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A Transcendental Argument for Liberalism

SAMUEL C. RICKLESS*

TABLE OF CONTENTS

I.	INTRODUCTION	273
II.	THE FIRST HORN OF THE JUSTIFICATION DILEMMA: COMPREHENSIVE LIBERALISM.....	277
III.	THE SECOND HORN OF THE JUSTIFICATION DILEMMA: NEUTRALIST LIBERALISM	281
IV.	<i>MODUS VIVENDI?</i>	284
V.	POLITICS?	286
VI.	THE TRANSCENDENTAL STRATEGY	287
VII.	THE INTEGRITY OBJECTION.....	292
VIII.	THE FAIRNESS OBJECTION	296
IX.	CONCLUSION	297

I. INTRODUCTION

Liberalism is the view that the state should not, except on mutually justifiable grounds, coerce a society's citizens to adopt, support, or follow some particular comprehensive conception of the good.¹ So understood,

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1. See Gerald F. Gaus, *The Place of Autonomy Within Liberalism*, in *AUTONOMY AND THE CHALLENGES TO LIBERALISM: NEW ESSAYS* 272, 274 (John Christman & Joel Anderson eds., 2005) ("The liberal tradition in moral and political philosophy maintains that each person has a moral claim to do as he wishes until some justification is offered for limiting his liberty."); see also 1 JOEL FEINBERG, *THE MORAL LIMITS OF THE CRIMINAL*

a liberal state, by definition, permits each citizen a zone of freedom delimited by her own understanding of the ingredients of a happy life. Liberalism, as a normative theory governing state–citizen (and, indirectly, citizen–citizen) relations, is opposed by various forms of totalitarianism, including theocracy and communism.² A theocratic state is one that imposes a particular religious form of life on its citizens, and thereby restricts their freedom to act in ways that the state considers heretical. A communist state is one that imposes a particular economic form of life on its citizens, and thereby restricts their freedom to engage in economic activity that the state considers exploitative or alienating.

Looking back at the clash of ideologies represented by, among others, the Crusades, the European wars of religion, anti-Jewish pogroms, the war against fascism, the war against colonialism, the Cold War, and the anti-apartheid movement, many believe that liberalism is the form of political organization that is most congenial to human society. Human beings, in the aggregate, find illiberalism unduly constraining, disrespectful, degrading, and oppressive; and when prevented from organizing themselves into cooperative ventures for mutual advantage that rest on broad guarantees of liberty and equal respect, they are ready and willing to sacrifice everything in the fight against despotism and tyranny. Unfortunately, there remain many supporters of various totalizing ideologies, most notably radical religious movements, about whom the same may be said.³

Politically, it is sometimes possible for the conflict between liberals and illiberals to be resolved, without war or civil strife, at the ballot box or in the courtroom. This is what has happened in numerous societies in the

LAW: HARM TO OTHERS 14 (1984) (“[Liberal] should refer to one who has so powerful a commitment to liberty that he is motivated to limit the number of acknowledged liberty-limiting principles as narrowly as possible . . .”).

2. See JERZY SZACKI, *LIBERALISM AFTER COMMUNISM* 64 (Chester A. Kisiel trans., Cent. European Univ. Press 1995) (1994) (“[T]he thesis on the anti-liberal nature of communism seems self-evident . . .”); Robert B. Thigpen & Lyle A. Downing, *Rawls and the Challenge of Theocracy to Freedom*, 40 *J. CHURCH & ST.* 757, 757 (1998) (“Theocracy is a major alternative to the liberal political order in the world today, as it was during the period that gave birth to liberalism.”).

3. See Tim Lister et al., *ISIS Goes Global: 143 Attacks in 29 Countries Have Killed 2,043*, CNN (Feb. 13, 2017, 11:36 AM), <http://www.cnn.com/2015/12/17/world/mapping-isis-attacks-around-the-world/index.html> [(“Since declaring its caliphate in June 2014, the self-proclaimed Islamic State has conducted or inspired more than 140 terrorist attacks in 29 countries other than Iraq and Syria.”)].

case of Sunday laws,⁴ anti-blasphemy laws,⁵ religious tests for public office,⁶ as well as laws banning polygamy,⁷ contraception,⁸ voluntary euthanasia,⁹ sexual relations between persons of the same sex,¹⁰ same-sex marriage,¹¹ and the ingestion of controlled substances.¹² But when ideology and rhetoric combine in potentially incendiary ways, political conflict can spill over into violence, as when abortion clinics are bombed and abortion providers shot to death,¹³ or it can spill into dehumanizing barbarism, as

4. See Alan Raucher, *Sunday Business and the Decline of Sunday Closing Laws: A Historical Overview*, 36 J. CHURCH & ST. 13, 13 (“Sunday closing laws, once deeply embedded in American government practice and public behavior, have largely vanished or become inconsequential in the United States.”).

5. Angelina E. Theodorou, *Which Countries Still Outlaw Apostasy and Blasphemy?*, PEW RES. CTR. (July 29, 2016), <http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/>

6. Angelina E. Theodorou, *In 30 Countries, Heads of State Must Belong to a Certain Religion*, PEW RES. CTR. (July 22, 2014), <http://www.pewresearch.org/fact-tank/2014/07/22/in-30-countries-heads-of-state-must-belong-to-a-certain-religion/> [https://perma.cc/Z77M-5PP3].

7. DEP’T OF ECON. & SOC. AFF., UNITED NATIONS, POPULATION FACTS: WORLD MARRIAGE PATTERNS 4 (2011), http://www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2011-1.pdf [https://perma.cc/L7J9-LHY7].

8. See Martha J. Bailey et al., *Early Legal Access: Laws and Policies Governing Contraceptive Access, 1960–1980*, at 3–5 (Aug. 2011) (unpublished manuscript), http://www-personal.umich.edu/~baileymj/ELA_laws.pdf [https://perma.cc/HNN5-AH7E].

9. *Euthanasia & Physician-Assisted Suicide (PAS) Around the World: Legal Status in 28 Countries from Australia to Uruguay*, PROCON.ORG, <http://euthanasia.procon.org/view.resource.php?resourceID=000136> [https://perma.cc/BB8P-ENZP] (last updated July 20, 2016, 7:31 AM).

10. Siobhan Fenton, *LGBT Relationships are Illegal in 74 Countries, Research Finds*, INDEP. (May 17, 2016, 11:28 AM), <http://www.independent.co.uk/news/world/gay-lesbian-bisexual-relationships-illegal-in-74-countries-a7033666.html> [https://perma.cc/U4Z6-MET6].

11. Drew DeSilver, *A Global Snapshot of Same-Sex Marriage*, PEW RES. CTR. (June 4, 2013), <http://www.pewresearch.org/fact-tank/2013/06/04/global-snapshot-sex-marriage/> [https://perma.cc/65SS-5X7Q].

12. Georgia Graham, *Drug Laws Around the World—Does Anyone Get It Right?*, TELEGRAPH (Oct. 30, 2014, 11:10 AM), <http://www.telegraph.co.uk/news/uknews/crime/11197559/Drug-laws-around-the-world-does-anyone-get-it-right.html>.

