nature, without interest" (*CJ* 5:267; 5:380). Turning to the *Vigilantius LE* (from 1793) can help us make sense of Kant's distinction between practical love of humanity and sensuous love of nature. In these lectures, Kant suggests that "[...] we are to love all objects of nature in proportion to their known perfection. This is based on the pleasure we take in the purposiveness of every natural object. It is love from feeling [...] it is intrinsically correct that this love of natural creatures, and the knowledge of them, can contribute to our self-perfection and morally practical activity [...] This moral satisfaction [in loving natural objects] has the beneficial effect, that it enlarges both our receptivity to all perfections of the kingdom of nature, and our moral disposition. We are in a position to love the objects of nature [...] This duty is naturally an imperfect one" (*LE* 27:668-9).

10] Such Kantian duties are "in regard" to nature. Though we can appreciate natural objects disinterestedly, our duties regarding nature always refer ultimately either to our moral perfection or to our treatment of other ends in themselves.

humanity's moral perfection (Svoboda 2015). We have an imperfect, though direct duty to ourselves to prevent such destruction. As Kant puts quite succinctly,

> A propensity to wanton destruction of what is *beautiful* in inanimate nature (*spiritus destructionis*) is opposed to a human being's duty to himself; for it weakens or uproots the feeling in him which, though not of itself moral, is still a disposition of sensibility that greatly promotes morality or at least prepares the way for it: the disposition, namely, to like something (e.g. beautiful crystal formations, the indescribable beauty of plants) even apart from any intention to use it (*MM* 6:443).

The connection between this passage on beauty in *MM* and Kant's discussion about beautiful nature in *CJ* can be sharpened by considering Kant's account of beauty as a symbol of morality in *CJ*. Paul Guyer establishes the connection between our duties regarding nature and beauty rather nicely:

> Response to beauty is like the judgment of morality in being immediate, disinterested, free, and universal. It is unlike the latter in being represented to sense rather than through concepts. But since the pure idea of morality is not itself directly representable to sense, this disanalogy does not undermine the analogy between beauty and morality but is rather what requires the former to become the symbol of the latter (Guyer 1993, 316).

> Taste prepares us for disinterested attachments; that is, even if the *content* of objects of taste is independent of morality, the *experience* of taste is a cause of a disposition favorable to the performance of duty [...] Kant clearly believes that experience of the beautiful can be an instrument or means for the development of a subjective disposition – he here calls it "love" – which is intimately connected to moral duty (Guyer 1993, 317-318).

Though duties do not stem from the aesthetic experience itself, the experience helps us to cultivate a virtuous attitude favorable for assisting us in discharging our duties, which include indirect duties about our treatment of non-rational nature.

To summarize, aesthetic reflection on beautiful natural objects (such as flora and fauna) has at least two important environmental implications. Such reflection can, first, promote a disinterested, non-instrumental and non-exploitative relationship between humanity and beautiful objects and, second, it can be used as one possible resource from which we can use to motivate protectionism, including proscription of wanton destruction of nature. To develop a healthy and sustainable relationship with nature, we obviously need to cultivate the proper attitude toward it, and this must involve non-exploitative comportment: benevolent stewardship rather than cruel domination to start. Moreover, since the opportunity for reflection on beautiful nature is valuable for our aesthetic and moral development on Kant's view, we should ensure that we do not destroy beautiful flora and fauna (and thereby preserve biodiversity) that could have been otherwise appreciated disinterestedly.

One immediate concern about constructing an environmental ethic from Kant's account of beauty regards its limited application. Beautiful nature, by virtue of its analogy

with morality and its ability to prepare humanity for morality by teaching us how to disinterestedly value other entities from an aesthetic standpoint, allows us to value the beauty in nature and gives us reason to protect it. This, naturally, includes many flora and fauna. Beautiful nature, however, is not the sole constituent of ecosystems; in fact, many keystone species (i.e., species whose functions are essential for ecological resilience) are often ugly, small, or aesthetically uninteresting. Not all nature is beautiful. How can Kantians value non-beautiful nature?[11] In *AS*, Kant asserts that sublime nature is humbling to our sensibility by virtue of its immense size or power. Small nature, by contrast, is associated with contempt and disrespect (*CJ* 5:249). Yet, small, non-beautiful organisms often play important roles in the functioning of ecosystems (as in, e.g., zooplankton in marine environments). If these are contemptible for Kant, how can he be of any use for supporting environmental protection? Moreover, how can Kantians value environments or ecosystems that appear to resist judgment as singular objects for reflection? In short, Kant's moral-aesthetic account of beauty seems inadequate to account for non-beautiful nature and natural systems.

