

# Journal of Practical Ethics

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# Editorial: Introducing the *Journal of Practical Ethics*' Podcast Series

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We are pleased to present the second issue of the *Journal of Practical Ethics*, with papers on three important practical matters: education, health, and the judging of others.

News stories reporting, and usually bemoaning, restrictions placed by schools on the celebration of Christmas as a religious festival have themselves become part of the ritual of Christmas. Aside from vexed questions on religion, polls have shown that parents are keen for schools to teach values and standards. In 'Moral Education and the Liberal State', Kyla Ebels-Duggan asks a difficult question. In a liberal state, what should those values and standards be?

Also timely is Daniel Hausman's 'Motives and Markets in Health Care'. As the US remains apparently irreconcilably divided over 'Obamacare', Hausman presents a supplement to standard models of controlling (or not controlling) the health care insurance market: non-financial incentives. In particular, Hausman argues that by modifying the balance and direction of motivating factors such as commitment to public service, self-interest and legal cases which are impacting on medical practice, we can produce a better balance of patient care and efficiency.

Finally, a timeless question: when is it right to judge others (in particular, to judge them negatively)? David Oderberg argues that the importance of a good reputation is so great that it is only in a rare case that one is permitted to form a bad judgement. We think it a very interesting read, but you don't have to rely on our

opinion: we have with this issue introduced a new series of podcasts interviewing an author from the issue to discuss the ideas presented, and our interviewed author for this issue is David Oderberg. You might also be interested to look back on the previous issue with a podcast interview with Seth Lazar. Podcasts are available from the journal website, [www.jpe.ox.ac.uk](http://www.jpe.ox.ac.uk).

Thank you to all the authors and reviewers who contributed to this issue. We hope you enjoy it, and letter responses to any of the Journal's articles are always welcome.

# The Morality of Reputation and the Judgment of Others

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## ABSTRACT

There is a tension between the reasonable desire not to be judgmental of other people's behaviour or character, and the moral necessity of making negative judgments in some cases. I sketch a way in which we might accommodate both, via an evaluation of the good of reputation and the ethics of judgment of other people's character and behaviour. I argue that a good reputation is a highly valuable good for its bearer, akin to a property right, and not to be damaged without serious reason deriving from the demands of justice and the common welfare. Rash judgment wrongfully damages reputation and is sometimes a seriously immoral act. Rashness is not merely about lack of evidence, but involves lack of charity and is to be avoided even in some cases where the evidence of bad character or action is epistemically sufficient for judgment. I argue that the desirability of a good name for its holder, whether the reputation is deserved or not, means that in all but a relatively narrow range of cases it is always wrong to think badly of someone, even if they are bad.

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## INTRODUCTION

We in the liberal, democratic West live in a society with a split personality, deriving from our own individual dissociative traits. On one hand, we spend much of our time—far more than we would imagine—morally judging the character and behaviour of others. On the other, we are also generally loath to make moral judgments

about other people. Very often we are unsure of whether to judge. We do not want to appear (or even to be) judgmental, but we also know that we do judge our fellows continuously, and believe this is often justified. To judge or not to judge? Here is an area of practical ethics that receives little contemporary attention, yet it is as central to morality as judging the state of the weather is to the question of how one should dress.

Fleshing this out a little, consider first the way in which moral judgment about others is manifested in outward behaviour. The thought is the father to the deed where deeds include words. So the ubiquity of judgments about others is manifest in two of society's greatest preoccupations, gossip and defamation (the two overlapping significantly). By gossip I loosely mean idle banter about people behind their backs, where although the content is explicitly only factual ('I heard Alan is having an affair', 'You have no idea how drunk Brenda got the other night', and so on), there is almost always an implicit, negative moral judgment. Although paradigmatic gossip is about people we know personally, gossip about 'celebrities' is a monstrous outgrowth, now at a level of popularity and refinement unmatched in human history. Perhaps some would count it as a central case precisely because those who gossip about celebrities (by 'those who gossip' I mean to include both producers and willing consumers) feel somehow close enough to the celebrity to think it's 'as if' they know them. (Wrongheaded this might be, but that is not the point. If you *think* you know someone as virtually a personal acquaintance—even if it is through the fantasy of a media glut of personal information—you can gossip about them.)

By defamation I do not mean only—or always—the activity that is contrary to law and must satisfy certain strict legal criteria. In most cases legal defamation involves publically imputing some fault of which the victim is innocent. But defamation as a *moral* category involves imputations of fault or bad character both true and false. Although not all defamation involves a moral judgment on the part of the defamer, explicit or implicit, what's more important is that defamers generally are quite aware that the hearers (or readers) of their words will make moral judgments based on what they think they have learned. Moreover, the ease with which willing audiences are found for defamation shows how common it is for us to pass judgments upon the acts of others. The motives are not hard to find, including: a sense of superiority ('at least I don't do what he does'); a feeling of being 'in the know' ('if only she knew what I know about Fred's behaviour!'); the sense of intimacy that comes from sharing tidbits



of information about third parties; the pleasure of filling time with idle and relatively cost-free chit-chat.

Judgmentalism is rife, yet so is the reluctance to judge, or at least to be seen as judgmental. Consider that this unwillingness cuts across both objectivism and subjectivism about morality. The objectivist believes in objectively true moral principles and prescriptions, holding for all people at all times and places. But not every objectivist, especially in a liberal society, wants to be thought of as imposing an objective moral code on others given the prevailing consensus in favour of tolerance, ‘live and let live’, and the like. For an objectivist not to want to insist on such an imposition might be irrational, but succumbing to peer pressure is not. By contrast the subjectivist, for whom what is morally true is a matter of opinion, believes that judging others must entail evaluating them by a standard that may well not apply to them. For the subjectivist, passing moral judgment reeks of what she sees as objectivist tyranny: if she is true to her subjectivism, she will try to train her mind not to judge; at the very least, she will not want anyone to think that her moral opinions are intended to apply of necessity to others.

My interest here is not defamation or gossip but their primary cause. They are but outward manifestations of an internal state of mind. Most moral philosophers have come to take it as axiomatic that when they evaluate human acts they are evaluating external, observable physical movements. Far less has there been work on the morality of *mental* acts, in particular moral judgments about others’ deeds or traits. Why might that be? First, like everyone else, most philosophers probably think there is something unseemly about subjecting people’s personal judgments to ethical assessment: it smells Orwellian, for if some judgments can be morally bad why shouldn’t a subset of those, if bad enough, be made illegal—‘thought crimes’? In reply, there are too many implausible steps between the antecedent and consequent to make this a reasonable objection. The law does not punish states of mind; even the vilest of intentions are immune unless they eventuate in some sort of outward act, if only an attempt. So just as with many other kinds of act, both mental and bodily, we can subject moral judgments about others to their own moral assessment without requiring a legal sanction for any of them, no matter how wrong they may be. (I will from now, for brevity, call moral judgments simply ‘judgments’ without qualification, and later I will further restrict the term ‘judgment’ to ‘negative or unfavourable judgment’. Context will make this clear.)

Secondly, it might be objected that we cannot know with certainty the judg-

ments that people make, mental contents being notoriously elusive, so we risk doing ourselves what we might end up imputing to others—making wrongful moral judgments about third parties. In reply, if there is a viable set of principles for assessing judgments, they will apply equally to second-order judgments, i.e. our own judgments about others' judgments. Any person knows with relative certainty, and in general, the contents of their own mental states, so they ought to be able to know with relative certainty the judgments they make about others' judgments. (I leave aside particular issues to do with self-deception, Freudian theories, and the like; for the sorts of cases I have in focus, the generalization applies.) So a person can apply the principles of judgment to their own judgments and if, for example, those principles dictate caution in judging the judgments of others, given certain circumstances, they will also dictate caution in respect of the first-order judgments those others make. Moreover, if we cannot know the judgments others make with the same certainty with which we can know our own, then those principles will dictate even *greater* caution when judging the judgments of others. So we ought not to fear an inordinate risk of making wrongful judgments about the judgments of others, as long as the principles are correct and we apply them well.

That slightly arcane point aside, all we need note is that we do not even need certainty in assessing others' judgments, and though we cannot always be certain of the judgment another makes, often we can. We know it precisely from outward behaviour, both word and deed. If I see you check the weather forecast and then fetch an umbrella before going outside, I can be certain you judge it to be raining or about to rain. Similarly, if I tell you that I'm no longer having anything to do with that so-and-so Bob after what he just did to me, you can be certain I judge Bob to have acted very badly. Words and deeds are how we know about any mental states, whether beliefs, opinions, judgments, hopes, fears, and so on. And if certainty means some sort of metaphysical guarantee, why do we need it? If that is the kind of certainty we need, then all human commerce should grind to a halt immediately—not a thought that need detain us.

A third reason for reluctance to entertain an ethic of moral judgment on the behaviour of others is the fear that it will lead us into censoriousness or judgmentalism. But there is a difference between making a judgment and being judgmental. Presumably, given that we pass judgment on others all the time yet generally deplore judgmentalism, most of us think that we can pass judgments without being judgmental (cases of weakness or hypocrisy aside). Rightly so, for judgmentalism is an

attitude or disposition that favours making negative judgments about people even when clearly unjustified. If we thought that by making judgments we were *ipso facto* being judgmental, we would tend not to make them. But we know that judgments about others can be favourable, or neutral, and if negative can be slight, or less critical than they might be.

More importantly, if judgmentalism is a vice, then presumably an ethic of judgment would rule it out! In other words, such an ethic is precisely what we need in order to have a rational basis for avoiding judgmentalism or censoriousness. If we refrain from judging because we don't want to be judgmental, then in reality we are already operating with an ethic of judgment, albeit inchoate. Spelling it out in more detail simply systematises and adds to whatever is intuitively plausible about judging others. Indeed, while it may be—and I think it is—plausible to hold judgmentalism a vice, it might also be that judgmentalism is a virtue. That is, we should not prejudge the results of working out an ethic of judgment by assuming that one of the things it might condone is something we think we should avoid.

## REPUTATION

Reputation, defined neutrally, is simply the general consensus of judgment about a person's character. Depending on how far knowledge—or presumed knowledge—of a person's life and actions extends, the general consensus could be as small as that of a village or as large as that of the world. Often, though, we talk about reputation normatively, as in 'I have a reputation to protect', or 'Emma's reputation is the one thing she holds dear'. Here we mean 'good reputation', the general consensus that a person is of good (reputable) character. Hence reputations can also be bad. But they can also be true or false—true if the consensus agrees with the facts about a person's character, false if not. (I will also, quite plausibly apart from highly non-standard cases, call true reputations *deserved* and false reputations *undeserved*, and vice versa.) If Fred is reputed honest and he *is* honest, his reputation is true; it is false if he is dishonest; similarly if he is reputed dishonest and he is in fact dishonest (true reputation) or is in fact honest (false reputation). So we have four possible combinations: (i) a good, true reputation; (ii) a good, false reputation; (iii) a bad, true reputation; (iv) a bad, false reputation. We all hold reputation to be of moral importance, but how should we rank these four? Somewhat surprisingly to many, I am going to argue that the desirability of a good name for its holder, *whether the reputation is deserved or not*,

means that in all but a relatively narrow range of cases it is *always* wrong to think badly of someone, even if they *are* bad. The wrongful act of what has traditionally been called ‘rash judgment’, I will argue, is not about lacking enough evidence to think ill of another person; it is about thinking badly of them *even* when you have enough evidence, with relatively few exceptions. To see how important a good name is, whether deserved or not, and to make my case plausible, we now need to examine the value of a good name in some depth.

To begin, it is clear that having a good, true reputation is the most prized possession. We want both to be good and to be reputed good. I claim also that having an undeserved, bad reputation is in general the worst of the four. Why should that be? A person with a bad but unmerited reputation might appreciate the chance to bear the slings and arrows of outrageous fortune, seeing it as an opportunity to grow in steadfastness and overall virtue. So how can we be sure it ranks, in terms of what is bad for the individual, below having a bad but deserved reputation? My reply is that although there are some people for whom a bad but false reputation affords the chance to grow in virtue, they are relatively few in number. By contrast, there are considerably more people for whom a bad but *true* reputation is for them a mark of honour, especially the honour that exists proverbially among thieves. Far more important, though, is that *any* person with a bad but undeserved reputation suffers a serious injustice, whereas no one with a true, bad reputation suffers any injustice on that score. So the former is, because of this fact alone, worse than the latter, and in fact worst of all.

To take this a little further, there is a contrary line of reasoning that might suggest the bad, true reputation is after all worst for its holder, and this focuses on the extra power that the pressure to conform to expectation exerts in the case of a reputation that is bad and true. In that of the bad, false reputation the pressure to conform to low expectations has to overcome the opposite force of a character that is genuinely upright. When the reputation is bad and true, by contrast, the pressure to conform needs only to push on an open door: if people expect you to be X, and you are in fact X, you may well confuse cause and effect, fulfilling their expectations as a supposed inevitable result of how they see you. It is simply easier to continue to *be* bad than to *become* bad, as Aristotle famously taught. And if the desirability of a certain kind of reputation is about more than what people happen to want for themselves, we might plausibly hold that a bad, true reputation is in fact worse than a bad, false one. Overall, though, as I see it a significant conformity effect *coupled* with being a victim

of serious injustice makes the unmerited bad reputation least desirable of all, even though the merited bad reputation has a stronger conformity effect considered on its own.

Let's now examine the fourfold ranking in more depth. I claim that a good and true reputation is best of all for its holder, and have argued that a bad, false reputation is worst of all. But what about the other two—a good, false reputation and a bad, true reputation? Would you rather be reputed good even though you are bad, or if you are bad would you rather be thought to be bad? Here the comparison is difficult, since there are considerations for and against the relative desirability of both. Further, we have to distinguish between what many or at least some people might want—because, say, there is some limited self-interest served by having that thing—and what is really good for them. It helps to look again in more depth at the first- and last-ranked reputations to make the point. The most desirable reputation—good and true—clearly serves a person's self-interest in the narrow sense of benefits received, since others will act positively toward the person because they judge the person good, and since the person is good their reciprocally virtuous behaviour toward others will only reinforce the already good reputation, leading to a positive feedback loop of mutual beneficence. What is more important, however, is that having a good reputation in addition to the reputation's being true makes it more probable that a person will not only continue to be good but become *better*, given the simple psychological force of other people's expectations—the well-verified phenomenon of conformity, to which I have already referred. So having a good and true reputation serves a person's self-interest in the narrow sense but *also* promotes and enhances their own good character, which is more important than the benefits they happen to receive from others.

Now consider a bad, false reputation, the worst of all. No one of sound mind would want this (even though a saintly person might welcome its arrival). From the viewpoint of narrow self-interest—how someone is personally treated, the benefits or harms he receives—things will likely not go well for him if he has a name that is undeservedly bad. If people think you are bad, they are generally not going to treat you well—not in the sense of going out of their way to hurt you, but they are likely to avoid association with you, distrust you, not give you the benefit of the doubt, and so on. But might it still be really good for you to have such a reputation? Here I think the force of conformity probably overwhelms the promotion of good character in the vast majority of cases. For a small, highly motivated minority, being good but thought bad will be a spur to acting even better so as to convince others of their wrongful as-

assessment. (Note, however, the threat posed by vainglory and posturing, which can nullify the enhancements to character coming from such behaviour.) Such a person might be encouraged to carry out highly visible acts of magnanimity so as to counteract the false judgment, good not just for others but for their own virtue. For another, even smaller saintly minority, being good yet thought bad would be a cross to bear, a mortifying and purifying experience tending to deepen their own humility and resignation. Yet for the great bulk of mankind, the power of a collective judgment against them is likely to weaken their own virtuous foundations, shaking their resolve to stay good: it is doubtful that most people feel a pressing need to exceed the expectations of others. So it does seem correct to place the good, true reputation at the top of the scale of desirability, and the bad, false reputation at the bottom—for the vast majority of people in most situations.

Returning now to our two hard cases—the good, false name and the bad, true name—we can apply similar considerations. Some small number of people probably like the idea of being both bad and thought bad—‘tough guys’, gangsters with a ‘reputation’ to protect, certain kinds of pathological personalities. Some very narrow forms of self-interest might be served for these people by a bad, true reputation: they might enjoy the distorted admiration of like-minded individuals or of others whose approval they seek; they may get intense pleasure from being of ill repute among what they see to be a dull, conformist majority; they may receive limited, albeit highly contingent, benefits from those with whom they fraternise.

Again, though, we are not talking about the mass of mankind, for whom a bad reputation is a highly distasteful thing whether the subject of the reputation really is of good or bad character. It poisons a person’s relationships with others in all the same ways, the only consolation when the reputation is bad and true being that at least it is deserved, so the subject does not experience the added bitterness of a reputation wholly unmerited. (This consolation is one of the factors that makes the bad, true reputation slightly more desirable—rather, less undesirable—than the bad, false one.) It is hard to see, then, how—all things considered—a bad, true reputation can be more desirable than a good but false one. In both cases the subject is bad, yet in one case he is thought good and in another not. What’s not to like about being thought good if you’re bad? You can have all the interpersonal benefits of being good without the cost of actually *being* good. Think of an unmerited good reputation as a kind of protective field, a bit like the famous Ring of Gyges in Plato’s *Republic*. Just



as the magic ring allowed its wearer to do bad things yet escape detection, so a good but false reputation might allow its holder, perhaps literally, to get away with murder.

It would be perverse, however, to rest the superior value of a good, false name over a bad, true one on the ground that the former can allow its holder to exploit it for nefarious ends. Perhaps this should count for nothing, but even if it counts for something it cannot be decisive. More important is what benefits a person consistently with living a moral life—even more, what might encourage them to do so. Again, it may be that a well-reputed bad person is of a brazen and non-conformist character, bristling at the very idea of being thought good and doing everything in her power to disabuse people of the illusion. In this non-standard case, a good but false reputation would seem to be of *less* value to the holder than a bad and true one. But we cannot use it to generalize over the bulk of humanity. I think we can safely say that, for the ordinary run of mankind, conformity effects again play a significant role: conformity will generally prolong and/or increase an ill-reputed bad person's badness while shortening/decreasing a well-reputed bad person's badness. Even bad characters want to please others. Now it is true that you can please others either by meeting their expectations or by overturning them and giving them a pleasant surprise ('see, I'm not the liar you thought I was'). A bad person with a bad reputation experiences the stick of others' negative treatment, but this stick also runs up against the pressure to conform to expectations. By contrast, the bad person with a good reputation experiences the carrot of others' favourable treatment. (I assume the subject understands that the favourable treatment is *because* she is judged good, and so is not thought to be a spur to continued bad behaviour!) And that carrot does not fight against the pressure to conform, but works with it to increase the prospects of a reduction in badness or at least a shortening of its duration. For this reason, I conclude that overall, and insofar as one can make general observations about what is likely to hold in most cases, the good, false reputation—the good reputation of a bad person—is indeed better for its holder than one that is bad and true, that is, the bad reputation of a bad person.

### THE VALUE OF A GOOD NAME

If what I have said so far is plausible, then the result is that a good reputation is better than a bad one, whether that good reputation is merited or not. How valuable is it? I would argue that it is in fact more valuable than many material goods such as property, money, and health. True, I would rather lose my good name than my

leg; you would probably rather be deprived of your fine reputation than your spouse, your house and all your savings. But many of the lesser material harms of life seem far easier to bear than the loss of a good name. Consider in particular how much easier it is generally to recover a material loss than to recover one's reputation. Once a good name has been lost, the victim has to overcome a wall of scepticism and mistrust to earn it back; and this requires much labour in the teeth of discouragement and demotivation. Again, some people would be fired up at the prospect of earning back their good name, but even the most righteously indignant among us would feel flattened by the task of whitening a generally black reputation as opposed to the lesser (though still often daunting) job of clearing one's generally good name of certain specific and relatively minor charges.

What we should be aiming at is to earn and maintain a good name, that is, to have a good name that is true. But for it to be true, we have to *be* good. This certainly does not mean we should be glory-seekers or see moral goodness as a means to the final end of a spotless reputation (even as an unattainable ideal). Nor, for that matter, should we seek a good name as the means to some further end of material benefit from our fellow human beings. We should seek goodness for itself, as the final end of all our acts, but goodness is a complex thing with various constituents, some of which are good in themselves and others good as means to more ultimate ends. Here we naturally think of such things as life, health, property, knowledge and friendship, beauty, work and play. If, as I contend, a good name is one of the more specific goods at which we should aim, in what broad category of good should it be located? The most likely seems to be that of property, which Aristotle identified as an 'external good' that contributes to overall happiness. Property is not an end in itself, but a means to an overall good life—facilitating not just one's own physical and mental health, but the sorts of virtuous behaviour, such as generosity, kindness, thoughtfulness, material aid to those in need, and so on, that are characteristic of good people. Similarly, a good name is a means to the end of overall goodness of character. This time, however, the means are not material but psychic or spiritual: a good reputation is a spur to continued good behaviour, setting a standard that most people are naturally motivated to meet and adhere to. Just as ownership of physical property is a *sine qua non* of free commerce in lesser goods among individuals and societies, so good reputations are the condition, to speak a little crudely, of the free commerce in good deeds among people. A good reputation—merited, needless to say—is like a licence or letter of credit smoothing the way for mutually beneficial ex-



changes among people. If the reputation is false, it is like a fraudulent roadworthiness certificate for a damaged and dangerous vehicle, or a cheque written on an overdrawn account—useful, at least for a while, to the possessor, and hence a good for them, but also highly imperfect and something they are obliged to correct as soon as they can, before others do it for them.