13. Liam Stack, *A Brief History of Deadly Attacks on Abortion Providers*, N.Y. TIMES (Nov. 29, 2015), https://www.nytimes.com/interactive/2015/11/29/us/30abortion-clinic-violence.html?_r=0.

when young people at a rock concert are systematically executed for pursuing a lifestyle that runs contrary to religious commandments.¹⁴

Because “war is merely the continuation of policy by other means,” the hope of many philosophers and political theorists is to find a way of *justifying* liberalism to those who find it unfair, disrespectful, or simply unduly constraining.¹⁵ For if liberalism can be justified, then the refusal of illiberals to accept principles of non-coercion becomes unreasonable, their claims of mistreatment and exclusion may legitimately be dismissed, and—should they turn to violence in pursuit of their totalizing ends—they may be rightfully imprisoned or, if necessary, killed in defense of the liberal state.

But this hope has run headlong into what appears to be an insurmountable dilemma. For in justifying liberalism, it seems, the liberal theorist must (logically) either make appeal to, or abjure reliance on, a comprehensive (or partial) conception of the good. If the liberal theorist appeals to a conception of the good, she is vulnerable to the charge of incoherence or unfairness. For her rejection of a social order organized around a particular conception of the good itself depends on a particular, and oftentimes rival, conception of the good. But if the theorist refuses to appeal to a conception of the good, then her defense of liberalism either rests on foundations too weak to support such a strong conclusion or ends up presupposing substantive axioms that make a mockery of her aspiration to axiological neutrality.

My aim in this Article is to clarify the nature of this dilemma and then explain how the liberal can avoid it. The major flaw in classical (whether comprehensivist or neutralist) defenses of liberalism is that they take the form of arguments resting on premises that, it is hoped, are acceptable to illiberals. This way lies inevitable failure. The key to defending liberalism is to turn the tables on the illiberal (such as the theocrat, the communist, or the fascist), by demonstrating that commitment to liberal principles is, at least in the case of most contemporary ideologies, a necessary condition of the very possibility of illiberalism. In Kantian terminology, I will construct a transcendental justification of liberalism. If I am right, the contemporary illiberal is hoist with his own petard: any reason he tries to offer against liberalism is self-defeating, and thus his only reasonable alternative is silence.

14. Rukmini Callimachi, *ISIS Claims Responsibility, Calling Paris Attacks ‘First of the Storm,’* N.Y. TIMES (Nov. 14, 2015), <https://www.nytimes.com/2015/11/15/world/europe/isis-claims-responsibility-for-paris-attacks-calling-them-miracles.html>.

15. The quotation comes from CARL VON CLAUSEWITZ, *ON WAR* 87 (Michael Howard & Peter Paret eds. & trans., Princeton Univ. Press 1976) (1832). Clausewitz’s point is different from mine, but his words are naturally used to express the point made in the text.

II. THE FIRST HORN OF THE JUSTIFICATION DILEMMA: COMPREHENSIVE LIBERALISM

The history of liberalism is framed by its reaction to eudaimonistic and theocentric conceptions of the good. Various schools of thought in ancient Greece differed with respect to the nature of the good, some taking it to be knowledge (Stoics),¹⁶ others pleasure and the absence of pain (Epicureans),¹⁷ and yet others a relatively fortunate life of activity in accordance with virtue (Aristotelians).¹⁸ It was a commonplace notion among the ancients that the city-state should be organized in such a way as to achieve its own good or the good of its (male, non-enslaved) citizens. As Christianity gained more adherents and became ascendant across Europe, the eudaimonistic conception of the good—thanks in part to the efforts of Catholic philosophers and theologians—was folded into a theocentric account of human nature. Catholic doctrine did not give up the idea of the *summum bonum*; rather, it identified it with something other-worldly, a supernatural union of the human soul with God in the afterlife.¹⁹ This theocentric account of human happiness went hand-in-hand with a theocentric account of state legitimacy, according to which monarchs—descended from Adam by primogeniture—ruled by divine right and dispensation.

16. See Dirk Baltzly, *Stoicism*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY § 5 (Edward N. Zalta ed., 2014), <https://plato.stanford.edu/entries/stoicism/> [<https://perma.cc/CF7Q-H8QU>] (stating that “the Stoics identify the moral virtues with knowledge” and “virtue is the only good”).

17. See Tim O’Keefe, *Epicurus*, in INTERNET ENCYCLOPEDIA OF PHILOSOPHY § 5a, <http://www.iep.utm.edu/epicur/#SH5a> [<https://perma.cc/2QZE-U64U>] (“Epicurus agrees with Aristotle that happiness is the highest good. However, he disagrees with Aristotle by identifying happiness with pleasure.”).

18. See Richard Kraut, *Aristotle’s Ethics*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY § 2 (Edward N. Zalta ed., 2017), <https://plato.stanford.edu/entries/aristotle-ethics/#HumGooFunArg> [<https://perma.cc/W3VJ-XQ3A>] (“[Happiness] consists in those lifelong activities that actualize the virtues of the rational part of the soul.”).

19. See John O’Callaghan, *Saint Thomas Aquinas*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY § 12.1 (Edward N. Zalta ed., 2016), <https://plato.stanford.edu/entries/aquinas/#Virt> [<https://perma.cc/57RE-2XQC>] (“Thomas first distinguishes a twofold happiness for human beings. One is the sort of happiness that is achievable by a human agent in this life through the exercise of the powers he or she is endowed with by nature. . . . However, Thomas adds that there is ‘another’ happiness that cannot be achieved simply by the exercise of the human powers without divine supernatural assistance. This is a happiness not to be found perfectly in this life, but only in the next. It is *beatitudo* or blessedness strictly speaking. It consists in the intellectual vision of God and all things ‘in’ God.” (citation omitted)).

The claim that a ruler's function is to guide his subjects towards a better relation to God after death following the dictates of church orthodoxy was put under significant pressure after the Reformation and during the Enlightenment.²⁰ Philosophers such as John Locke defended the view (itself grounded in a natural theology established by rational argument) that human beings are naturally free and equal, and that society is founded on the agreement of its members to entrust the protection of their natural rights to a sovereign.²¹ Intellectuals such as John Milton argued that freedom of thought and expression is the most efficient means of discovering the truth, even in theological matters.²² Immanuel Kant hailed the autonomy of human beings, and, in particular, their ability to use reason without the guidance of another, insisting that freedom is necessary to the achievement of enlightenment.²³ And political reformers, such as John Stuart Mill, defended the idea that freedom, encapsulated in experiments in living, conduces to human happiness, defined hedonistically, with greater weight given to higher pleasures in the utilitarian calculus.²⁴

This history presents us with various forms of illiberalism followed by a panoply of comprehensive arguments for liberalism based on the idea that freedom of thought and expression (among other freedoms) is needed to achieve one or other critical ingredient of the greatest good for human beings. On a Lockean view, the good can be achieved only if one acquires knowledge of what is good and why, knowledge requires truth, and the truth can be discovered only by the largely unrestricted use of natural reason. On a Kantian view, humans cannot achieve the *summum bonum* unless the satisfaction of their deepest desires is in proportion to the goodness of their will, a state of being in which they are self-legislating, that is, autonomous, and autonomy presupposes freedom.²⁵ On a Millian conception,

20. See JOHN RAWLS, *POLITICAL LIBERALISM*, at xxii–xxiv (expanded ed. 2005) [hereinafter RAWLS, *POLITICAL LIBERALISM*] (discussing the consequences of the Reformation and the division of Christianity on the development of political liberalism).

21. See JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 269, 330–31 (Peter Laslett ed., Cambridge Univ. Press student ed. 1988) (1690).

22. See JOHN MILTON, *AREOPAGITICA: A SPEECH OF JOHN MILTON FOR THE LIBERTY OF UNLICENSED PRINTING, TO THE PARLIAMENT OF ENGLAND* 25 (John W. Hales ed., Oxford, Clarendon Press 1894) (1644).