III. RECONSIDERING THE *CRITIQUE OF TELEOLOGICAL JUDGMENT*

As a way of responding to the question of the value of non-beautiful nature and natural systems, I suggest that we draw from Kant's connection of the aesthetic experience with scientific inquiry and appreciation of nature as an interconnected system. Though *CTJ* doesn't concern itself with beauty,[12] utilizing aspects of it that discuss organisms and nature's systematicity open a way for Kantians to supplement the moral insights of *AB* to natural systems such as ecosystems; valuing ecosystems will, of course, include non-beautiful nature that is not accounted for in *AB*. For non-beautiful flora and fauna have important roles to play in the flourishing and harmony of the whole. By making use of teleological reflective judgment, we can take Kant's view of natural beauty and its implications for protectionism to include aesthetic and moral consideration of natural systems and non-beautiful creatures.

One way to bridge the judgment of beautiful flora and fauna to environments is, I submit, through a detour into the *CTJ*. Obviously, an obstacle for this is that, though Kant discusses beautiful objects (e.g., flora, fauna) he doesn't explicitly discuss the beauty of *ecosystems* in *AB*; this is because taste concerns inner purposiveness whereas the teleological judgment of natural science concerns external purposiveness (harmony of our mental faculties vs apparent harmony of nature suited for our faculty of judgment). The question is thus how to build a bridge between the two and to discern whether a

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11] There is a great deal of literature on the status of the ugly in Kant scholarship. Some commentators even suggest that, based on Kant's account, nothing can be ugly (see Shier 1998). To address this would call for more argumentation than the scope of this paper allows. Hence, I instead focus on environmental implications for *non-beautiful* nature.

12] *CTJ* rarely mentions pleasure or beautiful nature (cf. *CJ* 5:380).

Kantian can transition from reflection of a single beautiful object of nature (which is the main business of *AB*, *CJ* 5:243) to those of natural systems (which ends up being a task of *CTJ*, though not with regard to beauty but with regard to natural science, *CJ* 5:378-384). Of course, viewing nature as a beautiful totality has not stopped its destruction thus far. Nonetheless, at least in the realm of environmental ethics, philosophers have suggested that such views are important for praxis (and indeed eco- and bio-centric thinking has been useful in facilitating conservation movements by helping us to see nature in non-instrumental terms). Now, in the pre-critical works, Kant has no problem with judging the whole of nature as a sublime and beautiful cosmic system.[13] Such an approach for the critical Kant runs into several problems, so I limit my concern to the judgment of natural systems such as ecosystems, for which we may also use Kant to motivate protectionism.[14]

According to Kant, the appreciation of natural beauty prompts scientific investigation into nature (*CJ* 5:185; 5:379-381; 20:204). By reflecting on beautiful organisms and viewing them disinterestedly by means of aesthetic judgment, we may become more receptive to viewing without interest (in what they can do for us instrumentally) environments of said organisms – environments which include non-beautiful organisms – as well-functioning holistic systems. Reflection on beautiful organisms can prompt us to investigate their relationship with natural systems. Some might object that the association of an object's beauty with an inquiry into its environmental context precludes the appreciation of the former. Kant sometimes even talks this way.[15] Nonetheless, it is crucial to recognize that

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13] A discussion of the evolution of Kant's thought on this matter is interesting but exceeds the bounds of this paper. In *Universal Natural History* (1755), the young Kant presents a holistic and purposive nature. Prior to his critical bifurcation of phenomenal and noumenal, Kant throughout judges nature as a unified, ontologically dynamic reality; speculates on the existence of rational aliens (1:351-61) and on how humans are not the pinnacle of creation but are just another middling species (1:353-4); and judges nature to be beautiful and sublime (1:255-6; 306; 365). The collapse of the pre-critical project, leading to the developments in the *Critiques*, led Kant to re-evaluate many of these views.