### A RIGHT TO A GOOD NAME?

It is tempting now to think that, like the right to property, there is a right to a good name: within certain limits involving injustices to other people (maybe self-harm as well), everyone has a right not to have their good reputation impugned, whether they deserve that reputation or not. As we value the right to property, so we should value reputation—something that negative judgments can only damage, being a kind of theft of what rightfully belongs to a person. The issue is, however, more vexed than I have just made it seem, and a good case can be made on either side of the issue whether there is a right to a good name that is as strong as the right to property. For a start, we should be careful about just such an analogy between a good name and one's own property. If I have a true, good reputation, I have a right to it—but how much is it like a property right? I can sell my property, but can I sell my good name? It seems I cannot unless I can also sell the identity that goes with it, because a good name is essentially that of a specific individual. The online world we inhabit so much of the time notoriously makes it easy for identities to be stolen, and what can be stolen can be bought and sold. People can and do sell their identities (if only for limited periods), though it is hard to see how the purpose could be anything other than fraudulent (e.g. to obtain some benefit through the agency of another when the seller is physically unable to get it themselves, or to help another obtain something which they could not do under their own name).

Selling your identity, however, is not the same as selling your reputation. At best, we can say that reputation is like a quality that rides on identity: if I sell you my car when you don't already have one, you get as a benefit the ability to take a country vacation you wouldn't otherwise be able to take. But I can't sell you that ability; for all I know you still won't be able to take the trip. Similarly, the possessor of a good, true name has quite a bit of control over their reputation, but it is nowhere near complete: people's judgments are fickle and can change for reasons having little to do with the subject's own behaviour. When a reputation is good but unmerited, moreover, the

subject's control of it is greatly diminished: one false move and they will be caught out, as it were. It is the highly contingent element in reputations that prevents us from saying that one's right to a good name is like a property right, where the possessor exercises a near-complete dominion. (The usual qualification, very loosely, is that you can do what you like with your own property as long as you don't hurt others — or yourself, I would argue. You can also hurt others with your good reputation, especially if it is unmerited, since they will mistakenly trust you; so hurting others cancels out on both sides, and what is left is near-total dominion over property but very imperfect control over reputation. Whether this is a difference of degree or kind does not seem to me a matter of importance.)

The question of whether the right to a good name is like a property right becomes acute when we consider a good, false name. One might argue as follows: if a bad person somehow has or gets a good name, he possesses something to which he has no right. It is like theft, or at least handling stolen property. Therefore, you don't do anything wrong by depriving him of his reputation, say by declaring his faults to the world (assuming you know them). Where is the injustice in that? On the other side—in favour of a person's right to their good name whether it be deserved or not—one might argue this way: possession, as they say, is nine tenths of the law. So one might think any person can keep their good reputation as long as others are willing to let them have it. No one person has the right to deprive another of his reputation: there has to be a general change of mind. Who is harmed by someone else's good name? Where's the injustice in that? If I lend you £100 and don't ask for it back, then it's yours; isn't it the same if I lend you my favourable judgment?

Note that a bad person might not get a good reputation by false pretences: he might simply be the sort of bad character whose misdeeds are generally secretive, or whose transactions with the outside world are fairly limited. In such a case he has his good reputation by default, as a general presumption that most people make about each other. If he gets it by false pretences, though—through studied hypocrisy, deliberately whitening his name so as to deceive others—then he seems more like a thief than in the first case. Still, even in the first case the subject appears like a handler of stolen goods who knows they are stolen but does not take them to the police. If he does nothing to correct his false reputation (assuming he knows about it), is he not at fault as much the hypocrite? Furthermore, it's all very well to say that if I lend you £100 and don't ask for it back, it's yours. But what if you intend to use the money to harm an innocent person? If I know about it, am I not required to ask for the money

back forthwith, as a matter of justice to the intended victim? In addition, it is simplistic to require that there be a general change of mind for a person to be deprived of their good name, once we begin wondering how that is supposed to come about without some individual's breaking ranks. If Charlie is a vicious person, and I know it but no one else does, then how can I comfortably sit back and think, 'I'd better not warn anyone else; who am I to take away his good name if everyone else thinks he's a good bloke?' How is a general change of mind supposed to happen unless someone plays the role of Paul Revere? Again, if an individual finds out that someone has a good but false reputation, does he not owe it in justice to everyone else in the community to alert them to the risk of entering into transactions with the bad person? ('I wouldn't trust Charlie if I were you', 'There's something you ought to know—Charlie isn't what he seems', etc.). All in all, we have what looks like a powerful case for depriving a bad person of a good name.

The question is not so easily settled, however. There is, quite simply, something odious in the idea that one person can set themselves up as the rightful arbiter of another's reputation before the world at large. There are two kinds of case to examine.

A. Consider the accidental case first, where Delia acquires her good reputation, despite her vicious character, simply through luck—by which I mean, without any conscious reputation management on her part. She goes about her daily life, perhaps her exchanges with others are fairly few, her vices tend to be secret or for whatever reason do not manifest themselves to many other people, and so on. Who am I to disabuse the world at large of the illusion it is under? It is as if someone accidentally dropped £100 in the street and Delia picked it up. If she can easily—and *with no serious inconvenience to herself*—ascertain the rightful owner and return the money, she should do so. Should she take extra steps to do this, leaving no stone unturned to get the money back where it belongs, we would applaud her heroic behaviour but recognize it as just that—above and beyond the call of duty. In the case of Delia's accidentally good reputation, what is she obliged to do—put out scores of internet posts warning people she is not as good as she seems? Take out newspaper advertisements? Apart from the absurdity of the thought (why would a bad person have the inclination to rectify the misapprehension anyway?), she simply cannot do any of this without causing herself immense damage, and were she to do the twenty-first-century equivalent of placing a massive dunce's hat on her head, we might applaud her noble self-sacrifice but we would not, and ought not, think Delia had done what she was purely and simply required to do as a matter of justice.

She may not be so required; but mightn't someone else? Perhaps you or I are required in justice, or at the very least allowed, to tear down Delia's reputation? Well, it could not be because of the universal truth of a moral principle to the effect that a person is either permitted or obliged to do for another what that other is not permitted or obliged to do for themselves. There is no such principle. (I am not allowed to steal, and no one is allowed to steal for me; I am not obliged to go shopping every day, nor is anyone obliged to go shopping for me). There are specific cases in which such a principle may apply, however, but they involve some sort of higher obligation involving control or authority, or a duty to protect the common welfare. Obviously parents lawfully and dutifully do things for their children (organizing their lives in various minute ways) that their children may not do for themselves (deciding freely how to spend their money, what to wear, what to read...). So do governments: I may not build a road for my own convenience wherever I like, but the government may build roads for me. I may not take the law into my own hands: the police do it for me.

So, am I in a position of authority either over Delia or the general community? If I am not the duly constituted authority, and I am not Delia's parent or guardian, who am I to destroy her reputation, no matter how at odds it is with the truth about her character? The government should warn people about individuals of bad character where the common welfare is at stake (dangerous criminals on the loose, rogue traders, etc.). Parents might choose to warn others about their own child's vices where there is a danger of harm to those others or purely and simply for the child's own correction. But neither you nor I are in a position that requires us to correct Delia by blackening her name, and if there is no manifest danger of a significant injustice to specific others (it is hard to be more precise but we must remember that, as Aristotle insisted, ethics is not mathematics), how can we justify taking away from her a possession, namely her reputation, that is more valuable than money or other wealth?

As far as the general welfare goes, in many cases causing damage to reputation is not merely a governmental obligation but one that devolves on us all as common citizens. Both the media and individuals broadcast reputation-destroying information about shoddy tradesmen, and they do us a service. If you suspect the likelihood of a specific injustice against someone due to a person's unmerited good reputation, you are right to warn the potential victim. ('You shouldn't ask Fred to house-sit for you—he breaks promises like pie crusts', and the like). Needless to say, if you are the potential victim of injustice, you might report your suspicions to someone else (some

regulatory body, or to a friend for advice on whether you should transact further with the person concerned).

On the matter of correction, note that there are two ways a good, false reputation can be corrected—by correcting the reputation or by correcting the character. As I suggested, a person with some sort of lawful authority over another might choose, without wrong, to harm their reputation for the subject's own benefit, i.e. to encourage them to earn it back. Without the relevant authority, however, and given the high value of a good name, in all other cases a person of bad character should be corrected *privately*: their reputation is not something over which another person has lawful dominion, so the only route left open is to try to get the person to change their behaviour to meet the reputation, not to lower the reputation to meet the behaviour.

B. Yet even if what I have said about an accidental good reputation is plausible, what about the case of reputation management, where by hypocrisy and other devious means a person engineers a fine reputation that does not correspond to reality? What makes this a more galling situation than that of a reputation got by luck is the added unfairness: not only does the subject have a vicious character but she has exploited one of her vices, namely hypocrisy, to ensure that her other vices remain generally unknown! She has filched her reputation as surely as a burglar. And what she has filched, we might think, is ours to snatch as we see fit, in order to restore the justice harmed by her deception.

My question, however, is: by what right does anyone else take it upon themselves to remedy the admittedly unfair state of things? There is no general obligation of the part of anyone—not even the government or the public as a whole—to rectify every injustice. If Gregory sees Helen trespassing on Ian's land, absent some special situation Gregory has no obligation to evict Helen. A special situation might be family ties, friendship, a promise or contract, guardianship of the land, Gregory's position as a law enforcement officer, and the like. But in general, not only is there no obligation to interfere, but there might even be a duty to refrain for fear of causing more harm than that done by the original trespass. The maxim of minding one's own business does not really capture what is at issue here. In the case of reputation, a person's hypocritical massaging of their good name might well be my business, especially if I have been a victim of their deceitfulness. It still does not follow that my duty is to warn others, and given the status of a good name as the valuable possession it is, I am not even permitted to do so, again absent some special situation. Consider again the property analogy: in the case of theft, I am morally entitled to deprive the thief of his

ill-gotten goods and hand them over to the police or their rightful owner to remedy a specific injustice *against the owner*. If I see the thief on the verge of stealing your wallet, I am at the very least permitted to take the wallet first and hide it. Similarly, if I am in the position where I know of an actual or likely specific injustice against an individual resulting from dealing with some person of bad character, I am at least entitled, and may be obliged, to warn the potential victim. But all I am allowed to do is warn *them*, and only about those aspects of the subject of the reputation that affect the transaction at hand. For instance, if Mike knows that Nancy is about to invite her friend Olivia over for dinner, and that Olivia is secretly having an affair with Nancy's husband, Mike is entitled (perhaps obliged as a trusted confidant) to warn Nancy. But even here, I submit, he would not be permitted morally just to tell Nancy about the affair; there would have to be the likelihood of Nancy's being further wronged by Olivia, say because Mike knows Olivia is only looking for an excuse to find out more about her husband's personal life so as to determine whether the affair can safely be continued. Moreover, even if Mike is allowed to tell Nancy (perhaps obliquely, so as to lessen the shock), he is not thereby permitted also to indicate that Olivia is, say, an alcoholic, or a shoplifter, or reveal some other vice that blackens her name more than the revelation of adultery will already harm it. Further, he most certainly is not entitled to tell the world at large about the affair or about any other of Olivia's misdeeds. No private individual is entitled indiscriminately to correct false reputations any more than to return all the world's stolen goods, even if he is capable of doing so.

Again, reference to the common welfare is a significant qualification of the general rule. This comes into play most often when the subject is a public official, whose character is rightly held to a higher standard than private citizens, especially in matters of trust and decency, given the proportionately greater influence he has over the fate of the populace. It is one thing to tread carefully in private matters between private citizens, and another when a public official relies on deceit and hypocrisy to whiten a disreputable character. Assuming that matters involving trustworthiness (fidelity, loyalty, the keeping of promises, general honesty) are of great importance in government, any private citizen is free to reveal defects of character relating to these matters when the subject is a public official. By contrast, much as it probably galls many people to hear it, it would be unjust to damage the reputation of a celebrity who manipulates the media and deceives the public to preserve an unmerited good name. Where, indeed, is the injustice that needs remedying? What harm is being done?



That the celebrity-addicted public thinks it has a 'right to know' says more about celebrity-mania than it does about celebrities themselves.

In all of these matters one must also consider the good done by damaging a reputation, however undeserved, versus the harm to the person whose reputation is damaged. The revelation of a major vice, in order to remedy a trifling wrong, can hardly be considered just. ('He overcharged you by £5? That's nothing—he's embezzled millions!') Broadcasting another's faults beyond the proper borders is also unjust: why tell the world that Bob is a lying cheat when only a handful of people (e.g. business associates) need to know? Again, declaring someone's defects with utter certainty when there is room for legitimate doubt shows a lack of respect for one's neighbour that can only poison social relations. We all want people's reputations to be in accord with their true characters, as a reliable guide to social exchanges. We also want people to have use and dominion only of what is rightfully theirs. But there are good and bad ways of promoting these desirable states of affairs. Which brings me to the topic of judging others.

### RASH JUDGMENT

To judge someone rashly is to possess the firm conviction that they are guilty of some morally wrong act, or defect of character, based on insufficient warrant. It is more than a mere suspicion, supposition or the entertaining of a possibility. It is not simply an assumption that you might make for prudential reasons. If I am walking through a large city late at night and a stranger comes up to me asking for directions, I might avoid him on the ground that he may be—or even probably is—a mugger. But I don't—or at least ought not, if rash judgment is wrong—make a firm judgment that he is; still less do I make a judgment about his true motives or the state of his conscience. This is not to say that there cannot be rash suspicions as well, for example suspecting as a potential thief a friend I have known for years who has a spotless record of honesty. My main concern here, however, is the morality of judgment, characterized as a firm assent of the mind.

If what I have outlined so far is plausible, then we can immediately see why rash judgment should be considered wrong: reputation-destroying behaviour is its natural outward expression. A firm judgment usually translates into external actions proportionate to the judgment. The more certain our judgments of others, the more fixed and overt our behaviour toward them. If harmonious social relations are a prime

good, then people's moderation of their judgments about each other can only serve that good.

Further, one might consider rash judgment as a wrong in and of itself, not just because of its effects. Again, the liberal ear will find this strange if not slightly menacing—how can we condemn anyone's state of mind? By judging rash judgment, are we not indulging in the very sort of poisonous behaviour we ought to avoid? Leaving aside the earlier discussion about second-order judgments, I want to advance some further considerations. First, to countenance a morality of just judgment is not *ipso facto* to propose that anyone go about judging the judgments of others. It is simply to enunciate a set of rules that each person ought to apply to themselves in order to judge their own judgments—something they can do using their own reason, and examining their own conscience, even if we suppose that no person has a right in any way to judge any judgment but their own. Secondly, given that what we ought to be avoiding is rashness in our judgments, there is moral space for individuals to judge each others' judgments, as long as the higher-level judgments are not rash. Thirdly, the application of morality to states of mind is hardly novel. Even liberal-minded people disapprove morally of hatred, spite, jealousy, and other corrosive states of mind—and presumably not just because of their tendencies to outward manifestation. We can make sense of a society of hate-filled people who nevertheless managed to get along well due to certain firmly built-in codes of proper conduct. But would the neutralization of external manifestation equally neutralize the internal states themselves, morally speaking? It might be countered that a person whose internal peace of mind is eaten away by such states is more to be pitied than judged. Yet the pity stems from the psychic damage they inflict on themselves, and no one thinks a person is morally entitled to harm themselves by indulging in such states of mind except insofar as we all agree that a person cannot be *coerced* into this or that mental state. I am not morally permitted to *force* you (e.g. with some special drug) not to indulge in hateful emotions—absent some special situation such as my guardianship of you or the risk you will harm others—but that doesn't mean you are morally *entitled* to do yourself the psychic harm that hatefulness brings about.

In any case, whether you concur with this latter consideration or not, it remains that every rash judgment puts a dent or hole in someone else's reputation (given that a reputation just is the sum total of opinions everyone has about an individual), and if reputation is a highly valued good, that good is thereby, however slightly, undermined. So should we not say, with little fuss, that the rules of just judgment do not



differ from—in fact are only a specific case of—the general rules for proportioning one’s belief to the evidence? At the most abstract level, if you have sufficient warrant for believing *p*, then you should believe that *p*, and if you don’t then you shouldn’t. What’s special about the rules for judgment as I have defined judgment here?

Note first that the high-level rule connecting warrant and belief has familiar counter-examples if it is construed as an unqualified, exceptionless requirement. Fred may have overwhelming evidence, hence overwhelmingly sufficient warrant, for believing he has a terminal illness that will carry him off in a month. But given what we know about the role of the mind in physical healing, it might well be prudent for Fred to believe with all his heart that he will get better, perhaps even suppressing all knowledge of the evidence against. Gina, faced with a torrent of evidence that her vote makes no difference to who ends up governing her, might still permissibly believe that it does, if so believing is a spur to her continued involvement in political activity. People rarely go through a conscious process beginning with the thought that a belief is wholly unjustified and concluding with the resolution to hold it anyway because of its utility. This does not imply that the process is irrational. It can be prudent; it can even be morally respectable. We should, of course, tread very carefully when it comes to these sorts of belief, and in no way think that they are more than an exception to a general rule. Categorising them and providing rules for when epistemically unjustified beliefs might be morally or prudentially justified is an important general exercise which I cannot explore here. Still, by focusing on rules for the judgment of others we can flesh out one class of belief where exceptions to the general rule of proportionality make an appearance.

The heart of the problem in working out rules of judgment is the tension between, on the one hand, the intellectual virtue of judging according to evidence, with all the usefulness that entails, and on the other the moral virtue of being charitable toward other people, with all the usefulness *that* entails. Note a couple of important points. One: in no way do I mean to reduce either virtue to its utility. Rather, there are two components, on either side of the line of tension, to the overall case for devising the right sorts of rule—something virtuous in itself, and something useful. Two: in no way do I mean to separate moral from non-moral components to the question. I take the provision of rules for judgment to be a moral issue—how we ought to judge, where the ‘ought’ is a moral one. The considerations going to its resolution are themselves moral. Exercising one’s intellect in a rational way, i.e. cultivating an intellectual virtue, is itself a moral activity, just like preserving and promoting one’s

health. The utility of doing so, at least for a large part, involves various personal and social goods connected with the harmonious negotiation of the world and peaceful social relations. Exercising charity is a moral activity, and there is a large moral component to the various goods that follow from it as well.

But how is the tension to be resolved? If there is no obligation of charity, then we can just say that everyone is morally bound to judge the character of another according to the evidence: if you are justified in judging Henry to be a scoundrel, then so you should judge. Such a judgment would be rash only insofar as it departed from any evidential justification. This cannot, however, be the end of the story. For charity is an obligation. It is traditionally defined in terms of love of neighbour, but we can equally speak of a general benevolence toward others. Now we cannot read off from this obligation any duty, for example, to hold off on judgment of others, at least in some cases, but we have to admit it as a possibility given that (i) judging another—where I am speaking exclusively of negative judgments—is necessarily damaging to the good of reputation and (ii) judging another can have bad effects on the one judged and/or on others, including the person making the judgment. Can we fill in the gaps enabling us to argue from the general obligation of charity to the specific one of avoiding certain kinds of judgment even when epistemically justified?

Although it is quite true that everyone without exception does morally wrong things at many times in their lives, it is also the case that most people are good—or so I shall argue. It is as well to note first that I have been speaking throughout of good and bad people, virtuous and vicious characters, as though these were uncomplicated, easily graspable matters. Of course they are not. I don't presuppose that they are essentially sharp phenomena (that is, non-vague), as though there were a precise borderline between good and bad people; many people, both philosophers and others, would vehemently deny it. In fact I believe it, but I do not need to assume it. All I claim is that such people exist, and that a rough characterization is all we need. People who habitually violate many basic moral norms are bad; those who do not are good. We used to have a rich vocabulary for the former, but for cultural reasons that are no doubt fascinating most have faded away: 'scoundrel'; 'blackguard'; 'knave'; 'miscreant'; 'rascal'; 'reprobate'; 'villain'; 'ne'er-do-well'; and others. The vocabulary for good people was always thinner. (Try to think of some single terms to stand in for rather dull compounds like 'good bloke', 'terrific chap', 'a true gentleman', 'a real lady', and a handful of others.) I submit that the reason for the asymmetry is precisely that—as I have suggested—most people are good. We only devise simple (non-compound)

terms for things that are either objectively uncommon relative to the rest of what exists, or are at least uncommon relative to our everyday experience of the world.