23. See IMMANUEL KANT, *An Answer to the Question: 'What is Enlightenment?'* (1784), reprinted in *POLITICAL WRITINGS* 54–59 (Hans Reiss ed., H.B. Nisbet trans., 2d, enlarged ed. 1991).

24. JOHN STUART MILL, *ON LIBERTY* (1859), reprinted in *18 COLLECTED WORKS OF JOHN STUART MILL: ESSAYS ON POLITICS AND SOCIETY* 213, 260, 266 (J.M. Robson ed., 1977).

25. See SUSAN MENDUS, *TOLERATION AND THE LIMITS OF LIBERALISM* 89 (1989). For contemporary autonomy-based defenses of liberalism, see *id.* at 89, 91–93 (1989), and WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* 75, 80–81, 152–55 (1995).

happiness is largely a function of higher pleasures, intellectual achievements among them; and such achievements require freedom of thought, inquiry, and association. And contemporary liberal theorists, such as William Galston, have taken up the mantle of Locke, Kant, and Mill within a framework that identifies liberalism as the best means of securing a variety of incommensurable goods that are necessary for human happiness, among them life, the normal development of basic capacities, the fulfillment of interests, knowledge, personal relationships, and the satisfaction of personal preferences.²⁶ For all these theorists, the proper defense of liberalism depends on a comprehensive conception of the good (or, at least, a conception of the basic components of the good).

However, as illiberals (and many non-comprehensive liberals) have pointed out, arguments for liberalism based on a particular conception of the good life or a particular hierarchy of values (whether truth, virtue, pleasure, autonomy, or some combination thereof is placed at the top of the hierarchy) either fail on their own terms or treat illiberals with the kind of disrespect that is antithetical to the letter and spirit of liberalism itself. The purpose of political theory is to articulate a conception of the state's function and a correlative conception of the duties of citizenship that can serve as a charter that can be endorsed by all (reasonable and rational) members of society, no matter their own conceptions of the good or rank-ordering of values. Without such a charter, cooperation hangs by a thread and social dissolution in times of stress beckons. Even if the charter does not appeal *ab initio* to the atheist and the theist, the communist and the libertarian, the Epicurean and the Stoic alike, the liberal's hope is that all persons subject to the charter can be brought to recognize, by rational means rather than at the point of a gun, that its terms are capable of grounding a fair system of social cooperation.²⁷ But to the theist, an argument for liberalism that ignores God's will is unacceptable and unfair; to the Epicurean, an argument for liberalism that is founded on the assumption that virtue is the highest good is wrong-headed; and to the libertarian, an argument for liberalism based on the motto "from each according to his

26. See WILLIAM A. GALSTON, LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE 174–77 (1991).

27. See, e.g., RAWLS, POLITICAL LIBERALISM, *supra* note 20, at 133–40 (discussing the possibility of an overlapping consensus in political liberalism).

ability, to each according to his needs!” is insulting.²⁸ Given the existence of different and irreconcilable ways of ranking and measuring value, there is no way to ground uncoerced mutual acceptance of a liberal charter on any argument that presupposes a controversial conception of value.²⁹

This problem is not alleviated by pointing out that a liberal state—however unjustified its charter—permits its citizens to choose and act on illiberal conceptions of the good. Neutrality of aim does not entail neutrality of justification: the fact that a liberal state does not have as a goal the imposition of a particular conception of the good on its citizens does not mean that it is grounded in a theory that treats all citizens with equal respect.³⁰ Moreover, in order to articulate stable terms of cooperation over time, the liberal charter must draw boundaries that define the limits of permissible action. Without limits, any action is permitted; and if any action is permitted, then, given understandable conflicts that arise over scarce resources and disagreements stemming from different conceptions of value, the polity will eventually descend into anarchic violence and, potentially, self-destruction. When the justification of the liberal state rests on a particular conception of the good, the limits on permissible action will necessarily be defined by what is consistent with the achievement of the relevant good. For example, if the purpose of the liberal state is to secure the conditions that make autonomy possible, then illiberal activities that reduce the autonomy of its citizens will be frowned upon or discouraged, and possibly forbidden. Members of illiberal associations will find themselves

28. This motto was popularized by Karl Marx in his *Critique of the Gotha Programme*. KARL MARX, *CRITIQUE OF THE GOTHA PROGRAMME* 10 (C.P. Dutt ed., Int'l Publishers 1938) (1875).

29. Some, for example, Richard J. Arneson, claim that the main problem with many illiberal views is that the arguments for them are “spectacularly weak and unequivocally merit rejection.” Richard Arneson, *Political Liberalism, Religious Liberty, and Religious Establishment*, in *RELIGION AND THE DISCOURSE OF HUMAN RIGHTS* 117, 136 (Hanoch Dagan et al. eds., 2014). However, two things should be noted. First, although this may be true of religious claims such as that God exists, it is much more difficult to maintain with respect to *non-religious* comprehensive conceptions of the good. Second, classifying arguments as “weak” requires standards for evaluating arguments. The standards employed by theists differ from the standards employed by atheists. Arguably, there is no non-question-begging way to *prove* that the standards employed by the latter are better than the standards employed by the former. For whether that proof counts as good or bad depends on the standards whose reliability is at issue. The transcendental argument I offer below offers a way out of both of these difficulties. See discussion *infra* Section VI.

30. For a clear tripartite distinction—neutrality of aim, neutrality of justification, neutrality of effect—, see Richard J. Arneson, *Liberal Neutrality on the Good: An Autopsy*, in *PERFECTIONISM AND NEUTRALITY: ESSAYS IN LIBERAL THEORY* 191, 193–94 (Steven Wall & George Klosko eds., 2003) (citing CHARLES E. LARMORE, *PATTERNS OF MORAL COMPLEXITY* 50–55 (1987)).

prevented from acting as they wish on grounds that they could not reasonably be expected to endorse. This should strike any liberal as unacceptable.

III. THE SECOND HORN OF THE JUSTIFICATION DILEMMA: NEUTRALIST LIBERALISM

Aware of the problems facing comprehensive or perfectionist justifications for liberalism, defenders of the liberal state have turned to the idea of neutrality, impartiality, or fairness. Using the nomenclature of Charles E. Larmore, the aim of non-comprehensive liberal theories is to provide a “neutral justification of political neutrality.”³¹ Rather than ground their defense of freedom in a particular conception of the good, neutralist liberals—as I will call them—appeal to principles that, so they hope, are actually accepted by or acceptable to all rational and reasonable people, no matter their conceptions of the good or ranking of values. For Larmore, the ground of liberalism lies in “a universal norm of rational dialogue,” according to which the resolution of disagreement between parties requires that each “prescind from the beliefs that the other rejects,” and in this way “retreat to *neutral ground*.”³² For Thomas Nagel, the ground lies in “a highest-order framework of moral reasoning . . . which takes us outside ourselves to a standpoint that is independent of who we are,” a standpoint of impersonal impartiality.³³ Within such a framework, one must be prepared “to submit one’s reasons to the criticism of others” according to common standards of rationality and evidence, and to provide non-circular explanations of the errors of one’s opponents.³⁴ For John Rawls, the ground lies in a liberal principle of legitimacy, which holds that political power should be exercised only “in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.”³⁵ For Amy Gutmann and Dennis Thompson, the ground consists in commitment to a norm of reciprocity, which requires “citizens and officials to justify

31. LARMORE, *supra* note 30, at 53.

32. *Id.*; see also BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 10–11 (1980) (defending the claim that “the notion of constrained conversation should serve as *the* organizing principle of liberal thought” and stating that neutrality is a major conversational constraint).