14] It would be interesting to consider whether Kant's critical philosophy could allow for judgment of everything in nature as beautiful. Environmental philosophers have attempted to do something of this sort. The discussion of an "ecological self" in deep ecology is one example. See Guyer (2006, 172) for a critique of the Kantian "precognitive" view that everything in nature is potentially beautiful. Though I find the precognitive view enticing (especially insofar as it allows us to connect the pre-critical works to Humboldt and Schopenhauer), I do not endorse it. Rather, I suggest that if we connect teleological judgment of natural systems with aesthetic judgment of beautiful nature, we may begin to see a means of viewing non-beautiful *natural systems* and their constituent flora and fauna with disinterest, worthy of protection. This is because teleological judgment allows us to see that non-beautiful creatures are embedded in natural systems, and they also play an important aesthetic role in how we can judge said systems as beautiful. This is not dissimilar to Leibniz's famous remarks on the ugly marks of a painting; they are just as essential for seeing the painting as a unified, singular object for judgment.

15] It is possible for the appreciation of beautiful flora (say, for instance, a flower) to fail to lead the judger to further investigate nature. Conversely, Kant often suggests that knowledge of an object sometimes makes it harder to judge its beauty (*CJ* 5:231). For determinate knowledge of that object's natural end (e.g., the purpose of its colorful buds) requires the judger (e.g., the botanist) to abstract from this in appreciating its form. See Humboldt (1997, 38-40), who deals with this objection in greater detail, and Guyer's (2006) "metacognitive" view for a contemporary resolution to the problem.

for Kant, we can freely shift between the two types of reflective judgment, namely aesthetic and teleological judgment.[16] If we could not shift freely between the two, we would have to admit that natural scientists remain aesthetically blind, which is absurd. To judge an animal as beautiful, for instance, involves conceptual distancing from the ecological features of the animal so that it can be viewed in terms of inner purposiveness. This would appear, at first, to exclude any possibility of utilizing aesthetic judgment for teleological, science-based purposes. I would suggest, however, that the *disinterested interest* (and subsequent curiosity) that judgment cultivates in appreciating beautiful objects such as animals can be valuable in facilitating scientific inquiry since it allows us to view nature without the prejudices of *instrumental interest*; disinterested interest in nature lets us be receptive to how natural systems function, whereas instrumental interest in nature blinds us to see everything in terms of human use-value relations. There are obviously conceptual differences in both types of judgment, but a disinterested interest allows for a more open relationship to nature. Rather than seeing animals in terms of what they can do for us as commodities, for example, the cultivation of disinterest via aesthetic judgment better positions us to disinterestedly appreciate, by means of teleological judgment, how such fauna play an important role in the harmonious functioning of the natural system in which they inhabit.[17]

The appreciation of beautiful natural objects can spark an intellectual interest into how such objects are possible and prompt curiosity into how they operate and have adapted to their locale; teleological reflection leads down a path to cognition of how various ecosystems are objects that overlap and are embedded in larger climes. Research beginning with the appreciation of beautiful organisms can thus, on Kant's view, even facilitate a view of nature as a whole (*CJ* 5:398). Of course, a judgment of beauty is not necessary for stimulating intellectual interest in ecosystems and nature as a whole, and this is one reason why beauty is not discussed in any great detail in *CTJ*. Part 2 of this paper argued that judgments of beauty have moral implications for our treatment of flora and fauna. Part 3, then, will show that we can extract similar moral implications for ecological systems and the non-beautiful flora and fauna that are constitutive of them. I will proceed by discussing two modes of argumentation for seeing how the *CTJ* can add to or supplement the *AB* as regards protectionism.

The first mode pertains to how teleological judgment, through reflection on the interconnected parts of organisms, allows us to view and individuate ecosystems like organisms (as singular objects); once we see ecosystems as singular objects, we can then potentially view them as beautiful. Kantian teleological judgment, then, can be

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16] Proto-environmental philosopher Alexander von Humboldt is one such figure heavily influenced by Kant in this regard. In the introduction to his first volume of *Cosmos*, Humboldt argues that aesthetic judgment, though autonomous in its own respect, can supplement us in our investigations of nature and facilitate further aesthetic judgments. For Humboldt's interpretation, aesthetic and teleological judgment are connected, the two mutually reinforcing each other.