I will leave aside for the moment the obvious question that comes to mind: since the multifarious terms for bad people have largely faded from use, can we now still safely assume that most people are good? Let us also set linguistic evidence to one side. I claim that most people are good. If they were not, society could not function. So at least where a society does function, most people have to be good overall. Let's put it more concretely: for all their vices, most people are still *not* habitual liars, thieves, cheats, bullies, physical aggressors against others, lazy good-for-nothings, spongers, hypocrites, slanderers...and the list goes on. We need to be clear: all people, without exception, engage in behaviour that comes under these headings, such that if they habitually did the things that come under all of these headings and more, they would be bad. But they do not. Or so I am claiming—for now.

The claim is not that most people are good *simpliciter*, as though they are, right now, candidates either for Heaven or its secular equivalent (if there is one). My assertion is that they are good overall (which is what I mean by 'good')—good characters mixed with a decent, perhaps generous, helping of bad. If this is true, it creates in my view a presumption. We need not be capable of fixing a statistic to the presumption: the moral life does not work like that. All we need to know is that most people are good, and that therefore in any particular case we are bound both rationally and morally to presume that the person under our consideration is good.

How strong is the presumption? Potentially both weak and strong—weak in one respect but strong in another, more important, respect. If everyone were good, we would have an immediate strong presumption. But we know there are many bad people. So suppose that only a slender majority of people are good. That creates a weak presumption of goodness in any particular case. Nevertheless, that weak presumption converts to a strong presumption when we realise that judging a person good or bad does not depend solely on judging external behaviour; it also depends crucially, perhaps most importantly, on judging a host of inner states—motives, beliefs, hopes, fears, anxieties, and many more—along with an array of external circumstances to many of which we are unlikely to have enough epistemic access to be able to factor them into our judgment. All of this complexity, I submit, turns a weak presumption of goodness into a strong one.

Suppose, for analogy's sake, I have a sack full of two superficially similar kinds of object—bingles and bongles. Fifty-one per cent of the objects are bingles and forty-

nine per cent are bongles. I ask you to reach into the sack and hold one, then think about judging whether it's a bingle. You can't tell just by touch, and even if you looked at it you couldn't tell. Suppose it turns out that there is no crucial experiment to determine whether something is a bingle or a bongle—no one fact that settles the matter. Rather, you have to make an overall judgment based on a large range of diverse characteristics. Moreover, it is very difficult to determine for any one characteristic whether the object has it or lacks it. To make the case even more apposite, suppose not even our best technology can determine whether some of the characteristics are present or not, even though there is a fact of the matter in respect of each feature. For you to judge with certainty that the object in your hand is a bongle you have a massive load of work to do. Someone smart enough and resourceful enough could do it, but that person probably isn't you. Can you presume the object is a bingle? There is a weak presumption because a slender majority are bingles. But that converts into a strong presumption given the monumental task of proving it to be a bongle. For it to be a strong presumption that something is the case is precisely for you to have a lot of work to do proving it to be otherwise.

I think this is roughly where we stand with people. Even if there is only a weak presumption of their goodness based on a slender majority, that converts to a very strong presumption given how hard it would be to prove any individual bad. You might say that we should all be agnostic given that it is equally hard to prove anyone good just as, in my analogy, it was equally hard to judge something to be a bingle or a bongle. But the question at issue is not about the rules for judging people good; it is about the rules for judging people bad. (In the analogy, I asked you whether you were holding a bongle, not a bingle.) If there were a presumption that people were bad, we would need rules for judging them good. We might even need them if the presumption is that people are good, since a presumption is not a judgment. Harmful effects can come from people's over-zealously judging others to be good, so I don't want to trivialise the issue. But damaging their reputation is not one of those harmful effects, and I am concerned here with the morality of reputation.

So, if I am right, there is a strong presumption that people are good. I said earlier, however, that we should not have scruples about judging others' judgments simply because we can't know their inner states. We can know their judgments by their outward manifestations, just as we know other mental states such as hopes and fears. But I am now making a different point about the difficulty of judging character based partly on a knowledge of others' internal states. The presumption of goodness does

not rely on our never being able to know another person's motives, reactions to circumstances, hopes, fears, and the like. We can know at least some of these in many cases, by the usual external criteria—not least of which is simple linguistic evidence, i.e. what people tell us about themselves. In particular, cases that are what we might call *notorious* do not pose a problem. When a person, through their own behaviour, manifests their immorality to the world, they do not have a reputation to lose—hence judging them in accordance with the evidence is unlikely to be rash. A person does not need to display or admit to their vices before a large number of people in order for these to be notorious. If Nancy does not care that a handful of her work colleagues know she is cheating on her husband with her boss, she cannot expect her colleagues to refrain from judging her behaviour (assuming they disapprove, of course). This does not mean they are entitled to gossip about it, but Nancy should expect this, in other words if she finds that friends and neighbours are soon aware of her adultery she cannot legitimately claim that her private behaviour is no one else's business. Notoriety can be achieved by manifesting one's vices to a large number of people, or in a public place, or by boasting, or due to a public judgment (by a court or official inquiry). Of course we all think of the media when it comes to making vices notorious, but we must remember that counter-balancing the noise the media make is the fact that their investigations and exposes apply to a very tiny minority of people in any society—nearly all of them celebrities, public officials, and those caught up in the judicial process. Of these cases I would echo fairly widespread views: any celebrity who uses or willingly benefits from positive media reports of their character and behaviour cannot complain of negative reports as long as they are true; the character and behaviour of public officials is a matter of legitimate public interest; and, as long as fairness in procedure is maintained, those caught up in the judicial process cannot complain of unjust notoriety. The vast majority of people, however, are untouched by media intrusion into their lives and can rightly complain if the media, having made their character or behaviour notorious, claim that its notoriety has deprived them of any protection for their reputation.

The presumption of goodness, then, is not based on the impossibility of ever knowing the state of a person's character, or the nature of their actions in terms of their motives, desires, and so on. We can even know the state of a person's conscience with some accuracy, especially when we are an intimate of that person. We might be able to judge that a person is so beyond hope, having delivered themselves over to vice, that only a miracle could turn them around. Nevertheless, the difficulty of these



sorts of judgment, given that we are dealing with a myriad internal states interacting with complex external circumstances, coupled with the need to preserve goodwill among people for the sake of harmonious social relations, means that we have a large burden to discharge if we are safely to make a judgment — by which, remember, I mean negative judgment—about another person’s character or behaviour.

It should be fairly clear now what it means to call a judgment rash. In moral matters, rashness does not consist in a simple disproportion between judgment and evidence. We cannot say: a person judges another rashly if and only if she lacks enough evidence to warrant her judgment. Certainly, if she lacks enough evidence she will almost always be judging rashly. But she might still judge rashly even when possessing sufficient warrant, if all we mean is epistemic warrant—something like a straight proportion between evidence and judgment. If I have enough evidence to judge with certainty that the post office will be open tomorrow, my judgment that it will be open can hardly be called rash. But when it comes to moral matters, there is a weighty presumption in favour of good character: I cannot rest easy in judging that Bob is a cheat—say, that he plagiarised an essay—solely because I have evidence of the sort that would be commensurate with a closely related *non-moral* judgment—say, that he worked hard on an essay. In moral matters I must have what used to be called ‘moral certainty’, in other words evidence that conclusively rules out any reasonable, competing explanation that preserves Bob’s good name. Moreover, there is what might be called a ‘double lock’ on such judgments because, unless I am in a specific position that obliges me to inquire into Bob’s behaviour—because, say, I am the person marking his essay—I do not even have any business concerning myself with it. If there was a presumption that people were permitted to inquire willy-nilly into the behaviour of others, this would undermine the very social harmony the original presumption of goodness is designed to protect. It would licence ‘fishing expeditions’ for the sake of blackening others’ reputations, which is directly opposed to charity and goodwill.

At this point the reader will be thinking that what I propose looks very much like the presumption of innocence that exists in the criminal law, requiring ‘proof beyond reasonable doubt’ to defeat it. This is no accident, since the legal presumption of innocence is itself founded on the moral presumption. The legal presumption was a product of the fusion of Roman and canon law in the early Middle Ages, and these were founded on what all jurists recognized as the natural law — universal moral prescriptions that mandated, among other things, how a person accused of

some crime was to be treated. Even Adam and Eve, said the medieval lawyers, had their day in court, having pleaded innocence, and God (for whom their crime was in fact notorious!) summoned them to account for their behaviour. From this, concluded the jurists, we were given the model for treating all criminal defendants.

We need to separate two points, however. Having your day in court (the right to a fair trial) and being presumed innocent are not the same. A court might presume a defendant guilty yet still give him a fair trial, with the burden of proof now resting on him to prove his innocence. What the medieval theorists meant with their biblical explanation is that Adam and Eve were naturally to be presumed good, having later been corrupted by the serpent. The model is then supposed to require treating all accused in the same way—innocent until the prosecution can provide specific, incontrovertible evidence to counteract this natural view of the accused's character or behaviour.

When it comes to reputation and rash judgment, the trial scenario does not apply. So the extra reasons for justifying the legal presumption of innocence are irrelevant, specifically the importance of the presumption in counteracting the power of the state (it being much harder for an individual to prove their innocence than for the state to prove them guilty). What we are left with is the bare presumption, founded in the nature of things, that people, overall, are good, overall.

### SPECIFIC APPLICATIONS

From the general principles I have laid out, we can draw some more specific applications. Consider the question of what is 'your business'. To go back to the plagiarism case, it is clear that if you have no need to know whether Bob plagiarised his essay, you have no need to form a judgment. This is just an application of the principle that we are not only not obliged, but are not even permitted, to go about inquiring into other people's behaviour or character, let alone the state of their conscience, without a sufficiently good reason. Satisfying one's curiosity is not such a reason; still less is the desire of feeling superior to others. In fact, I can think of only a few classes of sufficiently good reason. One would be a special relation of trust, whereby one person consents to another's examination of her conscience (priest/penitent, counsellor/patient, intimate friends). Another would be where this sort of close inquiry into another's behaviour or character was necessary for assessing their suitability for a particular job or role (employer/potential employee, principal/potential agent). Another

would be where we have a special position of authority to make such an inquiry. If I am Bob's lecturer I need to know, for academic reasons, whether he plagiarised his essay. If I am his personal tutor, I need to know for pastoral reasons. A parent has the right and duty to inquire into the state of conscience of their child, assuming first the absolute duty of parents to bring their children up to be good people. In these sorts of cases, the issue is always one of either potentially helping (by correction, admonition, punishment) the person into whose state of character one is inquiring, or else protecting against potential injustice to oneself or third parties.

What if information comes to you about someone's character or behaviour, even though you have no need to know and would never have been permitted to inquire into it yourself? If a highly reliable witness tells me, without any doubt in her mind, that some bare acquaintance of mine has been stealing from his employer, may I judge that this is so? Strictly, it seems, I may do so without being rash. It would not be *wrong* of me to do so, but that does not make it a *duty* for me to form my judgment in this way. Again, from the point of view of social harmony, surely it is better for me only to entertain strong suspicions, raising them perhaps with others but only if they need to be informed. In other words, if I am to take the duty of charity seriously, shouldn't I bend over backwards to avoid firmly assenting to an unfavourable characterization of someone when it is not a direct concern of mine and there is no concrete interest to be served by such assent?

Notice the point we have reached. What I am now suggesting is that, even if we are permitted in good conscience to form a judgment about another person's character or behaviour—having overcome the weighty presumption in their favour—it still does not follow that we ought to do so. In fact, in situations where there is no direct need—for the benefit of ourselves or others with whom we have some concern, or for the benefit of the subject of potential judgment—we ought, I submit, to find ways to *minimise* the behaviour of the person about whom we are considering our judgment, to *moderate* our judgment so that it is either less than certain, or if certain that its object is less serious. For example, if you can reasonably attribute a less bad motive (say, greed rather than cruelty) or a good motive instead of a bad one (kindness rather than malice), you should. Again, if you have a choice between judging someone guilty of doing something bad or something worse, consistently with the evidence, then you should judge the lesser offence. If all I see is Fred breaking into a house, with no further background knowledge, I may judge that he is intent on burglary but



not murder. Circumstances are often capable of multiple interpretations, but even if none are favourable this does not mean we may put the worst interpretation on them.

In so acting to minimise the faults of others, don't we open ourselves up to a plethora of false beliefs? If true belief were the only value at stake, we ought to be concerned. But the duty of charity or benevolence ranks no less high than that of believing the truth. Indeed, it ranks higher inasmuch as morality is about our character and behaviour, not merely our beliefs. If the perfection of our own character, and indirectly that of social relations, requires making a weighty presumption in favour of the goodness of others, then if we take the presumption seriously we have to accept the perhaps significant risk of false belief. Hence believing well of someone, even falsely, should take precedence over believing ill of them truly. As noted already, however, where another's vices are manifest or notorious—on display, as it were—we may without further inquiry judge them negatively, and ought to do so since the general rule in favour of believing the truth applies immediately. The reason for the exception, it seems to me, is that when a person's bad behaviour is so manifest as to make a negative judgment inevitable, it is as though we are not choosing to judge them at all. Rather, their behaviour *forces* a judgment on us, and if we resist it we ourselves have to do violence to our own rationality—itsself a form of self-inflicted harm for which we are morally responsible.

By now, it may seem that the boundaries and presumptions I have erected against negative judgments of others imply that a person who judges rashly always does something seriously wrong. It is one thing for us to remind ourselves of the singular importance of reputation and the need to preserve social harmony, but quite another to elevate rash judgment to the level of a taboo rivalling the many grosser forms of immorality with which we are daily confronted! The worry is justified, which is why we need to dial back a little and put matters in context. Not every wrong that a person does is serious. This does not negate one of the prime moral principles—do no wrong—but it does indicate the need for caution and context. It is one thing to judge rashly in a minor matter—say, that Betsy is thoughtless when it comes to birthdays—and another to judge rashly in a serious matter—say, that she is thoughtless about her children's welfare. Here, the seriousness of the wrong is measured by the content of the judgment, which itself reflects the damage to reputation. But context and circumstance also matter: it is one thing to judge that a celebrity is wasteful with other people's money but far worse to judge that a public official is, given the responsibilities of their job. To judge your neighbour a liar is bad; to think the same of a priest or

a police officer is far worse, since the more that is expected of someone, the greater the damage to their good name by even a relatively slight discredit. Again, if a person has a good name but many genuine questions have been publicly aired about their character, to judge them negatively would not in general be a serious wrong. The point is that even if rash judgment, which harms both charity and justice, is a form of immorality, sound moral principles cannot entail that we are all guilty of multiple serious wrongs pretty much all of the time, given human weakness and the all-too-familiar temptation to indulge in such judgment. This does not mean we should treat rash judgment lightly, only that assessing its moral gravity requires, as in all things, sensitivity to circumstance.

### LOOKING IN THE MIRROR

So far I have not mentioned a separate class of reasons that *on their own* ought to warn us against being too quick to make judgments about others. These all have to do with the *inherent unreliability* of such judgments, in other words their very tendency to be judgments that do the most damage—contributing to someone's having a bad but false reputation. For all that most people are good overall, we each still, without exception, have vices in our character that supply enough material for a lifetime's meditation. One of the things these vices cause is precisely a weakening of our ability correctly to judge the characters of each other. Probably the meta-vice, as it were—the granddaddy of them all—is pride. By pride I do not mean proper satisfaction and contentment in one's own (or others') achievements, but an excessive estimation of one's own character, behaviour, abilities and capacities—including, of course, the capacity to judge others. We all like to think we are good judges of character, but this is precisely what makes us generally bad judges: we assume first impressions are correct, we think that what we take ourselves to be perceiving is what we are in fact perceiving, we presume that we have enough experience dealing with others to be quite reliable when it comes to summing them up (we are all 'street wise', 'savvy', 'in the know'). In fact, this latter presumption can cause havoc. Many people do, unfortunately, have long and bitter experience dealing with their fellows, and it is a truism that the older you get, the more bitter and cynical you tend to become. But it would be a mistake to project that cynicism far and wide, viewing all human behaviour through a bottle of vinegar—as though there had to be a wicked motive behind every deed and every

person was simply not to be trusted. The same applies to any individual who has experienced a series of disappointments in life.

Being prone to vice as we all are, we tend to spread it around liberally. If I am vicious, finding pleasure in all sorts of wrongdoing, surely I will be surprised if others don't find the same enjoyment? And won't I find it too much of a reproof to think that although I cheated in these circumstances, and someone I know was in the same situation, they did not cheat as well? Many people, for all sorts of reasons, bear within themselves hatred, envy, malice, anger: for them it will take only the slightest provocation, no matter how objectively trivial, to judge someone else guilty of this or that moral outrage. Furthermore, it is likely that people who have a particular character flaw are more prone than those without it to find the same flaw in others. One reason would be the natural tendency we have not to think of ourselves as unusual in some significant respect—abnormal or singular. Another is the barely conscious thought that by taking our vices to be common, we somehow minimise their seriousness. Again, these inclinations can significantly skew our judgment of others.

One of the most promising ways of reversing this imbalance in our attitudes to other people, the strong presumption of innocence aside, is to reflect carefully on our own case. Before making a judgment about someone else, it is useful to ask how we would want to be judged by others in a similar case. If we judge rashly, can we complain if others judge us equally rashly? If we would wither at the self-application of our own standard of judgment, why should we apply it with equal rigour to our fellows? Only special pleading could make for a difference. Perhaps more important, though, is the simple fact that we can on the whole do far more good to ourselves and society by devoting the vast majority of time we currently spend on judging others to meditating on, with a view to correcting, our own faults. Clearly, we are far more likely to *succeed* in correcting ourselves than in correcting others, except perhaps for those totally under our authority—children, in particular. So if it is good for people to be good, and you can do your part to help make people good, it makes perfect sense to start with yourself. And given that this is a lifetime project for most of us, we are unlikely to have much time left over for reflecting on the faults of others.

Note that this recommendation is not to be construed as an invitation to narcissism. It is not a question of endless self-analysis but of endless self-correction. Psychoanalytic speculations aside, it does not usually take much reflection to work out our faults, vices, and weaknesses. Knowing what they are is not the problem so much as doing something about them. And doing something about them is essen-

tially tied to outward behaviour, involving practical implementation of techniques for improving ourselves and, as a necessary consequence, our actions toward others.

Furthermore, having suggested that we should not be more severe with others than we would be with ourselves, I am still allowing that we might be more severe with ourselves all the same. This is something we ought to consider as a natural consequence of our self-knowledge. True, we might crumple at a level of self-judgment we rightly refrain from applying to others, but it still may be a price worth paying for our own benefit, if it leads to self-improvement rather than self-paralysis.

### THE DAYS OF NOAH?

What if I have built all of the foregoing considerations on an overly rosy view of human nature? What if the strong presumption of goodness, on which the right not to be judged rashly depends, is itself an illusion? Most people might have been mostly good once, but maybe now they are mostly bad? (Recall the disappearance of all those wonderful terms for referring to people of bad character.) This is not the place to assess the truth of extreme moral-cultural pessimism. The question here is simply whether it would affect the ethics of judgment.

On this I will make only a couple of brief remarks. First, if things—rather, people—really are that bad, then what would have counted as rash judgment had the situation been as I have outlined above, would no longer do so. Moreover, a situation so dire would involve the notoriety of much vicious behaviour, so both the presumption of goodness and the appeal to non-notoriety would vanish. So much for the principle; but, secondly, would this impose an obligation of judgment? If the situation is as I have suggested earlier, judgment is the exception, not the rule. Its obligatoriness derives not just from the duty of believing what is true, but from the salutary and corrective effects of such judgment—warning potential victims, preventing or reversing injustice, helping the subject of judgment overcome their faults, and so on. But when, due to universal, manifest vice, judgment becomes the rule, not the exception, what interests are served? Would we seriously expect anyone to benefit, except in occasional cases? Would hearts so hardened against virtue be responsive to correction? Is there much to be gained by telling the thief that he is about to be robbed by someone else, while at the same time you expose yourself to being pillaged by both? Does anyone seriously think that by painting over a world of vice with a thin layer of ‘righteous’ judgment mankind could pull itself back from the brink? The reader may

not take the story of Noah to be more than that — a story, albeit edifying all the same. She should still, however, take note: Noah did not spend his time judging all the reprobates soon to be swallowed up in a torrent. Instead, he built an ark.