33. Thomas Nagel, *Moral Conflict and Political Legitimacy*, 16 PHIL. & PUB. AFF. 215, 229 (1987).

34. *Id.* at 232.

35. RAWLS, POLITICAL LIBERALISM, *supra* note 20, at 137.

public policy by giving reasons that can be accepted by those who are bound by it.”³⁶

If the requirement of neutralist liberalism is that disagreement over coercive public policies be resolved by mutual retreat to common ground, that is, a set of basic assumptions that are accepted by all parties, then the problem is that in modern societies such common ground as there is is too thin to serve as a ground for liberal principles. Neutralist liberals tend to assume, overly optimistically, that controversies over abortion, same-sex marriage, assisted suicide, and other divisive issues can be avoided if the disputing parties agree to put aside their differences and focus on the common intersection of their belief-sets.³⁷ But, although Party 1 may share a variety of basic beliefs with Party 2, and Party 2 may share a variety of basic beliefs with Party 3, and so on, the number of basic beliefs shared by *all* contending parties in modern societies is vanishingly small.³⁸ At best, the disputants might all share belief in basic logic truths, such as the law of non-contradiction³⁹ and the law of excluded middle.⁴⁰ But, beyond this, disagreements obtain not just at the level of policy prescriptions—for example, should abortion/same-sex marriage/assisted suicide be legally permitted?—but also at the level of fundamentals, that is, the basic premises that serve as the ultimate justification of the policy prescriptions. Some citizens of the polity will appeal to religious authority, some to moral intuition, some to philosophical arguments, and others to a combination of one or more of these with empirical claims. And although it might be possible in principle to adjudicate these disputes by using human reason, our long history of controversies that have yet to be resolved in this way strongly suggests that they are not (at least, practically speaking) eliminable.⁴¹ The same problem obtains at higher levels of abstraction. Every well-thought-out affirmative answer to the question whether, for example, the right is prior to the good, has been met with an equally well-thought-out negative

36. AMY GUTMANN & DENNIS THOMPSON, *DEMOCRACY AND DISAGREEMENT* 52 (1996).

37. ACKERMAN, *supra* note 32, at 4–12.

38. For similar points directed against Ackerman’s *Social Justice in the Liberal State*, see MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* 9 (1991) [hereinafter PERRY, *LOVE AND POWER*].

39. Laurence R. Horn, *Contradiction*, in *STANFORD ENCYCLOPEDIA OF PHILOSOPHY* § 2 (Edward N. Zalta ed., 2014), <https://plato.stanford.edu/entries/contradiction/> [<https://perma.cc/6374-8ZWH1>] (“No proposition may be simultaneously true and false.”).

40. *Id.* (“Every proposition must be either true or false.”).

41. See, e.g., Leigh Ann Caldwell, *Abortion: A Polarizing, Emotional Debate 41 Years After Court Ruling*, CNN (Jan. 22, 2014, 8:56 PM), <http://www.cnn.com/2014/01/22/politics/abortion/index.html> [<https://perma.cc/4EXL-C3JN>] (reporting that the abortion debate is “just as contentious today as it has ever been in the United States”).

answer.⁴² If the only thing on which proponents of mutually incompatible conceptions of the good agree is (at best!) the basic axioms of logic, then every neutralist defense of liberalism will fail. The standpoint of impersonal impartiality, neutrality, or reciprocity in a realm of public reason is a position from which it is logically impossible to argue for the restrictions on state power that are constitutive of a liberal polity.

Neutralist liberals are aware of this problem, but their prescription for solving it involves explicit or tacit appeal to a particular comprehensive conception of the good (or a particular ranking of values). Religious beliefs that justify human sacrifice, polygamy, or mass suicide are excluded from the role of justifying coercive public policies because they are “unreasonable.”⁴³ Racist and sexist beliefs—even those grounded on empirical claims—are excluded as “non-moral.”⁴⁴ At the limit, any belief systems incompatible with the proposition that all citizens are free and equal, or that all are deserving of equal concern and respect, are ruled out of court. This solution has all the advantages of theft over honest toil. Suppose I hold a set of basic beliefs that a neutralist liberal excludes from the realm of public reason as “unreasonable.” Given that I am a citizen (or legislator) who is deserving of equal concern and respect, the neutralist liberal owes me a justification for preventing me from appealing to these beliefs as reasons to support coercive public policies. If the neutralist simply appeals to the fact that my beliefs are “unreasonable,” then her or his defense of the exclusion will be question-begging. So the neutralist must appeal to a different reason, something that justifies or grounds the claim that my beliefs are “unreasonable.” That reason cannot lie in the axioms of logic, because, as we have seen, these axioms are too thin to serve as a justification for any substantive thesis (including any claim of “unreasonableness”). So it must lie in a substantive principle of some sort, a principle such as that “all persons are moral equals” or “the universe is not ruled by a deity who

42. See, e.g., JOHN RAWLS, *A THEORY OF JUSTICE* 27–28 (rev. ed. 1999) (“[I]n justice as fairness the concept of right is prior to that of the good.”). But see, e.g., MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE*, at xi (2d ed. 1998) (“[P]rinciples of . . . serve.”).

43. See, e.g., LARMORE, *supra* note 30, at 66; RAWLS, *POLITICAL LIBERALISM*, *supra* note 20, at 217; Stephen Macedo, *Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?*, 105 *ETHICS* 468, 473 (1995); Nagel, *supra* note 33, at 221.

44. Amy Gutmann & Dennis Thompson, *Moral Conflict and Political Consensus*, 101 *ETHICS* 64, 69–70 (1990).

can be placated by humans” or “it is best for persons to let them lead their lives free of state interference.” But these substantive principles either encapsulate, or are inconsistent with one or more, particular conceptions of the good (or ranking of values). This means that neutralist liberalism has collapsed into comprehensive liberalism, which is an ironic dialectical twist, given that the very *raison d’être* of neutralism is to avoid the problems of incoherence and unfairness that plague comprehensivism.

IV. *MODUS VIVENDI*?

Some liberals, following some aspects of Thomas Hobbes’ strategy for establishing the rationality of the social contract, argue that the justification dilemma leaves us with no option except to advocate for the liberal state as a kind of *modus vivendi*.⁴⁵ The idea is that a defense of freedom (to live, to speak, to associate with others, to practice one’s religion, to travel, to contract, and so on) must be based on a compromise, an agreement based on the recognition by each party that it is either counterproductive or undesirable to use force in the attempt to achieve its (totalizing) ends.⁴⁶

How would the case for *modus vivendi* work in practice? Consider the European wars of religion. Looking back as a Protestant, one might reason that the attempt to root out Catholicism by killing or forcibly converting Catholics might well be successful in the short term, but that the relative size, intelligence, wealth, and power of the Catholic population might well result (as it has resulted in the past) in similar attempts to root out Protestantism by killing or forcibly converting *Protestants*.⁴⁷ Although the establishment of one’s own brand of Christianity is the most desirable state of affairs, recognition of the existence of a relatively stable balance of power leads, at least rationally, to the recognition that there is a second-best option that also serves as a second-best option for one’s adversaries. That option involves granting one’s adversaries the freedom to practice their religion in exchange for being allowed to practice one’s own religion.⁴⁸

45. See JOHN GRAY, *TWO FACES OF LIBERALISM* 25, 133 (2000).

46. See *id.* at 105–06 (stating that under *modus vivendi* liberalism, we will come to think of human rights and freedom as convenient articles of peace, whereby individuals and communities with conflicting values and interests may consent to coexist peacefully).