17] This is not dissimilar to Leopold's famous injunction in "The Land Ethic" (1949) to shift from a commodity-based view of environments to a disinterested appreciation for their integrity, stability, and beauty.

appropriated as a reflective scaffold from which it becomes possible to judge ecosystems as beautiful, by way of their systematic harmonization of manifold and diverse flora and fauna. A view of mere diversity cannot be judged as beautiful (*CJ* 5:243), and hence, the unifying power of teleological judgment is needed to reflect on the diversity of ecosystems as unified objects. Natural systems can be understood in regulative terms as *Gaian*, i.e., as like singular organisms.[18] From this unifying function of teleological judgment, we can then appreciate natural systems as beautiful (*CJ* 5:379), since they can be judged as singular objects; prior to the supplemental feature of teleological judgment, ecosystems appear as abstract, dispersed, and dis-unified: a pond appears first as a hodgepodge collection of water, creatures, and resources; and then, reflectively, as a single, organized micro-ecosystem. Additionally, if we can make use of teleological judgment as a supplement to judge ecosystems as beautiful, then even non-beautiful nature constitutive of beautiful ecosystems deserve indirect moral consideration since teleological judgment reveals that each organism, no matter how small or uninteresting, contributes to the beauty and unity of an ecosystem.[19] When nature is viewed only through the narrow lenses of *AB*, it is difficult to motivate the protection of non-beautiful nature, since we are only obliged to protect and conserve beautiful objects. Fortunately, with the integration of teleological judgment regarding nature as a Gaian system composed of singular yet interconnected ecosystems, the moral-aesthetic problem of non-beautiful nature can be resolved.[20] This is because the non-beautiful elements of ecosystems can be appreciated as constitutive of said ecosystems when we judge them as beautiful; just as a beautiful painting can be appreciated even for its non-beautiful marks, so also can non-beautiful flora and fauna be appreciated when we judge an ecosystem as beautiful. To be clear, I do not mean to suggest that teleological and aesthetic judgment can be synthesized, as we do not require empirical knowledge to make pure judgments of taste. I mean that we can shift between the two in order to develop a stronger sense of disinterested appreciation for objects of nature in an environmental context and that the cultivation of one can be used to mutually reinforce the other; this is because teleological judgment allows us to individuate seemingly disparate "arenas" of nature as singular, unified objects; an environment, through teleological reflection, can be seen as a singular ecosystem with the potential to be judged as beautiful.[21]

18] In the history of environmentalism, framing devices such as Lovelock's Gaia Hypothesis, which suggests we ought to view the earth as a unified, self-regulating organism, have been influential in moving people to care about conservation.

19] As field ecology shows, not every organism in an ecosystem is essential for its maintenance. My point is that teleological judgment, with its regulative rather than constitutive use, allows us to *view* natural systems as individuated, unified objects.

20] That nature is, *in toto*, a harmonious system is a necessary idea for Kant. I do not mean to imply that this *idea* of nature is beautiful, since ideas cannot be, properly speaking, beautiful. Rather, I mean to suggest that making use of this idea via teleological judgment can assist us in viewing ecosystems as singular objects that can, subsequently, be judged as beautiful.

21] See Allison, who discusses how natural beauty can facilitate scientific inquiry and teleological reflection of nature (Allison 2001, 59). See Guyer, who argues that natural purposes play no role in judgments of taste (Guyer 2006).

The second mode for which teleological judgment can be of value for protectionism pertains to its potential for appreciating and loving nature, preparing us to act morally in regard to it. Essentially, teleological judgment can be used to bolster environmental thinking for Kantians and make Kant sympathetic in the realms of ecological thought. Now, the scientific exploration and aesthetic appreciation of nature's systematicity facilitates a view of nature's unity. Just as we are inspired by the harmonious ways in which organisms are essential for their environments by analogy to how our own organs function for us, so we can also appreciate the beautiful unity of nature in its heterogeneous diversity of empirical laws (*CJ* 5:185-87). We may value organisms that seem not to contribute to the functioning of ecosystems by making use of teleological judgment in order to frame natural systems from larger unified perspectives.[22] One might worry that, on this view, everything that exists could be valued, which could entail problematic consequences or lead to eco-misanthropy. This, however, is precisely why it is important to underscore the *regulative* nature of Kant's view, and the constraints put on it by his views on morality and imperfect duties.