## CONCLUSION

The preceding discussion has undoubtedly raised as many questions as it has attempted to answer. I do not pretend to have said anything close to the last word on a much-neglected topic. On the contrary, that the morality of judging others has been so little discussed, at least among contemporary ethicists, leaves the field open to debate — over both first principles and their application. It will be enough for present purposes to have persuaded some readers that judgment as I have defined it is not a taboo subject for ethical speculation; that, on the contrary, it is important for many reasons; and that it is possible to work out something like a framework of rules for handling the cases that come under it. As practical ethicists we should, I submit, not read the adjective ‘practical’ so narrowly that we confine ourselves, as we nearly always do, to the ethical assessment of outward behaviour only.

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# Moral Education in the Liberal State

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## ABSTRACT

I argue that political liberals should not support the monopoly of a single educational approach in state sponsored schools. Instead, they should allow reasonable citizens latitude to choose the worldview in which their own children are educated. I begin by defending a particular conception of political liberalism, and its associated requirement of public reason, against the received interpretation. I argue that the values of respect and civic friendship that motivate the public reason requirement do not support the common demand that citizens “bracket” their comprehensive commitments in politics. Rather, citizens should seek to enact policies the justification of which is compatible with the truth of their fellow reasonable citizens’ worldviews. Next I argue that no single educational approach can meet this standard of justification. Many believe that state sponsored education in a pluralist, liberal society ought to present multiple worldviews in a neutral way. I argue that this aspiration is unrealizable, and no other educational model will plausibly meet the justificatory demand. Finally, I address two objections to my favored alternative: that it may allow for the inculcation of disrespect, and that it violates children’s autonomy. Against the first, I claim that political liberals have no grounds for thinking that reasonable citizens will seek to inculcate disrespect. Finally, I argue that there is no conception of autonomy that can sustain the second.



Educating a child is in part a matter of transmitting information, but also a matter of shaping her normative outlook. Those who play a significant role in a child’s education will inevitably affect what she comes to value and to love, thereby influencing not only her intellectual but also her moral development. The hallmark of the view called political liberalism is the affirmation that views about what is good—what is



worth valuing and loving—are contested in ways that have normative implications for the use of state power.<sup>1</sup> Most self-identified political liberals nevertheless champion common schools for all, and some even argue that such schooling should be required by law. Here I argue that the values that motivate political liberalism support a different conclusion. Its basic commitments are not best realized by sponsoring, much less prescribing, a single educational approach for all children. The liberal state does best by taking neutrality to a higher level, allowing parents considerable latitude in choosing the conception of the good in which their children will be educated.<sup>2</sup>

I begin in the first section by defending a particular conception of political liberalism for which I have argued at greater length elsewhere (Ebels-Duggan 2010b). In the second section I argue that no single educational approach can be justified to all reasonable citizens. I do not attempt a complete case for my favored alternative here, but in the last section I sketch responses to what I regard as the two most pressing objections to it.

#### WHAT POLITICAL LIBERALISM IS (AND WHAT IT CANNOT BE)

Respect is the foundational value of political liberalism. Endorsement of the significant value of political relationships that respect all reasonable citizens characterizes the view.<sup>3</sup> But so far this is no more than a schema. Its practical import depends on what we mean by “respect” and whom we count as “reasonable.”

Political liberalism is a view about the respect due to others *as citizens*,<sup>4</sup> and political liberals standardly understand it as requiring that exercises of state power over a person be justifiable to her. I adopt Rawls’ label, “civic friendship,” to name recip-

1. Compare Eamonn Callan’s statement of the problem: “If the role of the state in education is to keep faith with its constitutive morality, a path must be found between the horns of a dilemma. The need to perpetuate fidelity to liberal democratic institutions and values from one generation to another suggests that there are some inescapably shared educational aims, even if the pursuit of these conflicts with the convictions of some citizens. Yet if repression is to be avoided, the state must give parents substantial latitude to instill in their children whatever religious faith or conception of the good they espouse” (Callan 1997, p.9).

2. No doubt some will regard a successful argument for this conclusion as reason to abandon political liberalism in favor of a more comprehensive liberal approach. Nothing in the structure of my argument blocks this response. I do not aim to defend political liberalism as such here, but address my case to those who find the view antecedently attractive.

3. Cf. Stephen Macedo: “The basic motive behind political liberalism, it should be emphasized, is not fear of conflict or a desire to exclude religious speech from the public realm but the desire to respect reasonable people” (Macedo 1995, p.474).

4. On the need for a distinctively political liberal conception of respect, and the implications of this for arguments about education, see (Neufeld and Davis 2010) and (Neufeld and Davis 2007).

rocal relationships of this sort (Rawls 2001, p.579).<sup>5</sup> To stand in relationships of civic friendship is, in an important sense, to use state power cooperatively together, rather than coercively against one another.<sup>6</sup>

Political liberals regard civic friendship as an ideal for political relationships, but only among “reasonable” citizens. That is, political liberals believe that we have reason to realize relationships of civic friendship with reasonable fellow citizens, using state power only in ways that can be justified to them. Clearly, much then turns on how we understand the class of the reasonable. If I were to regard others as reasonable just in case they share my own views, then the requirement to justify my political proposals to all reasonable citizens would look trivial to me. Any policy that I found justified by my own lights would thereby seem to me to be justifiable to all reasonable people, and purported reasons to justify proposals to others would do no normative work at all. Because political liberals claim to have a distinct view in which the ideal of mutual justification provides real guidance, they cannot understand the reasonable in this way.

For the purposes at hand “reasonable” is best understood as a term of moral rather than epistemic commendation.<sup>7</sup> In particular, the reasonable person has a certain attitude about politics, which I think is best interpreted as comprised of the following two commitments: (1) Affirmation of the great value of civic friendship with others who seek this cooperative relationship. (2) Recognition that among these are some citizens whose convictions about what is valuable are different from and potentially in conflict with your own, and thus that the reasons to cooperate offer non-trivial normative guidance.<sup>8</sup> A citizen who is reasonable in this sense will be willing,

5. Cf. (Rawls 1993, p.li) Cf. Cohen on political community (Cohen 2009, pp.163-164).

6. I do not mean to suggest that this is the only thing that we might mean by cooperation, or that when the ideal of civic friendship is realized there is no sense in which exercise of state power might remain coercive.

7. Here I take myself to be following Rawls (Rawls 1993, pp.48-54). Some of the arguments in the literature on liberalism and education depend on a more epistemic interpretation of reasonableness, one that treats Rawls’ comments about the burdens of judgment as making significant epistemic commitments. See, e.g. (MacMullen 2007, p.55) and (Callan 1997, p.40). I defend the superiority of the moral interpretation in (Ebels-Duggan 2010b).

8. These roughly map onto Rawls’ two aspects of the reasonable person, as he states them in (Rawls 1993, p.54): “The first basic aspect of the reasonable, then, is the willingness to propose fair terms of cooperation and to abide by them provided others do. The second basic aspect...is the willingness to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate use of political power in a constitutional regime.” In (Ebels-Duggan 2010b, p.61) I put the two requirements this way: reasonable people “acknowledge the value of justifying policies on grounds common among all reasonable views, and they recognize the existence of reasonable views in society besides their own.” I don’t mean the first requirement here to be any different from my earlier statement, though I prefer the present formula since it removes an apparent circularity by eliminating the term “reasonable.” This revision of the first requirement may make the



in principle, to forgo using political power in pursuit of some of the things that he values for the sake of realizing civic friendship. He can make sense of this restraint from his own point of view, that is without denying the values in question, because he also values civic friendship. A reasonable citizen thus recognizes that he cannot move directly from a value that he affirms to conclusions about the reasonableness of pursuing or promoting this value politically. He is committed to considering also what can be accomplished cooperatively.<sup>9</sup>

So far, then, we have the following characterization of political liberalism: relationships of mutual justification among reasonable citizens are valuable, giving rise to significant practical reasons. We should count among the reasonable all those who affirm the value of relationships of mutual respect. The upshot is that we have significant reason to limit the use of the power of the state to those policies that all reasonable people can accept from their own point of view.

To demonstrate that a policy meets this standard, political liberals must respond to objections to it by showing that either (1) the objections are unreasonable, that is no one who is reasonable in the sense just discussed could endorse them, so they need not be answered, or (2) the policy can be justified in a way that ought to move the dissenters by their own lights, so the objections can be answered.

This understanding of the argumentative burden requires a revision in the standard account of the content of public reason. Rawls' public reason requirement demands that justifications for fundamental political policies appeal only to consid-

second redundant. I previously believed that it had to be included to guard against an overly narrow interpretation of the reference to the reasonable in the first requirement.

Compare Cohen: "Let us say that people are reasonable, politically speaking, only if they are concerned to live with others on terms that those others, as free and equal, also find acceptable." (Cohen 2009, p.226). In an earlier paper Cohen has a different, more epistemic, view of the reasonable as those who have a stable disposition to affirm their views about value in the face of new information and critical reflection, but he seems to have subsequently abandoned this view. See "Deliberation and Democratic Legitimacy" in (Cohen 2009, p.52).

Contrast Freeman: "To be reasonable ultimately is to have a settled disposition to reason and act from the requirements of a liberal political conception of justice" (Freeman 2000, p.400). This understanding seems to subject the view to circularity that renders it unhelpful, though to be fair Freeman is clear that he does not regard this statement as a definition of the reasonable. He believes that no such definition is needed. Cf. (Freeman 2006, pp.227, 238).

9. I believe that this is the best way to understand Rawls' principle that we should not try to "enact the whole truth in politics." Cf. (Rawls 2001, p.574). Those who embrace civic friendship as a genuine and significant value do seek to enact the whole truth, as they see it, in the sense that they think that the value of civic friendship has an important place among the values to which political life appropriately responds. They may forgo the policy that they would enact if they presumed that everyone shared their worldview. But they do this on the basis of another value that they accept. So they seek to enact the policy that they think is best, all things (including the value of civic friendship) considered.

erations that any reasonable citizen can recognize as reasons.<sup>10</sup> Rawls presents this as requiring that citizens *not appeal* to the content of their worldviews in political reasoning.<sup>11</sup> Most contemporary political liberals follow him in holding that, for the purposes of politics, such views must be “bracketed” or “set aside.” Call this *the bracketing conception* of public reason.<sup>12</sup>

Despite its popularity among self-identified political liberals, the bracketing conception does not provide the best way to realize the value that motivates the public reason requirement. What provides reason to respect the requirement, if anything does, is the value of relationships of civic friendship. In order to realize these relationships, justifications must be such that all relevant citizens can accept them even as they affirm their own worldview. Only so can each see himself as cooperating in, rather than coerced by, the policy in question. But this requires something differ-

10. See, e.g., (Rawls 1993, p.226), (Rawls 2001, p.579).

11. See, e.g., (Rawls 1993, pp.141, 214, 236), (Rawls 2001, p.435).

12. The bracketing conception also follows from the combination of the limitation of public reason to a political conception of justice, e.g., (Rawls 2001, pp.581-584), and the requirement that the political conception must be presented as freestanding (Rawls 1993, pp.12-14, 144-145). For my worries about the “freestandingness” requirement see (Ebels-Duggan 2010b, p.64).

Samuel Freeman seems to embrace the bracketing conception in a thoroughgoing way in “Public Reason and Political Justification,” in (Freeman 2006). Cf. also (Freeman 2000). For other versions of the bracketing conception see (Larmore 2003) and Robert Audi’s contribution to (Audi and Wolterstorff 1997).

Joshua Cohen’s view is more ambiguous. In one place he speaks of “restricting ourselves to common ground in the face of diversity” (Cohen 2009, p.55), and surrounding context suggests that he has the bracketing conception in mind. However, he elsewhere recognizes the need for public justifications to take account of the force of each reasonable citizen’s comprehensive view from her own point of view. This different conception of the role of comprehensive doctrines in public reasoning is on display when Cohen defends a right to religious liberty (Cohen 2009, pp.164-166). In making this argument he relies on the idea that appropriate public justifications take seriously the fact that some convictions result in felt obligations and not merely preferences. So, he writes “...reasonable adherents cannot accept, as sufficient reasons in support of a law or a system of policy, considerations that would preclude their compliances with fundamental religious demands or require that they treat these demands as a matter of choice” (Cohen 2009, p.244). And later, “...we need to let political ideas of burdensomeness track the weight of reasons within the reasonable views of those we are regulating” (Cohen 2009, p.313). These statements differentiate his view from one in which we determine in a vacuum, or by exclusive appeal to the political culture, which considerations count as “public” and only later apply these to policy questions. I have argued elsewhere (Ebels-Duggan 2010b) that the latter approach leads to mistaken reasoning precisely on issues in which some citizens see themselves as having obligations. But these statements of Cohen’s seem to me to be in considerable tension with the following (lifted from one of his discussions of abortion): “because of the pluralism of philosophies of life among politically reasonable citizens, some bases for regulating conduct are politically weightless. To take the clearest case, people hold some commitments on faith, and take those commitments to impose overriding obligations...because they are expressly held as truths known through faith, they are matters on which reasonable people disagree, and adherents cannot reasonably expect others to accept those considerations as having any weight and, therefore, cannot use them in justifying regulations” (Cohen 2009, pp.309-310).

The bracketing conception figures prominently in liberal discussions of education. E.g., “These ultimate beliefs need not be bracketed in the sense of being denied, but they should be bracketed in the sense of not being invoked or relied upon as the public ground of decision for matters of basic justice” (Macedo 1995, n.41).

ent from bracketing. It requires that justification for political proposals be compatible with the truth of the comprehensive doctrines held by reasonable people in the society, such that reasonable citizens can accept these justifications without thereby denying their own convictions.<sup>13</sup> Call this the *shared reasons conception* of the public reason requirement. While the bracketing conception emphasizes not affirming or relying on your own worldview in politics, the shared reasons conception emphasizes avoiding justifications that are incompatible with the worldviews of others.<sup>14</sup>

It should be clear that any violation of the shared reasons conception upsets relationships of civic friendship. No one can accept a justification that would hold only if her worldview were false. Any policy requiring this kind of justification cannot be enacted cooperatively with those whose view it denies, but only coercively over their objections. So adherence to the shared reasons conception is a necessary condition for realizing civic friendship. It also appears to be sufficient: if a policy can be justified in a way that is compatible with the truth of your worldview, then you can accept the justification from your own point of view.

One might worry that the resulting standard of justification is too strong. It is true that it will often be difficult to formulate political policies that appear justified from all of the relevant points of view. In fact, on the shared reasons conception it will sometimes—perhaps even often—be impossible to do so, and so impossible to

13. This is very much in the spirit of Rawls' formulation: "We try, so far as we can, not to assert nor to deny any particular comprehensive religious, philosophical, or moral view, or its associated theory of truth and the status of values" (Rawls 1993, pp.55-56). Compare (Brighouse 2000, p.7) on the value that motivates liberal neutrality: "This is the aspiration that when the state resorts to coercion as it often must, it should do so without expressing disrespect for the persons coerced, and that part of what it would be to be disrespectful is to presume false the deepest commitments of the individuals against whom coercion is used."

14. Sometimes political liberals talk as if they are most interested in avoiding the assertion of a particular comprehensive doctrine. Macedo claims that "While political liberalism cannot avoid ruling out some accounts of what has ultimate value, it does not rest on a particular comprehensive account of the truth or the good as a whole" (Macedo 1995, p.492). And cf. (Gutmann 1995, p.559): "Political liberalism[']...neutrality is limited to its refusal to invoke any particular conception of the (nonpolitical) good life, including individuality, autonomy, and devotion to the divine, as a grounds for justifying ...liberal principles..."

But a policy that does not rely on the truth of any particular doctrine for justification may still rely on an implicit denial of some, as Macedo explicitly acknowledges. This strikes me as a problem, given the values that political liberalism purports to serve. Consider a policy that could be justified only by appeal to a general theism. The justification would not depend on any particular theological doctrine—Lutheran Christianity, Sunni Islam, or the like. But clearly it would still fail to be a justification that all reasonable people could accept. This, rather than lack of dependence on any particular doctrine, seems to me to be the most relevant feature of the policy for our purposes.

My way of interpreting the public reason requirement strikes me as in agreement with a different formulations of Macedo's: "...the critics of political liberalism seem consistently to miss the essential point: when determining the basic shape of the awful coercive powers of the modern state, should we not try and offer our fellow citizens reasons that they ought to be able to accept without making the absurdly unreasonable demand that they first accept our convictions about the ultimate ends of human life?" (Macedo 1995, p.495). To this I would add "...or reject their own views about this?"

realize fully relationships of civic friendship with all reasonable citizens. Political liberals standardly hold not only that we have significant reason to justify our policies to all reasonable citizens, but also that we have a general obligation to do so. In my view, there could not be such an obligation, because the availability of policies that all reasonable citizens can see as justified is a contingent matter.<sup>15</sup> More generally though relationships of civic friendship are of great value, they are not the only thing of value, and the view so far does not determine a course of action when other values conflict.<sup>16</sup>

The idea that you must bracket your comprehensive doctrine in political discussion gains its plausibility from the fact that *one* way in which you might run afoul of the shared reasons conception is by appealing to a value that you affirm but others deny. But the bracketing conception is both too broad and too narrow. Appeals to values found in your comprehensive doctrine will not upset relationships of civic friendship if your fellow reasonable citizens also affirm these values. Moreover, you violate the requirements of civic friendship even without explicit appeal to your worldview if your justification would be undermined by the truth of a particular worldview held by some reasonable people in the society.<sup>17</sup> Those who hold this worldview cannot then see the justification as sufficient grounds for the policy.

Meeting the standard of justification given by the shared reasons conception of public reason is a necessary and sufficient condition for realizing relationships of civic friendship, while adhering to the more widely affirmed bracketing conception is neither. The shared reasons conception is thus superior to the bracketing conception in that it better captures the underlying value that public reason is meant to serve. To realize this value, one needs policies that all can see as justified not when they *set aside* their comprehensive doctrines, but *given* their views, or in light of the fact that they take their own doctrines to be the true or best ones.<sup>18</sup> Talk of bracketing is misleading because, while it is true that some appeals to our worldviews are inappropriate in

15. If one wants to reserve the term “respect” to designate an obligatory way of regarding and/or treating others, then one can formulate this view as holding that respect for our fellow citizens does not generally require realizing civic friendships with them. It requires only appropriately valuing this relationship, and so taking seriously the reasons that it provides.

16. In (Ebels-Duggan 2010b) I argue that civic friendship, while important, is not important enough to justify cooperation in significant injustices.

17. Many political liberals’ arguments about abortion rely on the bracketing conception and exemplify this problem. This is already present in Rawls’ own brief comments. See (Rawls 1993, p.243n) and (Rawls 2001, p.606). See also, e.g., (Freeman 2006, pp.244-250) and (Dombrowski 2001), chapter 9.

18. The shared reasons conception can be read as an interpretation of the ideal of liberal neutrality. I take it to be a version of neutrality of justification, though standard interpretations treat neutrality of justification as roughly equivalent to the bracketing conception. See, for example (Kymlicka 1989) and (Patten 2012).

politics, the content of these views is nevertheless of central importance in determining the limits of possible cooperation.

This leads to a final, underappreciated, point: In order to enact political liberalism so conceived, we need to attend to what our fellow citizens actually think, and what they can actually endorse from their own point of view. We need to do the hard work of conversation and co-deliberation. We cannot generate the content of public reason in our offices in the philosophy department. We can only generate it together.

In this section I have sketched the motivations for a political liberal view and briefly argued that interpreting political liberalism according to the shared reasons conception captures these motivations better than the alternative bracketing view. Political liberalism affirms an attractive political ideal: genuinely cooperative relationships among those who genuinely disagree. If you believe that significant reasonable disagreements are endemic to a free society then this seems to be the only alternative to voting each other down and implementing coercive policies that cannot be seen as justified by some reasonable people whom they govern. Even if the value of cooperative relations does not always override other values that we could possibly realize politically, it is a significant value that can and should do normative work in guiding our political decisions. It is also, in an important way, a foundational value. It is not just a value that we try to produce through politics, but one that governs the constitution of our political relationships.

## EDUCATION POLICY IN THE LIBERAL STATE

I turn now to the implications of this version of political liberalism for issues surrounding education in the pluralist, liberal state. Political liberals face the following question: How can state-sponsored and/or state-imposed schooling be designed so as to be justifiable to all reasonable citizens? If the forgoing is correct, this amounts to the question of how education policy can be justified to all those who value civic friendship without requiring them to deny their other values. In this section I argue that, due to the importance of schools in the development of children's normative outlook, and the resulting inevitable entanglement of education with controversial worldviews, no single educational approach can be justified to all reasonable citizens.<sup>19</sup>

19. I am interested not only in curriculum, narrowly construed, but—among other things—in the institutional organization of the school, and the norms—formal and informal—that govern classroom and other interactions. This includes what Callan describes as a school's "hidden curriculum." See (Callan 1997, p.168).