47. See Leslie Griffin, *Good Catholics Should Be Rawlsian Liberals*, 5 S. CAL. INTERDISC. L.J. 297, 306 (1997) (“For Catholics and Protestants in the sixteenth century, religious toleration was a *modus vivendi* because each group wanted to establish the true religion. If their power changed, then the *modus vivendi* would evaporate. But political justice in an overlapping consensus does not fluctuate with power.”).

48. See GERALD F. GAUS, *CONTEMPORARY THEORIES OF LIBERALISM: PUBLIC REASON AS A POST-ENLIGHTENMENT PROJECT* 58 (2003) (“Whereas initially the minimum position of [Protestants and Catholics] was that the other be repressed (and so no compromise

The state will then serve as a means of protecting each religious group from the violent excesses of fringe groups that view compromise as worse than a fight to the death.

This defense of liberalism, however, has serious drawbacks. The first problem is that the lack of an agreement between adversaries on basic liberal principles entails that any *modus vivendi* is necessarily contingent, and hence hostage, to changing environments.⁴⁹ If facts change in a way that leads one to *perceive* that the balance of power has shifted significantly in one's own direction,⁵⁰ then one will be sorely tempted to advance one's own primary agenda by breaking the peace.⁵¹ Over time, facts shift regularly in these ways, as attested to by the frequency of wars between independent states in the last century. The point here is that we do not want a reason to accept liberal principles that is contingent on ever-changing circumstances; rather, we want a justification that is more robust and lasting than that.

The second problem is that *modus vivendi* is a veritable recipe for the decimation or coercion of minorities. Under a compromise regime, there is no reason for a majority to agree to a system of governance that protects the rights and freedoms of a distinct minority. If the majority is strongly inclined to impose a totalitarian system on a small minority, and if the majority understands that the minority has no realistic way of resisting the imposition, then it is more (instrumentally) rational for the majority to coerce or kill the minority than it is for the majority to compromise in a way that protects the minority. The problem, then, is that *modus vivendi* cannot solve the problem of plural totalistic ideologies by mutual agreement on the liberal state as a second best option unless *each* of the contending parties is (perceived by all to be) powerful enough to disrupt or frustrate the main aims of the other parties. Such a system might work (at least in the

was possible), eventually Catholics came to accept that an acceptable minimum was that they tolerate Protestants if Protestants tolerated Catholics (and, so too, with Protestants).”).

49. See John Horton, *Realism, Liberal Moralism and a Political Theory of Modus Vivendi*, 9 EUR. J. POL. THEORY 431, 440 (explaining that *modus vivendi* is an “ongoing endeavor,” and to some degree, “precarious and susceptible to being undermined by any of the infinite variety of life’s contingencies”).

50. For example, the Catholic population appears to have been weakened by disease or famine, or sources of Catholic wealth appear to have dried up as a result of financial mismanagement.

51. See Enzo Rossi, *Modus Vivendi, Consensus, and (Realist) Liberal Legitimacy*, 2 PUB. REASON 21, 31 (2010) (“[M]odus vivendi is the product of a contingent balance of power between competing parties”); see also GAUS, *supra* note 48, at 63 (mentioning that one problem of the agreement of *modus vivendi* is that individuals will constantly reevaluate the agreement in light of shifting power relations).

short term) to promote peace between Catholics and Protestants in various European countries. But, to take another example, it will not work to protect Christians in countries where Islam is dominant, and it will not work to protect Muslims in countries where Christianity is dominant.

V. POLITICS?

Some theorists object to any form of liberalism, whether comprehensive, neutralist, or *modus vivendi*.⁵² For them, the appropriate recipe to reduce social conflict produced by competing and irreconcilable conceptions of the good is *politics*.⁵³ By this they mean that in the public square, where citizens debate the merits of coercive public policies, every argument should have free rein.⁵⁴ Citizens who are opposed to abortion should be free to appeal to religious doctrines as support for policies that prevent women from ending their pregnancies; citizens who are opposed to the welfare state should be free to support its destruction by appeal to right-libertarian principles; citizens who want to ban polygamy or same-sex marriage or assisted suicide should be able to support the ban using whatever arguments they please. And if a majority gets control of the state apparatus and restricts the freedom of some, then that's just the way the cookie crumbles.

But politics, so understood, is really just another recipe for oppression, tyranny, or chaos. Politics works well in a system animated by liberal principles, a system in which people are not only free to speak their minds, but also free from unjustified coercion or harm. But when liberal principles are disregarded, there is no framework for politics: all that is left is war. Sometimes, totalitarian tendencies are channeled directly into violence, coercion, or intimidation: the mob shows up at your door and burns a cross on your lawn, or threatens you with harm if you do not do what they say. But those same tendencies can also be channeled to the same ends *indirectly*: through elections for representatives who pass laws that restrict freedom or worse. Anti-Jewish legislation passed in Nazi Germany in the 1930's included the exclusion of Jews from government service, from the bar, from public schools, from editorial posts at newspapers and magazines, from the army, and even from health spas.⁵⁵ Towards the end of the decade, Jews were forced to surrender their passports, to close their shops and

52. See Stanley Fish, *Mission Impossible: Settling the Just Bounds Between Church and State*, 97 COLUM. L. REV. 2255, 2255 (1997) ("All of liberalism's efforts to accommodate or tame illiberal forces fail, either by underestimating and trivializing the illiberal impulse, or by mirroring it.").

53. See *id.* at 2293.

54. See *id.*

55. *Antisemitic Legislation 1933–1939*, in HOLOCAUST ENCYCLOPEDIA, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007901> [<https://perma.cc/3GML-SXYH>].

businesses, and to live in areas where their freedom of movement was heavily circumscribed.⁵⁶ And then, during the Second World War, Jews were systematically herded into concentration camps, gassed, and shot.⁵⁷ All of these measures, and certainly the ones taken before the Nazi Party established a de facto dictatorship, were the result of official votes taken by official representatives in the official seat of government in accordance with official rules of debate and deliberation.⁵⁸ “Politics,” as the noted legal scholar, Fanley Stish, once said, “is merely the continuation of war by other means.” As such, it is not the *answer* to our problem: it *is* our problem.

VI. THE TRANSCENDENTAL STRATEGY

The justification dilemma establishes that, in a world of competing and irreconcilable conceptions of the good, no attempt to justify the liberal state to illiberals can succeed. Practically speaking, *modus vivendi* is an unstable solution to this problem, and “politics” is just another name for despotism or anarchy. Is it possible to make a persuasive case for liberalism?

The mistake that liberals have been making is to suppose that the best way to argue for liberalism is by offering reasoning to illiberals based on premises that the latter do or could accept. In fact, the best argument for liberalism is to show that any illiberal who wishes to live, work, and participate in society is caught in a practical contradiction, for someone who opposes liberalism under those circumstances is *ipso facto* committed to liberal principles. The argument is transcendental inasmuch as it establishes that commitment to liberalism is a necessary condition of being a functioning illiberal in society.

In terms of its form, the transcendental argument for illiberalism is similar to Aristotle’s argument for the principle of non-contradiction (PNC).⁵⁹ Aristotle notes that there is no good way to argue directly for the PNC: any deductive argument for the PNC would need to be based on premises that are surer than the PNC itself, and this is impossible. Instead, Aristotle challenges those who would deny the PNC to say something. As he argues, if they do take up the challenge, then they are *ipso facto* committed to the

56. *Id.*

57. *Id.*

58. *Id.*

59. ARISTOTLE, *Metaphysics Book IV*, reprinted in *THE METAPHYSICS* 161 (Hugh Tredennick trans., 1968).

truth of PNC. If they do not, then they have nothing to say. As I will now argue, this is the type of bind facing illiberals.