Now, since teleological judgment can help us see the entirety of ecosystems as connected systems for which we may value, it can assist us with realizing our duties by letting us discern those constituent flora and fauna of ecosystems that typically remain, as it were, concealed. In a sense, it is easy to motivate protectionism for beautiful creatures, since we naturally care for such beings. However, non-beautiful creatures tend to captivate the public mind far less. Teleological judgment, due to its Gaian outlook, lets us see each non-beautiful part of an ecosystem as significant and valuable. When we see these parts, we then can begin to consider our duties in regard to them, since we recognize that their protection is an indirect duty for which we must realize. In addition, Kant thinks teleological judgment can help us to love nature, which relates to our duties (*LE* 27:668-9). Kant makes the following connection between judgments of beauty and teleological views of nature:

> Once nature has been judged teleologically, and the natural purposes that we find in organized beings have entitled us to the idea of a vast system of purposes of nature, then even beauty in nature, i.e., *nature's harmony with the free play of our cognitive powers as we apprehend and judge its appearance, can similarly be considered as objective purposiveness, namely, of the whole of nature [regarded] as a system that includes man as a member.* We may regard nature as having held us in favor when it distributed not only useful things but a wealth of beauty and charms as well; and *we may love it* for this, just as its immensity may lead us to *contemplate it with respect [Achtung]* and to feel that we ourselves are ennobled in this contemplation – just as if nature had erected and decorated its splendid stage quite expressly with that aim (*CJ* 5:380, emphasis mine).

22] The issue of invasive species and protectionism is particularly difficult (and has led to disputes between animal and environmental ethicists), and I do not mean to grapple with it in this short paper. At the very least, I hope to suggest that Kant has the resources to deal with such issues if we make use of his regulative account of natural systems, since such systems can always be viewed by teleological judgment as embedded in larger macro-structures. The tricky part, I admit, is where to draw the line to motivate concrete protectionism.

Aesthetic judgments of nature attune us, by making us more susceptible to disinterested reflection in the future, for reflecting on nature's systematicity and appreciating ecosystems with disinterest. Bridging Kantian aesthetics with teleology prepares the way, as the above passage suggests, for humanity to love nature and regard it with respect.[23] When we reflect on nature in this way, we can understand and appreciate how we are members of nature, not masters over it. This appreciation compels humanity to avoid being complicit in unnecessary harm toward nature. To put it simply and illustratively, if you appreciate the beauty of the butterfly and her relation to her ecosystem, you'll love her, and then you'll be more readily able to extend this love and care (as an imperfect duty) to the caterpillar and even the insects with which she feeds.

In line with the first mode of argument, if ecosystems are considered as beautiful objects, then we have additional reasons to not wantonly destroy them (just as we have duties not to wantonly destroy beautiful flowers or crystal formations).[24] To be clear, I am not saying that ugly or non-beautiful nature is beautiful; rather, it is by viewing an ecosystem as beautiful and thereby deserving of *prima facie* protection, that the parts that make up the ecosystem should also deserve a degree of consideration insofar as they are constitutive of it. In line with the second mode of argument discussed above, a Gaian appreciation and love of natural systems prepares us to realize our duties in regard to the nonrational flora and fauna that populate said natural systems, many creatures of which would otherwise remain concealed to us without teleological judgment.[25]

Because beautiful judgments are judgments concerning singular objects, it might be objected that an attempt to judge ecosystems as beautiful is misguided because these are dynamic systems or aggregates. To the contrary, I claim that if first, the insights of Kant's *CTJ* on how inquiry of organized beings motivates a view of nature in terms of organized systems and second, if *AB*'s injunction is only to consider those objects in nature beautiful that are singular which may include organisms, then this objection may be discharged. For, take an organism such as a beautiful flower (e.g., *CJ* 5:229); a Kantian account warrants judgment of this flower as beautiful provided the proper occasioning conditions for a judgment of taste obtain, discussed in *AB*. However, from the standpoint of *CTJ*, the flower (as an

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23] In *MM* (6:442), Kant argues that we only have duties "*with regard to* [*Ansehung*]" nonrational nature. In this passage from *CTJ*, however, "*Ansehung*" is not the technical term used. It is a curious question of how to interpret what Kant means by saying nature may be contemplated with respect.