The central question for political liberals is how the state's approach to education will relate to the various, conflicting worldviews reasonable citizens affirm. Citizens who are parents have a particularly deep interest in this question, and introduce unique issues about justification. Many, probably most, parents take the raising of their children to be as central, important, and defining a task in their lives as any other. More importantly for our purposes, most take themselves to have obligations to and with respect to their children. Parents standardly regard shaping their children's character, helping them to value things worth valuing and to recognize appropriate considerations as reasons for acting, as central among these obligations.<sup>20</sup> At the same time, in contemporary American practice most children spend a great deal of time during their most formative years in schools. On this widely accepted model schools participate significantly in the raising of children, shaping their normative outlooks in profound ways. So, without denying that educational policy should be justifiable to all reasonable citizens, we can acknowledge that the way in which schools relate to the worldviews of parents is of special interest. Consider then these four possibilities: A school might

- (1) Educate students exclusively in and about their parents' worldview, while suppressing knowledge of other ways of life.
- (2) Teach children about many ways of life, in a context that treats the worldview that their parents embrace as true or best.
- (3) Present multiple worldviews, including parents' own, in a neutral way.
- (4) Advocate a single, state-selected worldview.

The first of these two approaches share an important feature: both undertake to inculcate a particular worldview. But, despite this important similarity, the second model should not be confused with or assimilated to the first. The first approach uses suppression of information about the existence and content of competing worldviews as a tool. By contrast, the second model welcomes exposure to multiple worldviews. It occupies the wide space between refusing to expose children to different views and maintaining, or purporting to maintain, neutrality among them. I will return to the importance of this distinction shortly.

On the face of it, (3) looks to many like the most promising approach to education

20. Thus when parents aim to communicate their values to their children they do not usually understand themselves as indulging a preference their own, or engaging in an act of self-expression. I think that this important point goes missing in many discussions of the possible grounds of parental rights. See, e.g., (Callan 1997, pp.132-145), (Brighouse 2000, pp.13-18) and (MacMullen 2007, pp.113-124). For a much better framing of conflicts between state and parents over educational issues see (Burt 1996).



in a liberal, pluralist society.<sup>21</sup> It is certainly the only plausible candidate for a single approach to education that could be justified to all.<sup>22</sup> However, I will argue that (3) is not a genuine possibility.<sup>23</sup> Any education will orient children towards some normative view, and for any such view there will be some reasonable parents who reject it. As these parents see it, their children are being educated to value the wrong things. Many will take cooperating in this to run counter to their obligations as parents, and thus will not be able to see it as justified. Since the other models do not have even *prima facie* plausibility as unique state-sponsored approaches to education that could be endorsed by all, I conclude that no single approach can meet that standard.

Consideration of the much-discussed case of *Mozert v. Hawkins* will help illuminate what is at issue. The case concerned an elementary school reading curriculum adopted by a school board in Tennessee in the early eighties. Though primarily designed to teach reading, the curriculum also explicitly aimed to expose children to various ways of life or conceptions of the good with the goal of developing virtues of citizenship. The school board adopted it in part to serve these purposes. A group of Christian parents claimed that allowing their children to be taught using this curriculum would violate their religious convictions, and so requested permission to opt out of it while still receiving the other benefits of public education. The case is helpful for our purposes in two ways. First, charitable interpretation of the parents' complaint illuminates the distinction between the first and second models of education, a distinction that is both important and often overlooked. Second, the case raises concerns about the viability of model (3). The curriculum in question seems to have been designed with precisely this model in mind. Yet it incurred objections that, I will argue, are best understood as pointing to its lack of neutrality.

Whatever the merits of the substance of these objections, political liberals should recognize them as of the right form. The parents assert that participation in the cur-

21. See, among others, (Macedo 1995), (Gutmann 1995), (Gutmann 1999), (Callan 1997), and (Ackerman 1980).

22. It might be thought that, in a limited way, prominent political liberals endorse a version of (4). Many think that the state need not remain neutral about everything, but can and should promote moral and civic values of tolerance and respect. (Gutmann 1999, pp.53-64) endorses a version of this. Cf. (Macedo 2003, p.237). I agree that the state has a legitimate interest in teaching these values. But, as I argue in the final section, reasonable parents will endorse these values by definition, and so seek to hand them on to their children. Any instantiation of (2) that my proposal endorses thus promotes civic respect, and in this way my proposal captures the limited appeal that (4) may have.

23. At least some parents take their obligations to include seeing to it that their children's formal education is positively embedded in a particular normative outlook, not merely that it does not conflict with this outlook. Such parents present the clearest cases in which the state will have difficulty justifying a single approach to education to all. See (Wolterstorff 2002).

riculum would violate their obligations as parents. Their understanding of these obligations is an integral part of their overall normative outlook. They cannot then continue to sincerely affirm this outlook and take themselves to have sufficient reason to endorse or cooperate in the educational model in question. Their objection thus amounts to a claim that the curriculum, and so its monopoly on state support, cannot be justified within the terms of public reason on the shared reasons conception.<sup>24</sup>

If that is right, a political liberal response to the *Mozert* parents must accomplish one of the two argumentative tasks laid out above: either show that their objection reveals that they are not reasonable, or show that education on model (3) can be justified to them without requiring them to give up or violate their own commitments. Liberal theorists who discuss this case usually treat it as raising issues about whether and how to accommodate unreasonable views. Observe, for instance, Stephen Macedo's construal of the central question *Mozert* raises: "Should public justification have a second stage?...a stage where, having constructed a reasonable public view, we consider pleas for accommodations and exceptions for marginal groups" (Macedo 2003, p.483). But in relegating justification to the *Mozert* parents to a potential second stage without first explaining why they are properly regarded as unreasonable, Macedo begs the very question political liberals need to ask: is the curriculum under consideration indeed part of a reasonable *public* view?

We may take Amy Gutmann to be pursuing the first of the two approaches when she claims, "The *Mozert* parents rejected the relevance of the distinction between exposure to knowledge and inculcation of belief. ... They rejected the idea that schools may teach children to understand and thereby to evaluate different ways of life. They assimilated such teaching to indoctrination into false beliefs" (Gutmann 1995, p.571). On this reading the parents object that merely by exposing their children to normative views that conflict with their own, the state inculcates these views, thereby violating the parents' obligations. Call this *the exposure objection*. To the extent that the parents raise the exposure objection, only the first model of education would

24. Some readers may be tempted by the view that it is not of the right form, because it makes reference to outcomes, here the outcome of education. This may suggest to some conceptions of neutrality widely rejected by liberal thinkers as too demanding. Among these are the idea that government action should not increase or decrease the number of adherents to a view (See (Patten 2012) on neutrality of effects), that all conceptions of the good should be burdened or benefited equally by government policy (See (Brighouse 2000) on neutrality of effects), or that all should be made equally easy to pursue (See (Brighouse 2000) on neutrality of outcomes). But the parents' complaint does not depend on a demand for neutrality in any of these senses. Rather their central objection is that participation in this policy would violate their own parental obligations. A citizen cannot both think that supporting a policy violates an obligation that he has, and see the policy as justified. So the parents claim that the policy violates the shared reasons conception of public reason.

satisfy them, and Gutmann claims that this is indeed what they seek. Elsewhere she argues at length that this sort of insularity is not compatible with a commitment to what I have called civic friendship.<sup>25</sup> Communicating the value of civic friendship to children requires teaching them what Rawls calls the fact of reasonable pluralism, and this cannot be done without exposure to conflicting views.<sup>26</sup> Since reasonable parents affirm the value of civic friendship, they are concerned to pass it, along with their other values, to their children, so they will not seek an education on model (1). I will treat this argument as decisive against the exposure objection and the first model of education. So, to the extent that Gutmann's characterization of the parents' objection is accurate, it is appropriate to treat the case as Macedo does, as one about whether and how a liberal society should accommodate certain unreasonable citizens.

But the strongest—and so most theoretically interesting—construal of the parents' objection understands them differently in two ways. First, it does not take the exposure of their children to diverse views as the object of their concern.<sup>27</sup> There is no doubt that the parents see themselves as obligated to pass on a particular normative outlook to their children, and reject model (3) because they believe that cooperating in this model is incompatible with fulfilling this obligation. But this commits them to the insularity of model (1) only if advocacy of a single view is incompatible

25. See, e.g., (Gutmann 1995), especially p. 571.

26. Cf. (Macedo 1995, p.485).

27. In an under-discussed concurring opinion in *Mozert*, Justice Boggs draws the distinction that I am pressing here. He chastises the majority for construing the parents' objection as concerning mere exposure to particular beliefs that conflict with their religious commitments, and is impressed by the fact that they object to the Holt curriculum "overall." He interprets them as holding that, taken as a whole, it tends to denigrate or oppose their religion (*Mozert*, p.1074), and to inculcate commitments opposed to it. He argues that we must accept their assessments that they are forbidden to submit their children to this educational program, and so regard the curriculum as requiring them to engage in conduct forbidden by their religion as a condition of receiving the benefit of public schooling.

Boggs sees the case, thus construed, as demanding an answer to the question: does the majority have a right to dictate the content of a single state-sponsored curriculum not limited by parameters set by the requirements of minority religious convictions? As he puts it, "[t]he school board recognizes no limitation on its power to require any curriculum no matter how offensive or one-sided, and to expel those who will not study it, so long as it does not violate the Establishment Clause." (*Mozert*, p.1073) He concludes that there are no constitutional protections against the majority imposing its views in this significant way. But he draws this conclusion only "reluctantly," and strongly suggests that, were he asked to declare on the question of what justice, rather than positive law, requires he would draw a different conclusion.

Late in his opinion Boggs provides an vivid illustration what he takes to be the profound implications of the court's decision: "Contrary to the position of amicus American Jewish Committee, Jewish students may not assert a burden on their religion if their reading materials overwhelmingly provide a negative view of Jews or factual or historical issues important to Jews, so long as such materials do not assert any propositions as religious truth, or do not otherwise violate the Establishment Clause" (*Mozert*, p.1080). Unless we think that such a curriculum could be justified to a reasonable Jewish citizen, political liberals must share his regret that the law allows such an imposition on those who dissent from the majority viewpoint.

For another discussion of *Mozert* that takes Boggs opinion seriously, see (Stolzenberg 1993).

with allowing exposure to others. So, while Gutmann accuses the parents of eliding the distinction between exposure to a view and the inculcation of that view, treating (1) as the only alternative to (3) apparently commits her to the closely related incompatibility thesis that one cannot present a single outlook as true or best, while also exposing students to alternatives.<sup>28</sup>

In fact, both claims about the relationship between exposure and inculcation are false, as we can see by considering an example. Suppose we undertake to teach our children about racism, a view that we deplore. It seems that we should teach them about the history and content of racist views, and should not shield them from the fact that some people still hold such views. Thus we expose them to racist views. But we will also make clear our own anti-racist commitments, presenting these as correct, not merely as opinions or matters of taste or as one among other possible options. The case should leave no doubt that exposure to a view is distinct from inculcation of that view. It also presents a clear example of aiming to inculcate a particular view, while simultaneously exposing students to an incompatible outlook.

The lesson to draw from this case is that exposure is a red herring, a distraction from what is really at issue. It is neither the real focus of the *Mozert* parents' objection, nor the correct characterization of what liberals like Gutmann and Macedo seek. In fact, the parents demonstrate that they recognize the distinction between exposure and inculcation when they say that they would endorse an education that exposed their children to alternative views, so long as it included teaching that the views in question were in error (*Mozert*, p.1064). The racism case is an example of just this kind. Here and elsewhere the parents demonstrate that they are not committed to model (1), but better interpreted as reaching for model (2). Their objection to (3) is then not due to the fact that it exposes children to alternative views. Rather, they assert that the curriculum in question goes beyond exposure to inculcate views incompatible with their own. Call this the *non-neutrality* objection.<sup>29</sup>

28. Like most citizens, the *Mozert* plaintiffs were not trained political theorists, so unsurprisingly their complaint amalgamates several different strands. One strand undeniably does seek something like the first model of education for their children. At some points in the proceedings, parents assert that simply by exposing their children to the content of religious and non-religious worldviews that conflicted with their own the school violated their religious convictions. One parent clearly asserted in courtroom testimony that there were at least some ideas in the curriculum that she regarded in this way (*Mozert*, p.1064).

29. They also make a third, distinct, complaint: lack of balance. This complaint seems sustained by the facts as I understand them. In a concurring opinion, one judge cites the plaintiffs' claim that "of 47 stories referring to, or growing out of religions...only 3 were Christian, and none Protestant" (*Mozert*, p.1081). The judge who wrote the main opinion rejects this objection on the grounds that "Balance in the treatment of religion lies in the eye of the beholder" (*Mozert*, p.1065). But this might not be a reason to throw out complaints based on balance, but rather be a reason to acknowledge

We cannot then dismiss the *Mozert* parents as unreasonable on the grounds rehearsed above. However, the racism example also makes clear that encouraging civic friendship requires more than mere exposure to alternative views. When we communicate the content of a racist view in order to repudiate it, we are not promoting civic friendship with those who hold the view. Since racism is a paradigmatically unreasonable view this isn't a problem; we are not concerned to encourage civic friendship with racists. But in order to count as reasonable, the *Mozert* parents must acknowledge that not all cases of disagreement are like this. They must value civic friendship with some citizens with whom they disagree. Call the treatment of competing views needed to communicate the value of civic friendship with their adherents "respectful presentation."

In the face of this, Gutmann could modify her case for regarding the parents as unreasonable. She might claim that they reject respectful presentation of alternative views, and in this way seek to educate their children in a way that betrays lack of commitment to civic friendship. She might then dismiss the parents as unreasonable even while acknowledging that they seek model (2) not model (1). This argument will go through if, but only if, model (2) is not compatible with presenting alternative views in a way that encourages civic friendship with those who hold them. I will set this question aside for the moment, returning to it in the next section. For now, notice that if (2) is compatible with valuing civic friendship, then we cannot dismiss the parents as unreasonable. If we cannot dismiss them as unreasonable, then political liberals must take seriously their claim that cooperation in the curriculum violates their parental obligations, and those who would defend the approach that the curriculum represents must try to answer it.

So far I've been arguing that the parents should be understood as advancing the non-neutrality objection rather than the exposure objection. In the remainder of this section, I explain the second modification of Gutmann's interpretation of their position, and argue that the resulting claim provides reason to think that model (3) is unachievable. In advancing the non-neutrality objection, the parents claim that the curriculum inculcates views incompatible with their own. Gutmann represents them as concerned that their children will embrace one of the views contained in the reader.

reasonable disagreement about what counts as balance and accommodate more pluralism in state-sponsored education. Callan believes that the complaint of lack of balance is the most interesting part of the parents' case (Callan 1997, p.160). I will not address the balance complaint independently of the non-neutrality complaint since I think that the theoretical interest of the former collapses into that of the latter.



They may have this worry, but the non-neutrality objection is better understood as raising a more sophisticated, second-order challenge with implications well beyond the case at hand: In teaching the material in these readers an instructor must either present the various views and lives represented there as on an evaluative par with one another or present some as superior to others. But neither option can be justified to all reasonable citizens.

Presenting some of the views as superior to others is obviously unjustifiable to citizens who affirm one of those in the latter category. But presenting all as on an evaluative par would also be problematic. Most everyone thinks that some matters are appropriately regarded as evaluatively discretionary while others are not. But, and this point is of central importance, *which matters are evaluatively indifferent is itself an important, difficult and controversial normative question*. This is just the sort of question over which reasonable citizens will persistently disagree.<sup>30</sup> Many parents take themselves to be obligated to help their children get these matters right.

For example, most people in our society think that career choice should be largely determined by personal preferences. That is, almost everyone regards some wide range of career options as evaluatively indifferent. Most will thus regard presenting a wide range of options to children neutrally as an important aspect of education.<sup>31</sup> But what exactly should be included is another matter, and can be an important one. How, for example, can one deal neutrally with military careers in a classroom that includes children from pacifist families? Endorsing the pacifist view that the military is an impermissible option is clearly inconsistent with neutrality. But treating choosing or rejecting a military career as an appropriate exercise of personal discretion would deny the truth of the pacifist convictions. Pacifists do not merely have a preference against their children choosing military careers, but view such choices as morally impermissible.<sup>32</sup> Readers who are not pacifists themselves should substitute a career

30. (Nagel 1987) comes closer than anyone else I am aware of to explicitly addressing problems arising from this fact. He attempts a principled account of which controversial views are to be excluded from the realm of public reason, and which controversies are rightly addressed there. His proposed solution deserves careful consideration, but—as he acknowledges—remains subject to vagueness at important points.

31. This example suggests a worry about girls raised in conservative communities where parents affirm narrow limits on the career choices that should be presented to their daughters as open possibilities. I suspect that this problem has no solution defensible in public reason. There is no education that both the parents in question and citizens concerned for the autonomy interests of the children can regard as justified. My view acknowledges the possibility of such cases, and it is beyond the scope of the paper to say how they should be addressed. Here my purpose is only to explore the limits of reasonable agreement.

32. Cohen's contrast between preferences and obligations is again relevant here. See (Cohen 2009, pp.244, 313).



that they would regard as impermissible to see how this might look to such parents. Similar issues arise with respect to anything that incurs on matters that some citizens regard as determined by our obligations and others as rightly left to personal preference. To the extent that these questions are contested no presentation of the relevant material in formative moral education can be justified to all.

The *Mozert* parents take certain religious commitments and practices to be non-discretionary, and understand their obligations as parents to include passing these convictions to their children. Presenting various religious commitments and practices to their children as appropriate matters for personal discretion, much as some careers are, conflicts with this obligation, and so cannot be justified them. As they recognize, the educational approach consistent with their understanding of their parental obligations with respect to such matters is not an appropriate candidate for unique state support. It would be unreasonable to seek to impose this education on all children. But an approach that treats a wide range of religious and non-religious views as equally correct or choiceworthy is no less contested. The more sophisticated reading of the non-neutrality objection in *Mozert* takes it to invoke this problem, and to object that the curriculum advances a second-order view that they reject.

Someone might object that this argument conflates two kinds of neutrality. On the one hand, there is *neutral presentation* of various worldviews or issues that incur on them. This is what schools would have to accomplish to stand a chance of satisfying the strictures of public reason with a single educational approach. On the other, there is the substantive normative position that the views in question are all equally correct or choiceworthy, and so evaluatively discretionary in the sense above. Call this *substantive neutrality*. Substantive neutrality is a position *among* contested views, and so not only different from neutral presentation but, as I have been arguing, in conflict with it. An advocate of model (3) might thus agree that treating contested matters like religious commitments as questions appropriate for personal discretion is not neutral among worldviews, but insist that the third model does not require, or even allow, this.

As a conceptual matter, these two sorts of neutrality are distinct. But, in practice disagreements concerning them will tend to arise together for good reason: in formative educational contexts, it is extremely difficult to present normative positions without explicitly or implicitly taking *some* position on their permissibility, value or truth.<sup>33</sup> Presenting a view while contrasting it with another that one explicitly endorses

33. This is part of what motivates resistance to the exposure/inculcation distinction. Cf. Callan

es would avoid communicating substantive neutrality, but model (3) does not allow this. The parents object that presenting a variety of normative outlooks in a way that aims to be neutral among them will tend to communicate substantive neutrality with respect to these views.<sup>34</sup> This amounts to an education on the fourth model, one that inculcates belief in a single state-selected conception of the good.

Such concern might be warranted at all educational levels, but is most plausible with respect to early education. Avoiding the conflation of neutrality of presentation and substantive neutrality requires students to distinguish between (1) the teacher is talking *as if* all of these options are of equal merit, treating each even-handedly, and (2) the teacher believes, or advocates the position, that all of these options are of equal merit. This is a demanding cognitive task, and children who lack well-formed conceptions of the good cannot reasonably be expected to perform it.<sup>35</sup>

Interestingly, the importance of teaching the intellectual virtue of charity further complicates matters. Students must learn to put rival views in the best possible light, looking for what someone would find attractive in them, and to empathize with what it would be like to hold such a view. These skills are arguably pre-conditions for the ability to treat others respectfully in the political sphere, so all reasonable citizens should value them and endorse their inculcation in the next generation. Many theorists suppose that this shared value requires, or at least pulls in favor of, a single common curriculum. But there is good reason to think that it actually exacerbates the difficulty of designing such a thing by further blurring the distinction between the two sorts of neutrality. If merely presenting various views without advocating substantive neutrality is difficult, modeling these positive charitable attitudes without communicating substantive neutrality is more difficult still. In the next section, I will argue that the virtue of intellectual charity is easier, rather than harder, to model in an education that explicitly advocates a particular worldview.