Let us begin by looking at what the vast majority of illiberals want. In the first place, they do not want to live alone in remote caves or perched on mountaintops. They also do not want to live in illiberal communes with no protection from outside forces. Even if they want to live apart, in gated communities, they still want the benefits of living in a *society*, that is, a scheme of cooperation among human beings that enables them to pursue their conception of the good. This scheme of cooperation should be powerful enough to deter hostile invasions or attacks—whether domestic or foreign—that would threaten their way of life.

In addition, illiberals want to be able to control (or want an illiberal majority to be able to control) the machinery of government in their society in ways that do not respect liberal principles, such as freedom of expression or freedom of action. It is not just that illiberals want to be left alone to live as they choose: illiberals who are committed to way of life *W* want *others* to be forced to live in accordance with *W*. A religious fundamentalist commits to not having an abortion, but she wants other women to be prevented from having abortions too. A radical Islamist commits to life in accordance with Shariah, but he wants others to live according to Shariah too. Someone who thinks that sexual relations between consenting adults of the same sex is an abomination will commit to sexual relations with someone of the opposite sex (or to no sexual relations at all), but he wants homosexuals not to act on their own sexual inclinations.

Finally, illiberals do not want to achieve their illiberal ends by beating others over the head (unless this is absolutely necessary). Instead, they want to be free to advocate for, and vote to achieve, the kind of governmental control suitable to their ends on the basis of reasons that are grounded in their own conceptions of the good.

The question is whether all of this is self-consistent.

In the first place, any argument that the illiberal proposes for his illiberal policies commits him to acceptance of basic standards of rationality. Suppose, for instance, that George is a religious fundamentalist who believes that ensoulment begins at conception, and who argues as follows: (1) fetuses have souls; (2) any ensouled being is a person; (3) persons have a right to life; (4) the destruction of anything that has a right to life should be legally proscribed; (5) abortion involves the destruction of a fetus; therefore, (C) abortion should be legally proscribed. Imagine further that this is the basis on which George votes for a legislator who is working to pass an anti-abortion bill on similar grounds. The very fact that George (or the legislator he supports) is employing a deductive argument as a persuasive tool in support of his goals commits him to basic principles of rationality: (i) that the same proposition cannot be both true and false at the same time;

(ii) that every proposition is true or false (or, perhaps, truth-valueless); (iii) that validity is a virtue of deductive reasoning; (iv) that any argument sharing the same logical form as a valid argument must also be valid; (v) that a given form of reasoning is unsound if it can be used to prove a proposition and its negation, and so on. The general point here is that reliance on reason as a persuasive rather than merely a rhetorical tool rationally presupposes commitment to basic logical principles. It is impossible to understand, or to follow the recommendations of, someone who abjures rational principles in pursuit of his ends.

Suppose now that the illiberal relies on empirical evidence in support of any argument designed to sway his fellow citizens. We can imagine George arguing as follows: (1) causing serious pain to an innocent being should be legally proscribed; (2) a twenty-week old fetus feels serious pain when its head is crushed; (3) a craniotomy involves crushing the fetus's head as a means of extracting it from the birth canal; therefore, (C) craniotomies should be legally proscribed. In this argument, (1) is a normative premise, and (3) is a definition, but (2) is an empirical assumption. The truth of empirical assumptions is determined by good inductive reasoning based on uncontroverted observation and data-gathering. In this case, George would appeal to neurobiological theories of pain and facts about the developing fetal brain in defense of premise (2). And those theories, in turn, are justified in part by the scientific method, which involves the use of mathematical/geometrical models, experimental design, and statistical techniques to identify and map the biochemical mechanisms of pain perception. It is not rational for George to appeal to empirically justified assumptions without committing to the epistemic standards by which these assumptions are justified. In appealing to the results of scientific investigation, George is implicitly endorsing the means by which these results are obtained.

It is worth emphasizing that it would be irrational for George to cabin his implicit endorsement of the scientific method to matters that pose no rational threat to his own conception of the good. To do so without justification would be ad hoc, and the abjuring of ad hoc reasoning is a mainstay of the scientific method (as it is a mainstay of philosophical reasoning). Suppose, for example, that George bases his opposition to sexual relations between consenting adults of the same sex on passages of the Bible that describe these relations as sinful. We might reasonably ask George why he puts so much stock in the Bible. His response will likely be that the Bible is the revealed word of God. We might then reasonably ask George why he thinks that the Bible is the revealed word of God. What evidence is

there that the Bible was divinely inspired? The fact that the Bible is written as a chronicle of divinely inspired actions is insufficient proof of its supposed divine status, for it is possible for anyone who is not divinely inspired to write a chronicle of divinely inspired actions. In response to these sorts of criticisms, George might be tempted to claim that the standards that are supposed to help determine whether chronicles written by present-day self-described prophets are really divinely inspired do not apply to the Bible. But this maneuver would be ad hoc, and hence impermissible according to the very empirical standards to which George would seek to appeal in ruling out the possibility that, say, this Article was written by a goblin or wizard.

Suppose now that George refuses appeal to the scientific method altogether. It follows that he would be barred from using the anti-craniotomy argument mentioned above. But he might find this result acceptable if it meant that he could save his defense of the divine origin of the Bible from the criticism that it is ad hoc. Unfortunately, throwing out the scientific method will have very serious repercussions on George's ability to live in a world that has been sculpted by the results of scientific investigation. Most every artifact used by human beings has been vetted by science. If George abjures reliance on science, then he is rationally committed to abjuring reliance on modern means of transportation (cars, airplanes), communication (cell phones), information transmission (television, Wi-Fi), shelter (skyscrapers), food production (synthetic products), sanitation (the sewage system), energy delivery (electricity, gas), medical care (drugs, surgical procedures), and more. It would be irrational for George to place a television advertisement, call his legislator, drive to church, turn on his air conditioner, take painkillers for a headache, and do most of the things he takes for granted without thinking of the scientific *imprimatur* they have received.

My argument thus far has been that illiberals who appeal to deductive and inductive arguments to prosecute and impose their own conception of the good are implicitly committed to endorsing deductive logic and the scientific method (that is, inductive logic). This puts serious pressure on forms of illiberalism that rest exclusively on religious faith or devotion to a cult (as opposed to, say, natural theology). But it does not yet rule out forms of illiberalism that are, or aim to be, consistent with reason and science. Consider, now, that illiberals want to live in a society with other people, some of whom, as they well understand, do not (at least, as yet) share their own conceptions of the good. Society is a scheme of cooperation for mutual advantage.⁶⁰ It is a tragedy of modern political life that this

60. See RAWLS, *POLITICAL LIBERALISM*, *supra* note 20, at 14 ("Thus, justice as fairness starts from within a certain political tradition and takes as its fundamental idea

fact is mostly invisible, and hence largely unappreciated, by illiberals. And yet the fact of cooperation is a pervasive aspect of human life lived among strangers. When I go to the grocery store, to the barber, to the doctor's office, to the bank, to my place of work, to a restaurant, to the movies, and so on, I interact with people I have never met, and yet I trust them not to kill me, or harm me, or steal from me. I simply assume that they are no more interested in taking advantage of me than I am interested in taking advantage of them. This is not because I think that what prevents them from pouncing on me is primarily the fear of being caught and punished by the state. It is because I assume that, as they also assume, we are all in this together. The fact that we are members of a society means that we have agreed to inhabit and staff a structure that makes it possible for us to pursue our conceptions of the good without undue interference. The difference between the liberal and the illiberal is that the former, unlike the latter, wants the scheme of cooperation that structures their lives to include the protection of basic liberties, even when these liberties stand in the way of achieving what some perceive as the good. But the illiberal who chooses not to live on a mountaintop, no less than the liberal who makes a similar choice, is subject to the necessary conditions of social membership.