24] Kant appears much stronger in condemning animal abuse than destruction of inanimate nature or flora. Rather than viewing this as a weakness, we may view this as a strength, as it allows us leeway to navigate between apparent moral dilemmas, as animal welfarists and environmental ethicists are wont to become embroiled. And, at the very least, it is clear that "wanton destruction" (*ein Hang zum bloßen Zerstören, MM* 6:443) of ecosystems without good reason will involve unnecessary animal suffering, so if the latter is to be favored the former must be considered.

25] See footnote 9 *supra*.

organized system) can be understood as composed of an interrelated aggregate of purposive objects; internally, the cells function to make the organs function, and externally, the flower maintains itself as a self-regulating system. I suggest it is the same with regard to ecosystems. Though it might seem counterintuitive to think of ecosystems as singular objects, especially since we often make use of abstract ideas such as "harmony" in describing them, I think the analogy between organisms and the harmony of their parts to ecosystems and their interconnected constituents helps clarify how this is possible.[26] We can understand an organism as a singular object of perception despite its manifold parts, and similarly, we can make sense of certain ecosystems as singular objects in a similar way, by means of teleological judgment (I admit that judging macro-ecosystems as objects appears problematic). Flora and fauna are viewed teleologically as cells that compose ecosystems, which are as it were organs that compose larger natural systems. If *AB* allows for judging organisms such as flowers as beautiful, why not allow for the possibility of judging ecosystems in like regard? And if the judgment of a flower as beautiful entails a duty to avoid wantonly destroying it, does not a similar judgment of an ecosystem also entail a similar duty for avoiding wanton harm?[27] To be sure, *pure* judgments of beauty link nicely with morality, whereas teleological judgment, with its connection to humanity and empirical concepts, is decidedly less pure. I stand with Allison on the important connection of natural beauty with appreciation and inquiry of natural systems, and suggest that even if we cannot make a pure judgment of an ecosystem as beautiful, we have reasons to protect it from the standpoint of humanity as the final end of nature (addressed in the conclusion of this paper). Alternatively, if we stipulate that it is possible to make a pure judgment of an ecosystem as beautiful, then the same sort of protectionism and non-exploitation that can be mobilized for beautiful flora and fauna can be extended further to ecosystems. This would consequently motivate protection of non-beautiful flora and fauna, given that they are constitutive of beautiful ecosystems, as marks are to a painting.

Paul Guyer and Allen Wood argue, in line with much of the foregoing, that Kantians may value non-rational nature by connecting aesthetic and teleological judgment to morality. For instance, according to Wood, "Kant thinks we also have moral duties regarding nature in general as regards what is beautiful or purposive in it. We must not wantonly destroy what is beautiful in non-rational nature" (Wood

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26] Symphonies (which, on a Kantian view can surely be judged as beautiful) are no less abstract than ecosystems, though both cannot easily be appreciated for their beauty in a single presentation due to the multiplicity of their parts. If ecosystems cannot be judged beautiful, it's difficult to understand how harmonious symphonies could be either.

27] Since our duties to nonrational nature are wide, we can easily limit them to cruel and destructive actions committed by humanity (such as factory farms or deforestation), not those done by other animals to animals or plants.

1998, 191). Additionally, Wood argues that Kant's teleological view about humanity as the ultimate end of nature is

> [...] emphatically *not* a view of nature which sees it merely as a tool or raw material for human beings to do as they please [...] When we regard ourselves as the ultimate end of nature, we look at nature as a unified and harmonious teleological system – the term for it today would be 'ecosystem' – and we undertake the responsibility of shaping our ends in such a way that they provide this system with its crowning unity and harmony [...] of acting as preservers and guarantors of that system. (Wood 1998, 204)

Guyer supports the connections between aesthetic and teleological judgment with morality, but he sharpens this approach by emphasizing the heuristic importance of natural ends for making sense of the practical significance of nature understood as a harmonious system. On his reading, reflection on nature's beauty and purposive interconnectedness could not allow humanity to

> [...] interpret morality to require the denial or destruction of nature within or without our own skins [...] the supposition that morality is an end of nature would be incompatible with any idea that morality could permit or require wanton destruction of natural resources without regard to the ecology of nature as a whole as an arena fit for continuing human habitation. (Guyer 2007, 93)

As Wood and Guyer make clear, aesthetic, and teleological judgments, as analyzed by Kant in *CJ*, have environmental implications that many traditional readers of Kant fail to consider. Because many commentators like Bilbro fail to engage the *CTJ*, they find little means to discuss how we may be motivated on Kantian grounds to protect natural systems. Wood and Guyer do a good job at showing how we may proceed in this respect, and in this paper, I hope to have explored in greater detail the environmental significance of the *CJ*, especially for our consideration of ecosystems.