It is then, at best, extremely difficult to avoid communicating substantive neutrality in the context of (3). Moreover, substantive neutrality is not the only controversial second order view about which such concerns arise. For instance, parents may have similar worries about what an education communicates about which normative

on the “hidden curriculum:” “The hidden curriculum comprises the attitudes, beliefs, or the like that the very fact of participating in the institution will tend to instill, and which are yet, at least typically, not consciously acknowledged by those who participate” (Callan 1997, p.168). Callan recognizes that “common schools” will inevitably have such a hidden curriculum and that it will be in tension with the commitments of some citizens in a pluralist democracy.

34. Cf. (Burt 1996).

35. Cf. (MacMullen 2007).

questions should be regarded as open, and which we may, or even must, treat—like the racism question—as settled. The *Mozert* parents believe that certain religious questions are appropriately treated as settled, and may object to schools treating such questions as open. No doubt other parents would agree that these questions should be treated as settled, but disagree about how they have been settled. Some of these would object to traditional religious views being presented as serious options in a public educational setting. Still other parents will regard religious questions as exactly the sort about which we ought to lack confidence. Or, again, consider disagreements about which sorts of normative commitments are significant or of genuine moment.<sup>36</sup> Here, too, questions about whether to take up a certain religious outlook provide a nice example. Some regard this as the most significant decision a person will make, while others think that it matters very little.

Reasonable citizens may have any of these convictions. And, while they are second-order, they are not necessarily esoteric or unimportant, but can figure importantly in a person's overall normative outlook. Many parents will regard an educational approach that communicates what they take to be false views about important normative matters as in conflict with their parental obligations, and so as unjustified. But it is difficult to see how any attempt to implement (3) could negotiate all the relevant convictions simultaneously, avoiding taking or communicating a position on any of these issues. Any settlement amounts to siding with some of these parents and against others, and collapses again into model (4). Thus no single approach to education will be publicly justifiable.<sup>37</sup> Political liberals, who aim for legislation that can be justified to all reasonable citizens, should thus seek an educational policy that provides parents with a wider range of options.

36. Cf. (Wolterstorff 2002) on how an educational approach may communicate through silence that an issue is unimportant.

37. Cf. (Callan 1997, pp.169-171). Cf. (Wolterstorff 2002, pp. 194-195): "It must be noted, in the first place, that the public school in our present-day American society has no choice but to infringe to a significant degree on the religious freedom of some members of society. It cannot possibly be fully impartial and nondiscriminatory among all religions and irreligions in our contemporary society, for in our society we find a large group of people who believe, as a matter of conscience, that the education their children receive should not be set in the context of a religion or irreligion and should not incorporate religious practices. But we also find in our contemporary society large groups of people who believe, as a matter of conscience, that the education their children receive should be set in the context of a specific religion and should include the religious practices appropriate to that religion. The public school must discriminate, coercively, against the members of one or the other of these groups."

## TOWARD COOPERATION ON EDUCATION

In the last section, I argued that any approach to education will effectively communicate some worldview. If this is right then someone must make the choice about what this worldview will be. There seem to be only two plausible contenders: the state and those with primary responsibility for raising the children, usually their parents.<sup>38</sup> The former will certainly involve the state in action that not all reasonable citizens will take to be justifiable. This is not decisive against it, since, as I acknowledged above, there are some questions that the state cannot resolve in any way that is justifiable to all. For all that I have said so far, how the state ought to involve itself in education might be such an issue. But accepting state interference with what many reasonable citizens take to be among their most important ends and obligations, in ways that cannot be justified to these citizens, should not be done lightly. We have weighty reason to seek a policy that all reasonable citizens could see as justified, and opt for such solution if we can find one.

I believe that we can. Within some limits, deference to parents' choices about the worldview in which their children will be educated—a version of model (2) above—can be justified to all. I cannot give a complete defense of this claim here, but will respond to two important objections to it: First, that if parents are allowed to educate children into their own worldview they may inculcate intolerance and so undermine the development of essential virtues of citizenship on which the stability of a just political order depends. This amounts to a concern that educating children on model (2) cannot be justified to citizens generally. Second, that education on model (2) violates children's autonomy. This amounts to a concern that such education cannot be justified to the children who receive it.

The basic response to the first worry is that political liberals have no grounds for supposing that reasonable parents who seek to pass on their worldviews to their children using model (2) will teach them not to respect others in politics. As reasonable,

38. It might look as if there is a third option: the classroom teacher. Some people find attractive a model on which the state enacts its neutrality towards the good by employing a diverse teaching staff who advocate various and conflicting worldviews. But the problems with model (3) surveyed above apply to this proposal as well. The state is still trying to present a variety of worldviews neutrally, though now diachronically, over the course of a student's education, rather than synchronically in a single year. Some parents may welcome this, but some reasonable citizens will find that an education consisting in this kind of cacophony of views does not fulfill their parental obligations as they understand them. There's no way that they can see this kind of education as justified from their own point of view. I thank Stacy Clifford for articulating this option for me.

they are committed to the value of civic friendship.<sup>39</sup> Given the opportunity to inculcate their own values these parents will, from their own point of view, have reason to pass this value, among others, to their children.

I think that this response is successful, but it will seem far too quick to some. Readers may worry that it begs the question set aside in the previous section: Is education on model (2) compatible with respectful presentation, or does seeking this sort of education itself reveal that a parent is not fully committed to the value of civic friendship? Recall that I granted that the latter is true of those who demand model (1): Insulating children from any exposure to alternative worldviews is plausibly incompatible with valuing civic friendship, since participating in cooperative political relationships requires some understanding of others' views. Model (2) includes exposure to alternative views, but above I argued that exposure is not enough: Passing on the value of civic friendship requires, in addition, what I called respectful presentation. Opting for model (2) will thus render the parents unreasonable if—but only if—model (2) is not compatible with respectful presentation. By the same token, model (2) would fail to be justifiable to other reasonable citizens.

Why might one suppose that model (2) is not compatible with respectful presentation? The ground of this suspicion must be that, in self-consciously advocating a single worldview as correct or best, model (2) is committed to teaching that other views are wrong or sub-optimal where they conflict. Some may worry that teaching that a view is wrong is not compatible with presenting it respectfully. But political liberals should—by their own lights—reject this incompatibility claim. They should do so because it is a central commitment of political liberalism that the respect due to others in politics is compatible with disagreement over the truth or acceptability of their worldview. The whole point of political liberalism is to show that and how we can respect one another politically even in the face of deep and abiding disagreement over our worldviews. If this project has any hope of success then it must be the case that one can regard a view as wrong while yet respecting, in the relevant sense, those who affirm it. Rejecting this possibility amounts to abandoning political liberalism. But affirming it undermines the most plausible source of the doubt that (2) is compatible with full affirmation of civic friendship.<sup>40</sup>

39. They can thus answer the worry of (Gutmann 1995, p.560). There she argues that mutual toleration is not sufficient for virtuous liberal citizenship. We need, beyond this, the virtue of respect. Cf. (Neufeld and Davis 2010) and (Neufeld and Davis 2007).

40. MacMullen argues that political liberals have, in any case, no grounds for giving development of civic virtue absolute priority over other values. He claims that arguments for such priority tend



In fact there is some reason, to which I alluded above, to think that the second model can communicate the value of civic friendship *more* effectively than the third, purportedly neutral, approach. There are certain intellectual and political virtues that a teacher can most effectively model for students only if he is not required to purport to neutrality among worldviews. On model (2), a teacher can explicitly affirm that a given outlook is correct, while also presenting others charitably, and explicitly encouraging political respect for those who hold them. The teacher can also directly affirm these virtues, and explain to students why someone who holds the worldview that he advocates should support them. By contrast, the teacher who must purport to neutrality cannot take any clear stand on matters of which view is correct, and so cannot model charity towards a view that he is known to reject, or political respect for people who hold this view.

Above I suggested that children who cannot distinguish between respect for those who hold a view and acceptance of that view may, as a result, come to embrace substantive neutrality among a variety of worldviews, as some parents fear. But another result is possible. Children who are not taught to distinguish between political and substantive neutrality may unnecessarily resist accepting the former on account of rejection of the latter. They may come to wrongly regard political neutrality as incompatible with their worldview, and so fail to develop virtues of empathy, charity and political respect. I take this to be the threat that political liberalism is designed to address, and a possibility that all reasonable people should seek to avoid. What I am claiming here is that one plausible strategy for doing so is to have teachers who make this distinction in their own outlooks teach and model it. If this is right, then it turns the first objection to model (2) on its head. Many political liberals appear convinced that model (3) is the best—or even the only—way to teach students how to be reasonable citizens. But, if valuing political respect is compatible with these various worldviews, it isn't at all clear why model (2) shouldn't serve this purpose at least as well, if not better.

Turn now to the second objection. There are at least three constituencies to whom educational policy would need to be justifiable if it is to be a cooperative endeavor among all citizens: parents, citizens generally, and children. The second objection claims that education on model (2) cannot be justified to the last of these, the

to overlook the fact that the polity can remain robust even if not all of its citizens are virtuous. See (MacMullen 2007), Chapter 2. (Brighouse 2000, p.68) is also unsympathetic with according this sort of authority to a collective interest in social reproduction.



children who receive it.<sup>41</sup> In particular, it asserts that such an education violates these children's autonomy, and that they cannot reasonably accept this.

The very idea of justifying policy to children raises difficult questions. Political liberals understand respect for an adult citizen as requiring that we enforce against her only those policies that she can see as justified given her own worldview. But it seems wrong to understand children as having any particular worldview. Thus it is inherently difficult for political liberals to determine what should count as respecting a child, or as justifying a policy to her.

Nevertheless, any plausible view must recognize that a child is a distinct individual with her own claims on the state. To point out the difficulty above is not to deny this, but only to recognize a complication about how to understand the content of children's legitimate claims. Since standard notions of justification do not apply easily to children, we might instead try to articulate their claims in terms of their interests, treating a view as justifiable to children just in case it gives their interests proper consideration. But this appealing suggestion brings complications of its own, since the reasonable disagreement that is the starting point of political liberalism entails reasonable disagreement about how to conceive these interests. Understanding children's claims in terms of their interests thus immediately raises the question of whose conception of children's interests we should use.<sup>42</sup>

Neither the range nor the significance of these disagreements should be overstated. It is widely agreed that children need basic material provision and nutrition, safety and the sense of safety, and stable and loving relationships especially with the adults who are their primary caretakers. And it is extremely plausible to hold that any residual disagreement on these fronts should be overridden, even if this requires coercing some who seek cooperative political relationships. Thus we can justify many important child protection and welfare laws by appeal to children's interests.<sup>43</sup>

The objection at hand might be understood as holding that children's interest in autonomy also belongs on the list of those so fundamental that we should be willing to override the decisions of even reasonable parents who would oppose it. So we need to consider whether children do indeed have such a significant interest in autonomy,

41. Indeed, on some views, this means that I have not so much as begun to justify education policy. Harry Brighouse argues that education policy decisions must always be justified primarily in terms of the interests of the children whom we seek to educate. See (Brighouse 2000), especially pp 13-18 and Chapter 3. Others think that the justifications in question should appeal to some of the interests of children, parents, and citizens. For the latter view see, e.g., (Galston 2011).

42. Cf. (Ebels-Duggan 2010a). And cf. (Burtt 1996).

43. For a similar view see (Burtt 2003).

and if so whether model (2) would be distinctively prone to violate it. We cannot settle either question definitively without a complete conception of autonomy, something that I can't possibly offer here. But, even in advance of trying to fill out such a conception, the argument of the last section gives us reason to be skeptical about the claim that (2) is distinctively problematic. Someone might think that (2) threatens autonomy in virtue of the fact that it directs children to a particular conception of the good. But if the argument above is right then *any* education will have this effect.<sup>44</sup>

Many readers will nevertheless find tempting the view that an education that at least aims at model (3) is more conducive to autonomy, so it is worth considering the objection in greater detail. The best response would be an argument that no plausible conception of autonomy can support the objection. That is, there is no sense of autonomy for which it is plausible both that children have an enforceable claim to its development and that it is in principle in tension with an education on model (2). Here I can do no more than sketch the case for this claim.<sup>45</sup>

A leading theme in discussions about autonomy and education is that of *thinking for one's self* or, what I take to be the same, *self-direction according to one's own reason*. Eamonn Callan's view is representative here. He characterizes autonomy this way: "Autonomy in the sense that counts here is about the capability and inclination to reason for one's self, and to shape one's life on the basis of the deliverances of reason."<sup>46</sup> This elusive idea is subject to both a strong and a weak reading. On the strong reading one directs one's self according to the deliverances of reason only if one restricts one's value commitments to those one can vindicate by reason alone, without appeal to any non-rational factor. But the claim that this could be done for any, much less all, normative commitments is an extremely controversial position in moral philosophy, associated with one of the most ambitious programs in contemporary ethics.<sup>47</sup> It seems to imply, for instance, that we should be able to provide

44. Some writers suppose that (2) is especially problematic on account of the unity between the child's home and school experiences that results. On this view, normative dissonance is good for autonomy. See (Gutmann 1999, p.69), and see Chapter 2 more generally. And cf. (Macedo 2003, pp.226-238). Also cf. (Brighouse 2006, p.22). My own view is that whether such dissonance is salutary or not depends entirely on the content of the views that are communicated to the child by the home and school respectively. Moreover, we cannot expect agreement on what this content should be in the midst of a pluralistic society.

45. For more on how to understand autonomy in educational contexts see (Ebels-Duggan forthcoming-a) and (Ebels-Duggan forthcoming-b).

46. (Callan 1997, p.58). Cf. (Brighouse 2000, p.67) and (MacMullen 2007, pp.69-73).

47. Here I have in mind something like Kantian constructivism, which attempts to derive substantive normative standards from the mere form of practical reasoning or the logic of agency. Perhaps the most ambitious attempt to do this is found in (Korsgaard 1996) and (Korsgaard 2009).

a moral skeptic with a complete refutation, one that he should, by his own lights, accept. Careful political theorists rightly ward off the idea that their view depends on the prospects for success of this sort of grand project.<sup>48</sup>

Steering clear of this unattractively demanding interpretation leaves us with a more plausible, but weaker—and vaguer—standard. Note Callan’s looser talk here: “...whatever reflection autonomy requires surely does not demand that we detach ourselves from all our ends. The requirement is only that we be capable of asking about the value of any particular end with which we currently identify and *be able to give a thoughtful answer* to what we ask” (Callan 1997, p.54), emphasis mine.<sup>49</sup> Elsewhere he tells us “I am autonomous to the degree that I have developed powers of practical reason, a disposition to value these powers and use them in giving shape and direction to my own life, and a corresponding resistance to impulses or social pressures that might subvert wise self-rule” (Callan 1997, p.148). In these characterizations the autonomous person is just the thoughtful person, and “thinking for one’s self” seems to be nothing other than “thinking.” If this is what autonomy means, then any approach to education should indeed seek to develop it. No one should deny that the well-educated person will be able to think well. But we’ve seen no reason to think that this version of autonomy is in any tension with model (2). It would simply beg the question to suppose without further argument that the second model of education cannot produce thoughtful people.

Many readers will think that this is surely too quick. Some will object that I have not considered the idea that distinctively autonomous thought requires the availability of alternatives to one’s current normative outlook.<sup>50</sup> Now there are two clear senses in which students educated on model (2) *do* have access to normative alternatives. First, since this approach does not seek to insulate them from the existence and content of disagreement, they are aware of multiple points of view in the culture

48. See, e.g., (Callan 1997, p.54). Others are clearer. MacMullen holds that it is inevitable, and not cause for regret, that non-rational factors will play a role in determining which normative outlooks we will find compelling. He sees no reason why attachments to our parents and culture of origin formed early in our development are not suited to play this determining role. (MacMullen 2007, pp.77-80). It is interesting to contrast Clayton, who agrees that reason cannot settle normative issues, but believes that the remaining indeterminacy ought to be by individual desires and dispositions. See (Clayton 2006), Chapter 3. Brighouse also denies that reason is sufficient to determine a particular way to live. He accepts the possibility of a determinative role for the parental culture but worries that one’s individual dispositions may make this culture a bad fit, so one needs to be given other possibilities. See (Brighouse 2000), Chapter 4 and cf. (Brighouse 2006), Chapter 3.

49. Cf. (MacMullen 2007, p.23) and (Clayton 2006, pp.11-13),

50. Here I mean to suggest this as a constitutive, conceptual claim about autonomy: to be autonomous is (perhaps among other things) to have alternatives. I take (Clayton 2006) to be endorsing this view when he speaks of the “environmental” conditions of autonomy, pp 11-13 and cf. p.89.

around them. Second, they understand that citizens with a wide variety of views have equal political status, so they both have—and know that they have—options politically. They know that no coercive sanctions will be brought to bear on them if they alter their worldviews.

But some will think that this is not enough, that there is a further sense in which these alternatives need to be *live* options, genuine possibilities for normative outlooks that they might adopt as their own, in order to enable a student's autonomy. Callan makes this requirement explicit:

*The essential demand is that schooling properly involves at some stage sympathetic and critical engagement with beliefs and ways of life at odds with the culture of the family or religious or ethnic group into which the child is born. Moreover the relevant engagement must be such that the beliefs and values by which others live are entertained not merely as sources of meaning in their lives; they are instead addressed as potential elements within the conceptions of the good and the right one will create for oneself as an adult. (Callan 1997, p.133).*

For alternative views to appear as live options in this sense, one must be able to gain a certain distance on one's own normative commitments, reflect critically on them, bring them up for review, or view them as contingent and revisable.<sup>51</sup> This sense of autonomy strikes many as in fundamental tension with an education that seeks to nurture allegiance to a particular conception of the good.

But it is more difficult to specify this idea in a compelling way than one might suppose. Like the first aspect of autonomy, this one is subject to a strong reading that most autonomy advocates repudiate. On the strong view, autonomy requires alienating ourselves from all of our commitments and occupying a neutral standpoint from which we can reconstitute them. This seems to require an act of "criterionless" or existential choice. But it is widely recognized that any choice must be made on the basis of some normative commitments: views about what is valuable or worthwhile, and the considerations that count as reasons. Such convictions are aspects of a conception of the good, not independent of them. This sort of argument convinces many

51. This also seems to be what Callan has in mind when he characterizes the autonomous person this way: "...[He] learns...seriously to examine the basic commitments of his life. These are no longer taken for granted as the virtual fate of someone born and reared in particular circumstances; he now sees them as revisable elements within one way of life among others, to be embraced or set aside according to the verdict of his own reason" (Callan 1997, p.52). Cf. (MacMullen 2007, pp.81-86), (Clayton 2006, pp.11-13), (Brighouse 2006, p.14), (Macedo 2003, p.237), and (Nussbaum 1997), chapters 1-2.

that the idea of a neutral standpoint from which we could choose among worldviews is conceptually confused.<sup>52</sup>

Moreover, supposing we could specify the relevant standpoint of neutrality, it seems unlikely that anyone has an interest in occupying it, much less an interest so important that we should override the value of civic friendship to protect it. At the very least the standpoint in question would need to be carefully distinguished from normative uncertainty, skepticism or confusion, since it is not plausible to suppose that children have an enforceable right to any of these. The strong reading under consideration makes it unclear how to draw these distinctions. None of these points are novel, and they explain why friends of autonomy tend to distance themselves from identifying it with criterionless choice.

Many do so by suggesting that, though all of our commitments should be viewed as up for revision, they should not all be thrown into question at once. MacMullen tells us that, "The key to autonomous reflection is that one can always temporarily treat as fixed one's allegiance to a particular belief or value while questioning others" (MacMullen 2007, pp.82-83). But if it were really meant to apply to all of our commitments this would still be too strong. Consider again the egalitarian rejection of racism. An adult whose education has rendered him incapable of regarding revision of this commitment as a real possibility is, to my mind, to that extent a well-educated adult. I see no appeal in an education that would encourage children to achieve a degree of critical distance from, seriously question, or entertain as realistic the possibility of abandoning this particular commitment.

Such wholehearted normative commitment is compatible with autonomy as thoughtfulness. It is compatible with encouraging students to consider such questions as *What does equality really mean? What does honoring it demand of us? What might be our reasons for affirming it?* Asking these questions does not require any sort of doubt or ambivalence about the authority of the commitment in question; it is perfectly compatible with finding abandoning that commitment unthinkable. Notably then, model (2) can welcome and encourage such questions.

So far I have argued that if autonomy means merely being thoughtful about one's value commitments, and informed about the presence and political status of normative disagreement, then it is not in tension with model (2). Moreover, it is hard to articulate a further value the term could name in this context. Even advocates deny that autonomy entails the absence of any non-rational determinates of one's commit-

52. E.g., (MacMullen 2007, p.76).



ments and actions, or the occupation of a neutral standpoint from which one could choose all of one's values. And while it might seem initially plausible that it requires something like the possibility of revising one's commitments, on reflection it seems too strong to claim that this is generally of value. It is normal, and commendable, to hold that there are at least some value commitments that we do not want to treat, or encourage others to treat, this way. So we have not found a conception of autonomy that is both in tension with model (2) and plausibly among the most important interests of children.