What are these necessary conditions? As Rawls has argued, any scheme of cooperation presupposes terms of cooperation.⁶¹ When we agree to live together and work together, we do so on the basis of mutually agreeable terms. If the terms are not mutually agreeable, then the relation that exists between strangers who are living in close proximity to each other is not cooperation; at best, it is a form of uneasy coexistence managed by fear. What terms could possibly be mutually agreeable to the illiberal and those who do not (at least, as yet) share his conception of the good? The illiberal could not possibly agree to terms that involve his being unjustifiably deprived of his freedom to pursue what he takes to be necessary for his happiness. But then, if the terms are to be mutually agreeable, they must also guarantee the same freedom to others, including those whose conception of the good clashes with his. The Marxist illiberal will not want to be coerced to follow Fascist requirements or prohibitions, and the Fascist illiberal will

that of society as a fair system of cooperation over time, from one generation to the next.” (footnote omitted) (citation omitted)).

61. See *id.* at 16 (“Cooperation involves the idea of fair terms of cooperation: these are terms that each participant may reasonably accept, provided that everyone else likewise accepts them.”).

not want to be coerced to follow Marxist requirements or prohibitions. Only terms of cooperation that protect the freedom of the Marxist and the Fascist to follow their own chosen life paths will be agreeable to each. But then, by the very fact of being committed to engaging in a scheme of cooperation with others, the illiberal—whether Marxist or Fascist—is thereby committed to a form of government organized in accordance with liberal principles. If this commits the illiberal to a set of mutually contradictory commitments, then so be it.

The upshot of the transcendental argument is that every illiberal faces the following dilemma: either live in a society and give up the idea of coercively foisting one’s own conception of the good on others, or go live in a remote area (either alone or with fellow illiberals). From this dilemma, there is no escape.

VII. THE INTEGRITY OBJECTION

Illiberals sometimes object that liberal restrictions on the kinds of arguments that may be offered in support of coercive public policies are excessively demanding.⁶² The “Integrity Objection” posits that no illiberal citizen should be forced to cleave his psychology in two, maintaining two completely separate personas—one that looks at the world through the lens of some particular illiberal ideology, and another that looks at the world from a set of doxastic commitments that are, or might be, acceptable to his fellow citizens.⁶³ Is it not asking too much of a person that he behave as a devout Catholic at home and in fellowship with other Catholics, but that he disregard his Catholic beliefs when participating in political arguments in the public square? Should it not be permissible for a deeply committed Catholic to try to persuade his fellow citizens on the basis of arguments that are ultimately grounded in Catholic dogma?

The answer, in a word, is “no.” In the first place, no aspect of liberalism prevents the illiberal from expressing his deepest convictions in public. Indeed, it is built into liberalism that the illiberal should have just as much right as anyone else to express himself freely. What liberalism asks of the

62. See generally CHRISTOPHER J. EBERLE, *RELIGIOUS CONVICTION IN LIBERAL POLITICS* (2002); PERRY, *LOVE AND POWER*, *supra* note 38; MICHAEL J. PERRY, *MORALITY, POLITICS, AND LAW* (1988) [hereinafter PERRY, *MORALITY, POLITICS, AND LAW*]; KEVIN VALLIER, *LIBERAL POLITICS AND PUBLIC FAITH: BEYOND SEPARATION* (2014); Nicholas Wolterstorff, *The Role of Religion in Decision and Discussion of Political Issues, in RELIGION IN THE PUBLIC SQUARE: THE PLACE OF RELIGIOUS CONVICTIONS IN POLITICAL DEBATE* (1997).

63. For a discussion of opposing views regarding the Integrity Objection, see VALLIER, *supra* note 62, at 59 (explaining that, for certain religious people, “[i]t is their conviction that they ought to strive for wholeness, integrity, integration, in their lives”) (quoting Wolterstorff, *supra* note 62, at 67)).

illiberal is not that he remain silent, but that he not base his voting decisions and attempts at public persuasion on his illiberal views. Second, no aspect of liberalism prevents the illiberal from offering *conditional* arguments of the form: “If you accept [fill in with your favorite illiberal assumptions], then you are rationally committed to accepting public policy P.” One might think of this form of argument as addressed to fellow illiberals. For, although those who do not share the relevant illiberal assumptions do not need to discharge the antecedent, this is something that those who accept these assumptions are rationally required to do. Third, liberalism places no restrictions on what illiberals are permitted to *think*: for, again, freedom of conscience is one of the rights protected in a liberal state.⁶⁴

Under these conditions, it is *not* too much to ask the illiberal to refrain from offering arguments that are: (a) designed to persuade; (b) based on his own illiberal assumptions; and (c) designed to support coercive public policies. In particular, those who abide by this restriction need not come to have bifurcated identities. Illiberals simply need to acknowledge that their own desire to live in a society with others necessarily places restrictions on what they can say and do in the public square. It may be that Ben really and truly believes that the end times are at hand, and that we should all sell our possessions in anticipation of the Second Coming immediately after next month’s election. But surely Ben need not consider himself as having a split identity if he casts his ballot on the assumption that the world won’t come to an end before the elected body convenes.

Kevin Vallier claims that the Integrity Objection is best read, not as the thought that adhering to restraint is *psychologically* damaging to illiberals, but as the *normative* thought that illiberals “have *no reason* to engage in integrity-violating restraint.”⁶⁵ However, as I have argued, this is false: illiberals who choose to live in a society with others are *ipso facto* committed, not merely to principles of rationality, but also to a liberal principle of restraint.

Relying in part on Paul J. Weithman, Vallier suggests that in the case of religion in particular, “restraint is objectionable in part because it closes off viable avenues towards realized citizenship,” that is, morally praiseworthy involvement in politics.⁶⁶ For example, African American churches in the

64. For further development of the thoughts in this paragraph, see generally Samuel C. Rickless, *Religious Arguments and the Duty of Civility*, 15 PUB. AFF. Q. 133 (2001).

65. VALLIER, *supra* note 62, at 59–60.

66. *Id.* at 61 (citation omitted). See generally PAUL J. WEITHMAN, RELIGION AND THE OBLIGATIONS OF CITIZENSHIP (2002).

United States educate their members about political issues and encourage them to be politically active.⁶⁷ Had their members not undertaken their political activism as a religious obligation, suggests Vallier, the achievements of the Civil Rights movement would have been more limited than they actually were.⁶⁸ Vallier also argues that Bishop Tutu's role on the Truth and Reconciliation Commission in South Africa following the demise of apartheid would have been "substantially muted" if he had felt the need to avoid grounding his political judgments on his religious commitments (such as the view that all children of God have the ability to repent).⁶⁹ Moreover, Tutu would not have been able to publicly reach many of his fellow citizens except by appeal to religious values, and thus, if constrained by liberal principles, would have been a less effective advocate for truth and reconciliation, and for social justice more broadly.