IV. CONCLUSIONS AND IMPLICATIONS

In the foregoing, I have presented two routes Kantians can pursue to defend protectionism, in addition to two modes of argumentation relating to the *CTJ*. These routes are not necessarily systematic, but are rather eclectic, meaning that the second can help supplement the first insofar as it runs into limitations for protectionism. First, appreciating nature's beauty disinterestedly fosters an injunction to preserve nature and avoid wanton destruction of it. Second, viewing nature teleologically, as an interconnected system, allows for us to conceive of natural systems as singular objects capable of disinterested appreciation, entailing similar injunctions against exploitation of ecosystems and natural resources. Additionally, teleological reflection of natural systems prepares us to realize our duties regarding nature, since it makes many aspects of systems, such as inconspicuous flora and fauna, visible. It is hard to protect flora and fauna if we fail to notice them in the first place. The Gaian-view of the *CTJ* brings such

entities in greater relief, and we can thereby make use of our duties from *MM* regarding them. Of course, it might be objected that the teleological view of nature from *CTJ* is problematic for protectionism since it is decidedly anthropocentric, instating humanity as the hegemonic final end of nature (*CJ* 5:429-36). To reply, it must be borne in mind that when we think about nature in these sections of the *CJ*, it is not from the standpoint of determinative judgment yielding theoretical cognition of nature; rather, teleological judgment is reflective, taking its standpoint from what must be posited by us in order to make sense of how nature could be amenable to our cognitive faculties. Moreover, Kant's discussion of morality and the final end of nature adopts a practical perspective, which means that even if humanity is the final end, we still have duties to not wantonly exploit or damage nature.[28] I agree that it is anthropocentric, even if only from a regulative perspective, but that this is not necessarily a problem for protectionism. In the Anthropocene, humanity as the dominant species of the planet has not only moral obligations to nature, but we also have existential reasons for protectionism: if we do not become stewards and alter our relationship to nature, we will face climate destabilization and societal collapse, spelling doom for untold numbers of humanity.

If we are to take seriously Kant's injunction that we view natural beauty with disinterested appreciation, we can begin the shift from exploitative and unsustainable despots to moral and benevolent stewards. For the reflection on beautiful nature, because of its disinterest, prepares us to value nature in non-instrumental terms in domains such as morality; it can thus aid us in discharging our moral duties to ends in themselves as well as those regarding nonrational nature. As stewards of nature, we do not destroy nature without good reason, and we understand the value of natural systems – both for the flourishing of nonrational nature and in light of our rational interest for scientific inquiry (*MM* 6:212). To be sure, making a judgment of beauty does not *necessarily* motivate protectionism, and it may seem that we are simply pushing the problem one step back. Thus, it is important to recognize that Kant's account of aesthetic judgment is merely one of the resources we can draw from in trying to motivate reasons to protect nature. One of the virtues of this approach is that it allows, akin to imperfect duties, for some leeway regarding decision-making about when there is a good reason to destroy nature. With this caveat, we can evade apparent ethical dilemmas since humanity ultimately has the final say.[29]

In the end, then, Kant's moral view of nature in *CJ* can be mobilized for altering how we have been treating nature thus far and henceforth. Though only one resource among many in our environmental toolbox, it is one that is nonetheless vital since

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[28] See Guyer for more extensive attention to this objection (1993, 330-34).

[29] A classic ethical dilemma in environmental ethics has to do with whether it is permissible to destroy a microecosystem to establish a school for a developing country. Bio- and eco-centrists are stuck with the hard problem of justifying whether the ecosystem has priority over the children. With a Kantian approach, though we have reason to protect said ecosystem, we may be able to justify destroying it to facilitate the sustainable progress of culture.