But one might still ask whether there is some *range* of particular commitments the content of which it is inappropriate to instill—or aim to instill—in a way that makes them unrevisable. The answer is that of course there is some such range, but reasonable people disagree over its boundaries. We might put this point in the following, familiar sounding, way: *which normative matters should be unrevisable is itself an important and difficult normative question, any answer to which will be controversial among reasonable citizens.*<sup>53</sup>

Someone might then still hold that the state should enforce a particular view on which commitments children should be educated to regard as revisable. But, if the ar-

53. It is tempting to think that political liberals can circumvent this disagreement by appeal to the idea of the reasonable. As we've seen political liberalism rests on a distinction between reasonable and unreasonable disagreements, and the assertion that the norms for dealing with these differ. Some theorists try to employ these same categories to arrive at a determinate view about the commitments on which education should encourage critical distance. They hold that children are entitled to an education that allows them to gain distance on just those commitments over which there is reasonable disagreement. This apparently allows one to agree that aiming to inculcate an effectively unrevisable commitment to racial egalitarianism does not violate a child's autonomy, because disagreement about this value is unreasonable. But, on this view, aiming to nurture the same sort of commitment to, say, a certain religious outlook does violate autonomy, because religious disagreement falls within the scope of the reasonable.

This argument relies on an important confusion. The distinction between the reasonable and the unreasonable that figures in political liberalism is tailored to define the line between those views that the state has reason to treat as one among many equally good ways to live and those that it does not. It is a very different matter to suggest that we should encourage individuals, including our children, to regard these same ways of life as live options, real possibilities for themselves. To think this is not to transcend the reasonable disagreement about which normative commitments should be unrevisable, but to take a substantive and controversial stand on this disagreement. Moreover, it is not a substantive stand that anyone should find attractive. If Rawls' grass counter seeks cooperation in political relationships, we should treat him as reasonable for political purposes. But this should not commit us to encouraging anyone to regard emulating him as a real possibility for their own lives. The interpretation of political liberalism that I defend in the first section makes the mistake especially easy to see. On my reading, the view requires respect for, in the first instance, people, not their views. It is our fellow citizens whom we identify as reasonable, or not, depending on their willingness to seek cooperative relationships with us. The respect due to particular normative outlooks is strictly derivative from the fact that respecting our fellow citizens is a matter of treating them in ways that they can understand as justified, and this in turn requires not enacting policies that could be justified only if their value commitments were false or bad. But this yields only a view about what to treat as reasonable in politics, not further views about which value commitments we can sensibly encourage people to treat as up for review.



gument here is correct, this cannot be defended by appeal to an interest in autonomy independent of further controversial normative commitments. It will need to depend instead on appeal to children's interests in being taught the normative truth, including the truth about which normative matters to treat as revisable, and a substantive position about what that truth is. That is, it will depend on precisely the kind of normative claims that political liberals hope to avoid in politics. Even supposing that excellent normative direction is indeed an essential interest of children, one ought to worry about assigning this task to the state. To do so is, at any rate, to abandon the political liberal hope for cooperation among reasonable citizens.

## CONCLUSION

I've argued that no single educational approach can be justified to all, and that there is good reason to think that granting parents greater discretion could be so justified. But I've not made any particular policy recommendations for how to apply this insight in practice. Ad hoc arrangements, like the one that the *Mozert* parents propose, state sponsored and regulated home schooling, vouchers or a voucher like system, increased charter schools with particular stated worldviews, and some combination of these are all among the possibilities. There are simply too many empirical and logistical issues surrounding each of these for me to make any credible assessment. I claim only that any consideration of such policies must take the case made here in to account.

It is impossible to raise a child without taking substantive stands on controversial matters of value. Someone must make these choices, and political liberals have important reasons not to assign them to the state. Parents have a very deep interest making these choices, and I have argued that we have no compelling reasons not to trust fellow reasonable citizens to do so. Because they endorse the value of civic friendship such citizens will aim to pass this shared value on to their children, in the context of a particular wider and richer ethical view about which there is disagreement. In so doing citizens both enact and aim to reproduce the overlapping consensus of which Rawls speaks.

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# Motives and Markets in Health Care

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## ABSTRACT

The truth about health care policy lies between two exaggerated views: a market view in which individuals purchase their own health care from profit maximizing health-care firms and a control view in which costs are controlled by regulations limiting which treatments health insurance will pay for. This essay suggests a way to avoid on the one hand the suffering, unfairness, and abandonment of solidarity entailed by the market view and, on the other hand, to diminish the inflexibility and inefficiency of the control view. It suggests that the way to mitigate these problems is to recognize the malleability of motivation and the range of factors, in addition to financial incentives, that may influence the behavior of patients and especially physicians.



A health-care system aims to promote the health of members of its target population and thereby to contribute to their opportunities, autonomy, and well-being. Because resources are limited and have other valuable uses, the satisfaction of health needs must be efficient, and the health-care system must also act fairly and in a way that respects the individuals it serves, often at times when they are extremely vulnerable. How should citizens arrange the details of the health care system so as to accomplish all this? Health-care and health-insurance administrators, caregivers, and members of the population at large must be motivated to undertake actions that promote autonomy, fairness, efficiency, and, of course, health.

In this paper I am going to consider the problems that arise in determining what choices should be open to patients and health-care providers (more specifically physicians) and how they should be motivated to make the best choices. These questions are interdependent. If patients and providers cannot be motivated to make good choices, then there is reason not to give them choices. In this essay, I shall focus

exclusively on incentives for patients and health-care providers (mainly doctors). I shall not consider questions concerning incentives for those who are neither patients nor doctors or incentives for purchasing insurance, and I shall have only a little bit to say about motivating people to choose healthy activities or habits. Nor shall I have anything to say about nudges (Thaler and Sunstein 2008; Schwartz 2011)—that is, structuring choice situations to take advantage of flaws in human deliberation. My focus is on rational decision-making by doctors and patients concerning specifically medical treatment and prevention of disease and disability and on the institutional design that determines what decisions they can make, what incentives influence their decision-making, and what determines their responsiveness to incentives.<sup>1</sup>

The first three sections in this essay examine two views concerning how to organize a health care system, which I call respectively, “the control view” and “the market view.” The market and control views are extreme positions, neither of which can be implemented without some admixture of the other. Rather than arguing for a specific compromise, I shall in sections 4 and 5 sketch a “third way.”

The market view assimilates patients to consumers and physicians to profit-seeking firms or employees in such firms, and it relies on economic incentives to allocate health care and to control costs. Libertarians espouse this view, and it is implicit in some Republican-Party proposals concerning health-care reform. The control view, in contrast, allocates resources by relying on constraints on physician and patient choices, mainly in the form of insurance provisions and best-practice guidelines. No actual health-care system entirely excludes individual choice, and none leaves everything to the market. The fundamental contrast between the two views lies in the favored method of allocating health-care resources. The market view relies on physician and patient choices subject respectively to profit seeking and budget constraints, while the control view limits costs via insurance regulations directing doctors and patients to make efficient health-care choices. As I shall argue, factors other than market choices or health-care regulations are and should be at work.

1. Unlike Ruth Grant, who uses the term “incentive” narrowly “to mean an extrinsic benefit deliberately designed to alter behavior,” I shall use the term “incentive” in a broad sense that includes any “of the factors that influence our choices or motivate action” (Grant 2012, pp. 38-9).

## THE CONTROL VIEW

Many health care needs are difficult to predict and expensive to satisfy. Centralized provision of health care that buffers individuals from these risks is accordingly an attractive policy, which is realized in most affluent countries. But public spirit will not induce patients to economize, and if health care is free there is little else. If health care is subsidized but not free, individuals will have a self-interested as well as a public-spirited reason to economize, though as subsidies increase, an individual's financial stake in economizing diminishes. Individuals who are ill and who seek medical care are mainly concerned about the probable outcomes and burdens of alternative treatments. With respect to the outcome, an individual cares about what health states the treatment is expected to lead to and the consequences of those health states for the individual's opportunities, autonomy, and well-being, and for family and friends. With respect to the burdens of treatment, the individual cares about the discomfort, disability, and distress treatment involves, its expense, and its consequences for family and friends. From the patient's perspective, the social costs of treatment alternatives and the burdens a patient places on the health-care system and the public purse are usually of little direct concern, though there is no reason to suppose that individuals have no concern at all about the social burden they may be imposing. Patients most of all want the best treatment, taking into account the parameters sketched above; and to get that treatment they want health-care providers who are motivated to serve their interests and who are competent to do so.

Because health care decisions are complicated, patients need expert advice, and because so many different factors bear on the interests of patients, they need doctors who are willing and able to get to know their aspirations, preferences and circumstances well and who will provide them with relevant and accurate information and counseling about the alternatives and their consequences.<sup>2</sup> The ideal physician from the patient's perspective is something like a caring, patient and selfless big sister, who is also a master of the relevant medical science. Which feasible institutions will

2. There are, of course, alternative institutional arrangements in which doctors have more limited roles, but I shall have nothing to say about them in this paper.



generate health care providers that approximate this ideal?<sup>3</sup> Licensing, regulation, standards, remuneration, and sanctions of all sorts shape the behavior of physicians. But a great deal that goes on in the doctor's office is beyond the reach of regulation.

If doctors prioritize the interests of their patients, then it is hard for them to control costs. The control view accordingly assigns the responsibility for controlling health-care costs to those who regulate the health-care system, including, crucially, those who specify health-insurance coverage. They set the rules determining which treatments and services caregivers can provide. Treatment choices that would use too many resources are ruled out, typically by requiring patients to pay for them out of pocket, though some treatments can be excluded by law or by recommendations of professional groups. For example, the British National Health Service will not pay for drugs that are not sufficiently cost-effective. The U.S. is (in theory) an exception with its untenable commitment to provide every effective treatment, regardless of cost, to the old and the poor.

With sufficient constraints concerning general policies and health-insurance reimbursements, patients and caregivers can be freed from any responsibility for economizing. Within the constraints, patients can think about their health care exclusively from a personal perspective, and doctors can (in principle) be caring, patient and selfless experts devoted entirely to the interests of their patients.

This strategy of universal coverage has considerable advantages. It simplifies the decisions that patients and caregivers have to make, and in principle it provides the same health care to everyone except the few who are wealthy enough to pay out of pocket for uncovered treatments. It enhances the confidence that patients can place in their doctors. It is a wonderful thing to have confidence that your doctor will do everything that he or she can for your welfare—provided, of course, that this confidence is justified.

On the other hand, this method of economizing restricts the range of options available to physicians and patients. General rules about which treatments can be provided are blunt instruments. Individuals differ in their conditions, circumstances,

3. This view may be old fashioned and from the perspective of the new industrialists of medical care (Gawande 2012), it may appear outdated. In their view, the future of medical care lies in diagnostic and therapeutic technology delivered by teams of anonymous experts. For example, at a large recent gathering of a chapter of Health Occupations Students of America, a hospital administrator gave a keynote address listing ten reasons for seeking a career in health services. Two thirds of the reasons consisted of factors such as high salaries, job security, portability, and flexibility, social status and so forth. Only at the end—almost as an afterthought—did the speaker mention that health care workers help to make people healthier, and there was no mention at all of the satisfactions and challenges attached to comforting people in need, allaying their anxieties, and helping them to come to terms with changes in their lives or their approaching deaths.

interests, and responses to treatments. Any practicable scheme of resource allocation that restricts the choices of doctors and patients will be insensitive to many relevant differences among patients. For example, a costly test whose results would be of little importance to one patient may relieve an overwhelming anxiety in another. Insurance company or government regulations preempt decisions by patients and recommendations by physicians, and these regulations will inevitably be faulty.

### THE MARKET VIEW STATED AND REFINED

These drawbacks to employing centralized control to determine practices and control costs motivate the market view. According to the market view, individuals, with the advice of health-care providers, decide on their own treatment, subject to the constraints imposed by their budgets. Since individuals have to bear the costs of their decisions, no more will be spent on health care than the members of the population want to spend, and their choices control costs without any centralized rationing. Given their budgets, individuals ration for themselves: Just as individuals decide on what to eat and on how much of their budgets to spend on food, so individuals should decide on what health care to purchase.

Any realistic formulation of the market view requires several important qualifications. Health care, unlike commodities such as DVDs or services such as hair styling cannot be left entirely to the market. There are four reasons why. These do *not* imply that the market view is untenable. They show instead that some qualifications and some refinements are needed. The first difference between health care and hair styling is that health care, like food, has become a basic need. Just as most people are not prepared to abandon their fellow citizens to starve, so they are not prepared to let them die for lack of simple medical treatment. Defenders of the market view consequently call for subsidies or vouchers for those who cannot otherwise afford to meet their needs.

Second, there are health-related public goods, such as the monitoring of potential epidemics, that cannot be left to the market. The development of medical knowledge is also an important public good.

A third well-known complication with health-care markets lies in the asymmetries of information concerning appropriate care in the doctor-patient relationship. The protections that markets provide for customers at the supermarket or mall, which consist in the threat that customers will take their business elsewhere, are in-

adequate in medical markets, which expose individuals to risks of exploitation and grave harm. Licensing and regulation of health-care providers may be needed, though some defenders of the market view may argue that the gravity of the threats will call into existence private agencies to address these threats by gathering (and selling) information concerning the quality of health-care providers.

The fourth distinctive feature of health care markets derives from the fact that, unlike the need for food or shelter or less pressing goods, individuals often find themselves with unanticipated expensive and compelling health-care needs. Even if it were possible to save for such contingencies, it would be inefficient if people had to do so. Any tenable version of the market view envisions that individuals who cannot afford to self-insure—a large majority of the population—will purchase health insurance.

The fact that a large portion of health care must be paid via insurance brings with it two difficult problems, which, to varying extents, affect insurance generally. The first of these is adverse selection: Since individuals know more about their health than insurance companies do, insurance policies will be a better deal for those with private information that their need for health care is greater than average. For example, insurance plans covering pregnancy and childbirth will attract women who are pregnant or who plan on becoming pregnant. Those buying insurance will thus tend to incur higher medical expenses than the average person, and premiums must be high enough to cover these costs. Higher premiums will in turn discourage healthier people from purchasing insurance, shrinking the pool of the insured and forcing still higher premiums. Unless insurance companies counteract this adverse selection, health insurance markets collapse. Counteracting adverse selection requires that private insurance policies for individuals exclude those with pre-existing conditions and refuse to cover conditions that people can choose, such as pregnancy. But our collective benevolence precludes abandoning those without insurance. Private health insurance must thus be supplemented with some sort of public provision for those who cannot insure themselves.

Health insurance also creates problems of moral hazard. Once insurance is in place, people face weaker incentives to economize on health care and, to a lesser extent, to care for themselves. Markets for health care and health insurance can counteract moral hazard problems by deductibles, co-pays, or coverage limits. Regardless of the effectiveness of these measures, there are limits both to the amount that individuals are willing to spend for health insurance and to the amount of taxes they

are willing to pay to provide government subsidies for the poor or for government subsidized insurance for those with pre-existing conditions. So there will be limits on the amount that is spent on health care. Defenders of the market view can conclude that, provided that government does not gum up the works, cost containment is automatic.

The market view models patients as consumers, with a preference ranking over different bundles of commodities and services and an overall budget constraint, and it models health-care providers as firms that seek to maximize their net financial returns or as employees of such firms. Although conceiving of patients as consumers imposes a particular structure on their wants, it is compatible with almost the whole range of things that patients are concerned about. Regarding providers as profit-maximizing firms or as employees of such firms, on the other hand, drastically limits the factors that influence their behavior. It is a misleading idealization.

Even with (a) vouchers for those who are poor (in order to address the fact that health care is a basic need), (b) licensing and regulation (to mitigate asymmetries in information concerning treatments), (c) provisions for public health and medical research, and (d) health insurance supplemented with aid for those who are excluded from the insurance market, leaving health care to the market remains problematic. Egalitarians will be repelled by the deep inequalities that result, and the actual inefficiency of private health care insurance in the United States compared to systems of public health insurance or provision in other wealthy countries should make one suspicious of the theoretical arguments in defense of the efficiency of markets.

#### DEFENSE OF A REFINED MARKET VIEW

Yet, as we have seen, planning and control have serious problems, too. Insurance regulations concerning what treatments will or will not be paid for are bound to be inflexible and insensitive to the differences in individual needs and preferences. The fact that markets protect individual choice makes them appealing. Provided that government policies address the pressing problems of fairness caused by inequalities in wealth and adverse selection within the health-insurance market, the market view might appear to be the better alternative for controlling costs, because it relies on individual choice rather than bureaucratic fiat to allocate resources.

Consider, for example, routine mammograms to screen for breast cancer and routine PSA tests for prostate cancer. The tests are individually inexpensive, but

they are used so widely that they are cumulatively costly (and they lead to expensive follow-up tests and treatments). Their benefits are variable and dubious. Moreover, their use and hence their costs can be anticipated. Whether or not these tests are advisable, unlike an x-ray for someone who may have broken a bone, routine mammograms and PSA tests are not called for by an unanticipated condition. They are as expected as a regular oil change in one's car, for which no one buys insurance.

Whether it is advisable for particular women to have routine mammograms or whether it is sensible for particular men to have routine PSA tests depends on their medical history and how much weight they place on lowering the risk of death as compared to incurring the risks and side-effects of diagnostic procedures and treatment. The tests are inexpensive enough that individuals can purchase them for themselves, but the interference of government and interest groups in the form of "best-practice" guidelines and insurance rules encourage choices that may be inappropriate for many individuals.

Permitting individuals to decide for themselves (in consultation with their doctors) has the potential of economizing more flexibly and with fewer limitations on individual freedom. Moreover, defenders of the market view argue that if individuals paid for these tests out of pocket, competition would drive their costs down.<sup>4</sup> If one makes financial costs irrelevant to individual decision making by requiring that insurance policies cover the tests—as states or the Federal Government do—individuals have no financial incentive to economize, and the commitment to reimburse individuals for these tests encourages individuals to have them. Requiring coverage for these tests may also persuade patients that these tests are beneficial: Why else would reimbursement be required?

Government is not the only culprit. With respect to the PSA test, the American Cancer Society has issued the following statement:

*The American Cancer Society does not support routine testing for prostate cancer*

4. Although mammograms can be had for \$75, charges in some hospitals are nearly \$900. Defenders of the market view argue that if individuals paid for these tests out of pocket, these disparities would diminish and the average cost would be under \$100. See <http://clearhealthcosts.com/2011/08/25/the-cost-of-a-mammogram-a-boston-new-york-rivalry/> (accessed July 23, 2012). The cost of PSA tests varies six-fold from \$22 to more than \$120. See <http://health.costhelper.com/psa-testing.html> (accessed July 23, 2012). Another source (<http://www.joepaduda.com/archives/002181.html>—accessed July 23, 2012) puts the cost at \$70-\$200 (plus the cost of an office visit). Home PSA testing kits are available on the web for \$30. Since insurance companies have strong incentives to limit reimbursement rates and both the knowledge and the capacity to do so, it is by no means obvious that market prices for these tests would be lower. Direct payment by individuals does, however, avoid the administrative overhead required by third-party payment.

*at this time because we believe proper pretest guidance and education is necessary. Doctors and other clinicians should provide information on the potential risks and benefits of PSA testing to appropriate patients, allowing them to make an informed decision on testing.*<sup>5</sup>

Yet the American Cancer Society also supports requiring insurance policies to cover the test on the grounds that, “Prostate cancer screening should not be prevented because of the reimbursement limitations of health insurance plans.” Unless the American Cancer Society maintains that no medical procedure that is potentially beneficial to anyone should be precluded by reimbursement limits, some explanation is needed for why PSA tests are especially beneficial. Moreover, almost every man in the U.S. can afford a \$30 PSA test, and special provision can be made for the few who are so poor that \$30 is a significant barrier to obtaining the test. For those who are not indigent, if the test is not worth \$30 to them and there is no compelling reason of social policy to provide the test, why should insurance policies (and hence, ultimately, everyone purchasing insurance) be required to pay? With a stronger commitment to markets, the meddling of non-governmental organizations such as American Cancer Society would be less consequential.

The following table helps clarify what forms of payment are most *efficient* with respect to which procedures:

#### EFFICIENT FINANCING

	<i>Low cost</i>	<i>High cost</i>
<i>Expected procedures</i>	Direct payment	Saving/Borrowing/ Subsidies
<i>Unexpected procedures</i>	Direct payment	Insurance/Subsidies

If costs are low, it is efficient for people to self-insure and save the administrative insurance overhead. If costs are high but can be anticipated, insurance is less efficient than saving or borrowing, again because of overhead costs. Concerns about fairness

5. <http://www.cancer.org/Cancer/ProstateCancer/MoreInformation/ProstateCancerEarlyDetection/prostate-cancer-early-detection-state-screening-coverage-efforts> (accessed July 19, 2012).



call for subsidies for those who cannot afford the procedures. Insurance is the most efficient way to finance health care only when costs are high and unexpected. Within a market model, the only role for government (apart from prosecuting fraud) is to provide the subsidies or vouchers demanded by charitable concern for those who are ill and cannot pay and by fairness concerns. Left to themselves, people will not purchase insurance when they can more efficiently self-insure, and health care will be more efficient.