I disagree. First, the Civil Rights movement was grounded in a basic appeal to principles of social justice. That we should judge people by the content of their character rather than by the color of their skin is not a specifically *religious* obligation: it is, first and foremost, a *moral* obligation. And certainly it is possible for an entire movement to be grounded in appeals to what justice, rather than to what God, demands. Witness the movement for the rights of workers, women's rights, gay rights, transgender rights, and the rights of the disabled. The idea that the Civil Rights movement would have fallen flat if it had not been driven by religious fervor strikes me as fanciful at best. The idea that we are somehow forced to choose between a liberal society that permits widespread injustice and an illiberal society that does not is based on a false dichotomy.

Second, although it may have been difficult for Bishop Tutu to divide his political identity from his religious identity as an Anglican Bishop, I suspect that it would not have been impossible. You do not need to be religious to understand the importance of truth and reconciliation as elements in the transition from apartheid to a working democracy; moreover, other members of that body, including Sisi Khampepe (a judge), Wynand Malan (a politician), Hlengiwe Mkhize (a psychologist), Dumisa Ntsebeza (a civil rights attorney), and Faizel Randera (a doctor), were not religious figures. Moreover, if Bishop Tutu had found it too difficult to separate his religious identity from his political role as chair of the TRC, then it would not have been inappropriate to replace him with someone else who was not struggling with identity issues as much as he. Indeed, given the TRC's role as a quasi-judicial body, it might have made more sense to appoint Justice Khampepe

67. VALLIER, *supra* note 62, at 61.

68. *Id.* (arguing that the achievements of the Civil Rights movement would have been minimized had the African American churches "accepted principles of restraint").

69. *Id.* at 63.

as chair anyway. Finally, it simply strains credulity to suggest that religious citizens of South Africa would have been less inclined to take the work of the TRC seriously if it had not been led by a religious figure. The aim of the TRC was not religious: it was to investigate and publicize human rights abuses under apartheid, identify candidates for reparation, and make recommendations concerning amnesty for past perpetrators. The idea that religious people cannot understand the importance of these functions except by placing them within a religious context insults their intelligence and common sense.

Vallier goes on to accuse advocates of liberal restraint of elitism: “Restraint might not be onerous for secular, college-educated citizens of Western liberal democracies But when restraint is applied outside of this privileged group, its restrictiveness is clear.”⁷⁰ Vallier thinks that it is “unduly onerous” to ask “severely oppressed citizens” who would never have found their political voices without the religious leadership of Bishop Tutu to distinguish between arguments that are, and arguments that are not, publicly acceptable under liberal principles of restraint.⁷¹ In other words, Vallier thinks that severe oppression somehow stunts a person’s ability to make distinctions. This is misguided. And, to make matters worse, it is also, ironically, elitist. Oppression, as should be clear even to those who have not suffered it, focuses the mind. Besides, it is insulting and demeaning to suggest that a “severely oppressed” religious person without a college degree is not smart enough to know the difference between an argument that appeals to God’s wishes and one that appeals to universal principles of justice.

70. *Id.* at 64. The accusation of elitism has become something of a borderline insult. Here, for instance, are some telling comments by Fish:

Someone sets out to solve the problem presented to a would-be regime of tolerance or higher-order impartiality or openness of mind or mutual respect by views that are manifestly intolerant, have no truck with impartiality, and accord respect largely to those who already agree with them; and invariably the solution that emerges is a mirror version of the problem it claims to address. Tolerance is defined in a way that renders the troubling views unworthy to receive it; openness of mind turns out to be closed to any form of thought not committed to its hegemony, and mutual respect is less a formula for ecumenical generosity than *the cant phrase of a self-selected little club of right-minded academics.*

Fish, *supra* note 52, at 2293 (emphasis added).

71. See VALLIER, *supra* note 62, at 64.

VIII. THE FAIRNESS OBJECTION

Michael J. Perry, Nicholas Wolterstorff, and Kevin Vallier press another objection to a principle of liberal restraint, namely that such a principle treats persons of faith unfairly relative to atheists and agnostics.⁷² The concern is that, although restraint does not require secular folk to restrict the way in which they argue publicly, it *does* require this of illiberals who want to vote on issues and persuade others on the basis of their own religious worldview. Because liberalism treats religious folk unfairly, so the objection goes, it consigns them to second-class status in a polity that, according to liberalism itself, should be treating all of its members as equals.

To determine whether anyone is being treated unfairly, we need to determine the baseline relative to which differential treatment is unwarranted. It must be admitted that liberalism requires that illiberals, but not liberals, exercise restraint. But this is unfair only if liberals and illiberals are morally equal in other respects. And the fact is that they are not. Illiberals attempt to coerce others in the very same society on grounds that are inaccessible—or, in some cases, unintelligible—to the latter; liberals, by contrast, do not. Moreover, as I have argued, illiberals who want to live in a society with others are already rationally committed to avoiding the very sorts of public arguments that they are otherwise sorely tempted to use. Therefore illiberals, unlike liberals, are in the position of asking for special dispensation to which they are not antecedently entitled and that they are antecedently required to eschew as a necessary condition of belonging to a scheme of cooperation with those who do not share their worldview.

To make this point plainer, consider the following analogy. Suppose I tell you the following story:

Lynn, Margaret, and Julie are roommates. Margaret has a loud voice, while Julie has a soft voice. Lynn tells both Margaret and Julie that they need to keep their voices down.

Our first reaction to this story is that Lynn may be treating Margaret unfairly, given that she is requiring a greater sacrifice from Margaret than she is requiring from Julie. So far, so Vallier.⁷³ But now suppose we fill in the following missing detail:

Lynn has an important final exam the next day, and needs a good night's sleep. Both Margaret and Julie previously agreed not to wake Lynn up by making too much noise in the apartment.

72. See PERRY, MORALITY, POLITICS, AND LAW, *supra* note 62, at 14–16; VALLIER, *supra* note 62, at 66–67; Wolterstorff, *supra* note 62, at 105.

73. See VALLIER, *supra* note 62, at 66–72.

Now it no longer strikes us as unfair for Margaret and Julie to be required to speak softly, even though this is more of an imposition on Margaret than it is an imposition on Julie. Similarly, as I have argued, both illiberals and liberals who want to live in a single society are committed to terms of cooperation that are mutually acceptable to their fellow citizens. If this means that a heavier burden falls on illiberals, then that is not unfair: it is no more than justice requires.

IX. CONCLUSION

The justification dilemma establishes that it is impossible to provide a compelling argument for liberalism based on premises that the illiberal could not reasonably reject. If the premises are derived from some comprehensive conception of the good that is incompatible with the illiberal's worldview, then the illiberal can complain, reasonably, that it would be unfair to force him to accede to the requirements of a competing worldview he does not accept. But if the premises are derived instead from some requirement of neutrality or impartiality, then the illiberal can complain, again reasonably, that neutrality is too thin a grounding for the liberal state. The best way to argue for liberalism is to turn the tables on the illiberal who seeks to persuade other citizens to follow his own conception of the good. For it is a precondition of adopting such an end that one commit to the requirements of deductive and inductive reasoning, and it is a precondition of living in a society that one cooperate with one's fellow citizens on the basis of mutually agreeable terms. In addition, there is no reason to believe that illiberals who obey principles of liberal restraint need to live with bifurcated identities, or that requiring adherence to these principles is an elitist way of closing off viable avenues to realized citizenship. And it is not unfair to require illiberals to avoid grounding their public arguments for coercive government policies in their own inaccessible, unshareable conceptions of the good. Politics need not involve a fragile *modus vivendi* or a mere continuation of war by other means: liberalism, along with the principles of restraint it requires of all citizens, is a necessary condition of the very possibility of illiberalism.