Kant's systematic philosophy is more defensible than many dogmatic approaches in environmental philosophy, and his philosophy has already been mobilized for other matters regarding international policy. This is indeed timely, since climate change, perhaps the biggest threat faced by humanity today, poses not only destruction to future and present humanity, but also to the stability of global biodiversity. With a sixth mass extinction underway, failure to act in line with sustainability precludes the possibility of appreciating much of nature, in addition to the massive failure that moral agents face regarding their duties toward nature. Our detour through the *CTJ* may help us in formulating this Kantian call to action since the Gaian-esque view that can be gleaned from it helps us to better appreciate natural systems and be less biased in assessing our duties regarding nonrational nature. Accordingly, the *CJ's* moral view of nature is one important tool that Kantians can draw from to justify regulatory change, and this vindicates Kant from those environmentalists who have marginalized him.

zvereb@mail.usf.edu

REFERENCES

Allison, Henry E. 2001. *Kant's Theory of Taste: A Reading of the Critique of Aesthetic Judgment.* Cambridge; New York: Cambridge University Press.

Biasetti, Pierfrancesco. 2015. From Beauty to love: A Kantian way to Environmental Moral Theory. *Environmental Philosophy* 12 (2): 139-60.

Bilbro, J. L. 2015. Sublime Failure: Why we'd better start seeing our World as Beautiful. *South Atlantic* 80: 133-58.

Brady, Emily. 2013. *The Sublime in Modern Philosophy: Aesthetics, Ethics, and Nature.* New York: Cambridge University Press.

Guyer, Paul. 1993. *Kant and the Experience of Freedom: Essays on Aesthetics and Morality.* Cambridge England; New York: Cambridge University Press.

———. 2007. Natural Ends and the End of Nature: Naturalizing Kant's teleology. In *Hans Christian Ørsted and the Romantic Legacy in Science: Ideas, Disciplines, and Practices,* ed. Robert M. Brain, Robert S. Cohen, and Ole Knudson, 75-96. Springer.

———. 2006. The Harmony of the Faculties Revisited. In *Aesthetics and Cognition in Kant's Critical Philosophy.,* ed. Rebecca Kukla, 162-193. Cambridge; New York: Cambridge University Press.

Humboldt, Alexander von. 1997. *Cosmos: A Sketch of the Physical Description of the Universe Vol. 1.* Translated by E.C. Otté. Baltimore; London: John Hopkins University Press.

Hoff, Christina. 1983. Kant's Invidious Humanism. *Environmental Ethics* 5 (1): 63-70.

Kant, Immanuel. 1987. *Critique of Judgment.* Translated by Werner S. Pluhar. Indianapolis: Hackett.

———. 1997. *Lectures on Ethics.* Translated and edited by Peter Heath and J.B. Schneewind. New York: Cambridge University Press.

———. 1996. *Metaphysics of Morals.* Translated and edited by Mary J. Gregor. New York: Cambridge University Press.

———. 2012. *Universal Natural History and Theory of the Heavens.* Translated by Olaf Reinhardt. New York: Cambridge University Press.

Korsgaard, Christine M. 2004. Fellow Creatures: Kantian Ethics and our Duties to Animals. The Tanner Lectures on Human Values, University of Michigan.

Regan, Tom. 2004. *The Case for Animal Rights.* Berkeley: University of California Press.

Reglitz, Merten. 2016. A Kantian Argument against World Poverty. *European Journal of Political Theory*: 1-19.

Roff, Heather. 2013. *Global Justice, Kant and the Responsibility to Protect: A Provisional Duty.* London: New York: Routledge, Taylor & Francis Group.

Sandler, Ronald L. 2018. *Environmental Ethics: Theory in Practice.* Oxford; New York: Oxford University Press.

Shier, David. 1998. Why Kant Finds Nothing Ugly. *British Journal of Aesthetics* 38 (4): 412-8.

Singer, Peter. 2009. *Animal Liberation.* New York: HarperCollins Publishers.

Svoboda, Toby. 2015. *Duties Regarding Nature: A Kantian Environmental Ethic.* New York; London: Routledge, Taylor & Francis Group.

Wood, Allen. 1998. Kant on Duties Regarding Nonrational Nature. *Proceedings of the Aristotelian.*

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