There are two complications. First, low cost expenditures can add up, and when there are many low-cost expenditures, it is misleading to place them in the first column in the table above. What is relevant is not the cost of individual procedures or treatments but total costs to patients. Second, insurance is also a means by which society can pool risks and influence the distribution of health care. Health insurance can help insulate the distribution of health care from inequalities in wealth. In addition, in the absence of insurance, those in bad health, whether this is anticipated or not, would face higher expenses than those in good health; and as a matter of justice and social solidarity, we may not want those who are already unfortunate with respect to their health also to suffer financially. One way to mitigate the financial consequences of poor health is, of course, insurance. Efficiency is not the only consideration, and insurance for anticipated high cost procedures may be called for.

It is possible to control costs entirely by government regulations that specify what services and treatments doctors can provide, just as it is possible to run an economy by government fiat. But central control generally does not work very well. It limits freedom and creates inefficiencies. Market economies work much better than centrally controlled economies, because markets roughly align individual interests with social benefit and make far better use of information. Yet the “curses” of our benevolence, our social solidarity, and our concerns with distributive justice place such serious constraints on market allocation of health care, that the case for markets sketched in this section is far from decisive.

#### SUPERSEDING THE MARKET-CONTROL DICHOTOMY: MOTIVATING DOCTORS

Given the asymmetries in information concerning appropriate treatment, the stakes in the decisions, and the emergency settings in which decisions must often be taken, what maximizes doctors’ incomes will often differ from what serves the inter-

ests of patients. On the other side of the relationship, in a market system, patients facing difficult medical decisions are forced to consider costs. This complicates the decision making of patients (and the advising of physicians, particularly when there are multiple insurance plans with different coverage limits). Moreover, charging patients introduces morally troubling inequalities. If treatment were free and the remuneration of physicians did not depend on which treatments they provide, most of the troubling inequalities in treatment could be avoided, medical decision making would be simplified, and it might be possible to align the interests of patients and physicians more closely. But costs must be controlled. Are we stuck with relying on markets or control or on some combination of the two?

Any way to mitigate the need for control must motivate doctors and patients to make choices that benefit patients *and* control costs. If these motivating factors are financial costs and rewards, then we're back to the market view. What makes possible a third way is the recognition that *there are other incentives in addition to financial incentives*. This third way will not eschew all control and all financial incentives, but it will rely heavily on non-financial incentives that are ignored by the market and control views. Let us consider, in very general terms, the factors that can push doctors and patients to make choices that efficiently promote health, welfare, autonomy and fairness.

Let us begin by considering the incentives that influence the choices doctors make. The next section considers what motivates patients. Julian Legrand (2006) distinguishes two exaggeratedly simple characterizations of the motivations of care providers. Either they are "knaves," who are motivated by self-interest, or "knights" who are altruistic. Economists typically model everyone as knaves, concerned exclusively with their own interests, and one of the drawbacks of economics is the extent to which it legitimizes and encourages the motivations that it pretends are already typical (Frank, Gilovich and Regan 1993). The market view usually follows economists in taking both patients and providers to be self-interested. Although Legrand argues persuasively that this crude distinction between knights and knaves clarifies disputes between social-democratic and neo-liberal policy makers, this distinction is (as Legrand recognizes) not particularly useful in understanding what motivates health-care providers. There are four reasons:

First, although Legrand distinguishes "knights" from "knaves," the important distinction is really between knavish and knightly *actions*. A cut-throat bond trader

may be a pussycat at home with the kids. Shaping choices in particular contexts need not require shaping characters.

Second, many different motivations count as self-interested, and many different motivations count as altruistic. Dr. Smith, who is consumed by vanity and cares about little besides the admiration of patients and colleagues, is as self-interested as Dr. Jones, who cares only about her annual income; but Smith and Jones are unlikely to treat their patients in the same way. If Smith succeeds in his objective of securing the admiration of his patients, he will be regarded as altruistic (as well as skilled), and his treatment of his patients resembles the treatment that a genuinely altruistic doctor would provide. Jones might simulate a deep concern for her patients as a way to boost her fees, but she is likely to appear more self-interested than Smith. Conversely both doctors who are exclusively concerned with their own patients' health and those who are also concerned about conserving resources for other patients may be "knights." But their objectives and behavior differ.

Third, many important motivational factors are neither self-interested nor altruistic. Consider, for example, trustworthiness or reciprocal altruism. Whether a doctor keeps her promises is a separate question from whether she is self-interested or altruistic.

Finally, motivations are mixed. Many things motivate doctors. Some of these are self-interested, others altruistic, and still others neither self-interested nor altruistic.

Although I do not have sociological evidence to support the following claim, it is not controversial to maintain that the following four considerations are among the factors that motivate doctors: (1) their patient's interests, (2) devotion to public service (including the promotion of medical knowledge), (3) self-interest, and (4) legal and normative constraints. What constitutes the self-interest of doctors varies, but the main self-interested considerations include remuneration, job satisfaction, status, colleagues' respect, and avoiding malpractice suits. I shall not attempt to rank the considerations, because their relative importance is bound to vary among doctors. Some doctors care more about their patients or about the good opinion of others than other doctors. In any case, it is a serious mistake to assume that doctors are motivated only by their pecuniary interests, both because it is false and because it legitimizes and encourages such motivation.

If one wants to design health-care institutions so as to promote health in a way that is fair, flexible, respects patients' autonomy, and economizes on resources, the designer needs to know what is wanted of doctors. One view, which exempts doctors

from any responsibility to conserve resources, holds that they should provide treatments that are as responsive as possible to the interests of the patients, where the patients themselves, if competent, largely define what is in their interests. But given the large and unavoidable asymmetries in medical knowledge, doctors should not simply sell the permitted services that their patients want to buy. They should also help the patient define what constitute the best outcomes, the least burdensome treatments, and the justifiable claims on insurance benefits (whether public or private). In many cases, patients effectively delegate the choice of treatments to their physicians. In emergencies, there is no realistic alternative, and in many non-emergency decisions, the factors are too complicated for patients to make up their own minds. Rather than offering a menu of available treatments and then carrying out the one the patient independently selects, doctors should use their technical expertise and their detailed knowledge of the particular patient to rank the items on the menu. Doctors must usually defer to the patient's wishes (or at least to their refusals), but within this limit, they exert a good deal of influence.

To help with the problems of allocating scarce health-care resources, doctors need to economize on the cost of treatments they recommend. When there is no difference in the expected benefit to the patient, the doctor should employ treatments that use fewer resources, and where benefits are slight and costs are large, doctors should recommend the less expensive alternative. However, as is obvious, the obligation to provide the best treatment to patients may conflict with an obligation to conserve resources. When more expensive treatments are better for patients, devotion to the best interest of the patient pushes one way, while economizing on the use of resources pushes the other way. Trading off efficacy, cost, and burden to the patient is difficult, and unless the best interest of the individual patient is given absolute priority, there is bound to be conflict. Different institutional designs will mitigate or aggravate this conflict. The challenge is to design a set of institutions that motivates doctors to make sensible trade-offs between their patient's interests, which are paramount, and controlling costs.

Let us begin by considering incentives that can motivate doctors simply to serve their patient's interests. The design of institutions that nurture the needed skills and motivations must begin with the four general motives that physicians already have, even though by means of training physicians and selecting medical students, designers of the health care system can influence the mix of motives they build on. Some of these motivations already push in the right direction and only need to

be supported and strengthened. First, doctors often care about their patients, and that care affects their behavior. Some of their patients are friends and neighbors, and even when they are strangers, doctors recognize the grave responsibilities of providing medical care. For their patients' sake, doctors care about whether treatments are successful and not too burdensome. This intrinsic altruistic concern is grounded in sympathy and benevolence as well as in a commitment to the duties of a physician. It is strengthened and made more effective by closer personal ties between the physician and the patient. A system such as the British National Health Service that encourages (or used to encourage) long-term relationships between patients and general practitioners helps to develop a caring relationship and enables doctors to get to know patients better and make better judgments about what is in their patients' interests.<sup>6</sup> In contrast, a system like that at the University of Wisconsin, where I teach, that provides a financial inducement for changing from one HMO to another as their premiums differ, disrupts doctor-patient relations. Similarly, the change from a system whereby one's doctor directs one's hospital care to a system of hospitalists weakens the link between physician and patient and hence the intrinsic incentives motivating doctors to promote their patients' interests. Although probably more expert with respect to some medical issues, the hospitalist will typically never have met the patient before and will be unlikely to have the same personal relationship to patient or the detailed knowledge that comes with it.

Other ways in which the concerns of physicians for their patients can be strengthened lie in selecting the right individuals to become doctors and nurturing a caring *culture* among doctors. This entails on the one hand encouraging relatively selfless and caring individuals to become physicians.<sup>7</sup> Higher incomes may attract greater talents, but at the same time, they may also attract students who are more interested in their future incomes than in caring for others. Lower incomes, especially if they result from spending more time with patients, might secure better doctors. Selection to medical school might also be made to depend more heavily on character judgments, but I am skeptical the ability of admissions committees to assess applicants' characters, which will in any case, adapt to the culture and norms of the profession.

Establishing and supporting social norms that encourage doctors to become

6. Personal ties are also encouraged by small practices, but these are burdensome for physicians and, as the technology of primary care expands, they are also uneconomical.

7. See footnote 4 above.

involved with their patients is crucial to this vision of medicine. Doctors need to be rewarded rather than punished for spending enough time with their patients to get to know their needs and concerns—despite the fact that from a short-run perspective, longer visits may appear to waste resources. Office schedules and technology can be helpful or harmful. For example, the shift to computerized records, which has obvious advantages, may result in greater physician engagement with the computer than with the patient.

With respect to securing physicians' commitment to their patients and enhancing their knowledge of what is truly in their patient's interests, beneficent concern for their patients is the best motivator, because it does not rely on the contingent and imperfect coincidence between the other motives and the desired outcome. But it is not a perfect motivator, and too much personal involvement can be dangerous. As the AMA stated in the mid-19th century, "the natural anxiety and solicitude which he [the doctor] experiences at the sickness of a wife, a child, or anyone who by the ties of consanguinity is rendered peculiarly dear to him, tend to obscure his judgment and produce timidity and irresolution in his practice."<sup>8</sup> I doubt, however, that too much beneficence is likely to be a frequent problem. Even with the best institutions, beneficence is limited; and other motivations come into play.

If doctors are to play a role in cost containment, they cannot be concerned exclusively about their own patients. Legal regulation, best-practice guidelines, and social sanctions are ways in which doctors can be motivated to economize while at the same time serving as additional ways that doctors can be motivated to take to heart the interests of their patients. The social expectations of doctors coupled with the status they enjoy create incentives to provide good and socially responsible care even when doctors have no benevolent concern for their patients and no generalized altruistic concern about cost containment or population health. These social expectations are enforced, as they should be, by formal legal and social sanctions. Carelessness and neglect are punished with malpractice suits, revocations of hospital

8. Quoted in Douglas 2009. When the close ties between doctor and patient are reciprocal, which is likely if they exist at all, the autonomy and informed consent of the patient may also be threatened.



privileges, and state disciplinary actions. There are also informal sanctions, which may be severe.<sup>9</sup> Losing the respect of one's colleagues is a serious penalty.

Normative constraints backed by legal or social sanctions, unlike benevolent concern for patients, are not always a good thing. They can lead to behavior that is harmful to patients and wasteful of resources. Malpractice suits enforce norms of acceptable treatment, but at a cost of significant resources devoted to litigation and to defensive medicine. Replacing malpractice suits with an alternative way of compensating patients who have been harmed would probably save resources, but it might also weaken incentives for good treatment. Designing a set of social norms and sanctions that will direct physicians to serve their patients and to conserve resources is a complicated matter, involving sophisticated social modeling, experimentation and, especially, a realistic appreciation of what motivates doctors.

Next we come to financial incentives, which are obviously of great importance. If doctors' incomes rise with more tests and procedures, patients are likely to be subjected to more tests and procedures.<sup>10</sup> If physicians have to bear some of the cost of the tests and procedures they prescribe, patients will be subjected to fewer. It might seem that the ideal compensation scheme would break any connection between remuneration and the choice of treatments and procedures. But the question is subtle, because testing and treatment have non-monetary costs and benefits. One way to counteract the failure to economize, which is an inevitable consequence of motivating doctors to serve their patients and removing costs constraints, is to give doctors a financial stake in performing fewer tests or a limited budget that can be used to purchase treatments for their patients (Hausman and Legrand 1999). Getting the financial incentives right is very hard. Financial incentives like those that are common in the U.S., which give doctors a stake in more expensive treatment, are costly and are among the factors that render the U.S. health care system so wasteful (Gawande 2009). On the other hand,

9. For example, a front-page article in the New York Times reports an investigation by Medicare of a suspiciously large number of heart catheterizations by doctors at HCA hospitals in Florida. ("Hospital Chain Inquiry Cited Unnecessary Cardiac Work" By Reed Abelson and Julie Creswell, August 6, 2012). The unfavorable publicity (with the doctors' names and pictures included) and the potential legal proceedings provide a powerful (though apparently not always decisive) incentive against such behavior.

10. See for example, Atul Gawande, "The Cost Conundrum: What a Texas town can teach us about health care." *The New Yorker*, June 1, 2009. [http://www.newyorker.com/reporting/2009/06/01/090601fa\\_fact\\_gawande](http://www.newyorker.com/reporting/2009/06/01/090601fa_fact_gawande)

financial incentives to do less, while lowering costs, could be harmful to patients both directly and by undermining trust in the doctor's motivations.<sup>11</sup>

That brings us to the last of the motivating factors, which I described vaguely as devotion to public service. I have in mind the fact that medicine is a calling not just to help those specific individuals who happen to be one's patients but to relieve the burdens of disease generally, insofar as it lies within the capacities of a single physician to do so. The commitment to public service includes the obligation to help people in emergencies, regardless of whose patients they may be, to volunteer in clinics to treat strangers, to share observations and insights that may help other physicians to improve their practice, and to participate in studies and experiments designed to improve medical knowledge. The strength of these motives varies widely, and they depend heavily on institutional details. A medical system that requires all doctors to carry out extensive public service early in their careers (as is the case in South Africa), may discourage more self-interested individuals from entering the field and help to make salient general health needs. A medical system that leads medical students to incur large debts, in contrast, is likely to lead to a greater concern with earnings. The extent to which doctors are committed to public service affects public attitudes, which in turn strengthen or undermine the commitment.

The commitment to public service is one basis upon which to motivate doctors to economize in the use of health-related resources. Doctors can help to control health care costs, and in some regards, relying on doctors is preferable to relying on insurance regulations. Doctors have much better information about the needs of individual patients and they can be more flexible. But it is difficult to construct institutions in which doctors are able and motivated to make responsible compromises between the interests of specific patients and the interests of some wider population

#### MOTIVATING PATIENTS TO MAKE A PUBLIC HEALTH CARE SYSTEM EFFICIENT

It is, I believe, impossible to rely on patients for any significant cost control, while at the same time meeting the demands of benevolence and fairness. Conservatives and defenders of the market model disagree. They believe that health-care costs can and should be controlled by the choices medical consumers make among insurance

11. The evidence seems to be that shifting from fee-for-service payments to capitation fees is not in fact harmful to patients. See for example Cuffel et al. 2002 and Glazier et al. 2009.

policies and among services paid for out of pocket. For example, eliminating reimbursements for expected inexpensive procedures such as mammograms or PSA tests and requiring that patients pay more out of pocket for their health care leads people to economize and reduces costs. But this *a priori* claim is apparently refuted by the apparently greater efficiency of state-run systems. It seems that the administrative and transactions costs of private insurance systems cancel out the savings that result from individual economizing.

Efficiency is, moreover, not the only consideration. If relying on individuals to economize leads to unfair or harmful states of affairs, then some other way of controlling costs needs to be found. In many cases there are moral reasons, including paternalist considerations, for *discouraging* economizing and instead subsidizing expected and low-cost procedures or requiring that insurance policies reimburse individuals for those expenses.<sup>12</sup>

Defenders of greater reliance on economizing by medical consumers as the means to control costs emphasize the moral hazard implicit in free or subsidized access to health care, which leads to overuse and to carelessness in personal care, both of which increase costs. They are right to point out the serious moral hazard problems health insurance creates, but private insurance is no less subject to these problems than state-supported health care.<sup>13</sup> If insurance policies pay for treatments and drugs, which may be extremely costly,<sup>14</sup> patients will choose the more efficacious or less burdensome treatment, regardless of the cost. Deductibles will not help much. Co-pays will help, but if patients only have to pay one-fifth or one-tenth of the total, their influence may be small; and if one makes them larger, then one creates serious inequities. It is moreover implausible to believe that an ethic of individual responsibility condemning taking more than one's fair share of the social resources devoted

12. One would think, for example, that those concerned to eliminate abortion would support the requirement that health insurance reimburse women for the cost of birth-control pills. According to an Associated Press article in the *New York Times* (October 4, 2012), providing free contraceptives to a sample of 9,000 teens in St. Louis reduced the rate of both unintended pregnancies and abortions to less than half the national averages.

13. I doubt moreover that the most serious problems of moral hazard can be cured with high deductible policies, because the most serious problems do not lie with too many visits to primary care physicians or diminished self-care. No doubt people with insurance see their physicians more often than they would if they had to pay. But the trouble, anxiety, and waiting involved in seeing a physician constitute strong non-financial incentives against frivolous visits to the doctor, and the risks of broken bones, obesity, or cancer give people good reasons to avoid dangerous and unhealthy behavior, even if they are confident that medicine can lessen the bad effects. Although the availability of anti-retroviral drugs has probably led people to take fewer precautions against contracting AIDS, how many people decide not to wear seat belts because they have comprehensive health insurance?

14. With different patent policies the costs of drugs and appliances could be much lower. But the political power of the pharmaceuticals companies probably takes this possibility off the table.

to health and welfare will do much to control costs, even though such an ethic, encouraged by the advice of physicians can make some contribution. Ultimately, much of the burden of controlling cost will rest on insurers who will cover only some of the potentially efficacious treatments.

If the government explicitly denies coverage for certain treatments, rather than permitting the anonymous insurance market coupled with individual choice and financial constraints to deny coverage, complaint, criticism and controversy is inevitable. But in any feasible market system, this criticism will not disappear: only it will be directed toward private insurance companies rather than the government. On the one hand, hiding behind private insurers has huge political advantages. On the other hand, if a public authority rather than private insurers dictates coverage limits, then they can be defended as serving the public good rather than private profit.

Proponents of the market view might argue that coverage limits in privately purchased health insurance reflect individual economizing, since they result from individual choices among alternative insurance policies rather than rationing decisions by insurance companies. What prevents individuals from receiving more expensive treatments are allegedly their own decisions concerning which insurance plan to purchase. So rather than doctors or some third party telling patients what treatments they can have, patients decide for themselves (subject to a budget constraint) when they are choosing among insurance policies.

This view is implausible. It ignores limitations on patients' time, knowledge, and effort. Although people no doubt know that policies have different costs and that they differ in which treatments they cover and in their co-pays or deductibles, few can make fine-grained choices among policies that differ with respect to whether they cover a specific treatment. (And given problems of adverse selection, it is questionable whether insurance markets would function at all if individuals had such choices.) It is implausible to maintain, as some defenders of market views do, that choices among insurance plans (as opposed to a choice of treatments, hospitals, and physicians) should be an important objective of health-care policy.

## CONCLUSIONS

While limiting health insurance mainly to unexpected and expensive treatments increases efficiency, only small savings can be achieved by increasing the financial incentives on individual patients to economize on the use of health care resources,

unless one is prepared to broach the limits imposed by our benevolence, solidarity and sense of justice. The incentives that matter most are those that the health-care system imposes on health-care providers, and many of these are not financial. Of course, financial incentives matter, but they may be harmful rather than beneficial, and benevolence, solidarity and equity limit the extent to which we can rely on the market. The non-financial incentives I have discussed lessen the need for direct control or for financial incentives and market allocation, but they do not eliminate these needs. To control costs equitably requires, unfortunately, explicit rationing decisions on the part of insurance administrators or regulators, whether public or private. This leads to a measure of inflexibility and inefficiency, which we have to live with. How damaging that inflexibility and how great the inefficiency depends on our success in motivating patients to acquiesce in the regulatory limits they face and in the medical advice they receive and especially in motivating doctors and other health-care professionals to act in the interests of their patients and in the public interest.

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